

ESTTA Tracking number: **ESTTA462365**

Filing date: **03/18/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Brian Landeche		
Entity	Individual	Citizenship	UNITED STATES
Address	32 Washington Square West New York, NY 10011 UNITED STATES		

Attorney information	Josh Gerben, Esq. Gerben Law Firm, PLLC 1155 Connecticut Ave NW Suite 500 Washington, DC 20036 UNITED STATES jgerben@gerbenlawfirm.com Phone:202-294-2287		
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Registration Subject to Cancellation

Registration No	3940550	Registration date	04/05/2011
Registrant	BOI PROMOTIONS INC. 327 W 21ST ST STE 2R NEW YORK, NY 10011 UNITED STATES		

Goods/Services Subject to Cancellation

Class 041. First Use: 2010/04/00 First Use In Commerce: 2010/04/00 All goods and services in the class are cancelled, namely: Arranging and conducting nightclub entertainment events; Arranging and conducting nightclub parties; Entertainment in the nature of producing, arranging, and conducting nightclub entertainment events and parties
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Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	85133001	Application Date	09/19/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	TWINK! TUESDAYS		

Design Mark	TWINK! TUESDAYS
Description of Mark	NONE
Goods/Services	Class 041. First use: First Use: 2005/01/00 First Use In Commerce: 2005/01/00 Night clubs

Attachments	85133001#TMSN.jpeg (1 page)(bytes) TWINK TUESDAYS_PetitiontoCancel_03182012.pdf (4 pages)(182695 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Josh Gerben/
Name	Josh Gerben, Esq.
Date	03/18/2012

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Brian Landeche,	§	
	§	
Petitioner,	§	
	§	
v.	§	Cancellation No. _____
	§	
BOI PROMOTIONS, INC.	§	Mark: TWINK! TUESDAYS
	§	
Registrant.	§	Registration No. 3940550

Petition for Cancellation

Plaintiff, Brian Landeche (hereinafter referred to as “Petitioner”), an individual, believes he is damaged by the registration of the mark shown in Registration Serial No. 3940550 and hereby petitions to cancel the same under the provisions of 15 U.S.C. § 1127. As grounds for cancellation, Petitioner asserts that:

1. Petitioner is the owner of U.S. Trademark Serial No. 85133001, filed for registration on the Principal Register on September 19, 2010 for the mark TWINK! TUESDAYS in connection with: “Night clubs” in international class 041 on the basis of use of the mark in U.S. commerce since at least as early as January 2005.

2. Since at least as early as January 2005 Petitioner has been, and is now using the mark TWINK! TUESDAYS in connection with night clubs. This use has been valid and continuous since at least as early as January 2005 and has not been abandoned.

3. Petitioner’s TWINK! TUESDAYS mark has become symbolic of extensive goodwill and consumer recognition built up by Petitioner through substantial amounts of time and effort in advertising and promotion. Petitioner has invested and continues to invest a great deal of time and money in the development and promotion of its professional quality services.

4. Upon information and belief, Registrant is a New York corporation with its principal place of business at 327 W 21st Street, Suite 2R, New York, NY 10011.

5. On August 3, 2010, Registrant filed an application to register the mark “TWINK! TUESDAYS” for “Arranging and conducting nightclub entertainment events; Arranging and conducting nightclub parties; Entertainment in the nature of producing, arranging, and conducting nightclub entertainment events and parties” in international class 041.

6. On April 5, 2011 Registrant obtained Registration No. 3940550 for the mark “TWINK! TUESDAYS” for “Arranging and conducting nightclub entertainment events; Arranging and conducting nightclub parties; Entertainment in the nature of producing, arranging, and conducting nightclub entertainment events and parties” in international class 041.

7. Petitioner’s first use date precedes Registrant’s first use date of April 2010.

8. On September 19, 2010, the Petitioner filed an application to register the mark “TWINK! TUESDAYS” for “Night clubs” in international class 041.

9. On September 7, 2011, the examining attorney reviewing Petitioner’s application issued a refusal to register the Petitioner’s mark because of a likelihood of confusion with Registrant’s mark “TWINK! TUESDAYS.”

10. Registrant’s TWINK! TUESDAYS mark is confusingly similar to the Petitioner’s TWINK! TUESDAYS mark. Accordingly, Registrant’s applied for mark and the services identified therein so resembles Petitioner’s previously used and not abandoned mark and the goods identified in Petitioner’s application as to be likely to cause confusion, or to cause mistake, or to deceive.

11. Therefore, the Registrant’s registration of TWINK! TUESDAYS is a source of damage and injury to Petitioner, the first user of the mark “TWINK! TUESDAYS.”

12. In view of the above, Registrant is not entitled to federal registration of its mark “TWINK! TUESDAYS” as Petitioner has priority of use of its “TWINK! TUESDAYS” mark due to its use in commerce at a date prior to Registrant’s first use in commerce.

13. By reason of all the foregoing, Petitioner will be gravely damaged by the continued registration of Registrant’s mark.

WHEREFORE, by his undersigned attorney, Petitioner, Brian Landeche, respectfully requests that Registration No. 3940550 be cancelled.

Dated: March 18, 2012

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J.M. Gerben", written in a cursive style.

Joshua M. Gerben, Esq.

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Suite 500
1155 Connecticut Ave NW
Washington, DC 20036
(202) 294-2287

CERTIFICATE OF SERVICE

I hereby certify that on March 18, 2012, a true and correct copy of the foregoing Notice of Opposition is being served by certified mail, return receipt requested on Applicant as shown in the correspondence record in the Office, as follows:

Xavier Morales
Law Office of Xavier Morales
PO BOX 48617
Los Angeles, CA 90048

A handwritten signature in black ink, appearing to read "J. Gerben", written in a cursive style.

Joshua M. Gerben, Esq.