ESTTA Tracking number: **ESTTA958915**

Filing date: **03/08/2019**

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	Project Opera House Pty Ltd.		
Entity	Corporation	Citizenship	Australia
Address	Dover Heights 7 Lancaster Road Sydney, 2030NSW AUSTRALIA		

Attorney information	William E O'Brien Esq., Law Offices of William E OBrien, LLC 2 Connector Road, Suite 200 Westborough, MA 01581 UNITED STATES william@masstechlawyer.com 7819565363

Registration Subject to Cancellation

Registration No.	4319857	Registration date	04/16/2013
Registrant	Twist Frozen Yogurt Bar Inc 48 Fieldstone Drive Katonah, NY 10536 UNITED STATES Email: kbm333@optonline.net		

Goods/Services Subject to Cancellation

Class 035. First Use: 2011/11/00 First Use In Commerce: 2011/12/00
All goods and services in the class are subject to cancellation, namely: Retail store services featuring frozen yogurt and candy

Grounds for Cancellation

Abandonment	Trademark Act Section 14(3)

Attachments	Petition for Cancellation TWIST FROZEN YOGURT BAR.pdf(2150495 bytes)

Signature	/william e obrien/
Name	William E O'Brien, Esq.
Date	03/08/2019

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

In the matter of Trademark Registration No.: 4,319,857
For the Mark: TWIST FROZEN YOGURT BAR & SWEET SHOP

Project Opera House Pty. Ltd.,

Petitioner,

v. Cancellation No.

Twist Frozen Yogurt Bar Inc.,

Registrant.
_____/

PETITION FOR CANCELLATION

Petitioner, Project Opera House Pty. Ltd, ("Petitioner") hereby petitions to cancel U.S. Trademark Registration No.: 4,319,857, for the mark TWIST FROZEN YOGURT BAR & SWEET SHOP on the following grounds:

1. Petitioner is an Australian corporation with a place of business at Dover Heights, 7 Lancaster Road, Sydney Australia 2030NSW.

2. On information and belief, the name of the current owner of the registration number 4,319,857 is Twist Frozen Yogurt Bar, Inc. ("Registrant"), a New York corporation, whose address of record is 48 Fieldstone Drive, Katonah, N.Y., 10536.

3. Petitioner believes that it will be damaged by the continued registration of the above- identified registration and hereby petitions to cancel the same on the grounds stated below.

4. Petitioner is the owner of U.S. Trademark Application Serial No.: 87959461 filed on June 12, 2018 for the mark TWISTED FROZEN YOGHURT for "Frozen yogurt" in International Class 30 ("Petitioner's Application"). A copy of Petitioner's Application is attached hereto as Exhibit A.

5. Petitioner has been, and continues to be, damaged in that the trademark registration number 4,319,857 for TWIST FROZEN YOGURT BAR & SWEET SHOP as used in connection with "retail store services featuring frozen yogurt and candy" ("Registrant's Mark") has been cited against Petitioner's Application as a basis for refusal of registration under Trademark Act Section 2(d), 15 U.S.C. § 1052(d). A copy of Registrant's Mark is attached hereto as Exhibit B.

6. On information and belief Registrant has abandoned its use of Registrant's Mark and intends not to resume such use.

7. According to the records at the NYS Department of State, the Registrant was dissolved on December 19, 2018. A true and accurate copy of the NYS Department of State Division of Corporations Entity Information as of March 7, 2019, reflecting the Registrant's date of dissolution is attached hereto as Exhibit C.

8. As a result of its non-use of the Registrant's Mark in connection with the services identified in therein with an intention not to resume use, Registrant has abandoned its Mark with respect to those services within the meaning of 15 U.S.C. § 1127.

WHEREFORE, Petitioner requests that this Petition for Cancellation be sustained in its favor and Registration Number 4,319,857 be cancelled.

Dated: March 8, 2019

Respectfully submitted,

/s/ William E. O'Brien
William E. O'Brien, Esq.
Attorney for the Petitioner

Law Offices of William E. O'Brien
2 Connector Road, Suite 200
Westborough, MA 01581

Tel.: (781) 956 – 5363

email: william@masstechlawyer.com

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING FILED ELECTRONICALLY WITH THE U.S. PATENT AND TRADEMARK OFFICE ON March 8, 2019

/s/ William E. O'Brien
William E. O'Brien, Esq.

EXHIBIT A – PETITIONER'S APPLICATION

Under the Paperwork Reduction Act of 1995 no persons are required to respond to a collection of information unless it displays a valid OMB control number.
PTO Form 1478 (Rev 09/2006)
OMB No. 0651-0009 (Exp 02/28/2021)

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 87959461
Filing Date: 06/12/2018

NOTE: Data fields with the * are mandatory under TEAS Plus. The wording "(if applicable)" appears where the field is only mandatory under the facts of the particular application.

The table below presents the data as entered.

