

ESTTA Tracking number: **ESTTA640275**

Filing date: **11/20/2014**

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	Cloud9 Distributors LLC		
Entity	Limited Liability Company	Citizenship	California
Address	237 N. Euclid Way #1 Anaheim, CA 92801 UNITED STATES		

Attorney information	Louis F. Teran SLC Law Group 1055 E. Colorado Blvd., Suite #500 Pasadena, CA 91106 UNITED STATES lteran@strategiclegalcounseling.com
----------------------	---

Registration Subject to Cancellation

Registration No	4068062	Registration date	12/06/2011
Registrant	Unitabac, LLC 114 Richards Avenue Dover, NJ 07801 UNITED STATES		

Goods/Services Subject to Cancellation

Class 034. First Use: 2010/07/28 First Use In Commerce: 2010/07/28 All goods and services in the class are cancelled, namely: Cigarillos; Cigars

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	86454100	Application Date	11/13/2014
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	CLOUD9		

Design Mark	<h1>CLOUD9</h1>
Description of Mark	NONE
Goods/Services	Class 034. First use: First Use: 2003/11/20 First Use In Commerce: 2003/11/20 Hookah; Hookah accessories; Hookah tobacco; Hookah charcoal; Hookah parts

Attachments	86454100#TMSN.png(bytes) Complaint - Cancellation.pdf(108996 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 Overnight Courier on this date.

Signature	/Louis F. Teran/
Name	Louis F. Teran
Date	11/20/2014

034 to Unitabac, LLC. (“Registrant”), a company duly organized and existing under the laws of the State of New Jersey, and hereby petitions for cancellation of the same.

As grounds in support of its petition for cancellation, Petitioner asserts as follows:

Petitioner’s Background

1. Petitioner manufactures and distributes hookahs, hookah accessories, hookah parts, hookah charcoal, and hookah tobacco.
2. Petitioner is the owner of U.S. Trademark Application Serial No. 86/454100 for the mark “CLOUD9” (“Petitioner’s Mark”) for the “hookah; hookah accessories; hookah tobacco; hookah charcoal; and hookah parts,” in International Class 034 (“Petitioner’s Goods”).
3. Petitioner has sold and/or distributed products bearing the “CLOUD9” mark since at least as early as November 2003.

Registrant’s Background

4. Upon information and belief, Petitioner alleges that Registrant Unitabac LLC (“Registrant”) is a company organized and existing under the laws of the State of New Jersey.
5. Upon information and belief, Petitioner alleges that Registrant has designated Mr. Geoffrey Evans, 114 Richards Ave., Dover, New Jersey, 07801, as the representative upon whom notice of process for proceedings affecting Registrant’s trademark registration may be served.

6. Upon information and belief, Petitioner alleges that on December 6, 2011, Registrant was awarded U.S. Trademark Registration No. 4,068,062 for the mark “CLOUD9” (“Registrant’s Mark”) for “Cigarillos; Cigars” in International Class 034 (“Registrant’s Goods”). Registrant’s trademark application was originally filed on an intent to use Registrant’s Mark in commerce, pursuant to Section 1(b) of the Lanham Act.

7. The USPTO issued a registration for Registrant’s Mark after Registrant declared that Registrant’s Mark was first used by Registrant on July 28, 2010.

8. Since Petitioner’s Mark was used in commerce since at least November 2003, prior to the date of first use of Registrant’s Mark, Petitioner has priority over any rights claimed by Registrant for registration of Registrant’s Mark.

GROUND FOR CANCELLATION

Likelihood of Confusion Pursuant to 15 U.S.C. §1052(d)

9. A hookah is a water pipe designed to smoke tobacco.

10. The phrase “CLOUD9” has no special meaning within the hookah and/or smokers’ products industry. Petitioner’s Mark is therefore arbitrary or fanciful terms as applied to hookah and/or smokers’ products and is afforded the highest level of protection.

11. Upon information and belief, Petitioner alleges that Registrant’s Mark, when used in conjunction with Registrant’s Goods, so resembles Petitioner’s Mark, as to be likely to cause confusion, to cause mistake, and to deceive within the meaning of 15 U.S.C. §1052(d).

12. Upon information and belief, Petitioner alleges that, the type of goods offered in conjunction with Registrant's Mark is similar or related to the type of goods offered in conjunction with Petitioner's Mark.

13. Upon information and belief, Petitioner alleges that Registrant's Goods and Petitioner's Goods are, or will be marketed to identical or similar groups of consumers.

14. Upon information and belief, Petitioner alleges that Registrant's Goods and Petitioner's Goods are, or will be advertised, promoted, and/or sold through the same or similar channels of trade.

15. Upon information and belief, Petitioner alleges that Registrant's Goods and Petitioner's Goods are, or will be targeted to the same general class of purchasers.

16. Petitioner has no control over the nature and quality of Registrant's Goods that will be using Registrant's Mark, and any dissatisfaction with Registrant's Goods would reflect adversely on Petitioner, thus damaging the goodwill and reputation Petitioner has established in Petitioner's Mark.

17. Registration of Registrant's Mark further damages Petitioner because the trademark registered, "CLOUD9", is so similar to Petitioner's Mark, that use of Registrant's Mark will cause confusion or mistake, and is likely to deceive purchasers into the erroneous belief that Registrant's Goods and Petitioner's Goods originate from the same source, or are authorized or sponsored by Petitioner.

18. Petitioner's customers, as well as the general public, are likely to be confused, mistaken, or deceived as to the origin or sponsorship of Petitioner's Goods and

Registrant's Goods. Based upon such likelihood of confusion, Registrant's Mark should be cancelled.

WHEREFORE, Opposer prays that Registration No. 4,068,062 be cancelled.

Petitioner hereby consents and appoints Louis F. Teran of the SLC Law Group, 1055 East Colorado Blvd, Suite #500, Pasadena, CA 91106, who is a member of the Bar of the State of California, as its duly authorized agent and attorney to prosecute this Petition for Cancellation and to transact all business in the Patent and Trademark Office and in the United States courts, to sign their name to all papers which may hereinafter be filed in connection therewith, and to receive all official communications in connection with this Petition for Cancellation.

Respectfully submitted,



Louis F. Teran
Attorney for Petitioner
Cloud9 Distributors LLC.

Louis F. Teran
SLC LAW GROUP
1055 East Colorado Blvd., Suite #500
Pasadena, CA 91106
Telephone: (818) 484-3217 x200
Facsimile: (866) 665-8877
lteran@strategiclegalcounseling.com

Cancellation
In the matter of Registration No. 4,068,062
Registration Date: December 6, 2011

CERTIFICATION OF SERVICE

I certify that a copy of this PETITION FOR CANCELLATION is being served
via UPS on this the 20th day of November, 2014, to the following:

Applicant's Representative:

Geoffrey Evans
UNITABAC LLC
114 Richards Ave
Dover, NJ 07801-4117

Applicant

UNITABAC LLC
114 Richards Ave
Dover, NJ 07801-4117



Louis F. Teran