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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 has filed a petition to cancel the registration indicated below.

### Petitioner Information

Name	Evolve Golf, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	805 N. 4th St. Wilmington, NC 28401 UNITED STATES		

Correspondence information	Edward A. Pennington Smith, Gambrell & Russell LLP 1055 Thomas Jefferson St NW, Suite 400 Washington, DC 20007 UNITED STATES Email: <a href="mailto:docketing@sgrlaw.com">docketing@sgrlaw.com</a> Phone: 2022634300
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### Registration Subject to Cancellation

Registration No.	5049578	Registration date	09/27/2016
Registrant	Pride Manufacturing Company, LLC 155 Franklin Road, Suite 250 Brentwood, TN 37027 UNITED STATES		

### Goods/Services Subject to Cancellation

Class 028. First Use: 2010/01/00 First Use In Commerce: 2010/01/00 All goods and services in the class are subject to cancellation, namely: Golf Tees
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### Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
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Related Proceedings	1:15-cv-01034-JFB-SRF Pride Manufacturing Company, LLC v. Evolve Golf, Inc. (D.Del.)
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### Mark Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	3280419	Application Date	03/08/2004
Registration Date	08/14/2007	Foreign Priority Date	NONE
Word Mark	EVOLVEGOLF		

Design Mark	<b>EVOLVEGOLF</b>
Description of Mark	NONE
Goods/Services	Class 028. First use: First Use: 2003/02/06 First Use In Commerce: 2003/02/06 Golf equipment and accesories, namely, golf tees

Attachments	78380319#TMSN.png( bytes ) EVOLVE GOLF Opposition.pdf(28278 bytes )
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Signature	/Edward A. Pennington/
Name	Edward A. Pennington
Date	09/01/2017

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

EVOLVE GOLF, INC.,	)	
	)	
Petitioner,	)	
	)	Cancellation No. _____
v.	)	
	)	U.S. Registration No. 5,049,578
PRIDE MANUFACTURING CO., LLC,	)	
	)	
	)	
Registrant.	)	
	)	

**PETITION FOR CANCELLATION**

Petitioner, Evolve Golf, Inc., a Delaware corporation with its principal place of business at 805 N. 4<sup>th</sup> St. Wilmington, NC 28401, is being damaged by and will continue to be damaged by the registration of the trademark **PRIDE EVOLUTION** (U.S. Reg. No. 5,049,578) for “Golf tees” in International Class 28, owned by Registrant Pride Manufacturing Co. Ltd., a Wisconsin limited liability company with an address of 155 Franklin Road, Suite 250 Brentwood, TN 37027.

As grounds for this Petition, Petitioner asserts that Registrant’s mark **PRIDE EVOLUTION** is confusingly similar to the mark **EVOLVEGOLF** covered by Petitioner’s prior federal registration. Therefore, continued registration of Registrant’s **PRIDE EVOLUTION** mark is prohibited by Section 2(d) of the Federal Trademark Act of 1946, as amended (the “Lanham Act”), 15 U.S.C. § 1052(d).

### Factual Background

(1) Petitioner was founded in 2003 and is a leading manufacturer of golf tees.

Petitioner is the owner of United States Trademark Registration No. 3,280,419 for the mark **EVOLVEGOLF** for “golf equipment and accessories, namely, golf tees” in International Class 28.

(2) U.S. Reg. No. 3,280,419 is *prima facie* evidence of the validity of Petitioner’s mark and its ownership and exclusive right to use the **EVOLVEGOLF** mark in commerce, and is constructive notice of Petitioner’s ownership thereof.

(3) Petitioner's registration pleaded above is active and incontestable pursuant to Section 15 of the Lanham Act, 15 U.S.C. § 1065. As such, the registration is conclusive evidence of the validity of the registered mark, and Petitioner’s ownership and exclusive right to use the **EVOLVEGOLF** mark in connection with the goods covered by the registration.

(4) Petitioner has made substantial, continuous and exclusive use of the **EVOLVEGOLF** mark for over fourteen years in commerce in connection the goods identified above and is currently using it in interstate commerce.

(5) By reason of long and continuous use in commerce combined with publicity and promotional efforts by Petitioner for over fourteen years, the **EVOLVEGOLF** mark has become recognized in the golf industry and customers thereof as a designation of origin that identifies Petitioner as the source of golf tees.

(6) Notwithstanding Petitioner’s longstanding rights in its **EVOLVEGOLF** mark, on February 22, 2016, Registrant filed an actual-use application to register **PRIDE EVOLUTION** with the U.S. Patent & Trademark Office (Serial No. 86/915,574). The application was

published for opposition on July 12, 2016. The application issued as Registration 5,049,578 on September 27, 2016.

**Likelihood of Confusion**

(7) Registrant’s mark, **PRIDE EVOLUTION**, so resembles the **EVOLVEGOLF** mark previously used and registered by Petitioner as to cause mistake, or to deceive, or to cause confusion as to source, sponsorship or affiliation.

(8) Petitioner registered and used the **EVOLVEGOLF** mark long prior to the filing date and claimed first use dates in the **PRIDE EVOLUTION** registration.

(9) Registrant’s mark, **PRIDE EVOLUTION**, has a highly similar connotation and commercial impression to Petitioner’s **EVOLVEGOLF** mark.

(10) Specifically, the **PRIDE EVOLUTION** mark is a combination of the terms “Pride” and “Evolution.” In Registrant’s actual use (on its packaging and advertising), the “Pride” portion of its mark is subordinated to the dominant “Evolution” portion of the mark. “Evolution” is the noun form of “Evolve” – the dominant portion of Petitioner’s mark. The similarity of the dominant portions of the marks, among other things, leads to a likelihood of confusion and, indeed, has led to multiple instances of actual confusion.

(11) Both the **PRIDE EVOLUTION** registration and Petitioner’s **EVOLVEGOLF** registration cover the same goods in the same class: golf tees in International Class 28.

(12) Accordingly, Registrant and Petitioner use their respective marks in the fields of use, thereby exacerbating the likelihood of confusion.

(13) The **PRIDE EVOLUTION** registration includes no limitations on Registrant’s channels of trade; they are identical and overlapping compared to Petitioner’s.

(14) Due to the distinctiveness of Petitioner's **EVOLVEGOLF** mark, consumers encountering Registrant's **PRIDE EVOLUTION** mark are likely to believe, mistakenly, that Registrant's goods are those of Petitioner, or are sponsored, endorsed or approved by Petitioner, or that there is a license, relationship or other connection between the parties. Indeed, multiple actual and potential customers have been confused between Registrant's **PRIDE EVOLUTION** mark and Petitioner's **EVOLVEGOLF** mark.

WHEREFORE, the Board should grant this Petition on the ground that the continued registration of **PRIDE EVOLUTION**, U.S. Reg. No. 5,049,578, is prohibited by Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

Respectfully submitted,

**Evolve Golf, Inc.**

Dated: September 1, 2017

By: /s/ Edward A. Pennington  
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