

ESTTA Tracking number: **ESTTA684977**

Filing date: **07/21/2015**

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	M/s. Emami Limited		
Entity	company	Citizenship	India
Address	687 Anandapur EM By Pass Kolkata, West Bengal, 700 107 INDIA		

Attorney information	Leo M. Loughlin Rothwell, Figg, Ernst & Manbeck, pc 607 14th Street, N.W. 8th Floor Washington, DC 20005 UNITED STATES PTO-TM-Email@rothwellfigg.com Phone:(202) 783-6040		
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Registration Subject to Cancellation

Registration No	4460761	Registration date	01/07/2014
Registrant	Gupta, Himani 6914 Vista Dr. Saginaw, MI 48603 UNITED STATES		

Goods/Services Subject to Cancellation

Class 003. First Use: 2009/11/01 First Use In Commerce: 2009/11/01 All goods and services in the class are cancelled, namely: cosmetics, namely, nonayurvedic preparations solely for cosmetic purposes, namely, make-up foundation, lipstick, lip balm, lip gloss, eye shadow, lip primer, blush, eye liners, face finishing powder, skin bronzer, facial cleaner, facial toner, facial moisturizer, eye cream, and neck and bust moisturizer

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.	85502259	Application Date	12/22/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	HIMANI		

Design Mark	HIMANI
Description of Mark	NONE
Goods/Services	Class 003. First use: First Use: 2005/05/10 First Use In Commerce: 2005/05/10 SOAPS FOR PERSONAL USE; SHAMPOO; PERFUMERY; ESSENTIAL OILS; COSMETICS; HAIR OILS AND LOTIONS; DENTIFRICES, NAMELY, TALCUM POWDER, PETROLEUM JELLY FOR COSMETIC USE, COSMETIC CREAMS AND LOTIONS AND TOILETRIES

Attachments	85502259#TMSN.png(bytes) Petition to Cancel.pdf(108057 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	/Leo M. Loughlin/
Name	Leo M. Loughlin
Date	07/21/2015

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

M/s. Emami Limited,	:	
	:	
Petitioner,	:	
	:	
v.	:	Cancellation No. _____
	:	
Himani Gupta,	:	
	:	
Registrant.	:	
	:	

PETITION FOR CANCELLATION

M/s. Emami Limited, an Indian Company, (hereinafter “Emami”) with an address at 687 Anandapur, EM By Pass, Kolkata West Bengal - 700 107, India, believes that it will be damaged by continued registration of the mark HIMANI MAKEUP – SKINCARE and Design (hereinafter the “Registrant’s Mark”) for: “cosmetics, namely, nonayurvedic preparations solely for cosmetic purposes, namely, make-up foundation, lipstick, lip balm, lip gloss, eye shadow, lip primer, blush, eye liners, face finishing powder, skin bronzer, facial cleaner, facial toner, facial moisturizer, eye cream, and neck and bust moisturizer” in International Class 03 as set forth in Registration No. 4,460,761, registered on January 7, 2014, owned by Himani Gupta, a Michigan individual, with an address at 6914 Vista Drive, Saginaw, Michigan 48603 (hereinafter the “Registrant”), and hereby seeks cancellation of same. As grounds for this cancellation, it is alleged that:

1. Since long prior to the filing date and first use date listed in Registration No. 4,460,761, Emami has extensively used, advertised and promoted the mark “HIMANI” for goods in International Class 03 (hereinafter the “HIMANI Mark”).

2. Emami is the owner and user of pending U.S. Application No. 85/502,259, claiming a first use in commerce date of May 10, 2005, for the HIMANI Mark for, "soaps for personal use; shampoo; perfumery; essential oils; cosmetics; hair oils and lotions; dentifrices, namely, talcum powder, petroleum jelly for cosmetic use, cosmetic creams and lotions and toiletries" in International Class 03, and has been using HIMANI since 2005 in U.S. commerce.

3. By virtue of the uncompromising and prestigious quality of the goods sold, advertised, and promoted under the HIMANI Mark and by virtue of the extensive sales, promotion and advertising of such high quality goods for over ten years, the HIMANI Mark has become well-known and has acquired recognition and strength throughout the United States.

4. Registration No. 4,460,761 has been cited by the Patent and Trademark Office as a bar to registration of Petitioner's Application Serial No. 85/502,259, on the grounds that the marks are so similar as to create a likelihood of confusion.

5. Upon information and belief, Registrant does not have a priority date earlier than November 1, 2009, which is well after Emami's date of first use.

6. Registrant is not related in any way to Emami.

7. Emami's use of the HIMANI Mark in connection with goods in International Class 03 is such that members of the public will perceive Registrant's Mark in close proximity with the HIMANI Mark and mistakenly assume that Registrant's Mark emanates from Emami.

8. Registrant's Mark so closely resembles Emami's previously used mark that its use, in connection with the goods aforementioned, is likely to cause confusion, or to cause mistake or deceive, in violation Section 2(d) of the Trademark Act of 1946, 15 U.S.C. § 1052(d).

9. The registration of Registrant's Mark will be inconsistent with Emami's rights at common law and will be damaging to Emami.

For the reasons stated above, Emami will be damaged by the continued registration of Registration No. 4,460,761 and the registration should be cancelled.

WHEREFORE, Petitioner respectfully prays that this petition for cancellation be granted.

Respectfully submitted,

M/s. Emami Limited

Date: July 21, 2015

By:



E. Anthony Figg
Leo M. Loughlin
Attorneys for Petitioner
Rothwell, Figg, Ernst & Manbeck P.C.
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Washington, DC 20005
Phone: 202-783-6040

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing PETITION FOR CANCELLATION has been served by First Class mail, postage prepaid, to

Himani Gupta
6914 Vista DR.
Saginaw, MI 48603-9641

On this 21st day of July, 2015.



Leo M. Loughlin