

ESTTA Tracking number: **ESTTA780847**

Filing date: **11/03/2016**

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 parties request to cancel indicated registration.

Petitioner Information

Name	Balkrishna Setty		
Entity	Individual	Citizenship	INDIA
Address	282/1 Opposite Bapujinagar Bus Stand Byatarayanapura, Mysuru Road Bengaluru, 560026 INDIA		

Name	Shrinivas Sugandhalaya BNG, LLP		
Entity	foreign limited liability	Citizenship	India
Address	282/1 Opposite Bapujinagar Bus Stand Byatarayanapura, Mysuru Road Bengaluru, 560026 INDIA		

Attorney information	C. Brandon Browning Maynard, Cooper & Gale, PC 1901 Sixth Avenue North, Suite 2400 Birmingham, AL 35203 UNITED STATES bbrowning@maynardcooper.com, tebbert@maynardcooper.com, ipdock- et@maynardcooper.com Phone:205-254-1036		
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Registration Subject to Cancellation

Registration No	4865759	Registration date	12/08/2015
Registrant	SHRINIVAS SUGANDHALAYA LLP E - 105, ANSA INDUSTRIAL ESTATE MUMBAI, MAHARASHTRA, 400072 INDIA		

Goods/Services Subject to Cancellation


Class 003. First Use: 2014/11/01 First Use In Commerce: 2014/11/20 All goods and services in the class are cancelled, namely: AIR FRAGRANCES PREPARATIONS IN THE FORMOF INCENSE STICKS, AGARBATTI, MASALA INCENSE STICKS, PERFUMED INCENSE STICKS, DHOOP STICKS, DHOOP CONES AND DHOOP POWDER
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Grounds for Cancellation

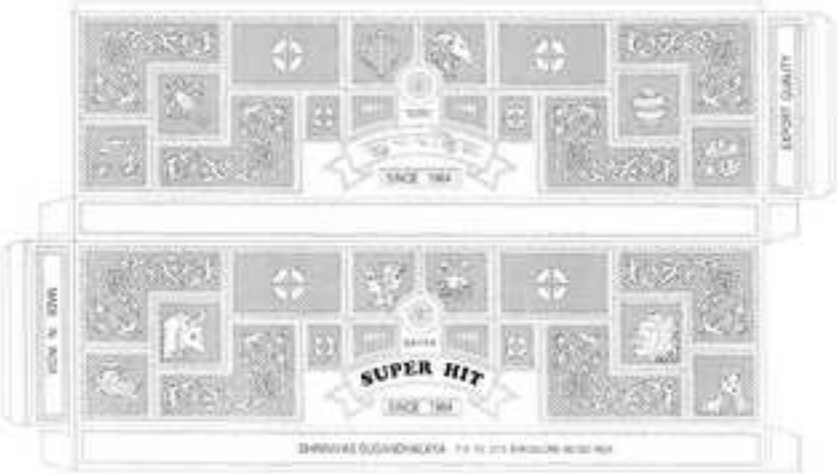
Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
Registrant not rightful owner of mark for identified goods or services	Trademark Act Sections 14(1) and 1
The registration is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used	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	common law rights in SHRINIVAS SUGANDHALAYA

Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	4550014	Application Date	10/19/2012
Registration Date	06/17/2014	Foreign Priority Date	NONE
Word Mark	SATYA RAIN FOREST INCENSE, MFRS.: SHRINIVAS SUGANDHALAYA, SATYA, SATYA INIVAS S, NAG CHA HALAYA , SRINIVAS SUGANDHALAY-ASATYA SAIBAB, S		
Design Mark			
Description of Mark	<p>The mark consists of the wording "SATYARAIN FOREST INCENSE Mfrs.: Shrinivas Sugandhalaya" on a white rectangular background containing a smaller orange rectangle which encloses the wording above. The word "SATYA" appears in white within a blue oval design and above the remaining wording which all appears in orange lettering. The mark appears on a brown background with the wording "SATYA INIVAS S" in white lettering along the top row. The wording is obscured by the white and red rectangles. On the middle row appears the wording "NAG CHA HALAYA" and on the bottom row appears "SRINIVAS SUGANDHALAYA SATYA SAIBAB" in white lettering. There are also two white seal designs containing a white letter "S" on the far left, a third above the rectangles and a fourth below them.</p>		
Goods/Services	Class 003. First use: First Use: 2009/07/01 First Use In Commerce: 2009/07/01 Air fragrances preparations in the form of Agarbatti, Masala Batti, Incense Sticks, Masala Incense Sticks, Perfumed Incense Sticks, Dhoop Sticks, Dhoop Cones and Dhoop Powder		

