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Filing date: **01/10/2013**

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	Comcast Corporation		
Entity	Corporation	Citizenship	Pennsylvania
Address	1701 John F. Kennedy Blvd. Philadelphia, PA 19103 UNITED STATES		

Attorney information	Mitchell H. Stabbe Edwards Wildman Palmer LLP PO Box 130 New York, NY 10150-0130 UNITED STATES trademark@edwardswildman.com, mstabbe@edwardswildman.com Phone:202.478.7378
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Registration Subject to Cancellation

Registration No	3466931	Registration date	07/15/2008
Registrant	BB Entertainment LLC P.O. Box 170 BB Entertainment LLC Belmont, CA 94002 UNITED STATES		

Goods/Services Subject to Cancellation

Class 038. First Use: 2006/07/21 First Use In Commerce: 2006/07/21 All goods and services in the class are cancelled, namely: Communications services, namely, transmitting streamed sound and audio-visual recordings via the Internet; Streaming of audio material on the Internet; Streaming of video material on the Internet
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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)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	3627342	Application Date	03/28/2000
Registration Date	05/26/2009	Foreign Priority Date	NONE
Word Mark	MYTV		

Design Mark	MYTV
Description of Mark	NONE
Goods/Services	Class 041. First use: First Use: 2009/02/17 First Use In Commerce: 2009/02/17 Entertainment services, namely, providing an electronic television program guide for television viewers

Attachments	76012109#TMSN.gif (1 page)(bytes) Petition for Cancellation MYTVPAL Reg. No. 3,466,931.pdf (8 pages)(104222 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	/Mitchell H. Stabbe/
Name	Mitchell H. Stabbe
Date	01/10/2013

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

In the matter of Registration No. 3,466,931
Date of Issue: July 15, 2008
Mark: MYTVPAL

COMCAST CORPORATION,)	
)	
Petitioner,)	
)	
v.)	Cancellation No.
)	
BB ENTERTAINMENT LLC,)	
)	
Registrant.)	

PETITION FOR CANCELLATION

Comcast Corporation (“Comcast”), a corporation under the laws of Pennsylvania, located and doing business with a mailing address of 1701 John F. Kennedy Blvd., Philadelphia, Pennsylvania 19103, believing that it will be damaged by Registration No. 3,466,931, as it relates to services in International Class 38, namely, “Communications services, namely, transmitting streamed sound and audio-visual recordings via the Internet; Streaming of audio material on the Internet; Streaming of video material on the Internet,” hereby petitions to cancel the registration of the mark MYTVPAL for these services.

As grounds therefor, it is alleged:

1. Petitioner Comcast has applied to register the service mark MYTV CHOICE for “Cable television broadcasting services that supply subscribers with television programs, films, movies and other audio-video content, available in programming tiers categorized by genre or subject matter; Provision of telecommunication access to television programs, films, movies and other audio-video content via cable, fiber optics, the Internet, mobile networks and other electronic communications networks, available in programming tiers categorized by genre or

subject matter; Telecommunication services, namely, transmission of television programs, films, movies and other audio-video content via cable, fiber optics, the Internet, mobile networks and other electronic communications networks, available in programming tiers categorized by genre or subject matter,” in Class 38; and for “Entertainment services, namely, providing non-downloadable television programs, films, movies and other audio-video content via cable, fiber optics, the Internet, mobile networks and other electronic communications networks, available in programming tiers categorized by genre or subject matter; and distribution of non-downloadable television programs, films, movies and other audio-video content, namely, television programming in the fields of current event reporting, music, comedy, drama, theater, movies and motion pictures, celebrity and entertainment news, business, science fiction, mystery, crime, health and fitness, history, the home, food, lifestyle, fashion, pop culture, travel, science, the environment, wildlife, weather, inspirational or motivational topics for women, biographies and children's entertainment, for others, to cable television systems, available in programming tiers organized by genre or subject matter,” in Class 41, Application No. 85/436,030, filed on September 30, 2011 (the “MYTV CHOICE” Mark).

