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

Proceeding	92063115
Party	Defendant Tequila Supremo, S.A. de C.V.
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Submission	Motion to Dismiss - Rule 12(b)
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

JENNI RIVERA ENTERPRISES, INC.,

Petitioner,

v.

TEQUILA SUPREMO S.A. DE C.V.,

Registrant.

Cancellation No. 92063115

Registration No. 4,737,318

Mark: **LA GRAN SEÑORA**

**REGISTRANT’S MOTION TO DISMISS PETITIONER’S PETITION FOR
CANCELLATION AND MEMORANDUM OF LAW**

Registrant Tequila Supremo S.A. de C.V. (“Registrant”) hereby moves pursuant to Fed. R. Civ. P. 12(b)(6) and TBMP § 503 to dismiss Jenni Rivera Enterprises, Inc.’s (“Petitioner”) Petition for Cancellation of Registration No. 4,737,318 (the “Petition”). As grounds for this motion, Registrant states as follows:

1. Petitioner identifies itself in the Petition as Jenni Rivera Enterprises, Inc., a California corporation.
2. Petitioner was dissolved well before the filing of the Petition for Cancellation.
3. Petitioner did not exist at the time the Petition for Cancellation was filed.
4. Petitioner lacks standing to bring the Petition.
5. Because Petitioner lacks standing to bring the Petition, Petitioner has failed to state a claim upon which the relief sought can be granted.

MEMORANDUM OF LAW

Petitioner filed the Petition for Cancellation of Registration No. 4,737,318. Petitioner claims that it is a California corporation, specifically, a legal entity with the right to

commercially exploit the name, likeness, and alleged marks of deceased singer Jenni Rivera. As discussed in detail below, Petitioner lacks standing to bring the Petition, as Jenni Rivera Enterprises, Inc. was voluntarily dissolved prior to the filing of the Petition.

ARGUMENT

I. PETITIONER'S PETITION FOR CANCELLATION FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

In a cancellation proceeding, the Federal Rules of Civil Procedure apply. 37 C.F.R. § 2.116(a); *see* TBMP § 101.02. “A motion to dismiss for failure to state a claim upon which relief can be granted is a test solely of the legal sufficiency of a complaint.” *Petróleos Mexicanos v. Intermix S.A.*, 97 U.S.P.Q.2d 1403, 2010 WL 5574284, at *1 (T.T.A.B. 2010); *see* TBMP § 503.02. Section 14 of the Trademark Act provides, in relevant part, that any person who believes he or she will be damaged by the registration of a mark on the principal register may file a petition to cancel the registration of a mark. 15 U.S.C. § 1064. Thus, to survive a motion to dismiss under Fed. R. Civ. P. 12(b)(6), Petitioner’s complaint must allege facts which would, if proved, establish that: (1) Petitioner has standing to maintain the proceeding; and (2) there is a valid ground for cancelling the Registrations. *Young v. AGB Corp.*, 152 F.3d 1377, 47 U.S.P.Q.2d 1752, 1754 (Fed. Cir. 1998); TBMP § 503.02.

A. Petitioner Lacks Standing to Bring the Petition for Cancellation

The Petition for Cancellation must be dismissed because Petitioner did not exist at the time the Petition was filed and therefore lacks standing to bring the Petition. Section 14 of the Trademark Act provides that “[a] petition to cancel a registration of a mark, stating the grounds relied upon, may . . . be filed . . . by any person who believes that he is or will be damaged . . . by the registration of a mark on the principal register.” 15 U.S.C. § 1064. The term “person,” as used in the Trademark Act, refers to either natural or juristic persons, the latter being defined as a “firm, *corporation*, union, association, or other organization *capable of*

suing and being sued in a court of law.” 15 U.S.C. § 1127 (emphasis added); *see also* TBMP § 303.02.

Petitioner identifies itself in the Petition for Cancellation as a California corporation (TTABVUE 1 at 1) and states that it is a “legal entity” (TTABVUE 1 ¶ 4). This is patently false — Petitioner no longer exists as a legal entity. Petitioner Jenni Rivera Enterprises, Inc. was voluntarily dissolved by its shareholders by the filing of a Certificate of Dissolution with the California Secretary of State’s office on February 6, 2015. (Declaration of Aaron Y. Silverstein, Apr. 12, 2016 (“Silverstein Decl.”), ¶ 7; *see* Silverstein Decl. Ex. A.) Petitioner was dissolved, and ceased to exist as a juristic person, nearly a full year before the February 3, 2016 filing date of the Petition for Cancellation. Accordingly, Petitioner is not a person, as defined in the Trademark Act, who has standing to bring a cancellation proceeding.

In light of the above, the Board should dismiss the Petition for Cancellation based on Petitioner’s lack of standing.

WHEREFORE, Registrant requests that its motion be granted and that Petitioner’s Petition for Cancellation be dismissed for failure to state a claim upon which relief can be granted.

Respectfully submitted,

Dated: April 12, 2016

By: /s/ Aaron Y. Silverstein
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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **Registrant's Motion to Dismiss Petitioner's Petition for Cancellation and Memorandum of Law** has been served on Petitioner's correspondent of record by mailing said copy on April 12, 2016, via First Class Mail, postage pre-paid to:

George L. Prajin
Lopez & Prajin
620 Newport Center Drive Suite 1100
Newport Beach, CA 92660

By: /s/ Aaron Y. Silverstein
Aaron Y. Silverstein