

ESTTA Tracking number: **ESTTA729869**

Filing date: **02/26/2016**

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	United States Department of the Interior, National Park Service		
Entity	Federal Government Entity	Citizenship	United States
Address	1849 C ST NW Washington, DC 20240 UNITED STATES		

Attorney information	Sheryl Rakestraw DOI Office of the Solicitor, Division of General Law 1849 C. ST NW Mail Stop 6456 Washington, DC 20240 UNITED STATES sheryl.rakestraw@sol.doi.gov, william.blake@sol.doi.gov Phone:2022084446		
----------------------	---	--	--

### Registrations Subject to Cancellation

Registration No	2715307	Registration date	05/13/2003
Registrant	DNC PARKS & RESORTS AT YOSEMITE, INC. 9001 VILLAGE DRIVE YOSEMITE, CA 95389 UNITED STATES		

### Goods/Services Subject to Cancellation

Class 016. First Use: 1969/12/31 First Use In Commerce: 1969/12/31 All goods and services in the class are cancelled, namely: pens, cases for pens, and stickers
Class 021. First Use: 1969/12/31 First Use In Commerce: 1969/12/31 All goods and services in the class are cancelled, namely: coffee mugs
Class 025. First Use: 1969/12/31 First Use In Commerce: 1969/12/31 All goods and services in the class are cancelled, namely: apparel, namely, t-shirts, sweatshirts, and golf shirts

### Grounds for Cancellation

False suggestion of a connection	Trademark Act section 2(a)		
Abandonment	Trademark Act section 14		
Registration No	2772512	Registration date	10/07/2003
Registrant	DNC Parks & Resorts at Yosemite, Inc.  Yosemite, CA 95389 UNITED STATES		

### Goods/Services Subject to Cancellation

Class 014. First Use: 2002/10/29 First Use In Commerce: 2002/10/29
--

All goods and services in the class are cancelled, namely: [ Watches ]
Class 021. First Use: 2002/10/29 First Use In Commerce: 2002/10/29 All goods and services in the class are cancelled, namely: non-electric iron candelabras; dishes; namely cups, plates, and bowls
Class 024. First Use: 2002/10/29 First Use In Commerce: 2002/10/29 All goods and services in the class are cancelled, namely: blanket throws
Class 025. First Use: 2002/10/29 First Use In Commerce: 2002/10/29 All goods and services in the class are cancelled, namely: hats, golf shirts, denim shirts

### Grounds for Cancellation

False suggestion of a connection	Trademark Act section 2(a)		
Abandonment	Trademark Act section 14		
Registration No	1529066	Registration date	03/07/1989
Registrant	YOSEMITE CONCESSION SERVICES CORPORATION YOSEMITE VILLAGE YOSEMITE NATIONAL PARK, CA 95389 UNITED STATES		

### Goods/Services Subject to Cancellation

Class 042. First Use: 1927/12/31 First Use In Commerce: 1927/12/31 All goods and services in the class are cancelled, namely: HOTEL AND RESTAURANT SERVICES
--

### Grounds for Cancellation

False suggestion of a connection	Trademark Act section 2(a)		
Abandonment	Trademark Act section 14		
Registration No	2685968	Registration date	02/11/2003
Registrant	DNC PARKS & RESORTS AT YOSEMITE, INC. 9001 VILLAGE DRIVE YOSEMITE, 95389 UNITED STATES		

### Goods/Services Subject to Cancellation

Class 041. First Use: 1969/12/31 First Use In Commerce: 1969/12/31 All goods and services in the class are cancelled, namely: Recreational services in the nature of ice skating
Class 043. First Use: 1969/12/31 First Use In Commerce: 1969/12/31 All goods and services in the class are cancelled, namely: Hotel and restaurant services

### Grounds for Cancellation

False suggestion of a connection	Trademark Act section 2(a)		
Abandonment	Trademark Act section 14		
Registration No	2739708	Registration date	07/22/2003
Registrant	DNC Parks & Resorts at Yosemite, Inc. 9001 Village Drive Yosemite, CA 95389 UNITED STATES		