2. Registrant, BB Entertainment LLC (“BB”), a Delaware limited liability company with a business address of P.O. Box 170, Belmont, California 94002, is the owner of U.S. Trademark Registration No. 3,466,931, for the trademark MYTVPAL for services in International Class 38, namely, “Communications services, namely, transmitting streamed sound and audio-visual recordings via the Internet; Streaming of audio material on the Internet; Streaming of video material on the Internet” (the “MYTVPAL Mark”). The certificate of registration for the MYTVPAL Mark issued on July 15, 2008.

3. Registrant BB's registration for the MYTVPAL Mark has been cited as a bar under Section 2(d) of the Act to registration of Petitioner Comcast's MYTV CHOICE Mark in Class 38. Accordingly, Petitioner Comcast has standing to petition for cancellation of Registrant BB's MYTVPAL Mark.

COUNT I (Fraud)

4. At the time it filed its application for registration of the MYTVPAL mark, Registrant BB needed to have used in commerce and submit specimens showing its use in commerce of MYTVPAL as a mark in connection with the offer, marketing or promotion of the services recited in the application. Use in commerce only creates trademark rights and supports an application for registration of a mark when the use is lawful. Upon information and belief, as of the time it filed its application for registration, BB had not made any bona fide lawful use of MYTVPAL as a service mark in connection with the streaming of audio and/or visual material and recordings on the Internet.

5. To support its claim of use of the MYTVPAL Mark, BB submitted a specimen consisting of a screen shot of a page from its website, located at <www.mytvpal.com>, which provides users to the site with access to streaming sound, audio and visual content, including programming from cable and network channels, for free. This screen shot displays the MYTVPAL Mark in connection with the tagline "Free High Definition TV over the Internet."

6. In Registrant BB's application for registration of the MYTVPAL Mark, BB asserted, through its attorney of record, under penalty of perjury, that the MYTVPAL Mark had been used in interstate commerce on or in connection with the services at least as early as July 21, 2006. Upon information and belief, Registrant BB knew that its representation was false regarding the lawful use of the MYTVPAL Mark as a mark for the services identified in the

application and intended to deceive the U.S. Patent and Trademark Office (“USPTO”) for the purpose of obtaining a federal trademark registration. Upon information and belief, Registrant BB knew that it was not making lawful use of the MYTVPAL Mark at the time of the filing of its application, because the streaming services it offers in connection with the MYTVPAL Mark were and are being provided without the necessary authorization of content providers.

7. The USPTO relied on Registrant BB’s misrepresentation to issue a registration in connection with the services listed in Class 38. Without the misrepresentation, no registration would have issued in connection with communication services, namely, the transmission of streaming sound and audio-visual recordings and material on the Internet. Thus, Registrant BB committed fraud on the USPTO, and Registration No. 3,466,931, should be cancelled.

COUNT II (Abandonment)

8. In the event Registrant BB is deemed to have made a bona fide lawful use of the MYTVPAL Mark at the time of its application, upon information and belief, BB subsequently ceased using and abandoned its rights in the MYTVPAL Mark in connection with communications services, namely, transmitting streamed sound and audio-visual recordings and material on the Internet.

9. If Registrant BB is permitted to retain the registration sought to be canceled, Petitioner Comcast’s application for registration of its MYTV CHOICE Mark will likely not be granted, to the great detriment of Petitioner.

COUNT III (Priority and Likelihood of Confusion)

10. Petitioner Comcast is the owner of United States Trademark Registration No. 3,627,342, for the MYTV service mark for “Entertainment services, namely, providing an electronic television program guide for television viewers,” in Class 41 (the “MYTV Mark”).

