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Filing date: **10/17/2014**

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	Picture Polish Pty Ltd,		
Entity	Corporation	Citizenship	Australia
Address	5 Appleblossom Place Nerang Queensland, 4211 AUSTRALIA		

Attorney information	Matthew H. Swyers The Trademark Company PLLC 344 Maple Avenue West, Suite 151 Vienna, VA 22180 UNITED STATES mswyers@thetrademarkcompany.com Phone:8009068626		
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**Registration Subject to Cancellation**

Registration No	3572598	Registration date	02/10/2009
Registrant	Moshe Inc 906 S. Los Angeles Street Los Angeles, CA 90015 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 003. First Use: 2007/11/08 First Use In Commerce: 2007/11/08 All goods and services in the class are cancelled, namely: Colognes, perfumes and cosmetics; Cosmetics in general, including perfumes; Disinfecting perfumed soaps; Eau de perfume; Essential oils as perfume for laundry purposes; Liquid perfumes; Oils for perfumes and scents; Perfume; Perfume oils; Perfume oils for the manufacture of cosmetic preparations; Perfumed creams; Perfumed extracts for tissues and perfumes; Perfumed paste; Perfumed powder; Perfumed powders; Perfumed soap; Perfumed soaps; Perfumed talcum powder; Perfumes; Perfumes and colognes; Perfumes and toilet waters; Perfumes, aftershaves and colognes; Perfumes, eau de colognes and aftershaves; Perfumes, eaux de cologne and aftershaves; Perfuming sachets
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**Grounds for Cancellation**

Abandonment	Trademark Act section 14
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Attachments	Petition to Cancel.pdf(176590 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	10/17/2014

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

In the matter of U.S. Registration No. 3,572,598  
For the mark PICTURE  
Registered on Feb. 10, 2009

Picture Polish Pty Ltd,	:	
	:	
Petitioner,	:	
	:	
vs.	:	Petition No. _____
	:	
Moshe Inc., D/B/A Scent-Sation,	:	
	:	
Registrant.	:	

**PETITION TO CANCEL**

Petitioner, Picture Polish Pty Ltd (hereinafter “Petitioner”), an Australian corporation located and doing business at 5 Appleblossom Place, Nerang Queensland 4211, Australia believes that it is and will continue to be damaged by the continued registration of U.S. Registration 3,572,598 for the mark PICTURE for use in connection with the goods identified in International Class 003 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:

1. The mark PICTURE was abandoned and is no longer in use by the Registrant, Moshe Inc., D/B/A Scent-Sation (“Registrant”) , a related entity, assignee, or successor in interest, in connection with the goods identified in International Class 003 on U.S. Registration No. 3,572,598.

**Statement of Facts**

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

1. Registrant, Moshe Inc., D/B/A Scent-Sation (hereinafter “Registrant”), contends that it is the owner of the mark PICTURE (hereinafter “Registrant’s Mark”) for use in connection with the following goods, namely: “Colognes, perfumes and cosmetics; Cosmetics in general, including perfumes;

Disinfecting perfumed soaps; Eau de perfume; Essential oils as perfume for laundry purposes; Liquid perfumes; Oils for perfumes and scents; Perfume; Perfume oils; Perfume oils for the manufacture of cosmetic preparations; Perfumed creams; Perfumed extracts for tissues and perfumes; Perfumed paste; Perfumed powder; Perfumed powders; Perfumed soap; Perfumed soaps; Perfumed talcum powder; Perfumes; Perfumes and colognes; Perfumes and toilet waters; Perfumes, aftershaves and colognes; Perfumes, eau de colognes and aftershaves; Perfumes, eaux de cologne and aftershaves; Perfuming sachets,” in International Class 003 (hereinafter “Registrant’s Goods”).

2. Registrant filed its application to register Registrant’s Mark on or about Sept. 04, 2008 alleging a date of first use of November 8, 2007.

3. Registrant’s Application for Registrant’s Mark was assigned U.S. Serial Number: 77/562,690.

4. Registrant’s Mark registered on the Principal Register on or about February 10, 2009 and was assigned U.S. Registration No. 3,572,598.

5. Upon information and belief, Registrant has ceased use of the mark PICTURE in connection with the goods covered in International Class 003 as more fully identified on U.S. Registration No. 3,572,598.

6. Upon information and belief Registrant does not retain intent to resume use of the Registrant’s Mark in connection with Registrant’s Goods as more fully identified on U.S. Registration No. 3,572,598.

