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Filing date: **09/04/2014**

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	Balmain S.A.		
Entity	Corporation	Citizenship	France
Address	44, Rue Francois 1er Paris, 75008 FRANCE		

Attorney information	Neil B. Friedman Baker and Rannells, PA 575 Route 28 Raritan, NJ 08869 UNITED STATES n.friedman@br-tmlaw.com,k.hnasko@br-tmlaw.com Phone:908-722-5640		
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Registration Subject to Cancellation

Registration No	2478288	Registration date	08/14/2001
Registrant	JEAN-PHILIPPE FRAGRANCES, L.L.C. STE. 1500 NEW YORK, NY 10176 UNITED STATES		

Goods/Services Subject to Cancellation

Class 003. First Use: 1998/06/11 First Use In Commerce: 1998/06/11 All goods and services in the class are cancelled, namely: perfume, eau de parfum, eau de toilette, eau de cologne, cologne, bath gel, bath soap, talcum powder, body lotion, bodyoil, personal deodorant and perfumed body spray

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

Attachments	Petition for Cancellation.pdf(26878 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	/Neil B. Friedman/
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Name	Neil B. Friedman
Date	09/04/2014

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

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Balmain S.A.,
Petitioner
v.
Jean-Philippe Fragrances, L.L.C.,
Registrant.
-----X

Cancellation No.:
Mark: ECSTATIC
Reg. No.: 2478288
Filed: September 30, 1997
Issued: August 14, 2001

**PETITION FOR CANCELLATION
PURSUANT TO 15 U.S.C. SECTION 1064**

In the matter of Trademark Reg. No. 2478288 for ECSTATIC (“Registrant’s Mark”) for perfume, eau de parfum, eau de toilette, eau de cologne, cologne, bath gel, bath soap, talcum powder, body lotion, body oil, personal deodorant and perfumed body spray (“Registrant’s Goods”) in Int. Class 003, owned by Jean-Philippe Fragrances, L.L.C (“Registrant”) on August 14, 2001, Balmain S.A., (“Petitioner”) a corporation organized and existing under the laws of France, located and doing business at 44, Rue Francois 1er, Paris, France 75008, believes that it will be damaged by the continued registration of ECSTATIC as Registrant’s mark and hereby petitions to cancel said registration pursuant to 15 U.S.C. §1064 (Trademark Act of 1946, §14).

COUNT I - ABANDONMENT

As grounds of cancellation, it is alleged that:

1. U.S. Registration No. 2478288 for Registrant's Mark issued on August 14, 2001 to Registrant's predecessor in interest, Tristar Coproration, and was assigned to Registrant on May 22, 2002.

2. Upon information and belief, Registrant is a New York limited liability company having a place of business at 551 Fifth Ave., Ste. 1500, New York, New York 10176.

3. Trademark Reg. No. 2478288, for the mark ECSTATIC, covers the Registrant's Goods.

4. Petitioner is the owner of trademark application Serial No. 86264061 for EXTATIC BALMAIN PARIS for cosmetics; cosmetic pencils for personal use, namely, lip pencils and eye pencils; day creams tinted; night creams; creams, gels, oils, salts and bubble baths for the bath and shower not for medical purposes; dentifrices; deodorants and deodorant soaps for personal use; eau de parfum, eau de toilette and eau de cologne; fragrances; blushes; make-up foundations; essential oils for personal use; milks, lotions, emulsions and creams and make-up foundations for cosmetic use for the face and body; lotions before and after-shave; make-up; masks; perfumery; perfumes; potpourri scented; base for make-up, namely preparations bases, gel base make-up, cream or liquid foundation, powders, blushes; make-up preparations for lips, namely lipstick, bright lipstick; preparations for the make-up of the eyes, namely blushes, eye-shadow, mascara, eye liners; preparations for the care of nails and feet, namely nail polish, manicure, nail; products for massage, namely oils, lotions, gels, tonic lotions, lotions, soothing; products for skin protection, namely solar milks, suntan lotions, suntan oils, anti-UV protection; products for care and protection for the skin and body; hair care products, namely hair preparations for non-medical use, in particular sprays for hair, gels, creams, balms,

mousses, shampoos, rinses, colouring products, treatment for permanent, preparations for curling hair; special care products namely whitening or bleaching preparations, anti-wrinkle products, firming products, conditioners; make-up remover products in the form of lotions, milks, creams, gels, make-up remover for the eyes; products makeup removers, cleansers and purifying, namely mousses, lotions, gels, creams, oils and salts not for medical purposes. moisturizing and nourishing products, namely emulsions, creams, tonic lotions, soothing lotions, oils essential for non-medical use; products for shaving, namely mousses, lotions, gels, creams for non-medical use; toilet soaps; body care, namely, milks, lotions, creams, products slimming; talc in non-medical use; day creams; perfumes; depilatory products; make-up foundations; anti-astringents preparations; water scented; preparations for the hydration of the skin in International Class 3.