Petitioner Comcast filed its application to register the MYTV Mark on March 28, 2000, and the certificate of registration for its MYTV Mark issued on May 26, 2009. Petitioner Comcast has continuously marketed and offered its services in the United States under the MYTV Mark since at least as early as February 17, 2009. Pursuant to Section 7(c) of the Lanham Act, Petitioner Comcast has a right of priority in its MYTV Mark over any third party who first used a confusingly similar mark after March 28, 2000 or obtained a US registration for a confusingly similar mark based on an application filed after March 28, 2000.

11. Registrant BB's application for the MYTVPAL Mark was filed on November 19, 2007, and claimed a date of first use of July 21, 2006. A certificate of registration for the MYTVPAL Mark issued on July 15, 2008.

12. Petitioner has the exclusive right to own and use the MYTV Mark in the United States, and its rights in the MYTV Mark have priority over and are superior to any right which Registrant BB may claim in and to the MYTVPAL Mark.

13. Registrant BB's MYTVPAL Mark is highly similar to Petitioner Comcast's MYTV Mark. For example, the MYTVPAL mark wholly incorporates Petitioner Comcast's MYTV Mark. In addition, MYTVPAL begins with MYTV and MYTV is the dominant portion of the MYTVPAL mark. Accordingly, the respective marks are highly similar aurally and visually and are similar in meaning.

14. Registrant BB's MYTVPAL services are closely related to Petitioner Comcast's MYTV services. For example, an electronic program guide is closely related to streaming audio-visual content such as programming from cable and network channels. Indeed, as part of its MYTVPAL service, Registrant BB provides an electronic program guide.

15. Upon information and belief, Registrant BB's services and Petitioner Comcast's services are marketed to the same class of consumers through the same or similar channels of trade.

16. As a result of the foregoing, consumers are likely to believe that either (i) Registrant BB's services originate with, are affiliated with, or are endorsed or sponsored by Petitioner Comcast, or (ii) Petitioner Comcast and Registrant BB are affiliated or associated entities.

17. Consequently, consumers familiar with Petitioner Comcast's MYTV mark are likely to utilize Registrant BB's MYTVPAL services believing them to be services provided by, sponsored by, or affiliated with Petitioner Comcast. Any such confusion will result in loss of trade and traffic to Petitioner Comcast. Furthermore, any defect, objection or fault found with the services promoted or provided under Registrant BB's MYTVPAL mark will necessarily reflect upon and may injure the reputation of Petitioner Comcast's services and the goodwill associated therewith.

18. Further, if Registrant BB is permitted to retain the registration sought to be canceled, Petitioner Comcast's application for registration of its MYTV CHOICE mark will likely not be granted, to the great detriment of Petitioner.

18. Any such confusion, mistake or deception inevitably would result in damage and injury to Petitioner Comcast.

19. For the reasons set forth above, a likelihood of confusion under Section 2(d) of the Lanham Act exists between Petitioner Comcast's MYTV mark and Registrant BB's MYTVPAL mark.

WHEREFORE, Petitioner Comcast deems that it is or will be damaged by Registration Number 3,466,931, and petitions for cancellation thereof.

The filing fee of \$300 required by 37 C.F.R. § 2.6(a) and Section 2.6(a)(16) of the Rules of Practice is being submitted herewith.

COMCAST CORPORATION

By: /Mitchell H. Stabbe/
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Dated: January 10, 2013

CERTIFICATE OF TRANSMISSION

I hereby certify that this Petition for Cancellation is being filed electronically with the Trademark Trial and Appeal Board, U.S. Patent and Trademark Office, Madison East, Concourse Level Room C 55, 600 Dulany Street, Alexandria, VA 22314, via the Electronic System for Trademark Trial and Appeals (<http://estta.uspto.gov>) on January 10, 2013.

/Mitchell H. Stabbe/
Mitchell H. Stabbe

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Petition for Cancellation has been served on BB Entertainment LLC, by mailing said copy on January 10, 2013, via First Class Mail, to:

BB Entertainment LLC
P.O. Box 170
Belmont, CA 94002

/Mitchell H. Stabbe/
Mitchell H. Stabbe