

ESTTA Tracking number: **ESTTA472667**

Filing date: **05/16/2012**

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	Castleberry Toys, Inc.		
Entity	Corporation	Citizenship	Georgia
Address	1240 Lake Drive Greensboro, GA 30642 UNITED STATES		

Attorney information	Matthew H. Swyers, Esq. The Trademark Company 344 Maple Avenue West, Suite 151 Vienna, VA 22180 UNITED STATES mswyers@thetrademarkcompany.com
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**Registration Subject to Cancellation**

Registration No	3986956	Registration date	06/28/2011
Registrant	PLAYMATES TOYS INC. 909 NORTH SEPULVEDA BLVD., SUITE 800 EL SEGUNDO, CA 90245 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 028. First Use: 2010/10/28 First Use In Commerce: 2010/10/28 All goods and services in the class are cancelled, namely: Dolls and related doll accessories
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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.	85255373	Application Date	03/02/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	TIPPI TURTLE 'THE WISER ONE'		

Design Mark	TIPPI TURTLE 'The Wiser One'
Description of Mark	NONE
Goods/Services	Class 028. First use: First Use: 1995/06/01 First Use In Commerce: 1997/12/03 Battery operated action toys

Attachments	85255373#TMSN.jpeg ( 1 page )( bytes ) Petition to Cancel.pdf ( 8 pages )(47049 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	/Matthew H. Swyers/
Name	Matthew H. Swyers, Esq.
Date	05/16/2012

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
The Trademark Trial and Appeal Board**

In the matter of U.S. Registration 3,986,956,  
For the mark TIPI,  
Registered on the Principal Register on June 28, 2011.

Castleberry Toys, Inc.,	:	
	:	
Petitioner,	:	
	:	
vs.	:	Cancellation No. _____
	:	
Playmates Toys, Inc.,	:	
	:	
Registrant.	:	

**PETITION TO CANCEL**

Petitioner, Castleberry Toys, Inc. (hereinafter “Petitioner”), a Georgia Corporation located and doing business at 1240 Lake Drive, Greensboro, Georgia, 30642, believes that it is and will continue to be damaged by the continued registration of U.S. Registration 3,986,956 for the mark TIPI and, accordingly, hereby petitions this honorable tribunal to cancel the same pursuant to 15 U.S.C. § 1064 and 37 C.F.R. § 2.111(b).

**Grounds for Cancellation**

As grounds for the instant Petition to Cancel, it is alleged that the continued registration of Registrant Playmates Toys Inc.’s (hereinafter “Registrant”) mark TIPI as more fully displayed in U.S. Registration No. 3,986,956 would be likely to cause confusion with Petitioner’s mark TIPPI TURTLE ‘THE WISER ONE’ which retains priority of use over Registrant’s mark TIPI by virtue of its prior use in commerce in the United States.

**Statement of Facts**

In support of the instant Petition to Cancel, it is alleged that:

1. Petitioner is the owner of the mark TIPPI TURTLE ‘THE WISER ONE’ used on or in connection with battery operated action toys.

2. Petitioner first used the mark TIPPI TURTLE 'THE WISER ONE' in connection with the above-identified goods in interstate commerce on or about December 3, 1997.

3. Petitioner's use of the mark TIPPI TURTLE 'THE WISER ONE' in connection with the above-identified goods has been continuous since on or about December 3, 1997.

4. Petitioner has invested significant sums of money in the promotion of the mark TIPPI TURTLE 'THE WISER ONE' and the Petitioner's goods in the United States.

5. As a result of the aforesaid, Petitioner has developed a valuable reputation and goodwill in its TIPPI TURTLE 'THE WISER ONE' mark and has achieved a following among the relevant consuming public prior to the filing, registration and/or priority date of Registrant's application to register the mark TIPI identified more fully in U.S. Registration No. 3,986,956.

6. On March 2, 2011, Petitioner filed an application to register its mark TIPPI TURTLE 'THE WISER ONE' used on or in connection with battery operated action toys in International Class 28. The application received Trademark Application No. 85/255,373.

7. By Office Action dated December 31, 2011, the examining attorney issued an initial refusal to register Petitioner's mark TIPPI TURTLE 'THE WISER ONE' based upon the examining attorney's opinion that, if registered, Petitioner's mark would be likely to create a likelihood of confusion with Registrant's registered mark for TIPI, U.S. Registration No. 3,986,956, under Trademark Act Section 2(d), 15 U.S.C. § 1052(d).

