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Filing date: **05/11/2016**

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	Pilgrim Telephone, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	405 Waltham Street PMB 340 Lexington, MA 02421 UNITED STATES		

Attorney information	Walter Steimel, Jr. The Steimel Law Group 1455 Pennsylvania Ave., N.W. Suite 770 Washington, DC 20006 UNITED STATES waltersteimel@gmail.com, waltsteimel@outlook.com Phone:2022719258
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Registration Subject to Cancellation

Registration No	4358258	Registration date	06/25/2013
Registrant	Play Megaphone, Inc. #3A, 160 E, 3rd Street New York, NY 10009 UNITED STATES		

Goods/Services Subject to Cancellation

Class 045. First Use: 2011/08/01 First Use In Commerce: 2011/08/01 All goods and services in the class are cancelled, namely: Internet-based introduction and social networking services related to video games
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Grounds for Cancellation


Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
Abandonment	Trademark Act Section 14(3)
Fraud on the USPTO	Trademark Act Section 14(3); In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)

Related Proceedings	91212314, 91212316
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	3360126	Application Date	02/27/2003
Registration Date	12/25/2007	Foreign Priority	NONE

		Date	
Word Mark	MEGAPHONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 038. First use: First Use: 2007/09/07 First Use In Commerce: 2007/09/07 Electronic voice messaging, namely, therecording and subsequent transmission of voice messages by telephone; local andlong distance telephone services; telecommunications services in the field of providing long distance service with audio advertising for others as a component of the long distance service; tele-phone voice messaging services and voice mail services		

U.S. Registration No.	3268714	Application Date	02/27/2003
Registration Date	07/24/2007	Foreign Priority Date	NONE
Word Mark	MEGAPHONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2006/12/19 First Use In Commerce: 2006/12/19 Direct marketing advertising for others		

Attachments	76492902#TMSN.png(bytes) 76496112#TMSN.png(bytes) Petition for Cancellation.pdf(5222275 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	/Walter Steimel Jr/
Name	Walter Steimel Jr
Date	05/11/2016

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

In the Matter of Trademark Registration No. 4,358,258 for the mark
MEGAPHONE

Date registered: June 25, 2013

PILGRIM TELEPHONE, INC.,)	
)	
Petitioner,)	
)	
v.)	Petition to Cancel No. _____
)	
PLAY MEGAPHONE, INC. a/k/a)	
MEGAPHONE LABS,)	
)	
Registrant.)	
)	

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

PETITION FOR CANCELLATION

Pilgrim Telephone, Inc., a Delaware corporation with a business address of 405 Waltham Street, PMB 340, Lexington Massachusetts ("Pilgrim" or "Petitioner"), believes that it has been damaged and will continue to be damaged by the mark shown in Registration No. 4,358,258 ("Registration"), and hereby petitions the Trademark Trial and Appeal Board for cancellation of the same registration under the provisions of 15 U.S.C. § 1064.

As grounds for cancellation, Petitioner alleges:

1. Pilgrim Telephone, Inc. is the owner of record of United States trademark Registration No. 3,360,126, for "[e]lectronic voice messaging, namely, the recording and subsequent transmission of voice messages by telephone; local and long distance telephone services; telecommunications services in the field of providing long distance service with audio

advertising for others as a component of the long distance service; telephone voice messaging services and voice mail services” in Class 38, and Registration No. 3,268,714 for “[d]irect marketing advertising for others.” (“Petitioner’s Marks” or “Marks”). Pilgrim’s registrations are incontestable, and Section 8 and 15 combined declarations have been accepted and acknowledged for each. The underlying applications for these registrations were filed as intent to use in 2003.

2. Petitioner has substantially invested in the promotion and development of its Marks for its goods and services.

3. As a result of Petitioner's investment and effort in promoting its Marks for its goods and services, its Marks have, on information and belief, already come to be recognized by consumers as uniquely associated with and belonging to Petitioner.

4. The Registration covers the designation MEGAPHONE, Registration No. 4,358,258, and has been registered by Play Megaphone, Inc. (“Registrant”), a Delaware corporation having a place of business listed with the USPTO as 160 E. 3rd Street, #3A, New York, New York 10009, for “Internet-based introduction and social networking services related to video games,” in International Class 45. Play Megaphone filed the underlying application, Serial No. 77728758, on May 4, 2009, and received registration on June 25, 2013.

5. The Registration has not yet been in effect for five years.

6. According to Registrant’s claims in its Registration, Registrant began using the mark MEGAPHONE (“Registrant’s Mark”) on August 8, 2011.

7. Registrant’s original description of services was “Internet-based introduction and social networking services,” but Registrant changed that description after a series of Office

Actions, at least one of which raised issues of a likelihood of confusion, by adding “related to video games.”

8. While Registrant limited its description of services, upon information and belief, it did not change the services it was actually offering the public under Registrant’s Mark, thereby effectuating a fraud on the United States Patent and Trademark Office (“USPTO”).

9. Upon information and belief, Registrant’s change in its description of services was undertaken solely to overcome objections of the Examining Attorney and prosecute the application, but was not reflected in any change in the services actually marketed and provided by Registrant.

10. Registrant filed a Cancellation Action (“Action”) against Petitioner herein on January 29, 2010, alleging that Petitioner’s Marks caused a likelihood of confusion with Registrant’s Mark, along with other pending applications of Registrant, and making other allegations. The Action was dismissed with prejudice against Registrant after it filed a motion to dismiss and failed to prosecute the Action. Registrant alleged, however, that there is a likelihood of confusion between Petitioner’s Marks and Registrant’s Mark.

11. Petitioner is not connected in any way with Registrant or the alleged use by Registrant of the MEGAPHONE designation for Internet-based introduction and social networking services related to video games, or for any other use.

