

ESTTA Tracking number: **ESTTA484391**

Filing date: **07/19/2012**

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	National Ayurvedic Medical Association		
Entity	Non-Profit Corporation	Citizenship	California
Address	620 Cabrillo Avenue Santa Cruz, CA 95065 UNITED STATES		

Correspondence information	Samantha A. Updegraff Attorney of record Peacock Myers, P.C. 201 Third Street, N.W. Suite 1340 Albuquerque, NM 87102 UNITED STATES supdegraff@peacocklaw.com Phone:505 998 6124
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**Registration Subject to Cancellation**

Registration No	3848130	Registration date	09/14/2010
Registrant	Posh Hair Salon Incorporated P.O. Box 4557 Avon, CO 81620 UNITED STATES		

**Goods/Services Subject to Cancellation**

<p>Class 003. First Use: 2005/07/07 First Use In Commerce: 2005/07/15 All goods and services in the class are cancelled, namely: 3-in-1 hair conditioners; 3-in-1 hair shampoos; After sun creams; After-shave; After-shave balms; After-shave creams; After-shave emulsions; After-shave gel; After-shave lotions; After-sun lotions; Age retardant gel; Age retardant lotion; Age spot reducing creams; Aloe vera gel for cosmetic purposes; Anti-aging cream; Antiperspirants; Anti-wrinkle cream; Anti-wrinkle creams; Antibacterial skin soaps; Antibacterial soap; Antiperspirants; Antiperspirants for personal use; Aromatherapy creams; Aromatherapy lotions; Aromatherapy oils; Baby hair conditioner; Baby lotion; Baby oil; Baby oils; Baby powder; Baby powders; Baby shampoo; Bath beads; Bath crystals; Bath foam; Bath foams; Bath gel; Bath gels; Bath lotion; Bath milks; Bath oil; Bath oils; Bath oils for cosmetic purposes; Bath pearls; Bath powder; Bath salts; Bath salts; Bath soaps in liquid, solid or gel form; Bathing lotions; Beauty creams; Beauty creams for body care; Beauty gels; Beauty lotions; Beauty masks; Beauty milks; Beauty serums; Body and beauty care cosmetics; Body crayons; Body cream; Body cream soap; Body creams; Body emulsions; Body glitter; Body lotion; Body lotions; Body mask cream; Body mask lotion; Body mask powder; Body masks; Body milk; Body milks; Body oil; Body oils; Body powder; Body scrub; Body spray used as a personal deodorant and as fragrance; Body sprays; Body sprays, namely, water in atomized containers used to produce a cooling effect; Bubble bath; Cleansing creams; Cleansing milk; Cold cream; Cold creams; Cold waving solutions; Cologne; Cologne water; Coloring preparations for cosmetic purposes; Compacts containing make-up; Concealers; Conditioners; Cosmetic balls; Cosmetic creams; Cosmetic creams for skin care; Cosmetic milks; Cosmetic oils; Cosmetic oils for the epidermis; Cosmetic preparations against sunburn; Cosmetic preparations for body care; Cosmetic products in the form of aerosols for skin care; Cosmetic products in the form of</p>
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aerosols for skincare; Cosmetic rouges; Cosmetic soaps; Cosmetic sun-protecting preparations; Cosmetic sun-tanning preparations; Cosmetic suntan lotions; Cosmetics; Cosmetics, namely, compacts; Cosmetics, namely, lip primer; Cream soaps; Creams for cellulite reduction; Creamy face powder; Creamy foundation; Creamy rouges; Cuticle conditioners; Cuticle cream; Cuticle removing preparations; Dusting powder; Eau de cologne; Eau de parfum; Eau de perfume; Eau de toilette; Eau-de-toilette; Eaux de toilette; Essential oils; Essential oils for personal use; Essential oils for use in the manufacture of scented products; Exfoliant creams; Eye cream; Eye gels; Eye lotions; Eye make-up; Eye make-up remover; Eye shadow; Eye shadows; Eye-shadow; Eyeliner; Eyeliners; Eyes make-up; Eyes pencils; Eyeshadow; Eyeshadows; Face and body beauty creams; Face and body creams; Face and body glitter; Face and body lotions; Face and body milk; Face creams; Face creams for cosmetic use; Face glitter; Face milk and lotions; Face powder; Face powder paste; Face-powder on paper; Facial beauty masks; Facial cleansers; Facial cleansing milk; Facial concealer; Facial cream; Facial creams; Facial emulsions; Facial lotion; Facial make-up; Facial masks; Facial