Input Field	Entered
TEAS Plus	**YES**
MARK INFORMATION	
***MARK**	TWISTED FROZEN YOGHURT
***STANDARD CHARACTERS**	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	TWISTED FROZEN YOGHURT
***MARK STATEMENT**	The mark consists of standard characters, without claim to any particular font style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
***OWNER OF MARK**	Project Opera House Pty Ltd.
INTERNAL ADDRESS	Dover Heights
***STREET**	7 Lancaster Road
***CITY**	Sydney
***COUNTRY**	Australia
***ZIP/POSTAL CODE (Required for U.S. and certain international addresses)**	2030NSW
LEGAL ENTITY INFORMATION	
***TYPE**	proprietary limited company (p/l or pty. ltd.)
***STATE/COUNTRY WHERE LEGALLY ORGANIZED**	Australia
GOODS AND/OR SERVICES AND BASIS INFORMATION	
***INTERNATIONAL CLASS**	030
***IDENTIFICATION**	Frozen yogurt
***FILING BASIS**	SECTION 1(b)
ADDITIONAL STATEMENTS INFORMATION	
*TRANSLATION (if applicable)	

*TRANSLITERATION (if applicable)	
*CLAIMED PRIOR REGISTRATION (if applicable)	
*CONSENT (NAME/LIKENESS) (if applicable)	
*CONCURRENT USE CLAIM (if applicable)	
ATTORNEY INFORMATION	
NAME	William E OBrien, Esq.
ATTORNEY DOCKET NUMBER	354002
FIRM NAME	Law Offices of William E OBrien, LLC
INTERNAL ADDRESS	Suite 200
STREET	2 Connector Road
CITY	Westborough
STATE	Massachusetts
COUNTRY	United States
ZIP/POSTAL CODE	01581
PHONE	781-956-5363
EMAIL ADDRESS	william@masstechlawyer.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
CORRESPONDENCE INFORMATION	
***NAME**	William E OBrien, Esq.
FIRM NAME	Law Offices of William E OBrien, LLC
INTERNAL ADDRESS	Suite 200
***STREET**	2 Connector Road
***CITY**	Westborough
***STATE** **(Required for U.S. addresses)**	Massachusetts
***COUNTRY**	United States
***ZIP/POSTAL CODE**	01581
PHONE	781-956-5363
***EMAIL ADDRESS**	william@masstechlawyer.com
***AUTHORIZED TO COMMUNICATE VIA EMAIL**	Yes
FEE INFORMATION	
APPLICATION FILING OPTION	TEAS Plus
NUMBER OF CLASSES	1
FEE PER CLASS	225
***TOTAL FEE PAID**	225
SIGNATURE INFORMATION	
* **SIGNATURE**	/william e obrien/

* **SIGNATORY'S NAME**	William E OBrien
* **SIGNATORY'S POSITION**	Attorney
SIGNATORY'S PHONE NUMBER	781-956-5363
* **DATE SIGNED**	06/12/2018

Under the Paperwork Reduction Act of 1995 no persons are required to respond to a collection of information unless it displays a valid OMB control number.
PTO Form 1478 (Rev 09/2006)
OMB No. 0651-0009 (Exp 02/28/2021)

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 87959461
Filing Date: 06/12/2018

To the Commissioner for Trademarks:

MARK: TWISTED FROZEN YOGHURT (Standard Characters, see mark)
The mark in your application is TWISTED FROZEN YOGHURT.

The applicant, Project Opera House Pty Ltd., a proprietary limited company (p/l or pty. ltd.) legally organized under the laws of Australia, having an address of

Dover Heights
7 Lancaster Road
Sydney 2030NSW
Australia

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

For specific filing basis information for each item, you must view the display within the Input Table.

International Class 030: Frozen yogurt
Intent to Use: The applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the identified goods/services. (15 U.S.C. Section 1051(b)).

The applicant's current Attorney Information:

William E OBrien, Esq. of Law Offices of William E OBrien, LLC
Suite 200
2 Connector Road
Westborough, Massachusetts 01581
United States
781-956-5363(phone)
william@masstechlawyer.com (authorized)

The attorney docket/reference number is 354002.
The applicant's current Correspondence Information:

William E OBrien, Esq.
Law Offices of William E OBrien, LLC
Suite 200
2 Connector Road
Westborough, Massachusetts 01581
781-956-5363(phone)
william@masstechlawyer.com (authorized)

E-mail Authorization: I authorize the USPTO to send e-mail correspondence concerning the application to the applicant or the applicant's attorney, or the applicant's domestic representative at the e-mail address provided in this application. I understand that a valid e-mail address must be maintained and that the applicant or the applicant's attorney must file the relevant subsequent application-related submissions via the Trademark Electronic Application System (TEAS). Failure to do so will result in the loss of TEAS Plus status and a requirement to submit an additional processing fee of $125 per international class of goods/services.