12. Petitioner has never granted a license or other permission to Registrant to use Petitioner’s Mark, and has asked Registrant to cease and desist from using the Registrant’s Mark.

13. Upon information and belief, Registrant had attempted to hijack domain names held by Petitioner or that Registrant has stated that it believes may be of interest to Petitioner.

14. Upon information and belief, Registrant's activities constitute abuse of the trademark process.

15. An investigation conducted by Petitioner elicited no evidence that Registrant's Mark is currently in use in connection with Internet-based introduction and social networking services related to video games, as listed in the Registration, or in the form shown in the Registration.

16. Upon information and belief Registrant has abandoned the use of Registrant's Mark in favor of a variant that constitutes a different mark or dissection of the mark.

17. Upon information and belief Registrant uses the Registrant's Mark, or a variation of the Registrant's Mark, in conjunction with telephony based social networking services not related to video games that are confusingly similar to Petitioner's Marks and services, and not with those alleged in its description of services.

18. An investigation conducted by Petitioner elicited no evidence that Registrant's Mark has been in use in association with the "Internet-based introduction and social networking services related to video games," which is the service listed in the Registration, at any time during the past three years.

19. An investigation conducted by Petitioner elicited no evidence that Registrant intends to use or to resume use of Registrant's Mark in association with "Internet-based introduction and social networking services related to video games," which is the service listed in the Registration.

20. Upon information and belief, the Registrant's Mark is not currently in use by Registrant for "Internet-based introduction and social networking services related to video games," which is the service listed in the Registration.

21. Upon information and belief, the Registrant's Mark has not been in use by Registrant for "Internet-based introduction and social networking services related to video games," which is the service listed in the Registration, during the past three consecutive years.

22. Upon information and belief, Registrant does not intend to use or resume use of the Registrant's Mark for "Internet-based introduction and social networking services related to video games," which is the service listed in the Registration.

23. Upon information and belief, Registrant has abandoned the Registrant's Mark for use with "Internet-based introduction and social networking services related to video games," which is the service listed in the Registration.

24. Upon information and belief, Registrant has abandoned the Registrant's Mark for a different or dissected formative that is inconsistent with the mark shown in the Registration.

25. Upon information and belief, Registrant has abandoned the Registrant's Mark for use with the "Internet-based introduction and social networking services related to video games" service listed in the Registration.

26. On May 9, 2013, Registrant submitted a Statement of Use to the USPTO in connection with its Registration No. 4,358,258. The Statement of Use contained a single specimen that purported to show the Registrant's Mark in use, stating that Registrant "is submitting one specimen for the class showing the mark as used in commerce on or in connection with any item in the class, consisting of a (n) screenshot showing the mark used in connection with the provision of social networking services."

27. Registrant's submission contained a Declaration, pursuant to 18 U.S.C. Section 1001 providing that false statements are punishable by fine or imprisonment, that the Registrant

“is using the mark in commerce on or in connection with the goods/services identified above, as evidenced by the attached specimen(s) showing the mark as used in commerce.”

28. Upon information and belief the Registrant's declaration is false.

29. Upon information and belief the screenshot used for the specimen is different from what was in use, and may have been altered or created with the sole purpose of providing a specimen.

30. Upon information and belief, at the time Registrant submitted the Statement of Use for its Registration, the Registrant's Mark was not actually in use in commerce for the claimed services as shown on the specimen.

31. Upon information and belief, the graphics submitted by Registrant in connection with its Statement of Use were created for the purpose of submission to the USPTO as specimen, were different from that used in commerce, and/or were not used in commerce as claimed by Registrant in its declaration.

32. Upon information and belief, Registrant knew at the time it submitted its Statement of Use that the declaration made therein was false, and intended that the USPTO rely upon that false statement in issuing its Registration.

33. Upon information and belief, the USPTO did not realize the false nature of Registrant's declaration, and reasonably relied on the declaration when issuing Registrant's trademark registration.

34. The misrepresentation made by Registrant was material, in that its Registration would not have issued absent such misrepresentation.

35. As a direct and proximate result of Registrant's false and fraudulent statement to the USPTO, Petitioner has been and continues to be injured through Registrant's maintenance of

ownership of a mark it does not use in the manner represented, and in a manner that causes confusion.

36. The maintenance of Registrant's Mark on the Principal Register for use in association with "Internet-based introduction and social networking services related to video games services" as listed in the Registration is inconsistent with Petitioner's rights, and has and will continue to damage Petitioner.

37. Upon information and belief the Registrant has abandoned its use of the Registrant's Mark, as registered, and the Registration should be cancelled.

WHEREFORE, Petitioner requests that Registration No. 4,358,258 be cancelled and that the Board rule in favor of Petitioner on the Cancellation.

Dated: May 11, 2014

Pilgrim Telephone, Inc.
Opposer

By and through counsel



Walter Steimel, Jr.
The Steimel Law Group
1455 Pennsylvania Ave., N.W. Suite 770
Washington, D.C. 20006

CERTIFICATE OF SERVICE


The undersigned certifies that it served a copy of the foregoing Petition for Cancellation upon on Play Megaphone, Inc. by First Class Mail, postage prepaid, on this 11th day of May, 2016, by placing the same in an envelope addressed to the following address for the Registrant contained in the official records of the USPTO:

Play Megaphone, Inc.
#3A, 160 E, 3rd Street
New York, New York 10009

with a second copy to counsel noted on its Registration, also by First Class Mail on this 11th day of May, 2016, by placing same in an envelope addressed as follows:

Hal Milstein, Esq.
Sheppard, Mullin, Richter & Hampton LLP
379 Lytton Avenue
Palo Alto, California 94301

By: _____


Walter Steimel, Jr.