scrubs; Facial washes; Fair complexion cream; Foam bath; Foundation; Foundation; Foundation make-up; Foundations; Fragrance emitting wicks for room fragrance; Fragrances for personal use; Gel eye masks; Gel for hair care and styling; Granulated soaps; Hair balsam; Hair care creams; Hair care lotions; Hair care preparations; Hair cleaning preparations; Hair coloring preparations; Hair conditioner; Hair conditioners; Hair conditioners for babies; Hair creams; Hair dressings for men; Hair dressings for women; Hair emollients; Hair fixers; Hair gel; Hair gels; Hair lacquers; Hair lotions; Hair mascara; Hair mousses; Hair nourishers; Hair oils; Hair pomades; Hair rinses; Hair rinses; Hair shampoo; Hair spray; Hair straightening preparations; Hair styling gel; Hair styling preparations; Hair styling spray; Hair tonic; Hair tonics; Hair waving lotion; Hair-washing powder; Hand cream; Hand creams; Hand lotions; Hand soaps; Lavender oil; Lip balm; Lip balm; Lip cream; Lip gloss; Lip gloss palatte; Lip liner; Lip polisher; Lipstick; Lipstick cases; Lipstick holders; Lipsticks; Liquid bath soaps; Liquid foundation (mizu-oshiroi); Liquid perfumes; Liquid soap; Liquid soap used in foot bath; Liquid soaps; Liquid soaps for hands and face; Liquid soaps for hands, face and body; Loose face powder; Lotions for cellulite reduction; Lotions for face and body care; Lotions for strengthening the nails; Make up foundations; Make-up; Make-up foundations; Make-up pencils; Make-up powder; Make-up products for the face and body; Make-up remover; Make-up removing lotions; Make-up removing milk, gel, lotions and creams; Make-up removing milks; Mascara; Mascaras; Massage oil; Massage oils; Mineral salt in the nature of bath salts not for medical purposes; Moisturizing milks; Mousse for hair care and styling; Nail cream; Night cream; Non-medicated bath preparations; Non-medicated body soaks; Non-medicated foot cream; Non-medicated lip care preparations; Non-medicated ointments for the prevention and treatment of sunburn; Non-medicated scalp treatment cream; Non-medicated skin care preparations; Non-medicated skin creams; Non-medicated stimulating lotions for the skin; Non-medicated sun care preparations; Non-medicated toiletries; Nutritional oils for cosmetic purposes; Oil baths for hair care; Oils for hair conditioning; Oils for toiletry purposes; Pencils for cosmetic purposes; Peppermint oil; Perfume; Perfume oils; Perfume oils for the manufacture of cosmetic preparations; Perfumed creams; Perfumed paste; Perfumed powder; Perfumed powders; Perfumed soap; Perfumed soaps; Perfumed talcum powder; Perfumery; Perfumes; Perfuming sachets; Pomades; Pomades for hair care and styling; Pomanders; Pressed face powder; Room fragrances; Rose oil for cosmetic purposes; Rouge; Rouges; Scented body spray; Sculpting gel; Self-tanning preparations; Shampoo-conditioners; Shampoos; Shampoos; Shampoos for babies; Shaving balm; Shaving cream; Shaving creams; Shaving foam; Shaving gel; Shaving gels; Shaving lotion; Shaving lotions; Shaving mousse; Shaving preparations; Shaving soap; Shower and bath foam; Shower and bath gel; Shower creams; Shower gel; Shower gels; Skin bronzing creams; Skin care products, namely, non-medicated skin serum; Skin clarifiers; Skin cleansers; Skin cleansing cream; Skin cleansing lotion; Skin conditioners; Skin cream; Skin creams; Skin creams in liquid and in solid form; Skin creams in liquid and solid; Skin creams in liquid and solid form; Skin emollients; Skin gels for accelerating, enhancing or extending tans; Skin lotion; Skin lotions; Skin masks; Skin moisturizer; Skin moisturizer masks; Skin soap; Skin texturizers; Skin toners; Soaps for body care; Soaps for personal use; Stick pomade; Styling gels; Styling lotions; Styling mousse; Sun block; Sun block preparations; Sun care lotions; Sun creams; Sun screen; Sun screen preparations; Sun tan gel; Sun tan lotion; Sun tan oil; Sun-block lotions; Sunscreen cream; Sunscreen creams; Suntan creams; Suntanning preparations; Toners; Toning lotion for the face, body and hands; Topical skin sprays for cosmetic purposes; Under-eye enhancers; Wrinkle resistant cream

