

ESTTA Tracking number: **ESTTA856841**

Filing date: **11/07/2017**

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	K9 & Coffee, INC.		
Entity	Corporation	Citizenship	Maryland
Address	3830 Ten Oaks Road Glenelg, MD 21737 UNITED STATES		

Correspondence information	Ruy Garcia-Zamor, Esquire Garcia-Zamor Intellectual Property Law, LLC 12960 Linden Church Road Clarksville, MD 21029 UNITED STATES Email: ruy@garcia-zamor.com, tyler@garcia-zamor.com, phat-thra@garcia-zamor.com Phone: 410-531-9853
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Registration Subject to Cancellation

Registration No.	5293255	Registration date	09/19/2017
Registrant	K9s and Coffee, LLC 8101 Emerald Drive EMERALD ISLE, NC 28594 UNITED STATES Email: k9sandcoffeenc@gmail.com		

Goods/Services Subject to Cancellation

Class 043. First Use: 2017/01/30 First Use In Commerce: 2017/01/30 All goods and services in the class are subject to cancellation, namely: Coffee shops

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	4955051	Application Date	08/18/2015
Registration Date	05/10/2016	Foreign Priority Date	NONE
Word Mark	K-9 & COFFEE		

Design Mark	<h1>K-9 & COFFEE</h1>
Description of Mark	NONE
Goods/Services	Class 043. First use: First Use: 2015/08/18 First Use In Commerce: 2015/08/18 Coffee shops; Restaurant, cafe, cafeteria, snack bar, coffee bar and coffee house, carry out restaurant, and take out restaurant services; Catering services; Coffee supply services for offices; Contract food services; Food preparation; Preparation of carry-out foods and beverages

U.S. Registration No.	5099542	Application Date	04/13/2016
Registration Date	12/13/2016	Foreign Priority Date	NONE

Word Mark	K-9 & COFFEE BRING YOUR PUP AND GRAB A CUP
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Design Mark	
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Description of Mark	The mark consists of a dog holding a cup inside a circle. In an outer circle, the wording "K-9 & Coffee" is at the top and "Bring Your Pup and Grab a Cup" is on the bottom. There are two paw prints on the left and right sides, inside the outer circle.
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Goods/Services	Class 043. First use: First Use: 2015/08/18 First Use In Commerce: 2015/08/18 Coffee shops; Restaurant, cafe, cafeteria, snack bar, coffee bar and coffee house, carry out restaurant, and take out restaurant services; Catering services; Coffee supply services for offices; Contract food services; Food preparation; Preparation of carry-out foods and beverages
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U.S. Registration No.	4664574	Application Date	09/13/2013
Registration Date	12/30/2014	Foreign Priority Date	NONE
Word Mark	K-9 & COFFEE BRING YOUR PUP AND GRAB A CUP		
Design Mark			
Description of Mark	The mark consists of a dog holding a cup inside a circle. In a outer circle, the wording "K - 9 & Coffee" is at the top and "Bring Your Pup and Grab a Cup" is on the bottom. There are two paw prints on the left and right sides, inside the outer circle.		
Goods/Services	Class 041. First use: First Use: 2014/03/01 First Use In Commerce: 2014/03/01 Arranging, organizing, conducting, and hosting social entertainment events		

Attachments	86728177#TMSN.png(bytes) 86974569#TMSN.png(bytes) 86063884#TMSN.png(bytes) KAC-Cancellation-Petition.pdf(94190 bytes)
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Signature	/rgz/
Name	Ruy Garcia-Zamor, Esquire
Date	11/07/2017

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

In the matter of trademark Registration No.: 5,293,255

For the Mark: K9s and Coffee

Date registered: September 19, 2017

K9 & COFFEE, INC.

v.

K9s and Coffee, LLC

PETITION TO CANCEL

K9 & Coffee, Inc. ("Petitioner") is a Maryland corporation, having its principal place of business at 3830 Ten Oaks Road, Glenelg, Maryland 21737, and petitions for a cancellation of the above U.S. Registration No. 5,293,255 ("Registration"), and states as follows:

1. To the best of the Petitioner's knowledge, the name of the current owner of the Registration is K9s and Coffee, LLC, a North Carolina limited liability company having its principal place of business at 8101 Emerald Drive, Emerald Isle, North Carolina 28594.
2. The Petitioner believes that it will be damaged by the above-identified Registration, and hereby petitions to cancel the same.

