

ESTTA Tracking number: **ESTTA541859**

Filing date: **06/05/2013**

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	Cortex USA, Inc.		
Entity	Corporation	Citizenship	Florida
Address	1400 NW 159th Street Suite 105 Miami Gardens, FL 33169 UNITED STATES		

Attorney information	Anuj Desai Arnall Golden Gregory LLP 171 17th St NW Suite 2100 Atlanta, GA 30363 UNITED STATES trademarks@agg.com, anuj.desai@agg.com, stephen.dorvee@agg.com Phone:404-873-8500		
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Registrations Subject to Cancellation

Registration No	3615211	Registration date	05/05/2009
Registrant	Cortex, Inc. 1177 Virginia Avenue Atlanta, GA 303063537 UNITED STATES		

Goods/Services Subject to Cancellation

Class 044. First Use: 1989/10/31 First Use In Commerce: 1989/10/31 All goods and services in the class are cancelled, namely: Hair salon services
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Grounds for Cancellation

Other	Upon information and belief, Registrant does not use and has not used the CORTEX mark in commerce in connection with the listed goods/ services.		
Registration No	4017515	Registration date	08/30/2011
Registrant	Cortex, Inc. 1177 Virginia Avenue Atlanta, GA 303063537 UNITED STATES		

Goods/Services Subject to Cancellation

Class 003. First Use: 2010/11/00 First Use In Commerce: 2010/11/00 All goods and services in the class are cancelled, namely: Shampoos; hair conditioners; hair styling preparations

Grounds for Cancellation

Other	Upon information and belief, Registrant does not use and has not used the CORTEX mark in commerce in connection with the listed goods/ services.
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Attachments	Petition.pdf(169877 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	/Anuj Desai/
Name	Anuj Desai
Date	06/05/2013

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

In the matter of:

Registration No. **3615211**
Registration No. **4017515**
For the Mark **CORTEX**

Cortex USA, Inc.,

Petitioner,

v.

Cortex, Inc.,

Registrant.

Cancellation No. _____

PETITION FOR CANCELLATION

COMES NOW Petitioner Cortex USA, Inc. ("Petitioner") and for its Petition of Cancellation against Registrant Cortex, Inc. ("Registrant") states as follows:

1.

Petitioner is a Florida corporation with an address of 1400 NW 159th Street, Suite 105, Miami Gardens, Florida 33169.

2.

Petitioner has the following use-based trademark applications pending before the United States Patent and Trademark Office ("USPTO") (collectively, "Petitioner's Applications"):

TRADEMARK	SERIAL NO.	CLASS
CORTEX INTERNATIONAL	85/696888	011
CORTEX INTERNATIONAL	85/698021	021
CORTEX INTERNATIONAL	85/698011	008 ¹
CORTEX PROFESSIONAL	85/697947	008 ²
CORTEX PROFESSIONAL	85/697977	011
CORTEX PROFESSIONAL	85/697990	021

3.

The Trademark Examiner for Petitioner’s Applications has refused registration of Petitioner’s CORTEX INTERNATIONAL and CORTEX PROFESSIONAL marks on the grounds that each of these marks is likely to be confused with Registrant’s CORTEX mark in Registration Nos. 3615211 and 4017515. Copies of these registrations are attached as Exhibit 1 hereto.

4.

In particular, Registration No. 3615211 was issued to Registrant on May 5, 2009 for “hair salon services” in International Class 044. Registration No. 4017515 was issued to Registrant on August 30, 2011 for “shampoos; hair conditioners; hair styling preparations” in International Class 003.

5.

To the best of Petitioner’s knowledge, Registrant is located at 1177 Virginia Avenue, Atlanta, Georgia 30306.

¹ This application was filed in International Class 009, but is being amended to International Class 008.

² This application was filed in International Class 009, but is being amended to International Class 008.

6.

Upon information and belief, Registrant does not use and has not used the CORTEX mark in commerce in connection with hair salon services or shampoos, hair conditioners, and hair styling preparations products. Therefore, Registration Nos. 3615211 and 4017515 are invalid and should be cancelled.

7.

Failure to cancel the aforementioned registrations and to eliminate them from the Principal Register of Trademarks will damage Petitioner because Petitioner will not be able to register the marks in Petitioner's Applications.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that Registration Nos. 3615211 and 4017515 be cancelled.

Respectfully submitted,

ARNALL GOLDEN GREGORY LLP

/Anuj Desai/

Stephen M. Dorvee | stephen.dorvee@agg.com

Anuj Desai | anuj.desai@agg.com

Counsel for Petitioner Cortex USA, Inc.

171 17th Street, N.W., Suite 2100
Atlanta, Georgia 30363
Phone: (404) 873-8500
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trademarks@agg.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing PETITION FOR CANCELLATION was sent via United States Mail to:

Cortex, Inc.
1177 Virginia Avenue
Atlanta, Georgia 30306

This 5th day of June, 2013.

/Anuj Desai/
Anuj Desai

EXHIBIT 1

Int. Cl.: 44

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 3,615,211

Registered May 5, 2009

**SERVICE MARK
PRINCIPAL REGISTER**

CORTEX

CORTEX, INC. (GEORGIA CORPORATION)
1177 VIRGINIA AVENUE
ATLANTA, GA 303063537

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

FOR: HAIR SALON SERVICES, IN CLASS 44 (U.S.
CLS. 100 AND 101).

SER. NO. 77-558,773, FILED 8-29-2008.

FIRST USE 10-31-1989; IN COMMERCE 10-31-1989.

JULIE GUTTADAURO, EXAMINING ATTORNEY

United States of America
United States Patent and Trademark Office

CORTEX

Reg. No. 4,017,515

CORTEX, INC. (GEORGIA CORPORATION)
1177 VIRGINIA AVENUE
ATLANTA, GA 303063537

Registered Aug. 30, 2011

Int. Cl.: 3

FOR: SHAMPOOS; HAIR CONDITIONERS; HAIR STYLING PREPARATIONS, IN CLASS 3
(U.S. CLS. 1, 4, 6, 50, 51 AND 52).

TRADEMARK

FIRST USE 11-0-2010; IN COMMERCE 11-0-2010.

PRINCIPAL REGISTER

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 3,615,211.

SER. NO. 77-672,545, FILED 2-18-2009.

BARBARA GAYNOR, EXAMINING ATTORNEY



David J. Kyffers

Director of the United States Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

Requirements in the First Ten Years*
What and When to File:

First Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

Second Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.*
See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*
What and When to File:

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

**The United States Patent and Trademark Office (USPTO) will NOT send you any future notice or
reminder of these filing requirements.**

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the USPTO. The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.