## Grounds for Cancellation

Genericness

Trademark Act section 23

The mark is merely descriptive	Trademark Act section 2(e)(1)
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Attachments	Petition_Cancellation.pdf ( 9 pages )(233092 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	/Samantha A. Updegraff/
Name	Samantha A. Updegraff
Date	07/19/2012

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

In re Registration of Posh Hair Salon Incorporated

U.S. Registration No. 3,848,130

Registered: September 14, 2010

Mark: DOSHA

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NATIONAL AYURVEDIC MEDICAL ASSOCIATION

Petitioner,

v.

Cancellation No. \_\_\_\_\_

POSH HAIR SALON INCORPORATED,

Registrant.

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**PETITION FOR CANCELLATION**

Box: Trademark Trial and Appeal Board  
Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

The National Ayurvedic Medical Association ("Petitioner" or "NAMA"), a California non-profit corporation, having its principal place of business at 620 Cabrillo Avenue, Santa Cruz, CA 95065, believes that it will be damaged by the continued registration of the mark in U.S. Trademark Registration No. 3,848,130 issued September 14, 2010, for a wide variety of products in International Class 03. Petitioner hereby petitions the Trademark Trial and Appeal Board to order cancellation of the registration pursuant of

Section 14(3) of the Lanham Act, 15 U.S.C. § 1064(3). As grounds for cancellation of the registration, Petitioner asserts as follows:

### BACKGROUND

1. Petitioner is a national organization representing the Ayurvedic profession in the United States. Its mission is to preserve, protect, improve and promote the philosophy, knowledge, science and practice of Ayurveda for the benefit of humanity.

2. The purpose of Petitioner is to provide leadership within the Ayurvedic profession and to promote a positive vision for Ayurveda and its holistic approach to health and wellness. Petitioner carries out its mission by creating and implementing a dynamic strategic plan to ensure the professional growth and success of Ayurveda.

3. Ayurveda is considered by many scholars to be the oldest still-existing healing science. Ayurveda is a Sanskrit word which means "The Science of Life". Ayurvedic knowledge originated in India more than 5,000 years ago and is often called the "Mother of All Healing". It stems from the ancient Vedic culture and was taught for many thousands of years in an oral tradition from accomplished masters to their students. Some of this knowledge was set to print a few thousand years ago, but much of it is passed on in the oral tradition. The principles of many, if not all, natural healing systems now familiar in the West, such as Homeopathy and Polarity Therapy, have their roots in Ayurveda.

4. The terms dosha, vata, pitta, kapha, agni, panchakarma, dravyaguna and others are all Ayurvedic terms transliterated phonetically into English from Devanagari (the Sanskrit language). These terms, including the term "dosha", have been in daily use for over a thousand years and have been in documented commercial use in this country for over 30 years. They are part of the medical vocabulary of the medical science of Ayurveda; much like Latin terms are part of the vocabulary of modern western medicine.