3. Petitioner owns the following family of trademarks: U.S. Trademark Registration No. 4,664,574 for a stylized logo including the wording “K-9 & COFFEE” and “BRING YOUR PUP GRAB A CUP” for “*Arranging, organizing, conducting, and hosting social entertainment events;*” U.S. Trademark Registration No. 4,955,051 for the wording “K-9 & COFFEE” in standard characters for “*Coffee shops; Restaurant, cafe, cafeteria, snack bar, coffee bar and coffee house, carry out restaurant, and take out restaurant services; Catering services; Coffee supply services for offices; Contract food services; Food preparation; Preparation of carry-out foods and beverages;*” and U.S. Trademark Registration No. 5,099,542 for a stylized logo including the wording “K-9 & COFFEE” and “BRING YOUR PUP GRAB A CUP” for “*Coffee shops; Restaurant, cafe, cafeteria, snack bar, coffee bar and coffee house, carry out restaurant, and take out restaurant services; Catering services; Coffee supply services for offices; Contract food services; Food preparation; Preparation of carry-out foods and beverages;*” (hereafter “Petitioner’s Family of Marks”).
4. The existence of Respondent's Registration is likely to cause consumer confusion with the Petitioner’s Family of Marks, for at least the following reasons. The Registration is for a mark which is nearly identical in appearance and sound to the Petitioner’s Registration No. 4,955,051 for the wording “K-9 & COFFEE” in standard characters. The Registration differs only slightly in appearance with the wording “K9s and Coffee” only removing a hyphen, adding an “s” and replacing the ampersand with the wording “and.” Such minimal changes have almost no appreciable change to the sound of the mark. Further, the Registration only describes its goods and services as “coffee shops” in Class 043. This is identical to a portion of the goods and services listed in the Petitioner’s Registration No. 4,955,051, which also lists “Coffee shops” in Class 043. Therefore, the Registration is for a nearly identical mark used in connection with

identical goods and services, making consumer confusion exceedingly likely. Petitioner's Registration No. 5,099,542 is for a stylized logo which includes the "K-9 & COFFEE" phrase as its dominant portion and is also for goods and services which include "Coffee shops" in Class 043. The Registration, therefore, also presents a likelihood of consumer confusion with Petitioner's Registration No. 5,099,542. Petitioner's Registration No. 4,664,574 is for the same logo as Petitioner's Registration No. 5,099,542, thus it also includes the "K-9 & COFFEE" phrase as its dominant portion. Thus, it presents a mark confusingly similar in sound and appearance to the Registration. Petitioner's Registration No. 4,664,574 is for "Arranging, organizing, conducting, and hosting social entertainment events" in Class 041, and while the class is different from that of the Registration, these services travel in similar channels of trade, as many social events are held at coffee shops. Therefore, the Registration would create a likelihood of consumer confusion with the Petitioner's Family of Marks.

5. The Petitioner's Family of Marks was in use prior to the first use of the Registration. In regard to the Petitioner's Family of Marks, Registration No. 4,664,574 has a date of first use of March 1, 2014 and was registered on December 30, 2014; U.S. Trademark Registration No. 4,955,051 has a date of first use of August 18, 2015 and was registered on May 10, 2016; and U.S. Trademark Registration No. 5,099,542 has a date of first use of August 18, 2015 and was registered on December 13, 2016. Conversely, the Registration has a date of first use of January 30, 2017 and was registered on September 19, 2017. **Therefore**, each of the marks in the Petitioner's Family of Marks predate the Registration, and thus benefit from prior use.
6. The grounds for cancellation are as follows:

Petitioner is a Maryland corporation and has been using a family of marks including the wording "K-9 & Coffee" in connection with coffee shops and other services since prior to

January 30, 2017 which is prior to the earliest priority date for the Registration. The Registration is likely to cause consumer confusion with the Petitioner's Family of Marks, due to the similarity of the marks and the respective goods and services with which the marks are used. The Petitioner is senior user, and Petitioner's Family of Marks all claim prior use. Therefore, the registered mark is invalid.

For the foregoing grounds, Petitioner requests that the U.S. Registration No. 5,293,255 be cancelled.

Dated: November 11, 2017

Respectfully submitted,

Kelvin Abrams, President of K9 & Coffee, INC.

By: /Ruy Garcia-Zamor/
/Tyler G. Blizzard/

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