

ESTTA Tracking number: **ESTTA773258**

Filing date: **09/27/2016**

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	Playa Products, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	5007 Ocean Front Walk Marina Del Rey, CA 90292 UNITED STATES		

Attorney information	Mark E. Miller, Esq. O'Melveny & Myers LLP Two Embarcadero Center, 28th Floor San Francisco, CA 94111 UNITED STATES markmiller@omm.com, jkoehler@omm.com, aechemy@omm.com Phone:415-984-8700
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Registration Subject to Cancellation

Registration No	4033035	Registration date	10/04/2011
International Registration No.	NONE	International Registration Date	NONE
Registrant	Mulchandani, Manish PO Box 7238 Dubai, UNITED ARAB EMIRATES		

Goods/Services Subject to Cancellation

Class 003. First Use: 0 First Use In Commerce: 0 All goods and services in the class are cancelled, namely: Cosmetics; deodorants for personal use

Grounds for Cancellation

Abandonment	Trademark Act Section 14(3)
Fraud on the USPTO	Trademark Act Section 14(3); In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)
Other	Void Ab Initio

Attachments	Petition to Cancel PLAYA - Reg. No. 4033035.pdf(19036 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 Overnight Courier on this date.

Signature	/Mark E. Miller/
Name	Mark E. Miller
Date	09/27/2016

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

IN THE MATTER OF REGISTRATION NO. 4,033,035
for the mark PLAYA'
registered October 4, 2011

PLAYA PRODUCTS, INC.,)	Cancellation No. _____
)	
Petitioner,)	
v.)	
)	
MANISH MULCHANDANI,)	
)	
Registrant.)	
_____)	

PETITION TO CANCEL

Playa Products, Inc. ("Petitioner") is a Delaware corporation with an address at 5007 Ocean Front Walk, Marina Del Rey, California 90292.

Manish Mulchandani is an Indian citizen with a last known mailing address at P.O. Box 7238, Dubai, United Arab Emirates ("Registrant"),¹ is the owner of record for U.S. Registration No. 4,033,035 (the "Registration"), issued on October 4, 2011, for the mark PLAYA' for the following goods:

International Class 003: Cosmetics; deodorants for personal use.

Petitioner believes it will be damaged by the continued existence of the Registration and, through its authorized attorneys, hereby petitions pursuant to 15 U.S.C. § 1064 to cancel or partially cancel the Registration. The grounds for cancellation are as follows:

¹ Registrant's listed correspondent and attorney of record is Jeffrey M. Furr, Furr Law Firm, 2622 Debolt Rd., Utica, Ohio 43080.

General Allegations

1. The Registration is based on application Serial No. 77/381,833 (the “Application”), which was filed pursuant to 15 U.S.C. § 1126(d) based on the Registrant’s United Kingdom Application No. 2463453.

2. On January 28, 2008, in connection with the Application, Jeffrey M. Furr, counsel for Registrant, submitted a sworn declaration to the United States Patent and Trademark Office on behalf of Registrant stating that Registrant had “a bona fide intention to use the mark in commerce on or in connection with the identified goods,” namely:

International Class 003: Cosmetics, deodorant.

3. Based on Petitioner’s reasonable investigation as of September 2016—over eight-and-a half years after Registrant filed the Application—Registrant has not used the mark PLAYA’ in commerce in connection with any of the goods identified in the Application.

4. Based on Petitioner’s reasonable investigation, Registrant lacked a bona fide intention to use the mark PLAYA’ in commerce in connection with any of the goods identified in the Application at the time Registrant filed the Application.

Ground 1: Void *Ab Initio* for Lack of Bona Fide Intent to Use

5. Petitioner repeats and realleges each and every allegation of paragraphs 1 through 4 above, and incorporates them by reference as if fully set forth herein.

6. At the time Registrant filed the Application, Registrant lacked a bona fide intention to use the mark PLAYA’ in commerce in connection with any of the goods identified in the Application.

7. Because Registrant lacked a bona fide intention to use the mark PLAYA' at the time Registrant filed the Application, the Registration is void *ab initio*.

Ground 2: Fraud in Procurement of Trademark Registration

8. Petitioner repeats and realleges each and every allegation of paragraphs 1 through 7 above, and incorporates them by reference as if fully set forth herein.

9. Based on Petitioner's reasonable investigation, Registrant knew at the time of testifying that Registrant had a bona fide intention to use the mark in commerce for all of the goods identified in the Application, that the testimony was false or misleading.

10. Registrant's sworn statement in the Application that Registrant had a bona fide intention to use the mark in commerce for all of the goods identified in the Application therefore constituted a knowingly false misrepresentation of material fact with the intent to deceive the United States Patent and Trademark Office.

11. But for the false statement in the Application, the United States Patent and Trademark Office would not have approved the Application for registration for the goods identified in the Registration.

12. Due to Registrant's knowingly false statement in the Application, Registrant committed fraud on the United States Patent and Trademark Office such that the Registration should be cancelled in whole or in part to eliminate all goods about which Registrant made the knowingly false statement.

Ground 3: Abandonment of the Mark

13. Petitioner repeats and realleges each and every allegation of paragraphs 1 through 12 above, and incorporates them by reference as if fully set forth herein.

14. Under 15 U.S.C. § 1127, “[n]onuse for three consecutive years shall be prima facie evidence of abandonment” of a mark.

15. Based on Petitioner’s reasonable investigation, Registrant does not use in commerce the mark PLAYA’ in connection with any of the goods identified in the Registration, and has not used the mark in commerce in connection with such goods for at least three years.

16. Based on Petitioner’s reasonable investigation, Registrant has no intention to resume (or begin) use of the mark in connection with the goods identified in the Registration.

17. As a result, Registrant has abandoned the mark PLAYA’ for the goods identified in the Registration, and Registrant is not entitled to the Registration or to the legal protections that the Registration affords.

18. Due to Registrant’s abandonment of the mark, the Registration should be cancelled in whole or in part to eliminate all goods for which Registrant has abandoned use of the mark.

19. For the reasons set forth in this Petition, Registrant is not entitled to the Registration or to the legal protections that the Registration affords.

20. The Registration is likely to cause consumer confusion between Registrant’s mark PLAYA’ and Petitioner’s mark PLAYA, including U.S. Trademark Application Serial No. 87/176,835 for “cosmetics; cosmetic powders for the skin and eyes; cosmetic skin creams; facial lotions and gels; body lotions, creams and gels; hair shampoos and hair conditioners; skin soap; facial and body cleansers; suncare for the face and body” in International Class 003 (the “PLAYA Application”).

21. Because the Registration grants the Registrant rights and legal protections to a trademark whose use is likely to cause consumer confusion with Petitioner's mark PLAYA and to prohibit Petitioner's PLAYA Application from maturing to registration, the continued existence of the Registration is causing injury and damage to Petitioner.

PRAYER FOR RELIEF

WHEREFORE Petitioner prays that U.S. Registration No. 4,033,035 be canceled.

The official filing fee is presented herewith. Please charge any additional fees or credit overpayment to Deposit Account No. 50-3548.

Dated: September 27, 2016

Respectfully submitted,

/Mark E. Miller/

Mark E. Miller

Attorneys for Petitioner
PLAYA PRODUCTS, INC.

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