5. Upon information and belief, Registrant has abandoned Registrant's Mark covered by Reg. No. 2478288. Cancellation is, therefore, appropriate under Section 14(3) of the Lanham Act, 15 U.S.C. Section 1064(3).

6. Upon information and belief, Registrant has discontinued use of the mark covered by the Registration for those goods specified in the description of goods and services with the intent to abandon. Upon further information and belief, Registrant intends not to resume use of such mark for the goods specified.

7. Registrant has abandoned Registrant's Mark in the United States and its U.S. Reg. No. 2478288 therefor.

8. Registrant's Mark has been cited as a basis for refusal of Petitioner's Trademark Application Serial No. 86264061 and on that basis, Petitioner believes that it is and will be damaged by the continued registration of the mark to Registrant.

COUNT II - FRAUD

9. Upon information and belief, on August 11, 2011, Registrant knowingly caused the filing of a false and fraudulent statement to the USPTO in connection with its filing of a Combined Declaration of Use and/or Excusable Nonuse/Application for Renewal of Registration of a Mark under Sections 8 & 9 (hereinafter the "Declaration") wherein it falsely claimed, "For International Class 003, the mark is in use in commerce on or in connection with **all** goods or services listed in the existing registration for this specific class: perfume, eau de parfum, eau de toilette, eau de cologne, cologne, bath gel, bath soap, talcum powder, body lotion, body oil, personal deodorant and perfumed body spray; or, the owner is making the listed excusable nonuse claim."

10. The Declaration contained the following warning: "The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that he/she is properly authorized to execute this document on behalf of the Owner; and all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true."

11. Registrant was knowingly not making use of Registrant's Mark in connection with each and every item of Registrant's Goods from at least August 2008 through August 2011, with no excusable nonuse claim.

12. The specimen filed by Registrant namely, a photograph of product packaging featuring Registrant's Mark, was filed with the Declaration with knowledge that the product packaging was not used in commerce from at least August 2008 through August 2011, with no excusable nonuse claim.

13. Indeed, the specimen filed by Registrant with the Declaration indicates that the same was manufactured by Tristar, the predecessor in interest to Registrant's Mark which was assigned in 2002.

14. The false and fraudulent Declaration was made by a person or entity who knew or should have known the same was false and fraudulent.

15. Registrant knowingly made a false, material misrepresentation of fact in connection with the maintenance of Registrant's Mark when it filed the Declaration.

16. The false and fraudulent Declaration was made with the intent to deceive the USPTO and that the USPTO rely upon the same.

17. The USPTO did rely on the false and fraudulent Declaration when it accepted the Declaration and permitted the renewal of the Registered Mark on September 28, 2011.

18. As a result, Registrant willfully and knowingly perpetrated a fraud on the USPTO.

19. Had the USPTO been aware of the false and fraudulent Declaration referred to above and of Registrant's knowing fraudulent acts, the USPTO would not have accepted the filing of the Declaration, nor allowed Registrant's Mark to renew.

20. The false and fraudulent Declaration was made on behalf of Registrant and at its direction.

21. As a result of the fraudulent acts perpetrated on the USPTO the registration sought to be cancelled continues to exist to the detriment of Petitioner.

22. Upon information and belief, service is proper upon Registrant at the address listed in Paragraph 2 herein.

WHEREFORE, Petitioner prays that Reg. No. 2478288 for the mark ECSTATIC be canceled.

Dated: September 4, 2014

Respectfully submitted,

BAKER AND RANNELLS, PA

/s/Neil B. Friedman
Neil B. Friedman
Attorney for Petitioner
575 Route 28, Suite 102
Raritan, New Jersey 08869
(908) 722-5640

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Petition for Cancellation was forwarded by first class postage pre-paid mail by depositing the same with the U.S. Postal Service on this 4th day of September, 2014 to Registrant at the following address:

Jean-Philippe Fragrances, L.L.C.
551 Fifth Ave., Ste. 1500
New York, New York 10176

/s/Neil B. Friedman
Neil B. Friedman