

ESTTA Tracking number: **ESTTA894712**

Filing date: **05/07/2018**

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	Kevin Kneupper		
Entity	Individual	Citizenship	UNITED STATES
Address	280 Spring Oak Rd. Unit #2114 Camarillo, CA 93010 UNITED STATES		

Correspondence information	Kevin Kneupper 280 Spring Oak Rd. Unit #2114 Camarillo, CA 93010 UNITED STATES Email: kneupper@gmail.com Phone: 512-420-8407		
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Registration Subject to Cancellation

Registration No.	5447836	Registration date	04/17/2018
Registrant	Hop Hop Productions, Inc. c/o PSBM 235 Park Avenue South New York, NY 10003 UNITED STATES		

Goods/Services Subject to Cancellation

Class 009. First Use: 2016/06/16 First Use In Commerce: 2016/06/16 All goods and services in the class are subject to cancellation, namely: A series of downloadable e-books in the field of romance
Class 016. First Use: 2016/06/16 First Use In Commerce: 2016/06/16 All goods and services in the class are subject to cancellation, namely: A series of books in the field of romance

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
The mark is merely descriptive	Trademark Act Sections 14(1) and 2(e)(1)
The mark is or has become generic	Trademark Act Section 14(3), or Section 23 if on Supplemental Register
Registrant not rightful owner of mark for identified goods or services	Trademark Act Sections 14(1) and 1
Fraud on the USPTO	Trademark Act Section 14(3); In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir.

	2009)
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	Other prior users of the "COCKY" mark in their romance novel titles.		
Goods/Services	Print and e-book romance novels		

Attachments	Petition to Cancel Trademark 5447836.pdf(651818 bytes)
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Signature	/Kevin Kneupper/
Name	Kevin Kneupper
Date	05/07/2018

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

In re Registration of Hop Hop Productions, Inc.

Mark: COCKY
Reg. No.: 5,447,836

KEVIN KNEUPPER	:	
	:	
Petitioner,	:	
	:	
v.	:	CANCELLATION NO. _____
	:	
HOP HOP PRODUCTIONS INC.	:	
	:	
Registrant.	:	

PETITION FOR CANCELLATION

HOP HOP PRODUCTIONS INC., a company organized under the laws of Delaware, with an address at 235 Park Avenue South, New York, NY 100031 (“Registrant”), is listed in the records of the U.S. Patent and Trademark Office (“USPTO”) as the registrant of U.S. Registration No. 5,447,836 (the “Registration”) of COCKY (the “Mark”), issued on April 17, 2018, for “a series of downloadable e-books in the field of romance” in International Class 9 and “a series of books in the field of romance” in International Class 16. Jonathan Pollack, Esq., 235 Park Avenue South, 9th Floor, New York, NY 10003, jp@morrisyorn.com, is listed as attorney of record and as e-mail contact.

KEVIN KNEUPPER (“Petitioner”), an individual residing at 280 Spring Oak Rd. Unit #2114, Camarillo, CA 93010, kneupper@gmail.com, is an author of e-books in the field of romance and books in the field of romance, and believes he will be damaged by the continued registration of the Mark and hereby petitions to cancel the Registration. As a competing author in the same field who has described characters in his books “They Who Fell” and “Argonauts” as

“cocky” and who may use this word in marketing materials, Amazon keywords, book descriptions, metadata describing his books, keywords targeted for paid advertisements, and future titles, Petitioner has a direct and personal stake in the outcome of the proceeding. The continued presence of the Registration on the federal trademark register constitutes an obstacle to Petitioner’s intended use of the term “cocky” in future works and in marketing materials, covers, metadata, advertisements, or keywords. The Registration, thus, is causing injury and damage to Petitioner, and Petitioner has standing to challenge it.

The grounds for cancellation are as follows:

COUNT I
THE TRADEMARK IS VOID BECAUSE IT IS GENERIC AND DESCRIPTIVE

1. Registrant Hop Hop Productions, an entity associated with romance novel author Faleena Hopkins, filed to register the mark “COCKY” on September 12, 2017. Registrant claimed first use in commerce on June 16, 2016. This appears to be the date of the first publication of a book then entitled “Cocky Roomie: A Bad Boy Romance Novel (The Cocker Brothers of Georgia)” by Faleena Hopkins. The book retains this title on Amazon.com for its paperback version.