### Goods/Services Subject to Cancellation

Class 035. First Use: 1969/12/31 First Use In Commerce: 1969/12/31
--

All goods and services in the class are cancelled, namely: Retail store services featuring gasoline
Class 041. First Use: 1969/12/31 First Use In Commerce: 1969/12/31 All goods and services in the class are cancelled, namely: Golf club services
Class 043. First Use: 1969/12/31 First Use In Commerce: 1969/12/31 All goods and services in the class are cancelled, namely: Hotel and restaurant services

### Grounds for Cancellation

False suggestion of a connection		Trademark Act section 2(a)	
Abandonment		Trademark Act section 14	
Registration No	2720778	Registration date	06/03/2003
Registrant	DNC PARKS & RRSORTS AT YOSEMITE, INC. 9001 VILLAGE DRIVE YOSEMITE, CA 95389 UNITED STATES		

### Goods/Services Subject to Cancellation

Class 041. First Use: 1985/01/01 First Use In Commerce: 1985/01/01 All goods and services in the class are cancelled, namely: Recreational services in the nature of downhill skiing, cross-country skiing and hiking
--

### Grounds for Cancellation

False suggestion of a connection		Trademark Act section 2(a)	
Abandonment		Trademark Act section 14	
Registration No	3731325	Registration date	12/29/2009
Registrant	DNC Parks & Resorts at Yosemite, Inc. 9001 Village Drive Yosemite, CA 95389 UNITED STATES		

### Goods/Services Subject to Cancellation

Class 025. First Use: 2006/12/31 First Use In Commerce: 2006/12/31 All goods and services in the class are cancelled, namely: Apparel, namely, t-shirts and sweatshirts
--

### Grounds for Cancellation

False suggestion of a connection		Trademark Act section 2(a)	
Abandonment		Trademark Act section 14	

### Mark Cited by Petitioner as Basis for Cancellation

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	The marks subject to this petition are all marks used in connection with the concession operations at Yosemite National Park. The Petitioner, National Park Service, relies upon the following marks/names for this Petition: Yosemite National Park, Ahwahnee, Curry Village, Wawona, and Badger Pass		
Goods/Services	This petition concerns goods and services within the following international classes: 14, 21, 24, 25, 35, 41, 42, 43.		

Attachments	Petition to Cancel 2-26-2015.pdf(164155 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 First Class Mail on this date.

Signature	/William B. Blake/
Name	William B. Blake
Date	02/26/2016

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

In the matter of Registration No. 2715307  
For the Trademark YOSEMITE NATIONAL PARK  
Issued March 13, 2003

In the matter of Registration No. 2772512  
For the Trademark THE AHWAHNEE  
Issued October 7, 2003

In the matter of Registration No. 1529066  
For the Trademark THE AHWAHNEE  
Issued March 7, 1989

In the matter of Registration No. 2685968  
For the Trademark CURRY VILLAGE  
Issued February 11, 2003

In the matter of Registration No. 2739708  
For the Trademark WAWONA  
Issued July 22, 2003

In the matter of Registration No. 2720778  
For the Trademark BADGER PASS  
Issued June 3, 2003

In the matter of Registration No. 3731325  
For the Trademark BADGER PASS  
Issued December 29, 2009

NATIONAL PARK SERVICE,

Petitioner,

v.

DNC PARKS & RESORTS AT YOSEMITE,  
INC.,

Registrant.

Cancellation No.

**CONSOLIDATED PETITION TO CANCEL**

Petitioner, a bureau of the United States Department of the Interior, a federal agency of the United States, believes that it is being and/or will be damaged by the continued registration in the United States Patent and Trademark Office (“USPTO”) of the following marks:

- YOSEMITE NATIONAL PARK, Registration No. 2715307, Issued March 13, 2003;
- THE AHWAHNEE, Registration No. 2772512, Issued October 7, 2003;
- THE AHWAHNEE, Registration No. 1529066, Issued March 7, 1989;
- CURRY VILLAGE, Registration No. 2685968, Issued February 11, 2003;
- WAWONA, Registration No. 2739708, Issued July 22, 2003;
- BADGER PASS, Registration No. 2720778, Issued June 3, 2003; and
- BADGER PASS, Registration No. 3731325, Issued December 29, 2009 (collectively, “the Subject Registrations”).

