

ESTTA Tracking number: **ESTTA1223787**

Filing date: **07/22/2022**

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	Parasol Management Group, Inc. DBA Ninja Sushi Hawaii		
Entity	Corporation	Citizenship	Hawaii
Address	44-237 MIKIOLA DR KANEEOHE, HI 96744 UNITED STATES		

Attorney information	H. MICHAEL DRUMM DRUMM LAW LLC 12650 W. 64TH AVENUE, #519 ARVADA, CO 80004 UNITED STATES Primary email: trademark@drummlaw.com Secondary email(s): trent@drummlaw.com No phone number provided		
Docket no.			

**Registration subject to cancellation**

Registration no.	6318042	Registration date	04/13/2021
Register	Principal		
International registration no.	NONE	International registration date	NONE
Registrant	GENCO, Inc. 2F ARIKAWA BLDG. 6-17-11 ROPPONGI, MINATO-KU TOKYO, 106-0032 JAPAN		

**Goods/services subject to cancellation**

Class 043. First Use: None First Use In Commerce: None All goods and services in the class are subject to cancellation, namely: Providing sushi; providing foods and beverages
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**Grounds for cancellation**

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
Abandonment	Trademark Act Section 14(3)
Other	Lack of bona fide intent

Mark cited by petitioner as basis for cancellation

U.S. application no.	90716066	Application date	05/17/2021
Register	Principal		
Registration date	NONE	Foreign priority date	NONE
Word mark	NINJA SUSHI		
Design mark			
Description of mark	NONE		
Goods/services	Class 043. First use: First Use: Jul 30, 2003 First Use In Commerce: Jul 30, 2003 Restaurant and catering services; Take-out restaurant services		

Attachments	Ninja Sushi Petition for Cancellation SUSHI NINJA.PDF(130927 bytes )
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Signature	/Trent E. Rinebarger/
Name	Trent E. Rinebarger
Date	07/22/2022

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

In the Matter of Trademark Registration No. 6318042  
For the mark SUSHI NINJA  
Registered on the Principal Register April 13, 2021

Parasol Management Group, Inc.	)	
DBA Ninja Sushi Hawaii	)	
Petitioner,	)	
v.	)	
	)	Opposition No. _____
GENCO, Inc.	)	
	)	
Registrant.	)	

**PETITION FOR CANCELLATION**

Petitioner Parasol Management Group, Inc. is a Hawaii corporation having its principal address at 44-237 Mikiola Dr., Kaneohe, Hawaii 96744.

Registrant GENCO, Inc. is a foreign corporation having its principal address at 2F Arikawa Bldg. 6-17-11 Roppongi, Minato-ku Tokyo Japan 106-0032.

Petitioner Parasol Management Group, Inc. believes that it is being damaged by registration of the mark SUSHI NINJA and hereby files this Petition for Cancellation against the same.

The grounds for this Petition for Cancellation are as follows:

1. Petitioner Parasol Management Group, Inc. (“Petitioner”) is the owner of the trademark NINJA SUSHI for restaurant and catering services. On May 17, 2021, Petitioner filed an application with the USPTO to register the mark NINJA SUSHI as a trademark for “Restaurant and catering services; Take-out restaurant services” in International Class 043 (Serial No. 90716066).

2. The USTPO has refused to register Petitioner's application on the basis of Section 2(d) likelihood of confusion with the registered mark SUSHI NINJA (Registration No. 6318042) for (in pertinent part) "Providing sushi; providing foods and beverages" in Class 043 (the "Registered Mark").

3. GENCO, Inc. ("Registrant") is the record owner of the Registered Mark. The Registered Mark was registered on April 13, 2021. Thus this Petition for Cancellation is timely filed less than five years from the date of registration.

4. Registrant filed the SUSHI NINJA application on December 4, 2018, originally on a 1(b) intent-to-use basis and 44(D) basis based upon a foreign trademark application. Registrant claims a priority date of November 26, 2018.

5. Petitioner has been using its NINJA SUSHI trademark in commerce in the U.S. since at least as early as July 30, 2003, more than 15 years prior to Registrant's application and claimed priority date. Because Registrant's priority date is well after Petitioner's date of first use, Petitioner has priority as to Class 43 restaurant services.

6. Further, upon information and belief, and as set forth in detail below, Registrant has not used the SUSHI NINJA mark in interstate commerce in Class 43 for "Providing sushi; providing foods and beverages." Upon information and belief, Registrant did not have a bona fide intent to use the Registered Mark in commerce in the U.S. at the time of filing its application and the application is void ab initio as to Class 43. Additionally, Registrant has, through its failure to use the trademark in commerce in the U.S. in Class 43, abandoned the registration.

7. Petitioner is damaged by the Registered Mark because the Petitioner's application has been refused based on the Registered Mark and the Registered Mark is

preventing Petitioner from lawfully obtaining registration for its NINJA SUSHI trademark. Further, in the event that Registrant were to begin using the Registered Mark for the sale of goods and services in Class 43, such goods and services would likely be through the same channels of trade as those of Petitioner and consumers could be confused as to the source of the goods and services. At the very least, the Registrant's registration, if allowed to continue, will be a cloud on Petitioner's legal right to continue to use its NINJA SUSHI trademark.

