

ESTTA Tracking number: **ESTTA777792**

Filing date: **10/19/2016**

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	Baltimore Orioles Limited Partnership		
Entity	limited partnership	Citizenship	Maryland
Address	333 West Camden Street Baltimore, MD 21201 UNITED STATES		

Attorney information	Mary L. Kevlin / Robert J. English Cowan, Liebowitz & Latman, P.C. 114 West 47th Street New York, NY 10036 UNITED STATES rje@cll.com, mlk@cll.com, las@cll.com, njh@cll.com, trademark@cll.com Phone:212-790-9200
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Registration Subject to Cancellation

Registration No	4871673	Registration date	12/15/2015
Registrant	Fried Os 10002 E.Bay Harbor Dr. Bay Harbor Islands, FL 33154 UNITED STATES		

Goods/Services Subject to Cancellation

Class 035. First Use: 2014/09/17 First Use In Commerce: 2015/07/29 All goods and services in the class are cancelled, namely: Concession stands featuring food

Grounds for Cancellation

Other	see attached pleading
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Attachments	FRIED OS - Petition for Cancellation.pdf(114039 bytes) Ltr to Commissioner - FRIED OS.pdf(57131 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	/Robert J. English/
Name	Robert J. English

Date	10/19/2016
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Registration No. 4,871,673
Issued: December 15, 2015
For Mark: FRIED OS

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BALTIMORE ORIOLES LIMITED	:	
PARTNERSHIP,	:	Cancellation No.
	:	
Petitioner,	:	
	:	
v.	:	<u>PETITION FOR</u>
	:	<u>CANCELLATION</u>
FRIED OS LLC,	:	
	:	
Registrant.	:	
-----X	:	

Commissioner for Trademarks
Attn: Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Petitioner, Baltimore Orioles Limited Partnership (“Petitioner”), a Maryland limited partnership with offices at 333 West Camden Street, Baltimore, Maryland 21201, believes that it will be damaged by registration of the standard character mark FRIED OS (“Registrant’s Mark”) in International Class 35 for “concession stands featuring food” as shown in Registration No. 4,871,673 (the “Registration”), and hereby petitions to cancel the same.

As grounds for cancellation, it is alleged that:

1. Petitioner is the owner of the renowned BALTIMORE ORIOLES MAJOR LEAGUE BASEBALL club.
2. Since long prior to September 17, 2014, Registrant’s claimed first use date, Petitioner and its predecessors, and their affiliated and related entities, licensees and/or sponsors have used the names or marks O’s, O and/or ORIOLES, including, without limitation, in the

following distinctive stylizations as shown here:



and

, alone or with other word, letter and/or design elements

(“Petitioner’s O’S Marks”), in connection with baseball games and exhibition services and a wide variety of goods and services, including, but not limited to, food and beverage items and concession stands; apparel; paper goods and printed matter; toys and sporting goods; and novelty items.

3. Petitioner owns U.S. federal registrations for Petitioner’s O’S Marks in International Classes in International Classes 6, 9, 14, 16, 18, 20, 21, 24, 25, 28, 35, 36, 41; namely, Registration Nos. 831,251, 1,561,778, 1,563,302, 1,602,346, 1,605,473, 1,638,334, 1,831,753, 1,903,093, 1,924,675, 2,322,643, 3,291,902, 3,291,904, 3,326,758, 3,349,801, 3,432,937, 3,750,953, 4,391,949 and 4,391,952. Registration Nos. 831,251, 1,561,778, 1,563,302, 1,602,346, 1,605,473, 1,638,334, 1,831,753, 1,903,093, 3,291,902, 3,291,904, 3,326,758, 3,349,801 and 3,432,937 are incontestable. Registration Nos. 1,831,753 and 1,924,675 are partially incontestable.

4. Since long prior to September 17, 2014, Registrant’s claimed first use date, Petitioner and its predecessors, and their affiliated and related entities, licensees and/or sponsors have promoted and advertised the sale and distribution of goods and services bearing or offered in connection with Petitioner’s O’S Marks, including, but not limited to, baseball games and

exhibition services and a wide variety of goods and services, including, but not limited to, food and beverage items and concession stands; apparel; paper goods and printed matter; toys and sporting goods; and novelty items and have offered such goods and rendered such services in commerce.