8. The Office Action dated December 31, 2011 referenced hereinabove was Petitioner's first notice that Registrant was using the mark TIPI in the United States.

9. Based upon information and belief, Registrant is a California corporation located and doing business at 909 North Sepulveda Blvd, Suite 800, El Segundo, California 90245.

10. Registrant is using the mark TIPI in connection with dolls and related accessories in International Class 28.

11. Registrant's registration identified more fully in U.S. Registration No. 3,986,956 was filed with the United States Patent and Trademark Office on May 13, 2010.

12. Upon information and belief, Registrant first used the mark TIPI in connection with the goods covered by its registration in the United States in October of 2010.

13. As such, Petitioner's rights in the mark TIPPI TURTLE 'THE WISER ONE' has priority of use over Registrant's rights in the mark TIPI, U.S. Registration No. 3,986,956, inasmuch as Petitioner commenced its use of the mark TIPPI TURTLE 'THE WISER ONE' in connection with its goods in interstate commerce prior to the filing, registration, and/or priority of use date of the Registrant's registration and use of the mark TIPI.

14. Petitioner believes that consumers confronted with the Registrant's mark TIPI will inevitably be confused and deceived into the mistaken belief that the Registrant's goods have their origin or are in some manner connected with the Petitioner and/or Petitioner's goods offered in connection with its TIPPI TURTLE 'THE WISER ONE' mark.

15. The continued registration of Registrant's mark confers upon Registrant rights to which it is not entitled and is inconsistent with the prior established rights of Petitioner in its mark TIPPI TURTLE 'THE WISER ONE'.

16. By reason of the foregoing, Petitioner will be seriously damaged by the continued registration of Registrant's mark TIPI.

WHEREFORE Petitioner Castleberry Toys, Inc., by counsel, prays that the instant petition be granted and U.S. Registration No. 3,986,956 be cancelled.

Respectfully submitted this 16<sup>th</sup> day of May, 2012.

/Matthew H. Swyers/  
Matthew H. Swyers, Esquire  
344 Maple Avenue West, Suite 151  
Vienna, VA 22180  
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Fax (270) 477-4574  
mswyers@thetrademarkcompany.com  
Counsel for Petitioner

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
The Trademark Trial and Appeal Board**

In the matter of U.S. Registration 3,986,956,  
For the mark TIPI,  
Registered on the Principal Register on June 28, 2011.

Castleberry Toys, Inc.,	:	
	:	
Petitioner,	:	
	:	
vs.	:	Cancellation No. _____
	:	
Playmates Toys, Inc.,	:	
	:	
Registrant.	:	

**Certificate of Service**

I HEREBY CERTIFY that a true and accurate copy of the foregoing *Petition to Cancel* was served this 16<sup>th</sup> day of May, 2012 upon the Registrant's Attorney of Record via first class mail at the address listed on the TARR database as reported this day as follows:

Karen Kreider Gaunt  
Wood, Herron & Evans LLP  
441 Vine Street  
2700 Carew Tower  
Cincinnati, OH 45202-2917

And a copy to:

Playmates Toys Inc.  
909 North Sepulveda Blvd  
El Segundo CA 90245

/Matthew H. Swyers/  
Matthew H. Swyers

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As grounds for the instant Petition to Cancel, it is alleged that the continued registration of Registrant Playmates Toys Inc.’s (hereinafter “Registrant”) mark TIPI as more fully displayed in U.S. Registration No. 3,986,956 would be likely to cause confusion with Petitioner’s mark TIPPI TURTLE ‘THE WISER ONE’ which retains priority of use over Registrant’s mark TIPI by virtue of its prior use in commerce in the United States.

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/Matthew H. Swyers/  
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344 Maple Avenue West, Suite 151  
Vienna, VA 22180  
Tel. (800) 906-8626 x100  
Fax (270) 477-4574  
mswyers@thetrademarkcompany.com  
Counsel for Petitioner

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2700 Carew Tower  
Cincinnati, OH 45202-2917

And a copy to:

Playmates Toys Inc.  
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/Matthew H. Swyers/  
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