### **COUNT I – PRIORITY AND LIKELIHOOD OF CONFUSION**

8. Petitioner restates and incorporates paragraphs 1 through 7 as if fully stated herein.

9. Petitioner's first use of the NINJA SUSHI mark in intrastate and interstate commerce in the United States was at least as early as June 30, 2003, and has been used continuously thereafter.

10. Petitioner's rights in the NINJA SUSHI mark have priority of use as Petitioner commenced use of the mark in connection with its goods in interstate commerce prior to Registrant's filing and use, if any, of the Registered Mark.

11. The Registered Mark, SUSHI NINJA, is confusingly similar to Petitioner's NINJA SUSHI mark. The elements of the marks are identical, just in reverse order. The term SUSHI was disclaimed by Registrant in Class 43 as highly descriptive or generic.

12. Registrant's use of the SUSHI NINJA mark on Registrant's services is likely to cause confusion, mistake, or deception in that consumers are likely to believe Registrant's goods and services are sponsored, authorized, or licensed by, or in some other

way, legitimately connected with Petitioner.

13. The Registered Mark and the Petitioner's mark are in the same or closely related class of goods and services which travel in the same trade channels.

14. Petitioner is damaged by registration of the SUSHI NINJA mark by Registrant because such registration is prima facie evidence of the exclusive right to use the mark in conjunction with Registrant's products and services and such use would be likely to cause confusion and mistake or deceive as to the affiliation, connection, origin, approval or other association of Registrant with Petitioner (where none exists). Consumers familiar with Petitioner's NINJA SUSHI mark and Petitioner's reputation for quality restaurant and catering services would be likely to buy Registrant's advertised products and services mistaking them for a product or service by, endorsed by, or affiliated with Petitioner.

15. Furthermore, any fault or lack of quality found with Registrant's products or services marketed under the SUSHI NINJA mark would reflect upon, and seriously injure the reputation and goodwill which the Petitioner has established for its products merchandised under its marks.

16. The Registered Mark is currently preventing Petitioner from registering its mark.

17. At the very least, the registration, if allowed to continue, will be a cloud on Petitioner's legal right to continue to use its NINJA SUSHI trademark.

**COUNT II – LACK OF BONA FIDE INTENT TO USE THE MARK IN  
INTERSTATE COMMERCE**

18. Petitioner restates and reincorporates paragraphs 1 through 17 as if fully stated herein.

19. According to USPTO records, Registrant's application to register the Registered Mark was filed on December 4, 2018, under a Section 1(a) and 44(D) filing basis.

20. Upon information and belief, Registrant has not begun using the Registered Mark in interstate commerce for "Providing sushi; providing foods and beverages."

21. Upon information and belief, Registrant did not have a bona fide intent to use the Registered Mark in interstate commerce for providing sushi, food and beverages at the time of the December 4, 2018 filing and the application is void ab initio as to Class 43.

### **COUNT III- ABANDONMENT**

22. Petitioner restates and incorporates paragraphs 1 through 21 as if fully stated herein.

23. Upon information and belief, the Registered Mark has been abandoned and Registrant is not using (and has never used) the Registered Mark in interstate commerce in Class 43 for sushi, food and beverages.

24. Due to Registrant's failure to use the Registered Mark in connection with sushi, food and beverages in interstate commerce, the Registered Mark has become abandoned as to Class 43 for the purposes of Section 45 of the Trademark Act and thus the registration should be cancelled as to the Class.

Parasol Management Group Inc. DBA Ninja Sushi hereby appoints H. Michael Drumm, Trent E. Rinebarger, and Ethan A. Larson, members of the Bar of the State of

Colorado, whose address is Drumm Law, LLC, 12650 W. 64th Avenue, #519, Arvada, Colorado 80004, as its attorneys to prosecute this Petition for Cancellation with full power of substitution and revocation, to transact all business in the Patent and Trademark Office in connection therewith. All communications, verbal or written, are to be addressed to:

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The statutory fee of \$600 per class under 37 CFR 2.6(a)(17) has been filed online via <http://estta.uspto.gov/>.

Respectfully submitted,  
/Trent E. Rinebarger/

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**CERTIFICATE OF ELECTRONIC TRANSMISSION**

I hereby certify that this Petition for Cancellation is being electronically filed with United States Patent and Trademark Office, Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, VA 22313-1451 via ESTTA on:

Date: July 22, 2022                      /s/ Trent E. Rinebarger, Esq.

**CERTIFICATE OF MAILING**

I hereby certify that a true and correct copy of the foregoing Petition for Cancellation was served on Registrant via email to the address and on the date indicated below:

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Date: July 22, 2022                      /s/ Trent E. Rinebarger, Esq.