7. On or about September 15, 2011 Petitioner filed a Federal Trademark Application for the mark PICTURE POLISH and Design (hereinafter “Petitioner’s Original Mark”) , assigned Application Serial No. 85/424,183, for use in connection with “Aromatic body care products, namely, body lotion, shower gel, cuticle cream, shampoo, conditioner, non-medicated lip balm, soap, body polish, body and foot scrub and non-medicated foot cream; False nails; Nail art stickers; Nail buffing preparations; Nail care kits comprising nail polish; Nail care preparations; Nail care preparations, namely, nail softeners; Nail cream; Nail enamel; Nail enamel removers; Nail enamels; Nail gel; Nail glitter; Nail grooming

products, namely, tips, glue, lacquer and glitter; Nail hardeners; Nail polish; Nail polish base coat; Nail polish protector in the nature of a thin plastic covering applied to nails; Nail polish remover; Nail polish removers; Nail polish top coat; Nail repair products, namely, linen nail wraps; Nail repair products, namely, nail wraps; Nail repair products, namely, silk nail wraps; Nail stencils; Nail strengtheners; Nail tips; Nail varnish; Nail varnish for cosmetic purposes; Nail varnishes; Nail-polish removers” (hereinafter “Petitioner’s Original Goods”) in Class 003.

8. By a final Office Action entered on or about May 20, 2013 registration of Applicant’s Original Mark, as more fully identified in Application Serial No. 85/424,183, was refused due to the Examining Attorney’s opinion of a likelihood of confusion with Registrant’s Mark pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. Section 1052(d).

9. Petitioner initiated an appeal of the Examining Attorney’s final refusal to register Petitioner’s Mark on or about January 17, 2013. The Trademark Trial and Appeal Board affirmed the Examining Attorney’s refusal to register Petitioner’s Original Mark based on a likelihood of confusion with Registrant’s Mark under 2(d) of the Trademark Act, 15 U.S.C. Section 1052(d). As such, the Petitioner’s Application for Petitioner’s Original Mark was abandoned on or about October 28, 2013.

10. On or about October 15, 2014 Petitioner filed a new application to register the mark PICTURE POLISH (hereinafter “Petitioner’s Mark”) with the U.S. Patent and Trademark Office for use in connection with the following goods, namely: “Aromatic body care products, namely, body lotion, shower gel, cuticle cream, shampoo, conditioner, non-medicated lip balm, soap, body polish, body and foot scrub and non-medicated foot cream; False nails; Nail art stickers; Nail buffing preparations; Nail care kits comprising nail polish; Nail care preparations; Nail care preparations, namely, nail softeners; Nail cream; Nail enamel; Nail enamel removers; Nail enamels; Nail gel; Nail glitter; Nail grooming products, namely, tips, glue, lacquer and glitter; Nail hardeners; Nail polish; Nail polish base coat; Nail polish protector in the nature of a thin plastic covering applied to nails; Nail polish remover; Nail polish removers; Nail polish top coat; Nail repair products, namely, linen nail wraps; Nail repair products, namely, nail wraps; Nail repair products, namely, silk nail wraps; Nail strengtheners; Nail tips; Nail

varnish; Nail varnish for cosmetic purposes; Nail varnishes; and Nail-polish removers (hereinafter “Petitioners Goods”).

11. Petitioner’s application for Petitioner’s Mark was assigned U.S. Serial No. 86/424,459.

12. Petitioner has continuously used Petitioner’s Mark in connection with Petitioner’s Goods since at least as early as April 1, 2009.

13. Petitioner believes that it will be damaged by Registrant’s continued registration insofar as Petitioner’s mark will not be permitted to register while Registrant’s registration remains in effect.

WHEREFORE in consideration that the mark PICTURE is no longer in use, has been abandoned, without the intent to resume use, Petitioner requests and prays that U.S. Registration 3,572,598 be cancelled on the grounds and for the reasons set forth hereinabove.

Respectfully submitted this 17<sup>th</sup> October, 2014.

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/

Matthew H. Swyers, Esq.

344 Maple Avenue West, Suite 151

Vienna, VA 22180

Tel. (800) 906-8626

Facsimile (270) 477-4574

mswyers@TheTrademarkCompany.com

Counsel for Petitioner

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

In the matter of U.S. Registration No. 3,572,598  
For the mark PICTURE  
Registered on Feb. 10, 2009

Picture Polish Pty Ltd,	:	
	:	
Petitioner,	:	
	:	
vs.	:	Petition No. _____
	:	
Moshe Inc., D/B/A Scent-Sation,	:	
	:	
Registrant.	:	

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I caused a copy of the foregoing this 17<sup>th</sup> day of October, 2014 to be served, via first class mail, postage prepaid, upon:

MOSHE, INC.  
D/B/A SCENT-SATION  
906 S LOS ANGELES ST.  
LOS ANGELES, CALIFORNIA 90015

/Matthew H. Swyers/  
Matthew H. Swyers