The National Park Service hereby petitions to cancel the Subject Registrations under Section 14 of the Trademark Act of 1947, 15 U.S.C. § 1064. In the alternative, the National Park Service petitions that the Subject Registrations be transferred to the National Park Service under Section 18 of the Trademark Act of 1947, 15 U.S.C. § 1068.

Pursuant to 37 C.F.R. § 2.112(b), the National Park Service files this Consolidated Petition against the Subject Registrations as all are identified as owned by Registrant, and all raise common issues of law and/or fact.

As grounds for its cancellation, Petitioner alleges:

1. The National Park Service is a bureau of the United States Department of the Interior, a federal agency of the United States. The National Park Service was created pursuant to the Organic Act of 1916. See 39 Stat. 535-36 (1916). Pursuant to its statutory mission, the National Park Service:

shall promote and regulate the use of the National Park System by means and measures that conform to the fundamental purpose of the System units, which purpose is to conserve the scenery, natural and historic objects, and wild life in the System units and to provide for the enjoyment of the scenery, natural and historic objects, and wild life in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.

54 U.S.C. §§ 100101(a) *et seq.* The National Park Service is headquartered at 1849 C Street, NW, Washington, DC 20240.

2. On information and belief, Registrant DNC Parks & Resorts at Yosemite, Inc. (“DNCY”) is a subsidiary of Delaware North Parks & Resorts, Inc. DNCY is a Delaware corporation having its principal place of business at 9001 Village Drive, Yosemite, California 95389. Prior to May 9, 2003, DNCY was named Yosemite Concession Services Corporation.

3. The Trademark Trial and Appeal Board (“TTAB” or “the Board”) is an administrative adjudicatory tribunal within the USPTO. The TTAB has jurisdiction to cancel the Subject Registrations. See 15 U.S.C. §§ 1064, 1067; see also 37 C.F.R. § 2.111.

#### Background

4. The National Park Service (“NPS”) is responsible for administering Yosemite National Park. Yosemite National Park was established as the United States’s third national park in 1890. See 26 Stat. 650-52 (1890); see also 27 Stat. 235-36 (1891); 33 Stat. 1286 (1905). Yosemite National Park is located in California and covers an area of more than 1,500 square miles. Yosemite National Park is internationally recognized for its spectacular granite cliffs, waterfalls, clear streams, giant sequoia groves, and biological diversity. The park had approximately 4.2 million visitors in 2015 and since 2006 more than 40 million people have visited Yosemite National Park.

5. “Ahwahnee” is a word in the Miwok language. The Southern Sierra Miwok were the original inhabitants of the Yosemite Valley. It is also the name for the historic hotel

commissioned by the National Park Service in 1925-1927 to accommodate tourism in Yosemite National Park. Commercial hotel and related services are provided for visitors by a third-party concessioner under contract with the NPS. The hotel was designated as a National Historic Landmark in 1987.

6. Curry Village is a historic tent and rustic lodging facility located within Yosemite National Park that carries the namesake of the original concessioners of the facility, David Curry and Jenny Foster Curry. Commercial lodging, food and beverage, and related services are provided to visiting tourists by a third-party concessioner operating under contract with the National Park Service. Originally named “Camp Curry,” the name was changed to Curry Village in 1970 and the facilities were placed on the National Register of Historic Places in 1979.

7. “Wawona” is Miwok for “Big Trees” and the name for The Wawona Hotel, a historic hotel built in 1876, and re-named “Wawona” in 1883. It is located within the southern part of Yosemite National Park. Commercial hotel and related services are provided for visitors by a third-party concessioner under contract with the National Park Service. In 1987 the hotel was designated as a National Historic Landmark.

8. Badger Pass is the name of a ski area located in Yosemite National Park. Commercial services including restaurant and retail and ski school services are provided for visitors by a third-party concessioner under contract with the National Park Service. Badger Pass Ski Area was determined eligible for listing on the National register of Historic Places on August 13, 2009 with concurrence from the California State Historic Preservation Office on December 29, 2009.