5. As a result of the sales and promotion of its goods and services bearing or offered in connection with Petitioner's O'S Marks, Petitioner has built up highly valuable goodwill in Petitioner's O'S Marks, and said goodwill has become closely and uniquely identified and associated with Petitioner.

6. On September 17, 2014, Applicant filed an application to register Registrant's Mark for "concession stands featuring foods" in International Class 35, claiming a first use date of September 17, 2014. This application matured to the Registration on December 15, 2015.

7. Upon information and belief, Registrant did not use Registrant's Mark for the services covered in the Registration prior to its claimed first use date of September 17, 2014.

8. The services covered by the Registration are identical and/or closely related to the goods offered and services rendered in connection with Petitioner's O'S Marks.

9. Upon information and belief, the "OS" component of Registrant's Mark is used in a stylization that is virtually identical to certain of Petitioner's O'S Marks as shown below:

Registrant's Mark



Petitioner's O'S Mark



10. As Registrant's Mark is a standard character word mark, registration of such mark effectively could give Registrant rights to the mark in any stylization, including the stylizations of Petitioner's O'S Marks that have been duly registered or have priority of use over Registrant's Mark. Additionally, registration of such mark effectively could prevent Petitioner from developing additional "O'S" or "O" marks in the future.

11. The word "FRIED" in Registrant's Mark is disclaimed.

12. Registrant's Mark so resembles Petitioner's O's Marks as to be likely, when used in connection with Registrant's services, to cause confusion, to cause mistake, and to deceive the trade and public, who are likely to believe that Registrant's services have their origin with Petitioner and/or that such services are approved, endorsed or sponsored by Petitioner or associated in some way with Petitioner. Petitioner would thereby be injured by the continued registration of Registrant's Mark.

WHEREFORE, Petitioner believes that it will be damaged by continued registration of Registrant's Mark and requests that the cancellation be sustained and said registration be cancelled.

Please recognize as attorneys for Petitioner in this proceeding Mary L. Kevlin, Richard S. Mandel, Robert J. English (members of the bar of the State of New York) and the firm Cowan, Liebowitz & Latman, P.C., 114 W. 47th Street, New York, New York 10036-1525.

Please address all communications to Mary L. Kevlin, Esq. at the address listed below.

Dated: New York, New York
October 19, 2016

Respectfully submitted,

COWAN LIEBOWITZ & LATMAN, P.C.
Attorneys for Petitioner

By: /Robert J. English /

Mary L. Kevlin

Richard S. Mandel

Robert J. English

114 W. 47th Street

New York, New York 10036-1525

(212)790-9200

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on October 19, 2016, I caused a true and correct copy of the foregoing Petition for Cancellation to be served via First Class Mail, postage prepaid, on Registrant and Correspondent of Record as follows:

Fried Os
10002 E. Bay Harbor Dr.
#2
Bay Harbor Islands, Florida 33154
Attn: Domenico Luisi

/Robert J. English /
Robert J. English



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October 19, 2016

By Electronic Filing

Commissioner for Trademarks
Attn: TTAB
P.O. Box 1451
Alexandria, VA 22313-1451

Re: Baltimore Orioles Limited Partnership
Petition for Cancellation Against
Fried Os registration for
FRIED OS
Ref. No. 21307.025

Dear Commissioner:

We enclose a Petition for Cancellation against Registration Number 4,871,673 registered on the Principal Register on December 15, 2015. Contemporaneously with the electronic filing of this Petition for Cancellation, we are arranging for an electronic payment in the amount of \$300 to cover the filing fee.

If the amount received is insufficient and additional fees are required, please charge our Deposit Account No. 03-3415.

Please address all future correspondence to the attention of Mary L. Kevlin of Cowan, Liebowitz & Latman, P.C.

Respectfully submitted,

/Robert J. English/
Robert J. English

Enclosures

cc: Ms. Diane Kovach (w/encs.)
Mary L. Kevlin, Esq. (w/encs.)