2. The same book has been titled (or retitled) “Cocky Roomie: Jake Cocker (Cocker Brothers®, The Cocky® Series Book 1” on Amazon.com, but only for its e-book version. It is unclear when this title was first used from publicly available information. On information and belief, this book was retitled at some point after June 16, 2016, and Petitioner’s claimed priority date for the use of “cocky” as a partial series title is not, in fact, accurate.

3. On July 20, 2016, the second book in the series was published. This book is currently titled “Cocky Biker: An MC Romance (The Cocker Brothers of Georgia Volume 2)” on

Amazon for its paperback version, and “Cocky Biker: Jett Cocker (Cocker Brothers®, The Cocky® Series Book 2)” for its e-book version.

4. A number of other books in this series have followed. Registrant claims that as a result of her use of the word “Cocky” in the titles of these books, it is now the sole owner of this generic word with respect to romance novels.

5. Since the registration of the mark, authors have reported being subject to legal threats by Ms. Hopkins, causing an uproar on Twitter and throughout the self-publishing community and the community of romance writers. Those reports include claims by authors that Ms. Hopkins has asserted that other authors may no longer use the word “cocky” in the titles of their books, on the covers of their books, or in the keywords relating to their books.

6. For example, author Jamila Jasper posted on Twitter the following message which on information and belief came from Ms. Hopkins:

Comment: Hi Jamilla,

My name is Faleena Hopkins, author of Cocker Brothers, The Cocky® Series.

The Federal Trademark Commission has granted me the official registered trademark of the word/mark “Cocky” in relation to romance books, no matter the font.

Trademark Registration number: 5447836

I am writing to you out of professional respect so that you may rename your book “Cocky Cowboy” which shares the same title as my book, and republish all the versions (ebook, paperback and audible) on Amazon to keep your ratings and money earned.

My attorney at Morris Yorn Entertainment Law has advised me that if I sue you I will win all the monies you have earned on this title, plus lawyer fees will be paid by you as well.

I will do that -- but I'd rather give you the option.

I have had this series established since June 16, 2016 and I take all of the hard work I put into establishing it, very seriously.

Your hard work I also take seriously.

You have the opportunity to adjust, rename, and republish before taking further action. You can do so on Amazon without losing reviews.

Thank you,

Faleena Hopkins

7. Because of the fears of litigation under this invalid Mark expressed throughout the community of authors, and in particular romance authors, and because of his own standing to

challenge this Mark and the potential damage its continued registration threatens to his business as a self-published author, Petitioner has filed this Petition for Cancellation.

8. Registrant’s trademark “cocky” covers only a portion of the title to the series at issue. As such, the Mark is registerable: “only if the applicant can show that the portion of the title meets the following criteria: (1) It creates a separate commercial impression apart from the complete title; (2) It is used on series of works; and (3) It is promoted or recognized as a mark for the series.” TMEP 1202.08(d). “When a mark is used merely as a *portion of the title* of a creative work, the applicant has a heavier burden in establishing that the portion for which registration is sought serves as a trademark for the goods. *The mere use of the same words in more than one book title is insufficient to establish the words as a mark for a series.* The applicant must show that the public perceives the portion sought to be registered as a mark for the series.” TMEP 1202.08(d)(iii) (emphasis in original).

9. Registrant cannot meet this “heavier burden,” and indeed appears to have provided no supporting evidence in its application. The word “cocky” as used in the title to a romance novel cannot be trademarked because it is generic and descriptive. Romance novels frequently involve “alpha males” as their protagonists—and those alpha males are often described in the titles to the works using adjectives such as “cocky,” “confident,” “arrogant,” and many others.

10. Such generic terms cannot be subject to a trademark. The word “cocky” itself—standing on its own—is a mere adjective, a word that has long been in use in the industry in titles, covers, keywords, advertising, and book descriptions to describe the “alpha male” characters frequently encountered in romance novels.