9. On October 1, 1993, the NPS and DNCY entered into Contract No. CC-YOSE004-93, a concession contract “to provide accommodations, facilities, and services for the

public” within Yosemite National Park (hereinafter, “the Concession Contract”). In its proposal for the Concession Contract, DNCY recommended a program to explore “the development of a Yosemite National Park logo, which should then be trademarked.” DNCY represented that it “would go forward with the program only with full [National Park Foundation] approval.” DNCY, however, never sought approval of the National Park Foundation or the NPS with respect to its trademark program or even advised the NPS of the program directly.

10. The Concession Contract requires the NPS to condition granting a new concession contract on the successor concessioner’s purchase of DNCY’s “other property . . . used or held for use in connection with” operations authorized in the Concession Contract.

11. The Concession Contract had an initial 15-year term commencing October 1, 1993 that was to expire on September 30, 2008. The term was extended and continued through February 29, 2016. DNCY’s Concession Contract with the NPS expires on February 29, 2016.

12. At Yosemite National Park, all of the hotels, restaurants and recreational infrastructure, known as Concession Facilities, are owned by the United States. Thus, DNCY did not own, and has never owned, any of the hotels, restaurants or recreational infrastructure located within Yosemite National Park. Nor has DNCY ever had a “possessory interest” in any of the hotels, restaurants or recreational infrastructure located within Yosemite, as that term is defined in the National Park Service Concessions Policy Act, **Public Law 89-249** (repealed by the National Park Service Concessions Management Improvement Act of 1998, **Pub. L. No. 105-391**, codified at 54 USC Chapter 1019).

13. On May 30, 2014, DNCY wrote NPS, noting that DNCY was “aware that the NPS is in the process of preparing a request for proposal (RFP) for the primary concession contract in Yosemite.” DNCY then stated that:

In anticipation of a potential RFP process, we have undertaken a valuation of the property that we use for our operations in the Park and believe the total value of such property will be approximately \$100,000,000 as of the end of our contract . . . . We are writing this letter now because we wanted to make sure that NPS is aware of this valuation so that NPS can ensure that potential bidders are properly informed in order to avoid a potential contractual dispute depending on the bidder selected.

14. On June 5, 2014, DNCY responded to NPS's request for more information by providing a table showing five asset categories and summary valuations for each category of asset. Among the valuations was \$51,200,000 for "Intellectual Property."

15. By letter dated June 16, 2014, DNCY provided NPS a "schedule of asset values with a breakdown of asset categories." In a manner similar to DNCY's June 5, 2014, letter, the schedule included a summary valuation of \$51,160,136 for "Intellectual Property - Trademarks, service marks, customer database and internet related intangibles" without any explanation or documentary support, while stating that "the fair value we have determined is an appropriate assessment of the amount that a successor concessioner would be required to pay us for the identified assets in the event that we are not the successful bidder."

16. On June 16, 2015, NPS selected Yosemite Hospitality, LLC, a wholly-owned affiliate of Aramark Sports & Entertainment, LLC (referred to as "Aramark") as the winning bidder for the new Yosemite concession contract. NPS had received bids for the new Yosemite contract from only two companies: DNCY and Aramark.

17. Following NPS's selection of Aramark as the winning bidder, DNCY has repeatedly requested that NPS demand that Aramark pay DNCY for its intangible property, which DNCY has continued to value at up to \$51 million.

18. On July 13, 2015, DNCY wrote to NPS stating that it would not negotiate with Aramark over the fair value of the intangible property.

19. On September 17, 2015, DNCY filed suit against the United States in the United States Court of Federal Claims. See DNC Parks & Resorts at Yosemite, Inc. v. United States, Court of Federal Claims No. 15-1034 C. DNCY alleges, *inter alia*, that the NPS breached the Concession Contract by failing to require Aramark to pay \$51 million to DNCY for its intangible property, including trademarks associated with Yosemite National Park.

20. On October 27, 2015, DNCY wrote to Aramark and asserted that “if Aramark uses DNCY’s intellectual property at any time without purchasing it for fair value, DNCY will consider the use an infringement and will pursue all available remedies.” DNCY’s threat against Aramark was based, in part, on the marks in the Subject Registrations.

21. As a result of DNCY’s demands in connection with marks in the Subject Registrations, the NPS announced new names for five of the Yosemite National Park Concession Facilities and locations that bear the same names as the marks in the Subject Registrations. While the name changes will help the NPS minimize the disruption caused by DNCY’s demands, the NPS will incur a financial cost in implementing the name changes. The NPS currently estimates sign replacement costs required by the name changes to be \$1.7 million.

