

ESTTA Tracking number: **ESTTA1054949**

Filing date: **05/12/2020**

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	Taki Kastanis		
Entity	Individual	Citizenship	UNITED STATES
Address	808 McKinley Lane Hillsdale, IL 60521 UNITED STATES		

Attorney information	Michele S. Katz Advitam IP LLC 150 S. Wacker Drive Suite 2400 Chicago, IL 60606 UNITED STATES mskdocket@advitamip.com, atokarz@advitamip.com 312-332-7710		
----------------------	--	--	--

Registration Subject to Cancellation

Registration No.	5770771	Registration date	06/04/2019
Registrant	Angelopoulos, Jim 5937 Hillrose Drive San Jose, CA 95123 UNITED STATES		

Goods/Services Subject to Cancellation

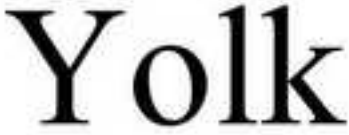
Class 043. First Use: 2018/05/25 First Use In Commerce: 2018/05/25 All goods and services in the class are subject to cancellation, namely: restaurant services featuring breakfastfood
--


Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
Deceptiveness	Trademark Act Sections 14(3) and 2(a)
Fraud on the USPTO	Trademark Act Section 14(3); In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)


Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration	3347771	Application Date	03/22/2007
-------------------	---------	------------------	------------

No.			
Registration Date	12/04/2007	Foreign Priority Date	NONE
Word Mark	YOLK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 2006/11/01 First Use In Commerce: 2006/11/01 Cafe-restaurants; Carry-out restaurants; Restaurant services; Restaurants; Take-out restaurant services		

U.S. Registration No.	3347784	Application Date	03/22/2007
Registration Date	12/04/2007	Foreign Priority Date	NONE
Word Mark	YOLK.		
Design Mark			
Description of Mark	The mark consists of an outline of the egg white (as it would appear when frying an egg) as its outline with the yolk of the egg being the letter 'o' in the word yolk, and the word YOLK appearing in the design.		
Goods/Services	Class 043. First use: First Use: 2006/11/01 First Use In Commerce: 2006/11/01 Cafe-restaurants; Carry-out restaurants; Restaurant services; Restaurants; Take-out restaurant services		

U.S. Application No.	88263030	Application Date	01/15/2019
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	YOLK		
Design Mark	<h1>Yolk</h1>		
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 2006/11/01 First Use In Commerce: 2006/11/01 Cafe-restaurants; Carry-out restaurants; Restaurant services; Restaurants; Take-out restaurant services		

U.S. Application No.	88263040	Application Date	01/15/2019
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	YOLK		
Design Mark			
Description of Mark	The mark consists of the word "YOLK", an outline of the egg white (as it would appear when frying an egg), the yolk of the egg being the letter "O" in "YOLK", a dot to the right of "YOLK", all within a quadrilateral with shaded lines.		
Goods/Services	Class 043. First use: First Use: 2006/11/01 First Use In Commerce: 2006/11/01 Cafe-restaurants; Carry-out restaurants; Restaurant services; Restaurants; Take-out restaurant services		

Attachments	77137603#TMSN.png(bytes) 77137839#TMSN.png(bytes) 88263030#TMSN.png(bytes) 88263040#TMSN.png(bytes) Petition To Cancel - YOLKED.pdf(109567 bytes)
-------------	--

Signature	/Michele S. Katz/
Name	Michele S. Katz
Date	05/12/2020

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

In re Registration of:

Registrant : Jim Angelopoulos
Reg. No. : 5,770,771
Mark : YOLKED
Registration Date : June 04, 2019

TAKI KASTANIS, :
 :
 :
 Petitioner :
 :
 v. : Cancellation No. _____
 :
 :
 JIM ANGELOPOULOS, :
 :
 :
 Registrant/Respondent. :

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

PETITION FOR CANCELLATION

1. Petitioner, Taki Kastanis (“Petitioner”), is an individual residing at 808 McKinley Lane, Hinsdale, Illinois 60521. Petitioner believes that he will be damaged by Registration No. 5,770,771 for the mark YOLKED (herein the “YOLKED Registration”) and hereby petitions to cancel said registration in accordance with 37 C.F.R. § 2.111(b).

