

ESTTA Tracking number: **ESTTA610691**

Filing date: **06/18/2014**

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	Argus Food Processing Corp.		
Entity	Corporation	Citizenship	Florida
Address	9202 NW 106 St. Medley, FL 33178 UNITED STATES		

Attorney information	Jesus Sanchelima Sanchelima & Associates, P.A. 235 SW Le Jeune Rd Miami, FL 33134 UNITED STATES legal@sanchelima.com Phone:305-447-1617		
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Registration Subject to Cancellation

Registration No	4209002	Registration date	09/18/2012
Registrant	Carlo Ghailian 315 E. 8th Street, Suite 202 Los Angeles, CA 90014 UNITED STATES		

Goods/Services Subject to Cancellation

Class 035. First Use: 2012/04/01 First Use In Commerce: 2012/04/01 All goods and services in the class are cancelled, namely: Retail grocery stores, retail delicatessen services, and retail bakery services, all specializing in Italian foods and Italian food products
Class 043. First Use: 2012/04/01 First Use In Commerce: 2012/04/01 All goods and services in the class are cancelled, namely: Sit-down delicatessen services, restaurants featuring bakery goods, and catering services, all specializing in Italian foods and Italian food products

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.	85768094	Application Date	10/31/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	DON DOMINGO		

Design Mark	DON DOMINGO
Description of Mark	NONE
Goods/Services	Class 029. First use: First Use: 2003/11/05 First Use In Commerce: 2003/11/05 Blood sausage; Fish sausages; Preservedmeats and sausages; Sausages; Sausages,namely, sujuk; Uncooked sausages; Vegetarian sausages

Attachments	85768094#TMSN.jpeg(bytes) 140617le.Petition for Cancellation.pdf(107219 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	/js/
Name	Jesus Sanchelima
Date	06/18/2014

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

In Re:

Registration No. 4,209,002

Registration date: September 18, 2012

Filing date: October 17, 2011

Mark: DOMINGO'S ITALIAN DELI

For: *retail grocery stores, retail delicatessen services, and retail bakery services, all specializing in Italian foods and Italian food products* in international class 035, and *sit-down delicatessen services, restaurants featuring bakery goods, and catering services, all specializing in Italian foods and Italian food products*, in international class 043.

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

Argus Food Processing Corp.

Petitioner

v.

Cancellation No.

Carlo Ghailian

Registrant

_____)

PETITION FOR CANCELTION

Petitioner, Argus Food Processing Corp., (hereinafter “Petitioner”) a corporation of Florida, with its principal place of business at 9202 NW 106 Street, Miami, FL 33178, believes that it is, and will be damaged by the above-identified registration of the mark **DOMINGO'S ITALIAN DELI** for the services identified above and hereby petitions to cancel the same.

As grounds for cancellation, Petitioner incorporates by reference the allegations contained in its ESTTA cover page and further alleges as follows:

I. FACTS

1. Petitioner has used, and continues to use, in commerce in the United States the mark **DON DOMINGO** for *blood sausage; fish sausages; preserved meats and sausages; sausages; sausages, namely, sujuk; uncooked sausages; vegetarian sausages* since at least as early as 2003.

These goods are referred to as “Petitioner’s Goods”.

2. Petitioner has developed a valuable goodwill associated with its mark **DON DOMINGO** for Petitioner's Goods.
3. Petitioner has used in commerce in the United States the mark **DON DOMINGO** with "Petitioner's Goods" prior to Registrant's application's filing date.
4. On Oct. 31, 2012, Petitioner filed an application for registration for the mark **DON DOMINGO** for *blood sausage; fish sausages; preserved meats and sausages; sausages; sausages, namely, sujuk; uncooked sausages; vegetarian sausages* in Int. class 029 for which serial number 85-768,094 was obtained.
5. Registrant's above referenced mark registration was cited in the Office Action rejecting Petitioner's mark application (Serial No. 85-768,094) under Section 2d of the Lanham act.
6. On Oct. 17, 2011, Carlo Ghailian (hereinafter Registrant) filed an application to register the mark **DOMINGO'S ITALIAN DELI** for: *retail grocery stores, retail delicatessen services, and retail bakery services, all specializing in Italian foods and Italian food products* in international class 035, and *sit-down delicatessen services, restaurants featuring bakery goods, and catering services, all specializing in Italian foods and Italian food products*, in international class 043 in the United States Patent and Trademark Office. Registrant's application matured in registration No. 4,209,002 with the United States Patent and Trademark Office dated Sep. 18, 2012.

II. PRIORITY AND LIKELIHOOD OF CONFUSION

7. Registrant's mark **DOMINGO'S ITALIAN DELI**, when used for *retail grocery stores, retail delicatessen services, and retail bakery services, all specializing in Italian foods and Italian food products* in international class 035, and *sit-down delicatessen services, restaurants featuring bakery goods, and catering services, all specializing in Italian foods and Italian food products*, in international class 043, is likely to cause

confusion or mistake in the market and with relevant purchasers with Petitioner's mark for Petitioner's Goods.

III. DAMAGES

8. Petitioner is damaged by Registrant's registration since Petitioner will not be able to control the nature and quality of the confusingly similar mark **DOMINGO'S ITALIAN DELI** for related services and said improper use of the mark and further complicate the confusion among the relevant customers and potential customers. Furthermore, Petitioner is being damaged by not being able to register its mark because of Registrant's prior registration thus preventing Petitioner from availing itself from the benefits of the Lanham Act.

WHEREFORE, Petitioner prays that Registrant's Registration identified as Reg. No. 4,209,002 be cancelled.

Respectfully submitted,
Attorneys for Petitioner:

/s/ Jesus Sanchelima
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed on this
18th day of June 2014 to:

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By: /s/ Jesus Sanchelima
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