22. DNCY’s Concession Contract with the NPS expires on February 29, 2016. As the result of the expiration of the Concession Contract, DNCY is expected to discontinue all use in commerce of the marks in the Subject Registrations in connection with the goods and services identified in the respective Subject Registrations.

23. DNCY agreed to sell and transfer “other property . . . used or held for use in connection with” operations authorized in the Concession Contract to a successor upon the contract’s expiration. DNCY asserts that the marks in the Subject Registrations are included within this contractual obligation to sell and transfer. DNCY has never asserted any intent to use

the marks in the Subject Registrations in connection with the goods and services identified in the respective Subject Registrations after the expiration of the Concession Contract. Upon discontinuing use, DNCY does not intend to resume any use in commerce of the marks in the Subject Registrations in connection with the goods and services identified in the respective Subject Registrations.

#### Subject Registrations

24. In 2002, without providing notice to NPS of its intent to do so, DNCY filed applications with the USPTO to register several trademarks associated with Yosemite National Park.

25. On January 31, 2002, DNCY filed Application Serial No. 76365484 for YOSEMITE NATIONAL PARK covering certain goods in International Classes 16, 21, and 25 based on its purported use of the mark in United States commerce for all goods listed in the application. Thereafter, on May 13, 2003, the application matured to registration as Registration No. 2715307.

26. On June 3, 2002, the USPTO examining attorney (“the Examiner”) assigned to review the application initially rejected DNCY’s application to register a trademark for YOSEMITE NATIONAL PARK, in part because the trademark would have presented a false association between DNCY and the NPS. The Examiner found that “‘Yosemite National Park’ identifies the National Park Service.” In addition, the Examiner found that Yosemite National Park “is an extremely famous national park.” Ultimately, the Examiner found that “the fame of the National Park Service is of such a nature that when [DNCY] uses [Yosemite National Park] for its goods,” the public presumes “a connection with the National Park Service.”

27. On December 2, 2002, DNCY responded to the Examiner's rejection. DNCY did not challenge the Examiner's finding that "'Yosemite National Park' identifies the National Park Service." DNCY did not challenge the Examiner's finding that Yosemite National Park "is an extremely famous national park." DNCY did not challenge the Examiner's finding that "the fame of the National Park Service is of such a nature that when [DNCY] uses [Yosemite National Park] for its goods," the public presumes "a connection with the National Park Service." Instead, DNCY argued that its association with NPS was not false, and as proof of that, DNCY submitted three pages of the Concession Contract, identifying the parties to the contract.

28. Even though DNCY submitted only a small portion of the Concession Contract to the Examiner, DNCY heavily redacted contract language from that small portion that suggested that DNCY's rights in Yosemite-related trademarks were limited. DNCY intentionally redacted the introductory text of the contract that stated that Yosemite National Park is administered by the National Park Service. DNCY intentionally redacted the text of the "Term of the Contract" section of the contract that set the expiration of the contract for September 30, 2008. DNCY intentionally redacted the following text:

The Secretary [of the Interior, through the Director of the National Park Service] reserves the right to determine and control the nature, type and quality of the merchandise and services described herein as authorized and required to be sold or furnished by the Concessioner within [Yosemite National Park].

29. On September 30, 2015, DNCY filed Application Serial No. 86774150 for YOSEMITE (design) covering certain services in International Class 41 based on its purported use of the mark in United States commerce for all services listed in the application. The application is currently pending before the USPTO.

30. On January 27, 2016, the USPTO examining attorney (“the Examiner”) assigned to review the application initially rejected DNCY’s application to register a trademark for YOSEMITE (design), because the trademark would have presented a false association between DNCY and the NPS. The Examiner found that “Yosemite National Park is so famous that consumers would presume a connection” with the National Park Service.

31. On July 11, 1988, Yosemite Park and Curry Company filed Application Serial No. 73739312 for THE AHWAHNEE covering certain services in International Class 42 based on its purported use of the mark in United States commerce for the services listed in the application. Thereafter, on March 7, 1989, the application matured to registration as Registration No. 1529066. On July 31, 2003, the registration was conveyed to DNCY.

