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Filing date: **07/02/2018**

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	Realcapitalmarkets.com, LLC		
Entity	LIMITED LIABILITY COM-PANY	Citizenship	Delaware
Address	2051 Palomar Airport Road, Suite 120 Carlsbad, CA 92011 UNITED STATES		

Attorney information	Susan N. Acquista, Esq. DLA PIPER LLP (US) 401 B Street, Suite 1700 c/o Trademark Dept. San Diego, CA 92101 UNITED STATES Email: sdtrademark@dlapiper.com, christina.duenas@dlapiper.com Phone: 6196992723		
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Registration Subject to Cancellation

Registration No.	4959877	Registration date	05/17/2016
Registrant	Rock Candy Media 5900 Balcones Drive, Suite 205 Austin, TX 78731 UNITED STATES Email: Resengr@aol.com		


Goods/Services Subject to Cancellation

Class 035. First Use: 2015/08/01 First Use In Commerce: 2015/08/01 All goods and services in the class are subject to cancellation, namely: Advertising and marketing services provided by means of indirect methods of marketing communications, namely, social media, search engine marketing, inquiry marketing, internet marketing, mobile marketing, blogging and other forms of passive, sharable or viral communications channels

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
No use of mark in commerce before application, amendment to allege use, or statement of use was filed	Trademark Act Sections 14(1) and 1(a), (c), and (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)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	87414488	Application Date	04/17/2017
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	RCM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2000/01/12 First Use In Commerce: 2000/01/12 Real estate marketing services, namely, online services provided by means of an integrated marketplace platform that includes listing engines, buyer and seller databases, marketing toolkits, and business intelligence for buyers and sellers of real estate		

Attachments	87414488#TMSN.png(bytes) Petition to Cancel.pdf(283390 bytes)
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Signature	/Susan Acquista/
Name	Susan N. Acquista, Esq.
Date	07/02/2018

Petition to Cancel Registration No. 4959877
Registered on the Principal Register on May 17, 2016

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

Realcapitalmarkets.com, LLC,

Petitioner,

v.

Rock Candy Media,

Respondent.

Cancellation No. _____

PETITION TO CANCEL

Petitioner Realcapitalmarkets.com, LLC (“Petitioner”), a Delaware Limited Liability Company having its principal place of business at 2051 Palomar Airport Road, Suite 120, Carlsbad, CA 92011, believes that it will be damaged by the continued registration on the Principal Register of Registration No. 4959877 for the mark DIET RCM & Design (the “DIET RCM Registration”) registered by Rock Candy Media (“Registrant”), a Texas Limited Liability Company having its principal place of business at 5900 Balcones Drive, Suite 205 Austin, TX 78731, and hereby petitions to cancel the same under Section 14 of the Trademark Act of 1946 (15 U.S.C. § 1064).

As grounds for this cancellation, Petitioner alleges as follows:

1. Petitioner has, at least as early as January 12, 2000, used the mark **RCM** for real estate marketing services, namely, online services provided by means of an integrated marketplace platform that includes listing engines, buyer and seller databases, marketing toolkits, and business intelligence for buyers and sellers of real estate.

2. Petitioner has sold its services under the mark RCM substantially throughout the United States. Petitioner has developed valuable goodwill with respect to this mark. By virtue of the excellence of its services, the Petitioner has gained for its mark a valuable reputation.

3. Petitioner owns U.S. Application Serial No. 87/414488 for the mark RCM covering “real estate marketing services, namely, online services provided by means of an integrated marketplace platform that includes listing engines, buyer and seller databases, marketing toolkits, and business intelligence for buyers and sellers of real estate” in International Class 35. Petitioner’s application has been jeopardized because the DIET RCM Registration has been cited by the Examining Attorney in charge of Petitioner’s application at the Patent and Trademark Office as a basis of possible refusal to register Petitioner’s mark.

4. The Registrant has registered **DIET RCM & Design** as a Service Mark for “advertising and marketing services provided by means of indirect methods of marketing communications, namely, social media, search engine marketing, inquiry marketing, internet marketing, mobile marketing, blogging and other forms of passive, sharable or viral communications channels” in International Class 35. Registrant’s claimed date of first use is August 1, 2015, as evidenced by the official records of the Patent and Trademark Office.

5. In connection with Registrant’s application for the DIET RCM Registration, Registrant submitted a single specimen of a screenshot of a Facebook page. The screenshot does not show the http address, thus raising questions as to its authenticity. *See Exhibit A.*

6. The service mark registered by the Registrant, namely, **DIET RCM & Design** incorporates Petitioner’s mark, RCM, in its entirety. By virtue of its prior use of the mark RCM, Petitioner believes the DIET RCM Registration should be canceled.

7. In addition, Petitioner is informed and believes, and thereon alleges, that Registrant does not now use nor has it continuously used the mark **DIET RCM & Design** in

commerce in the United States. As Registrant appears to have abandoned the mark DIET RCM & Design for the services stated in the DIET RCM Registration, Petitioner believes the DIET RCM Registration should be canceled.

8. Furthermore, Petitioner is informed and believes, and thereon alleges, that Registrant has failed to use the mark DIET RCM & Design in commerce on or in connection with the services listed in the DIET RCM Registration, despite its representation to the contrary in its Section 1(a) Declaration. Respondent's Registration is thus void *ab initio* and not entitled to registration.

9. Additionally, Petitioner is informed and believes, and thereon alleges, that the statements made by Registrant in the Section 1(a) Declaration submitted in connection with the DIET RCM Registration were knowingly false and made to reserve a right to which Registrant was not entitled because the mark DIET RCM & Design was not in use in the United States as of the date of the Section 1(a) Declaration in connection with all of the services listed in Registrant's application for the mark.

10. Upon information and belief, the Patent and Trademark Office would have refused Registrant's application had it known that the alleged DIET RCM & Design mark was not in use in the United States as of the date of the Section 1(a) Declaration in connection with all of the services listed in Registrant's application. Accordingly, Petitioner believes that Respondent committed fraud on the USPTO with respect to the DIET RCM Registration, which requires that the DIET RCM Registration be cancelled in its entirety.

11. By virtue of the foregoing, if the DIET RCM Registration is permitted to remain on the Principal Register, with all of the presumptions offered by its status as a federal registration, Petitioner will continue to be subjected to harm, and Registrant will enjoy unlawful gain and advantage to which it is not entitled under the Trademark Act of 1946.

WHEREFORE, Petitioner requests that this Petition be granted and that Registration No. 4959877 be cancelled.

Dated: July 2, 2018

Respectfully submitted,

By: 

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Attorney for Petitioner
Realcapitalmarkets.com, LLC

Exhibit A



DIET RCM
Advertising Agency · Marketing Consultant · Graphic Design

YO! DIET RCM SELLS

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The cover photo features a black and white image of a skateboarder in mid-air on the left. On the right, there is a boombox. A large yellow speech bubble with blue lightning bolts on either side contains the text 'YO! DIET RCM SELLS' in pink and black. The background has a pattern of white dots on a black field.