

ESTTA Tracking number: **ESTTA231353**Filing date: **08/19/2008**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 requests to cancel indicated registration.

Petitioner Information

Name	Farmhouse Entertainment, LLC		
Entity	Limited Liability Company	Citizenship	Tennessee
Address	19 Music Square West Suite F Nashville, TN 37203 UNITED STATES		
Attorney information	William Y. Klett, III Nexsen Pruet, LLC PO Drawer 2426 Columbia, SC 29202 UNITED STATES wklett@nexsenpruet.com Phone:803-253-8205		

Registration Subject to Cancellation

Registration No	3480036	Registration date	08/05/2008
Registrant	Carter, John R 120 Willow Ridge Lane Pelham, AL 35124 UNITED STATES		

Goods/Services Subject to Cancellation

Class 041. First Use: 1977/02/01 First Use In Commerce: 1977/02/01
All goods and services in the class are cancelled, namely: Entertainment in the nature of visual and audio performances, namely, musical band, rock group, gymnastic, dance, and ballet performances

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Abandonment	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)

Related Proceedings	Application No. 77/411,440
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	77411440	Application Date	03/03/2008
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	TELLURIDE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 041. First use: First Use: 2006/04/03 First Use In Commerce: 2006/04/03 Entertainment in the nature of visual and audio performances, namely a musical band

Attachments	77411440#TMSN.jpeg (1 page)(bytes) PetitionforCancellation.pdf (6 pages)(191617 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/wklett/
Name	William Y. Klett, III
Date	08/19/2008

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

Farmhouse Entertainment, LLC,

Petitioner,

v.

John R. Clark,

Registrant.

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Registration No. 3,480,036

Mark: TELLURIDE

PETITION FOR CANCELLATION

Farmhouse Entertainment, LLC, a Tennessee limited liability company having its place of business at 19 Music Square West, Suite F, Nashville, Tennessee 37203 ("Petitioner") believes that it will be damaged by the registration of the mark shown in Registration No. 3,480,036 in International Class 041, and hereby petitions to cancel same. To the best of Petitioner's knowledge, the owner of the registration is John R. Carter, an individual whose address is 120 Willow Ridge Lane, Pelham, Alabama 35124.

As grounds for cancellation, it is alleged:

1. Petitioner is a Tennessee limited liability company having its principal business in Nashville, Tennessee.
2. Petitioner is the legal entity for the musical group TelluRide, a band that writes, records, and performs throughout the United States.
3. Petitioner is the owner of U.S. Application Serial No. 77/411440, filed March 3, 2008, for TELLURIDE for "entertainment in the nature of visual and audio

performances, namely a musical band” in International Class 41.

4. Petitioner has adopted and continuously used its TELLURIDE mark since at least as early as April of 2006 to the present in connection with its entertainment services.

5. Petitioner is the owner of the domain name www.tellurideband.com, used in connection with Petitioner’s website since April, 2006.

6. Petitioner has expended considerable effort and expense in promoting its TELLURIDE mark, and the services thereunder, with the result that the relevant public has come to know, rely upon, and recognize the services and music of Petitioner by its TELLURIDE mark.

7. Petitioner has acquired valuable goodwill in its TELLURIDE mark as a result of the use of said mark for Petitioner’s services and music.

8. Petitioner’s mark represents Petitioner’s substantial goodwill which has accrued to Petitioner by virtue of the widespread and prominent use of Petitioner’s TELLURIDE mark and for Petitioner’s high-quality services and music.

9. Petitioner has used its TELLURIDE mark openly and in interstate commerce on or in connection with its music and services prior to the filing date of Registrant for Registrant’s TELLURIDE mark, and is the proper owner of the TELLURIDE mark for said services and business.

10. There is a high degree of similarity between Petitioner’s TELLURIDE mark and Registrant’s TELLURIDE mark, between Petitioner’s services and Registrant’s services, and between Petitioner’s and Registrant’s channels of trade. In fact, they are virtually identical.

11. Petitioner's TELLURIDE mark is distinctive and famous in the music industry.

12. Registration No. 3,480,036 (the "'036 Registration"), filed December 20, 2007 and issued August 5, 2008, sought to be cancelled, is for the trademark TELLURIDE for "entertainment in the nature of visual and audio performances, namely, musical band, rock group, gymnastic, dance, and ballet performances" in International Class 041.

13. The date of first use in commerce alleged by Registrant in its '036 Registration is February 1, 1977.

14. Upon information and belief, Registrant discontinued all use of the TELLURIDE mark for more than ten (10) years, abandoning any rights it may have had in the TELLURIDE mark.

15. Upon information and belief, Registrant ceased all use in commerce of the TELLURIDE mark, having ceased to perform or sell musical recordings, with no intent to resume use of the mark.

16. Petitioner began use of the TELLURIDE mark following Registrant's abandonment of any alleged rights Registrant may have had.

17. Petitioner has made continuous use of the TELLURIDE mark since prior to Registrant's filing of his application for the registration sought to be cancelled.

18. Registrant had actual knowledge of Petitioner's use of the TELLURIDE mark prior to Registrant's filing of his application for the registration sought to be cancelled, as evidenced by correspondence sent by Registrant to Petitioner prior to Registrant's filing his application.

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