32. DNCY submitted a specimen with its application to support its claim that it was using THE AHWAHNEE in United States commerce. In the specimen, DNCY describes The Ahwahnee as a “Yosemite landmark.”

33. On July 1, 2002, DNCY filed Application Serial No. 76426371 for THE AHWAHNEE covering certain goods in International Classes 11, 14, 21, 24, and 25 based on its purported intent to use the mark in United States commerce for the goods listed in the application. DNCY later deleted its claim to International Class 11 from its application. Thereafter, on October 7, 2003, the application matured to registration as Registration No. 2772512. On September 28, 2009, DNCY deleted its claim to International Class 14 from its registration.

34. On February 4, 2002, DNCY filed Application Serial No. 76366341 for CURRY VILLAGE covering certain services in International Classes 41 and 43 based on its purported

use of the mark in United States commerce for the services listed in the application. Thereafter, on February 11, 2003, the application matured to registration as Registration No. 2685968.

35. On January 31, 2002, DNCY filed Application Serial No. 76365483 for WAWONA covering certain services in International Classes 35, 41, and 43 based on its purported use of the mark in United States commerce for the services listed in the application. Thereafter, on July 22, 2003, the application matured to registration as Registration No. 2739708.

36. DNCY submitted a specimen with its application to support its claim that it was using WAWONA in United States commerce. In the specimen, DNCY describes Wawona as “one of the oldest mountain resort hotels in California and a National Historic Landmark.”

37. On February 4, 2002, DNCY filed Application Serial No. 76366808 for BADGER PASS covering certain services in International Classes 41 and 42 based on its purported use of the mark in United States commerce for the services listed in the application. DNCY later deleted its claim to International Class 42 from its application. Thereafter, on June 3, 2003, the application matured to registration as Registration No. 2720778.

38. On June 3, 2009, DNCY filed Application Serial No. 77751058 for BADGER PASS covering certain goods in International Class 25 based on its purported use of the mark in United States commerce for the goods listed in the application. Thereafter, on December 29, 2009, the application matured to registration as Registration No. 3731325.

39. The National Park Service believes that it is and/or will be damaged by the continued registration of the Subject Registrations.

**FIRST CLAIM FOR RELIEF**  
**The Marks in the Subject Registrations Create a False Association**

40. The National Park Service repeats and realleges each and every allegation set forth in Paragraphs 1 through 39 as if fully set forth herein.

41. The TTAB is empowered to order cancellation of registered marks that falsely suggest a connection with “persons, . . . institutions, or national symbols” pursuant to 15 U.S.C. §§ 1052(a), 1064.

42. The marks in the Subject Registrations are the same as, or close approximations of, names used by the National Park Service.

43. The marks in the Subject Registrations are recognized as the same as, or close approximations of, names used by the National Park Service. The marks in the Subject Registrations point uniquely and unmistakably to the National Park Service.

44. As of March 1, 2016, when the Concession Contract expires, the National Park Service is not connected with any activities performed by DNCY in connection with the marks in the Subject Registrations.

45. The fame or reputation of the National Park Service is such that, when the marks in the Subject Registrations are used with DNCY’s goods or services, a connection with the National Park Service is presumed.

46. Accordingly, the Subject Registrations should be cancelled. Alternatively, the Subject Registrations should be transferred to the National Park Service under Section 18 of the Trademark Act of 1947, 15 U.S.C. § 1068.

47. As DNCY is relying on the marks in the Subject Registrations to support its inflated demands for compensation in its breach-of-contract suit against the United States in the

United States Court of Federal Claims, these registrations are causing damage and injury to the National Park Service by having to defend an unmeritorious suit.

**SECOND CLAIM FOR RELIEF**  
**DNCY Has Abandoned the Marks in the Subject Registrations**

48. The National Park Service repeats and realleges each and every allegation set forth in Paragraphs 1 through 39 as if fully set forth herein.

49. The TTAB is empowered to order cancellation of registered marks that have been abandoned pursuant to 15 U.S.C. §§ 1125(c), 1064.

50. As the result of the expiration of the Concession Contract, DNCY is expected to discontinue all use in commerce of the marks in the Subject Registrations in connection with the goods and services identified in the respective Subject Registrations.