2. Upon information and belief, Registrant, Jim Angelopoulos (“Respondent”), is an individual residing at 5937 Hillrose Drive, San Jose, California 95123.

BACKGROUND

3. Petitioner is the Chief Executive Officer (“CEO”) and Founder of Yolk Restaurants.

4. Petitioner’s Yolk Restaurants specialize in the food and beverage industry, specifically restaurant, café, carry-out, and take-out services with a specialty in breakfast food.

5. On March 22, 2007, Petitioner filed Application Serial Nos. 77/137,603 to register the mark YOLK in International Class 43 in connection to the following services: café-restaurants, carry-out restaurants, restaurant services, restaurants, and take-out services, which registered on December 04, 2007 (Reg. No. 3,347,771). The mark was first used in commerce on November 01, 2006.

6. On March 22, 2007, Petitioner filed Application Serial No. 77/137,839 to register the mark YOLK and Design in International Class 43 in connection to the following services: café-restaurants, carry-out restaurants, restaurant services, restaurants, and take-out services, which registered on December 04, 2007 (Reg. No. 3,347,784). The mark was first used in commerce on November 01, 2006.

7. On July 6, 2018, Reg. Nos. 3,347,711 and 3,347,874 inadvertently lapsed, but Petitioner did not abandon the marks and has continuously used them in commerce.

8. On January 15, 2019, Petitioner filed Application Serial No. 88/263,030 (currently pending) to re-register the mark YOLK (originally Reg. No. 3,347,771) in International Class 43 in connection to the following services: café-restaurants, carry-out restaurants, restaurant services, restaurants, and take-out services. The mark was first used in commerce on November 1, 2006.

9. On January 15, 2019, Petitioner filed Application Serial No. 88/263,040 (currently pending) to re-register the mark YOLK (originally Reg. No. 3,347,874) in International Class 43

in connection to the following services: café-restaurants, carry-out restaurants, restaurant services, restaurants, and take-out services. The mark was first used in commerce on November 1, 2006.

10. Petitioner opened the first Yolk Restaurant in 2006 in Chicago. The Yolk Restaurant chain is now nationally recognized with approximately sixteen (16) locations across four (4) states including Illinois, Indiana, Florida, and Texas.

11. In 2008, Yolk Restaurant was voted “#1 breakfast” by Fox News viewers in Chicago and was featured on the cover of the spring/summer 2010 edition of Dining Out Chicago Magazine.

12. Petitioner’s website www.eatyolk.com includes information, advertising, and shopping available nationally regarding the Yolk Restaurants, which all contain references to Petitioner’s YOLK marks.

13. Upon information and belief, in 2015, Respondent visited one of Petitioner’s Yolk Restaurants in Chicago and contacted Petitioner via email to express how “very impressive” Petitioner’s Yolk Restaurant was and that Respondent was interested in a phone call with Petitioner.

14. Upon information and belief, in 2015, Respondent stated that he was the owner of Scrambl’z Restaurants, which are “breakfast places,” in an email to Petitioner.

15. On August 17, 2011, Respondent filed Application Serial No. 85/400,509 to register the mark SCRAMBL’Z in International Class 43 in connection to the following services: restaurant services, which registered on June 12, 2012 (Reg. No. 4,156,966). The mark was first used in commerce on July, 1, 2004.

16. Upon information and belief, in 2015, an email from Petitioner to Respondent included information regarding Petitioner’s status as owner and founder of Yolk Restaurants, Yolk

Restaurant advertising, locations of Yolk Restaurants, and an opportunity to franchise or invest in a Yolk Restaurant.

17. On February 19, 2018, Respondent filed an intent-to-use application (Application Serial No. 87/802,177) to register the mark YOLKED in International Class 43 in connection to the following services: restaurant services featuring breakfast food.