They describe psycho-physiological functions and identify structure and function in living systems. In Ayurveda, everything has an effect on everything else. Ayurveda describes these effects in part by the characteristics of dosha, vata, pitta and kapha. Companies, schools, manufactures and retailers of products and services related to Ayurveda all describe the effects of their products and services on individuals by using the term dosha as well as vata, pitta and kapha.

5. The term “dosha” refers to the three bodily humors that describe and identify one's constitution and any imbalances according to Ayurveda. These teachings are also known as the Tridosha system. A central concept of Ayurvedic medicine is that health exists when the three doshas (Vata, Pitta and Kapha) are in balance, along with digestive fire, bodily wastes, the tissues and the mind.

6. “Dosha” is a fundamental and key concept in Ayurvedic medicine and is used to explain how literally everything does or will affect the body, mind and spirit. Thus, every product and substance can be identified and described doshically as pacifying or aggravating to the system. For example, “this skin moisturizer pacifies all doshas or is tridoshic” or “this wrinkle resistant cream pacifies vatta dosha” or “some skin gels can calm pitta dosha”.

7. Petitioner's members and the Ayurvedic professional community have used the term DOSHA in their Ayurveda practices in the United States since at least 1984. Petitioner's members and the Ayurvedic professional community have also used the term DOSHA on skin products and to describe skin and hair products since at least 1984.

8. On information and belief, Registrant is a delinquent corporation organized under the laws of Colorado, Owner Monalisa Aguilar, and currently maintains its principal place of business at 210 Offerson Road, Beaver Creek, CO 81620.

Registrant has registered the term "dosha" in International Class 003, in connection with the sale of "3-in-1 hair conditioners; 3-in-1 hair shampoos; After sun creams; After-shave; After-shave balms; After-shave creams; After-shave emulsions; After-shave gel; After-shave lotions; After-sun lotions; Age retardant gel; Age retardant lotion; Age spot reducing creams; Aloe vera gel for cosmetic purposes; Anti-aging cream; Anti-perspirants; Anti-wrinkle cream; Anti-wrinkle creams; Antibacterial skin soaps; Antibacterial soap; Antiperspirants; Antiperspirants for personal use; Aromatherapy creams; Aromatherapy lotions; Aromatherapy oils; Baby hair conditioner; Baby lotion; Baby oil; Baby oils; Baby powder; Baby powders; Baby shampoo; Bath beads; Bath crystals; Bath foam; Bath foams; Bath gel; Bath gels; Bath lotion; Bath milks; Bath oil; Bath oils; Bath oils for cosmetic purposes; Bath pearls; Bath powder; Bath salts; Bath salts; Bath soaps in liquid, solid or gel form; Bathing lotions; Beauty creams; Beauty creams for body care; Beauty gels; Beauty lotions; Beauty masks; Beauty milks; Beauty serums; Body and beauty care cosmetics; Body crayons; Body cream; Body cream soap; Body creams; Body emulsions; Body glitter; Body lotion; Body lotions; Body mask cream; Body mask lotion; Body mask powder; Body masks; Body milk; Body milks; Body oil; Body oils; Body powder; Body scrub; Body spray used as a personal deodorant and as fragrance; Body sprays; Body sprays, namely, water in atomized containers used to produce a cooling effect; Bubble bath; Cleansing creams; Cleansing milk; Cold cream; Cold creams; Cold waving solutions; Cologne; Cologne water; Coloring preparations for cosmetic purposes; Compacts containing make-up; Concealers; Conditioners; Cosmetic balls; Cosmetic creams; Cosmetic creams for skin care; Cosmetic milks; Cosmetic oils. Cosmetic oils for the epidermis; Cosmetic preparations against sunburn; Cosmetic preparations for body care; Cosmetic products in the form of aerosols for skin care; Cosmetic products in the form of aerosols for skincare; Cosmetic rouges; Cosmetic

