

ESTTA Tracking number: **ESTTA544201**Filing date: **06/20/2013**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 | Ms. Jaime Keeling | | |
| Entity | Individual | Citizenship | UNITED STATES |
| Address | 16 HANCOCK ST APT 4 Brooklyn, NY 11216 UNITED STATES | | |

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|----------------------|---|
| Attorney information | Adam Davids Adam Davids & Associates, PLLC 799 Broadway, Suite 527 New York, NY 10003 UNITED STATES adam@adamdavids.com Phone:646-415-9007 |
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Registration Subject to Cancellation

| | | | |
|-----------------|--|-------------------|------------|
| Registration No | 4334491 | Registration date | 05/14/2013 |
| Registrant | Hars, Eve 923 3/4 N Beaudry Ave Los Angeles, CA 90012 UNITED STATES | | |

Goods/Services Subject to Cancellation

Class 041. First Use: 2006/12/00 First Use In Commerce: 2006/12/00
All goods and services in the class are cancelled, namely: Presentation of live show 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) |
| Other | Title of a Creative Work - In re Posthuma |

Mark Cited by Petitioner as Basis for Cancellation

| | | | |
|---------------------------------------|---|------------------|------|
| U.S. Application/ Registration No. | NONE | Application Date | NONE |
| Registration Date | NONE | | |
| Word Mark | POINT BREAK LIVE! | | |
| Goods/Services | Presentation of live show performances. | | |

| | |
|-------------|--|
| Attachments | Petition For Cancellation - PBL 6-20-13 (FE).pdf(1149214 bytes) |
|-------------|--|

Certificate of Service

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

| | |
|-----------|---------------|
| Signature | /Adam Davids/ |
| Name | Adam Davids |
| Date | 06/20/2013 |

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

| | | |
|---------------|---|---------------------------------|
| JAIME KEELING |) | |
| Petitioner, |) | In the Matter of Trademark Reg. |
| |) | No. 4,334,491 |
| |) | |
| v. |) | Cancellation No. _____ |
| |) | |
| |) | |
| |) | For the Mark: Point Break Live! |
| EVE HARS |) | |
| Registrant |) | Registered May 14, 2013 |

PETITION FOR CANCELLATION

Petitioner Jaime Keeling ("Petitioner"), a United States individual with an address at 16 Hancock Street, Apartment 4, Brooklyn, NY 11216, believes that it is or will be damaged by the above-identified registration, and hereby petitions to cancel the same. Grounds for cancellation are set forth below:

BACKGROUND

1. Petitioner created the live theater piece "Point Break Live!" (the "Play") a parody of the Katherine Bigelow directed action film in 2003, prior to its premiere at the Little Theater in Seattle in August 2003. See **Exhibit A** attached hereto.

2. Petitioner has been offering or licensing performances of the Play since its premiere in 2003.

3. The Play has become well-known throughout the United States and abroad. Attached as **Exhibit B** are various current and former productions of the Play produced or authorized by Petitioner.

4. On August 26, 2007, Registrant contacted Petitioner to inquire about obtaining rights for New Rock Productions, LLC, a company owned by Registrant, to mount a production of the Play in Los Angeles.

5. On September 24, 2007, Petitioner licensed performances of the Play to New Rock Productions, LLC, a company co-owned by Registrant (the “License Agreement”). See **Exhibit C** attached hereto.

6. On January 4, 2008, Petitioner registered the copyright in the Play with the United States Copyright Office with Registration Number PAu003337717. See **Exhibit D** attached hereto.

7. In early January 2008, under patently false pretenses, later upheld by a jury verdict, Petitioner breached the license agreement for the Play and on December 15, 2010, a complaint was filed by Petitioner against, amongst others, Petitioner. See **Exhibit E** attached hereto.

8. On September 18, 2012, Registrant filed the application to register the trademark “Point Break Live!” with the U.S. Patent and Trademark Office, claiming its use in commerce under Section 1(a) for “Presentation of live show performances” in International Class 41.

9. On December 7, 2012 a jury trial was concluded and judgment was entered in Petitioner’s favor on January 10, 2013.

10. On January 10, 2013, the United States District Court Southern District of New York granted a motion to “permanently enjoin defendants [including Registrant] along with their respective officers, directors, principals, agents, representatives, servants, employees, affiliates, successors, or assigns, and any person or entity acting on their behalf or in concert or participation with them from infringing Jaime Keeling’s copyright by publicly performing, copying, distributing, displaying, marketing, advertising, or offering to license (a) the state play known as *Point Break LIVE!*, (b) Keeling’s copyrighted script for *Point Break LIVE!*, and (c)

any script defendants have used to stage *Point Break LIVE!* in the past or engaging in any other activity constituting an infringement of Keeling's copyright in *Point Break LIVE!*" (the "Court Order") See **Exhibit F** attached hereto.

11. On May 14, 2013, a trademark registration was granted for "Point Break Live!" (the "Mark") in favor of Registrant based on the Mark's use in commerce.

12. Upon information and belief, on at least two separate occurrences in June 2013, Registrant has sent cease and desist letters stating that Registrant has a valid trademark in the Mark and that a venue and a crowd-sourcing website were each infringing Registrant's rights in the Mark when Petitioner attempted to use the name of the Play with these third parties.

FIRST BASIS FOR CANCELLATION – TITLE OF A CREATIVE WORK

13. Registrant repeats and realleges all allegations contained in Paragraphs 1 to 12 and by this reference incorporates them here.

14. Section 1202.08 of the Trademark Manual of Examining Procedure states the well-established rule that "[t]he title, or a portion of a title, of a single creative work must be refused registration under §§1, 2, and 45 of the Trademark Act, 15 U.S.C. §§1051, 1052, and 1127, unless the title has been used on a series of creative works. The title of a single creative work is not registrable on either the Principal or Supplemental Register. *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1162, 64 USPQ2d 1375, 1378 (Fed. Cir. 2002) ("the title of a single book cannot serve as a source identifier"); *In re Cooper*, 254 F.2d 611, 615-16, 117 USPQ 396, 400 (C.C.P.A. 1958), *cert. denied*, 358 U.S. 840, 119 USPQ 501 (1958) ("A book title ... identifies a specific literary work ... and is not associated in the public mind with the publisher, printer or bookseller...."); *In re Posthuma*, 45 USPQ2d 2011 (TTAB 1998) (holding the title of a live theater production unregistrable)."

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