A fee payment in the amount of $225 has been submitted with the application, representing payment for 1 class(es).

Declaration

Basis:
If the applicant is filing the application based on use in commerce under 15 U.S.C. § 1051(a):

- The signatory believes that the applicant is the owner of the trademark/service mark sought to be registered;
- The mark is in use in commerce on or in connection with the goods/services in the application;
- The specimen(s) shows the mark as used on or in connection with the goods/services in the application; and
- To the best of the signatory's knowledge and belief, the facts recited in the application are accurate.

AND/OR
If the applicant is filing the application based on an intent to use the mark in commerce under 15 U.S.C. § 1051(b), § 1126(d), and/or § 1126(e):

- The signatory believes that the applicant is entitled to use the mark in commerce;
- The applicant has a bona fide intention to use the mark in commerce on or in connection with the goods/services in the application; and
- To the best of the signatory's knowledge and belief, the facts recited in the application are accurate.

To the best of the signatory's knowledge and belief, no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or mistake, or to deceive.

To the best of the signatory's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the allegations and other factual contentions made above have evidentiary support.

The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Declaration Signature

Signature: /william e obrien/ Date: 06/12/2018
Signatory's Name: William E OBrien
Signatory's Position: Attorney
Signatory's Phone Number: 781-956-5363
Payment Sale Number: 87959461
Payment Accounting Date: 06/13/2018

Serial Number: 87959461
Internet Transmission Date: Tue Jun 12 21:47:06 EDT 2018
TEAS Stamp: USPTO/FTK-XX.XXX.XX.XXX-2018061221470668
1742-87959461-61061fe9611d4ec244bcd858c9
df5a581799da1fe3124bdebfcbc4fc228c77b44-
CC-8615-20180612213524115959

TWISTED FROZEN YOGHURT

EXHIBIT B: REGISTRANT'S MARK

United States of America

United States Patent and Trademark Office

Reg. No. 4,319,857

Registered Apr. 16, 2013

Int. Cl.: 35

SERVICE MARK

PRINCIPAL REGISTER

TWIST FROZEN YOGURT BAR INC (NEW YORK CORPORATION)
48 FIELDSTONE DRIVE
KATONAH, NY 10536

FOR: RETAIL STORE SERVICES FEATURING FROZEN YOGURT AND CANDY, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 11-0-2011; IN COMMERCE 12-0-2011.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FROZEN YOGURT BAR & SWEET SHOP" AND DESIGN OF YOGURT AND A CHERRY, APART FROM THE MARK AS SHOWN.

THE MARK CONSISTS OF A BORDERED OVAL CONTAINING THE OUTLINED WORD "TWIST" IN ALL CAPITAL LETTERS WITH A STRIPED LETTER "W" AND A YOGURT SWIRL TOPPED WITH A CHERRY WHICH RESTS ONTOP OF THE LETTER "W", AND THE WORDS "FROZEN YOGURT BAR & SWEET SHOP" APPEAR UNDER THE WORD "TWIST".

SER. NO. 85-567,095, FILED 3-12-2012.

DAVID C. REIHNER, EXAMINING ATTORNEY

UNITED STATES PATENT AND TRADEMARK OFFICE · DEPARTMENT OF COMMERCE

Acting Director of the United States Patent and Trademark Office

EXHIBIT C: ENTITY INFORMATION

NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through March 7, 2019.

Selected Entity Name: TWIST FROZEN YOGURT BAR INC.

Selected Entity Status Information

Current Entity Name:	TWIST FROZEN YOGURT BAR INC.
DOS ID #:	4158480
Initial DOS Filing Date:	OCTOBER 27, 2011
County:	WESTCHESTER
Jurisdiction:	NEW YORK
Entity Type:	DOMESTIC BUSINESS CORPORATION
Current Entity Status:	INACTIVE - Dissolution (Dec 19, 2018)

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

TWIST FROZEN YOGURT BAR INC.
48 FIELDSTONE DRIVE
KATONAH, NEW YORK, 10536

Chief Executive Officer

KEVIN MCKENNA
2022 SAW MILL RIVER RD
YORKTOWN HEIGHTS, NEW YORK, 10598

Principal Executive Office

TWIST FROZEN YOGURT BAR INC.
48 FIELDSTONE DR
KATONAH, NEW YORK, 10536

Registered Agent

NONE

This office does not record information regarding the names and addresses of officers, shareholders or directors of nonprofessional corporations except the chief executive officer, if provided, which would be listed above. Professional corporations must include the name(s) and address(es) of the initial officers, directors, and shareholders in the initial certificate of incorporation, however this information is not recorded and only available by viewing the certificate.

***Stock Information**

# of Shares	Type of Stock	$ Value per Share
200	No Par Value	

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
OCT 27, 2011	Actual	TWIST FROZEN YOGURT BAR INC.

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

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