soaps; Cosmetic sun-protecting preparations; Cosmetic sun-tanning preparations; Cosmetic suntan lotions; Cosmetics; Cosmetics, namely, compacts; Cosmetics, namely, lip primer; Cream soaps; Creams for cellulite reduction; Creamy face powder; Creamy foundation; Creamy rouges; Cuticle conditioners; Cuticle cream; Cuticle removing preparations; Dusting powder; Eau de cologne; Eau de parfum; Eau de perfume; Eau de toilette; Eau-de-toilette; Eaux de toilette; Essential oils; Essential oils for personal use; Essential oils for use in the manufacture of scented products; Exfoliant creams; Eye cream; Eye gels; Eye lotions; Eye make-up; Eye make-up remover; Eye shadow; Eye shadows; Eye-shadow; Eyeliner; Eyeliners; Eyes make-up; Eyes pencils; Eyeshadow; Eyeshadows; Face and body beauty creams; Face and body creams; Face and body glitter; Face and body lotions; Face and body milk; Face creams; Face creams for cosmetic use; Face glitter; Face milk and lotions; Face powder; Face powder paste; Face-powder on paper; Facial beauty masks; Facial cleansers; Facial cleansing milk; Facial concealer; Facial cream; Facial creams; Facial emulsions; Facial lotion; Facial make-up; Facial masks; Facial scrubs; Facial washes; Fair complexion cream; Foam bath; Foundation; Foundation; Foundation make-up; Foundations; Fragrance emitting wicks for room fragrance; Fragrances for personal use; Gel eye masks; Gel for hair care and styling; Granulated soaps; Hair balsam; Hair care creams; Hair care lotions; Hair care preparations; Hair cleaning preparations. Hair coloring preparations; Hair conditioner; Hair conditioners; Hair conditioners for babies; Hair creams; Hair dressings for men; Hair dressings for women; Hair emollients; Hair fixers; Hair gel; Hair gels; Hair lacquers; Hair lotions; Hair mascara; Hair mousses; Hair nourishers; Hair oils; Hair pomades; Hair rinses; Hair rinses; Hair shampoo; Hair spray; Hair straightening preparations; Hair styling gel; Hair styling preparations; Hair styling spray; Hair tonic; Hair tonics; Hair waving lotion; Hair-washing powder; Hand cream; Hand creams; Hand

lotions; Hand soaps; Lavender oil; Lip balm; Lip balm; Lip cream; Lip gloss; Lip gloss  
palatte; Lip liner; Lip polisher; Lipstick; Lipstick cases; Lipstick holders; Lipsticks; Liquid  
bath soaps; Liquid foundation (mizu-oshiroi); Liquid perfumes; Liquid soap; Liquid soap  
used in foot bath; Liquid soaps; Liquid soaps for hands and face; Liquid soaps for hands,  
face and body; Loose face powder; Lotions for cellulite reduction; Lotions for face and  
body care; Lotions for strengthening the nails; Make up foundations; Make-up; Make-up  
foundations; Make-up pencils; Make-up powder; Make-up products for the face and  
body; Make-up remover; Make-up removing lotions; Make-up removing milk, gel, lotions  
and creams; Make-up removing milks; Mascara; Mascaras; Massage oil; Massage oils;  
Mineral salt in the nature of bath salts not for medical purposes; Moisturizing milks;  
Mousse for hair care and styling; Nail cream; Night cream; Non-medicated bath  
preparations; Non-medicated body soaks; Non-medicated foot cream; Non-medicated lip  
care preparations; Non-medicated ointments for the prevention and treatment of  
sunburn; Non-medicated scalp treatment cream; Non-medicated skin care preparations;  
Non-medicated skin creams. Non-medicated stimulating lotions for the skin; Non-  
medicated sun care preparations; Non-medicated toiletries; Nutritional oils for cosmetic  
purposes; Oil baths for hair care; Oils for hair conditioning; Oils for toiletry purposes;  
Pencils for cosmetic purposes; Peppermint oil; Perfume; Perfume oils; Perfume oils for  
the manufacture of cosmetic preparations; Perfumed creams; Perfumed paste; Perfumed  
powder; Perfumed powders; Perfumed soap; Perfumed soaps; Perfumed talcum powder;  
Perfumery; Perfumes; Perfuming sachets; Pomades; Pomades for hair care and styling;  
Pomanders; Pressed face powder; Room fragrances; Rose oil for cosmetic purposes;  
Rouge; Rouges; Scented body spray; Sculpting gel; Self-tanning preparations;  
Shampoo-conditioners; Shampoos; Shampoos; Shampoos for babies; Shaving balm;  
Shaving cream; Shaving creams; Shaving foam; Shaving gel; Shaving gels; Shaving