51. Upon discontinuing use, DNCY does not intend to resume any use in commerce of the marks in the Subject Registrations in connection with the goods and services identified in the respective Subject Registrations.

52. Accordingly, the Subject Registrations should be cancelled. Alternatively, the Subject Registrations should be transferred to the National Park Service under Section 18 of the Trademark Act of 1947, 15 U.S.C. § 1068.

53. As DNCY is relying on the marks in the Subject Registrations to support its inflated demands for compensation in its breach-of-contract suit against the United States in the United States Court of Federal Claims, these registrations are causing damage and injury to the National Park Service by having to defend an unmeritorious suit.

**THIRD CLAIM FOR RELIEF**  
**DNCY's Registration of YOSEMITE NATIONAL PARK**  
**Dilutes NPS's Yosemite National Park**

54. The National Park Service repeats and realleges each and every allegation set forth in Paragraphs 1 through 39 as if fully set forth herein.

55. The TTAB is empowered to order cancellation of registered marks that dilute the distinctive nature of famous marks pursuant to 15 U.S.C. §§ 1125(c), 1064.

56. Yosemite National Park is a famous mark owned by the National Park Service. Yosemite National Park is widely recognized by the general consuming public of the United States as a designation of source of the NPS's goods and services. When the general public encounters the mark in almost any context, it associates the term, at least initially, with the NPS.

57. Yosemite National Park is a distinctive mark.

58. DNCY's use of YOSEMITE NATIONAL PARK in commerce dilutes the NPS's Yosemite National Park.

59. DNCY first began using YOSEMITE NATIONAL PARK in commerce after the NPS's Yosemite National Park became famous.

60. DNCY's use of YOSEMITE NATIONAL PARK is likely to cause dilution by blurring because the association that arises from the similarity between DNCY's mark and NPS's mark impairs the distinctiveness of NPS's mark.

61. DNCY's use of YOSEMITE NATIONAL PARK is likely to cause dilution by tarnishment because the association that arises from the similarity between DNCY's mark and NPS's mark harms the reputation of NPS's mark.

62. Accordingly, YOSEMITE NATIONAL PARK, Registration No. 2715307, should be cancelled. Alternatively, the registration should be transferred to the National Park Service under Section 18 of the Trademark Act of 1947, 15 U.S.C. § 1068.

63. As DNCY is relying on the mark in the registration to support its inflated demands for compensation in its breach-of-contract suit against the United States in the United States Court of Federal Claims, the registration is causing damage and injury to the National Park Service by having to defend and unmeritorious suit.

WHEREFORE, the National Park Service requests that the present Consolidated Petition for Cancellation be sustained and Registrations Nos. 2715307, 2772512, 1529066, 2685968, 2739708, 2720778, and 3731325 be cancelled. Alternatively, the National Park Service requests that the present Consolidated Petition for Cancellation be sustained and Registrations Nos. 2715307, 2772512, 1529066, 2685968, 2739708, 2720778, and 3731325 be transferred to the National Park Service under Section 18 of the Trademark Act of 1947, 15 U.S.C. § 1068.

Respectfully submitted,

February 26, 2016

Of Counsel:

JOHN ROBERSON  
SCOTT BOLDEN  
United States Department of Justice

s/ Sheryl L. Rakestraw  
SHERYL L. RAKESTRAW  
WILLIAM B. BLAKE  
U.S. Department of the Interior  
1849 C Street NW, MS 6456  
Room 6447  
Washington, DC 20240  
Telephone: 202-208-4446

CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2016, I mailed the foregoing CONSOLIDATED PETITION FOR CANCELLATION by depositing true and correct copies of the same with the United States Postal Service, postage prepaid, in envelopes addressed to DNCY's attorneys of record and DNCY's litigation counsel:

George L. Snyder  
Anne F. Downey  
HODGSON RUSS LLP  
140 Pearl Street Suite 100  
Buffalo, New York 14202

Karol A. Kepchar  
Thomas P. McLish  
AKIN GUMP STRAUSS HAUER & FELD, LLP  
1333 New Hampshire Avenue, N.W.  
Washington, DC 20036

February 26, 2016

s/ Sheryl L. Rakestraw  
Sheryl Rakestraw