18. On June 05, 2018, Petitioner's YOLK mark (Reg. No. 3,347,771) was cited against the Respondent's YOLKED application (Serial No. 87/802,177) under a Section 2(d) Refusal for a likelihood of confusion.

19. On April 11, 2019, Respondent filed a statement of use for Application Serial No. 87/802,177, listing the YOLKED mark's date of first use in commerce on May 25, 2018.

20. The YOLKED Mark registered on June 04, 2019, during the period when Petitioner's YOLK mark registrations (Reg. Nos. 3,347,711 and 3,347,874) had inadvertently lapsed.

RESPONDENT'S TRADEMARK IS VOID FOR FRAUD ON THE U.S. PATENT AND TRADEMARK OFFICE

21. Petitioner hereby realleges and reaffirms paragraphs 1 through 21 of this petition, as if the same were herein set forth verbatim.

22. Respondent was deceitful and fraudulent in the procurement of the application that resulted in the registration of the YOLKED mark.

23. When Respondent filed the application and the statement of use for the YOLKED mark he signed a declaration which states that "all statements made of his/her knowledge are true; and that all statement made on information and belief are believed to be true" ("Respondent's Declaration").

24. The Respondent's Declaration further states "to the best of the signatory's knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when applied to the goods or services of such other person, to cause confusion or mistake, or to deceive."

25. The Respondent's Declaration also states that "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."

26. Respondent knew of Petitioner's Yolk Restaurants, the YOLK marks, and Petitioner's trademark rights dating back to at least 2015 when Respondent visited one of Petitioner's Yolk Restaurants and contacted Petitioner via email. At the time, Respondent was the owner of Scrambl'z Restaurant and the SCRAMBL'Z mark (Reg. No. 4,156,966). By refraining from disclosing this and signing the Respondent's Declaration, Respondent committed fraud on the U.S. Patent and Trademark Office.

27. Respondent was made further aware of Petitioner's YOLK mark (Reg. No. Reg. No. 3,347,771) on June 5, 2018, when it was cited against the Respondent's YOLKED application (Serial No. 87/802,177) under a Section 2(d) Refusal for a likelihood of confusion. A reasonable inquiry under the circumstances would have led Respondent to see that Petitioner was continuing to use his YOLK marks (Reg. Nos. 3,347,711 and 3,347,874) in commerce and that Petitioner had "the right to use the mark in commerce, either in identical form or in such near resemblance as to be likely . . . to cause confusion or mistake or to deceive." By refraining from disclosing this and signing the Respondent's Declaration, Respondent committed fraud on the U.S. Patent and Trademark Office.

28. Petitioner is being damaged by the continued registration of the YOLKED mark because said registration is preventing Petitioner from re-registering his own YOLK marks (Application Serial Nos. 88/263,030 and 88/263,040).

29. Petitioner is being further damaged by the continued registration of the YOLKED mark because said registration is affecting the goodwill of Petitioner's business used in connection with the YOLK marks and is likely to confuse and mislead the consuming public and suggests an affiliation with Petitioner, which Respondent does not have.

WHEREFORE, Petitioner requests that Respondent's registration, Registration No. 5,770,771 be canceled; that registration not be continued for the mark; and that this petition for cancellation be sustained in favor of Petitioner.

Dated: May 12, 2020

Respectfully submitted,

ADVITAM IP

By: /Michele S. Katz/
Michele S. Katz
ADVITAM IP, LLC
150 S. Wacker Drive, Suite 2400
Chicago, IL 60606
Tel: (312) 332-7710
Fax: (312) 332-7701
Email: mkatz@advitamip.com
Attorney for Petitioner
Taki Kastanis

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 12, 2020, a true and correct copy of the foregoing PETITION FOR CANCELLATION has been emailed to counsel for Respondent at the email address below:

RUTH KHALSA
446 E SOUTHERN AVE
TEMPE, ARIZONA UNITED STATES 85282
trademarks@legalforce.com