lotion; Shaving lotions; Shaving mousse; Shaving preparations; Shaving soap; Shower and bath foam; Shower and bath gel; Shower creams; Shower gel; Shower gels; Skin bronzing creams; Skin care products, namely, non-medicated skin serum; Skin clarifiers; Skin cleansers; Skin cleansing cream; Skin cleansing lotion; Skin conditioners; Skin cream; Skin creams; Skin creams in liquid and in solid form; Skin creams in liquid and solid; Skin creams in liquid and solid form; Skin emollients; Skin gels for accelerating, enhancing or extending tans; Skin lotion; Skin lotions; Skin masks; Skin moisturizer; Skin moisturizer masks; Skin soap; Skin texturizers; Skin toners; Soaps for body care; Soaps for personal use; Stick pomade; Styling gels; Styling lotions; Styling mousse; Sun block; Sun block preparations; Sun care lotions; Sun creams; Sun screen; Sun screen preparations; Sun tan gel; Sun tan lotion; Sun tan oil. Sun-block lotions; Sunscreen cream; Sunscreen creams; Suntan creams; Suntanning preparations; Toners; Toning lotion for the face, body and hands; Topical skin sprays for cosmetic purposes; Under-eye enhancers; Wrinkle resistant cream”.

#### GENERIC AND/OR HIGHLY DESCRIPTIVE

9. Petitioner requests cancellation of U.S. Trademark Registration No. 3,848,130 under Sections 23 and/or 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1). Registrant's mark is generic and/or highly descriptive when used in connection with the goods provided under its registration (listed above) as well as other goods related to the teachings of Ayurvedic medicine. Registrant's mark for DOSHA is generic and/or highly descriptive, as it describes a quality, a characteristic, and a feature of the specified goods.

10. Petitioner's members and the Ayurvedic community use the generic or highly descriptive term “dosha” in connection with their businesses, their medical and educational services, and their products.

11. If Registrant's trademark registration sought here to be cancelled is allowed to continue to be registered, the effect would be to create for Registrant statutory rights under the Trademark Act and such registration would tend to restrict and interfere with, and damage Petitioner, NAMA, as well as all others that practice Ayurvedic Medicine. To prevent Ayurvedic practitioners and the general public from using the term DOSHA for skin or hair care products, would be like preventing dermatologists from using the term ACNE to describe skin or hair care products, skin care qualities, and skin care functions.

Petitioner hereby gives notice under Rule 2.122(d), (37 C.F.R. 2.122(d)), Trademark Rules of Practice, that after hearing and in any appeal on this cancellation proceeding, it will rely on its registrations and rights thereto as evidence in support of this Notice of Cancellation.

Petitioner believes and avers that it will be damaged by the continued registration of the above asserted mark of Registrant and respectfully requests cancellation of Registration No. 3,848,130. Petitioner asks that this cancellation be sustained and that the registration be cancelled, and for such other and further relief that may be deemed proper.

Respectfully submitted,

By  \_\_\_\_\_  
Samantha A. Updegraff  
Registration No. 60,139  
PEACOCK MYERS, P.C.  
P. O. Box 26927  
Albuquerque, New Mexico 87125-6927  
Telephone (505) 998-1500  
Attorneys for Petitioner

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 19, 2012, a true and correct copy of the foregoing "Petition for Cancellation" was served via First Class Mail to attorney for Registrant: Kelly McKenney, The Law Offices of Kelly McKenney LLC, 268 Deer Run, Carbondale, CO 81623.



Samantha A. Updegraff