11. “The genericness doctrine in trademark law is designed to prevent such anti-competitive misuse of trademarks. At its simplest, the doctrine states that when a trademark

primarily denotes a product, not the product's producer, the trademark is lost.” *Anti-Monopoly, Inc. v. General Mills Fun Group*, 611 F.2d 296, 301 (9th Cir. 1979). “Courts equate “common descriptive name,” as used in the statute, with the shorthand expression “generic term.”” *Id.*

12. Numerous romance novels have used “cocky” in their title or series title, many of them predating Registrant’s first publication date of June 16, 2016. And while there appears to be a significant factual issue as to when Registrant in fact began using the term “cocky” in the title to its series, *see* Count IV, many of these novels were published before any arguable priority date. A non-exhaustive list of these prior works includes: “Cocky Bastard” by Penelope Ward and Vi Keeland (published August 15, 2015); “Cocky Prince” by Jules Barnard (published March 28, 2016); “Cocky: A Stepbrother Baby Romance” by Mia Carson (published August 17, 2015); “Cocky: A Cowboy Stepbrother Romance” by Kaylee Kazarian (published August 12, 2015); “Romance: Cocky Stepbrother: A Billionaire Romance” by Emily Guzman (published November 23, 2015); and “A Cocky Werewolf: A Gay MM Mpreg Werewolf Shifter Romance” by Wolfgang Glasscock (published December 8, 2015).

13. In addition to these individual titles, there are various romance novel series that have used “cocky” in the name of the title to their series. A non-exhaustive list of these works includes: “A Cocky Cage Fighter” series by Lane Hart (first published July 7, 2015); “Cocky Dom Series” by Lex Valon (first published April 15, 2017); “My House Servant is Cocky and Naughty With Secrets” by Nono Shimanaga (first published January 9, 2017); and “The Cocky Series” by Tara Crescent (first published August 22, 2017).

14. Indeed, a short perusal of the search results of Amazon.com for romance novels reveals a litany of titles promising “cocky” cowboys, stepbrothers, executives, werewolves, sheiks, sports stars, royalty, and nearly every conceivable combination thereof. Many if not most of these

novels predate Registrant's claim, and many are book series which use "cocky" as a descriptor in their series names.

15. Because "cocky" is commonly used in the industry in a generic or descriptive sense, and has been since long before Registrant published the first book in the series at issue, Registrant cannot meet its "heavier burden" of showing that the "cocky" portion of the title to its series has been promoted or recognized as a mark. As such Registrant's Mark is invalid.

16. The Registration creates a legal presumption that Registrant has valid and exclusive rights in the Mark for goods identified in the Registration.

17. For the reasons set forth above, Registrant is not entitled to the Registration or to the legal presumptions that the Registration creates.

18. The continued presence of the Registration on the federal trademark register constitutes an obstacle to Petitioner's intended use of the term "cocky" in future works and in marketing materials, covers, or keywords. The Registration, thus, is causing injury and damage to Petitioner.

COUNT II
THE TRADEMARK IS VOID FOR PRIOR USE OF THE MARK

19. Petitioner incorporates paragraphs 1-18 by reference.

20. "It is axiomatic in trademark law that the standard test of ownership is priority of use. To acquire ownership of a trademark it is not enough to have invented the mark first or even to have registered it first; the party claiming ownership must have been the first to actually use the mark in the sale of goods or services." *Sengoku Works Ltd. v. RMC Int'l. Ltd.*, 96 F.3d 1217, 1219 (9th Cir. 1996).

21. Because of the numerous examples of prior use of the word “cocky” in both romance novel titles and romance novel series titles as described in paragraphs 12-14, the Mark was in prior use before Registrant used it in commerce.

22. The Registration creates a legal presumption that Registrant has valid and exclusive rights in the Mark for goods identified in the Registration.

23. For the reasons set forth above, Registrant is not entitled to the Registration or to the legal presumptions that the Registration creates.

24. The continued presence of the Registration on the federal trademark register constitutes an obstacle to Petitioner’s intended use of the term “cocky” in future works and in marketing materials, covers, or keywords. The Registration, thus, is causing injury and damage to Petitioner.

COUNT III
THE TRADEMARK IS VOID BECAUSE THE REGISTRANT IS NOT THE OWNER
OF THE MARK

25. Petitioner incorporates paragraphs 1-24 by reference.

26. Because of the numerous examples of prior use of the word “cocky” in both romance novel titles and romance novel series titles as described in paragraphs 12-14, the Mark was in prior use before Registrant used it in commerce.

