

ESTTA Tracking number: **ESTTA592537**

Filing date: **03/14/2014**

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	Benjamin Garcia		
Entity	Individual	Citizenship	UNITED STATES
Address	4198 N. "F" Street SAN BERNARDINO, CA 92407 UNITED STATES		

Attorney information	Matthew H. Swyers The Trademark Company 344 Maple Avenue West Vienna, VA 22180 UNITED STATES mswyers@thetrademarkcompany.com Phone:8009068626		
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Registration Subject to Cancellation

Registration No	4437246	Registration date	11/19/2013
Registrant	Ortiz, Fernando 2580 senter rd #533 San jose, CA 95111 MXX		

Goods/Services Subject to Cancellation

Class 041. First Use: 2012/01/21 First Use In Commerce: 2012/01/21 All goods and services in the class are cancelled, namely: Entertainment, namely, live performances by a musical band

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	85749168	Application Date	10/09/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	EL 30-30 DE GUERRERO		

Design Mark	EL 30-30 DE GUERRERO
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 1990/07/10 First Use In Commerce: 2008/07/10 Audio and video recordings featuring music and artistic performances

Attachments	85749168#TMSN.jpeg(bytes) Petition to Cancel.pdf(98849 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	/Matthew H. Swyers/
Name	Matthew H. Swyers
Date	03/14/2014

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board**

In the matter of U.S. Registration 4,437,246
For the mark EL 30.30 DE VILLA
Registered on the Principal Register on Nov. 19, 2013

Garcia, Benjamin, a/k/a TA EL 30-30 DE GUERRERO	:	
	:	
	:	
Petitioner,	:	
	:	
vs.	:	Cancellation No. _____
	:	
Ortiz, Fernando, a/k/a El Oso,	:	
	:	
	:	
Registrant.	:	

PETITION TO CANCEL

Petitioner, Benjamin Garcia a/k/a TA EL 30-30 DE GUERRERO (“Petitioner”), a U.S. Resident with a mailing address of 4198 N. “F” Street, San Bernardino, California 92407 and believes that he is and will continue to be damaged by the continued registration of U.S. Registration 4,437,246 for the mark EL 30.30 DE VILLA and, accordingly, hereby petitions this honorable tribunal to cancel the same pursuant to 15 U.S.C. § 1064 and 37 C.F.R. § 2.111(b).

Grounds for Cancellation

As grounds for the instant Petition to Cancel, it is alleged that the continued registration of Registrant, Fernando Ortiz a/k/a El Oso’s (hereinafter “Registrant”) mark: EL 30.30 DE VILLA (“Registrant’s Mark”), as more fully displayed in U.S. Registration No. 4,437,246 would be likely to cause confusion with Petitioner, Benjamin Garcia a/k/a TA EL 30-30 DE GUERRERO’s (hereinafter “Petitioner”) mark: EL 30-30 DE GUERRERO (“Petitioner’s

Mark”), as more fully identified in Trademark Application Serial No. 85/749,168, which retains priority of use over Registrant’s mark by virtue of its prior use in commerce in the United States.

Statement of Facts

In support of the instant Petition to Cancel, it is alleged that:

1. Petitioner is the owner of the mark: EL 30-30 DE GUERRERO (“Petitioner’s Mark”) as more fully identified in Trademark Application Serial No. 85/749,168 for use in connection with audio and video recordings featuring music and artistic performances (“Petitioner’s Products”) covered in International Class 09.

2. Petitioner first used Petitioner’s Mark in connection with Petitioner’s Products in commerce on or about Jul. 10, 2008.

3. Petitioner’s use of Petitioner’s Mark in connection with Petitioner’s Products has been continuous since on or about Jul. 10, 2008.

4. Petitioner has invested significant sums of money in the promotion of Petitioner’s Mark and the Petitioner’s Products in the United States.

5. As a result of the aforesaid, Petitioner has developed a valuable reputation and goodwill in Petitioner’s Mark and has achieved a following among the relevant consuming public prior to the filing, registration and/or priority date of Registrant’s application to register the mark: EL 30.30 DE VILLA (“Registrant’s Mark) as identified more fully in U.S. Registration No. 4,437,246.

6. On or about Oct. 09, 2012, Petitioner filed an application to register Petitioner’s Mark for use in connection with Petitioner’s Products covered in International Class 09. The application received Trademark Application No. 85/749,168.

7. By an Office Action dated Feb. 7, 2014, the examining attorney issued an initial refusal to register Petitioner's mark, under Trademark Act Section 2(d), 15 U.S.C. § 1052(d), based upon the examining attorney's opinion that, if registered, Petitioner's mark would be likely to create a likelihood of confusion with Registrant's registered mark: for EL 30.30 DE VILLA, ("Registrant's Mark) for use in connection with entertainment, namely, live performances by a musical band ("Registrants Goods") covered in International Class 41 as more fully identified in U.S. Registration No. 4,437,246.

8. The Office Action dated Feb. 27, 2014 referenced hereinabove was Petitioner's first notice that Registrant was using the mark EL 30.30 DE VILLA in the United States.

9. Based upon information and belief, Registrant is a U.S. Resident with a mailing address of 2580 Senter Rd. #533 San Jose, California 95111.

10. Upon information and belief, Registrant filed its application to register Registrant's Mark on or about, Jun. 01, 2012, alleging a first date of use in commerce of Jan. 21, 2012. The application received U.S. Serial No. 85/641,235

11. As such, Petitioners' rights in Petitioner's Mark have priority of use over Registrant's rights in Registrant's Mark, inasmuch as Petitioner commenced its use of the mark EL 30-30 DE GUERRERO in connection with Petitioner's Products in interstate commerce prior to the filing, registration, and/or priority of use date of the Registrant's registration and use of the mark EL 30.30 DE VILLA.

12. Upon information and belief, Registrant's application for Registrant's Mark registered on Nov. 19, 2013 on the Principal Register.

13. Petitioner believes that consumers confronted with the Registrant's Mark will inevitably be confused and deceived into the mistaken belief that the Registrant's goods have

their origin or are in some manner connected with the Petitioner and/or Petitioner's Products offered under Petitioner's Mark.

14. The continued registration of Registrant's mark confers upon Registrant rights to which it is not entitled and is inconsistent with the prior established rights of Petitioner in Petitioner's Mark.

15. By reason of the foregoing, the Petitioner will be seriously damaged by the continued registration of Registrant's mark EL 30.30 DE VILLA as more fully identified in U.S. Registration No. 4,437,246.

WHEREFORE the Petitioner, Benjamin Garcia a/k/a TA EL 30-30 DE GUERRERO, by counsel, prays that the instant petition be granted and U.S. Registration No. 4,437,246 be cancelled.

Respectfully submitted this 14th day of March, 2014.

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/

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