

ESTTA Tracking number: **ESTTA636459**

Filing date: **11/02/2014**

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	Arun Verma		
Entity	Individual	Citizenship	UNITED STATES
Address	355 South Broadway Hicksville, NY 11801 UNITED STATES		

Attorney information	Nitin Kaushik Kaushiks 38 West 32nd Street, Ste 1511 PO Box 20310 New York, NY 10001-0310 UNITED STATES nkaushik@kaushiklex.com Phone:2123801029		
----------------------	---	--	--

Registration Subject to Cancellation

Registration No	4280147	Registration date	01/22/2013
Registrant	BANGKOK INTERNATIONAL CUISINE CO., LTD SUKHUMVIT SOI 20, SUKHUMVIT ROAD KLONG TOEI, BANGKOK, 10110 THAILAND		

Goods/Services Subject to Cancellation

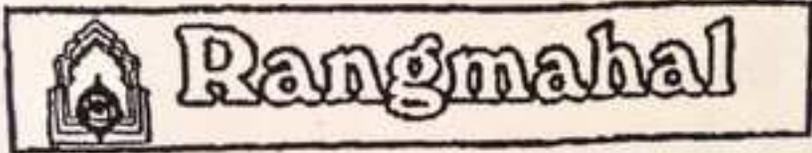
Class 029. First Use: 2007/04/10 First Use In Commerce: 2011/05/30 All goods and services in the class are cancelled, namely: Frozen pre-packaged entrees consisting primarily of seafood; Prepared meals consisting primarily of meat substitutes; frozen entrees consisting primarily of meat, fish, poultry or vegetables; frozen meals consisting primarily of meat, fish, poultry or vegetables; frozen vegetable-based entrees

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Prior use under Common Law

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	85938195	Application Date	05/21/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	RANGMAHAL		

Design Mark	
Description of Mark	The mark consists of a custom logo has colors red starting from the most inner design, then the leaf type object is green, the inner base is yellow and the borders are red and green. The mark also consists of the word "RANGMAHAL" written in green and yellow with border of black and red.
Goods/Services	Class 043. First use: First Use: 1995/08/18 First Use In Commerce: 1995/08/18 Bar services; Catering services; Restaurant services

Attachments	85938195#TMSN.png(bytes) Short & Plain Statement of Grounds.pdf(181646 bytes)
-------------	---

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	/nitin kaushik/
Name	Nitin Kaushik
Date	11/02/2014

Under common law, trademark rights within a certain territory are based on priority of use of a mark within that territory. Under Section 7(c) of the Trademark Act, the date of filing an application whether based on actual use or intent to use, establishes a registrant's date of "constructive use," establishing nationwide priority except against a person who began to use (or applied for and ultimately obtained registration) of the mark prior to that date. Thus, a "prior user" is a party who began use somewhere or applied for the mark prior to that date. In the present case, the Petitioner previously successfully filed for the same mark as the present application on June 15, 1998 with application serial number 75/502,131. The mark was registered as trademark on July 6, 1999 with registration number 22/59,526. However, due to an inadvertent mistake of not filing the Section 8 affidavit, the mark was cancelled. Even after the inadvertent mistake the Petitioner did not stop the use of the mark for his goods and services. The cancellation of the mark does not limit the trademark rights under the common law. In fact, the previous issued trademark is self-attesting evidence that Petitioner is using the mark way before the mark that the Petitioner is seeking to cancel.