27. In the alternative to the other counts, and to the extent the Mark is valid, the Registrant cannot be its owner because the Registrant was not the first individual or entity to use the Mark in commerce.

28. The Registration creates a legal presumption that Registrant has valid and exclusive rights in the Mark for goods identified in the Registration.

29. For the reasons set forth above, Registrant is not entitled to the Registration or to the legal presumptions that the Registration creates.

30. The continued presence of the Registration on the federal trademark register constitutes an obstacle to Petitioner's intended use of the term "cocky" in future works and in marketing materials, covers, or keywords. The Registration, thus, is causing injury and damage to Petitioner.

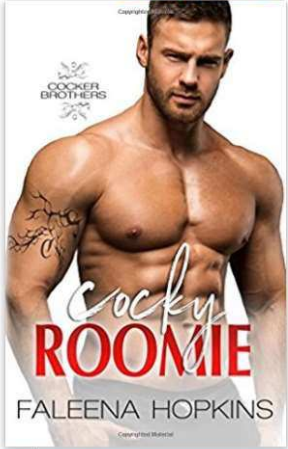
COUNT IV
THE TRADEMARK IS VOID FOR FRAUD ON THE U.S. PATENT AND TRADEMARK OFFICE

31. Petitioner seeks to cancel the Registration on the ground that, on information and belief, it was obtained as a result of knowingly false statements about the ownership and use of the Mark, which were made with the intent to deceive the USPTO and constitute fraud on the USPTO.

32. Petitioner incorporates paragraphs 1-30 by reference.

33. As described in paragraphs 1-3, it appears from publicly available information that Registrant has at some point changed the title of her series.

34. A screenshot taken May 6, 2018 of the paperback title of Registrant's series appears as follows, with the bolded paperback title as a series called "The Cocker Brothers of Georgia." Below, based on a field populated by separate data in common with the e-book version of Registrant's series, the series is titled "The Cocker Brothers, The Cocky Series."



Cocky Roomie: A Bad Boy Romance Novel (The Cocker Brothers of Georgia) (Volume 1) Paperback

– June 15, 2016

by [Faleena Hopkins](#) (Author)

★★★★☆ 590 customer reviews

Book 1 of 18 in the [Cocker Brothers®](#), [The Cocky® Series](#)

▶ [See all 3 formats and editions](#)

<p>Kindle</p> <p>\$0.00 kindleunlimited</p> <p>This title and over 1 million more available with Kindle</p>	<p>Paperback</p> <p>\$10.99 ✓prime</p> <p>2 Used from \$22.77</p> <p>1 New from \$10.99</p>
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35. Other websites such as Goodreads refer to the book series as being titled “The Cocker Brothers of Atlanta.” The e-book specimens in Registrant’s application use both this title and the title “Cocker Brothers, The Cocky Series.” The print specimens in Registrant’s application, by contrast, use only the title “Cocker Brothers” for the series. Registrant’s application does not explain these discrepancies and various titles or provide dates for when the “Cocky Series” title was first applied to the series.

36. On information and belief, at some point in time Registrant has changed the title of the series (and appears to have done so multiple times). On information and belief, Registrant intentionally withheld information from the Patent and Trademark Office regarding these changes to the series title with intent to deceive the USPTO.

37. A change to the series title would be material to the question of whether and how the term “cocky” was used by Registrant in commerce, as well as to the priority date of Registrant’s trademark, which is currently claimed to the date of first publication of the first book. If, as believed, the title of the series was previously some other title or multiple other titles which did not include the word “cocky,” this material information should have been disclosed to the USPTO.

38. The Registration creates a legal presumption that Registrant has valid and exclusive rights in the Mark for goods identified in the Registration.

39. For the reasons set forth above, Registrant is not entitled to the Registration or to the legal presumptions that the Registration creates.

40. The continued presence of the Registration on the federal trademark register constitutes an obstacle to Petitioner's intended use of the term "cocky" in future works and in marketing materials, covers, or keywords. The Registration, thus, is causing injury and damage to Petitioner.

WHEREFORE, Petitioner Kevin Kneupper prays that Registration No. 5,447,836 be canceled.

Respectfully submitted,

Dated: May 6, 2018

/s/ /Kevin Kneupper/, Petitioner *pro se*
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