U.S. Registration No.	3438680	Application Date	09/01/2004
Registration Date	06/03/2008	Foreign Priority Date	NONE
Word Mark	SATYA SUPER HIT SINCE 1964 MADE IN INDIA EXPORT QUALITY SHRINIVAS SUGANDHALAYA P.B. NO. 2318 BANGALORE - 560 023 INDIA		

Design Mark	
Description of Mark	The mark consists of a package for the goods being sold.
Goods/Services	Class 003. First use: First Use: 1996/12/31 First Use In Commerce: 1996/12/31 Incense sticks

Attachments	85758208#TMSN.png(bytes) 76653291#TMSN.png(bytes) Cancellation759.pdf(123538 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	/cbbrowning/
Name	C. Brandon Browning
Date	11/03/2016

**\UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Registration No. 4,865,759
For the mark “SHRINIVAS SUGANDHALAYA LLP. (stylized)”

BALKRISHNA SETTY, individually and as)	
general partner in Shrinivas Sugandhalaya)	
Partnership with Nagraj Setty, and)	
SHRINIVAS SUGANDHALAYA BNG, LLP)	
)	
Petitioners,)	
)	
v.)	Cancellation No. _____
)	
SHRINIVAS SUGANDHALAYA LLP)	
)	
Registrant.)	
)	
)	

PETITION FOR CANCELLATION

COME NOW the Petitioners, BALKRISHNA SETTY, INDIVIDUALLY AND as general partner in Shrinivas Sugandhalaya Partnership, a certain general partnership with Nagraj Setty and SHRINIVAS SUGANDHALAYA BNP LLP, a foreign limited liability partnership having an address at No. 282 / 1, Opposite Bapujinagar Bus Stand, Byatarayanapura, Mysuru Road, Bengaluru - 560026, Karnataka, India, (collectively “Petitioners”) and petition to cancel Registration No. 4,865,759, for the mark SHRINIVAS SUGANDHALAYA LLP (stylized), issued on December 8, 2015, owned by Shrinivas Sugandhalaya LLP (“Registrant”), having a place of business at E-105, Ansa Industrial Estate, Saki Vihar Road, Sakinaka, Mumbai, Maharashtra India 400072. Petitioners believe that they are or will be damaged by Registration No. 4,865,759 and allege the following for cancellation of same:

1. Petitioner Balkrishna Setty and Mr. Nagraj Setty formed Shrinivas Sugandhalaya Partnership pursuant to a Deed of Partnership, made and entered into at Mumbai, India on December 24, 1999 (the “Deed of Partnership”).

2. Shrinivas Sugandhalaya Partnership was formed for the purpose of continuing the incense manufacturing and distribution business founded in 1964 by the late Mr. K.N. Satyam Setty and promoted since that time under the mark SHRINIVAS SUGANDHALAYA.

3. Shrinivas Sugandhalaya Partnership, by itself and/or through its licensees and predecessors in interest, has made substantial and continuous commercial use of the SHRINIVAS SUGANDHALAYA mark in the United States since at least 1973 in connection with, *inter alia*, air fragrance preparations in the form of incense sticks, dhoop sticks, dhoop cones and dhoop powder (collectively, the “Partnership Goods”).

4. As a result of Shrinivas Sugandhalaya Partnership’s long and substantial use of the SHRINIVAS SUGANDHALAYA mark throughout the United States, consumers have come to recognize the mark and associate it with Shrinivas Sugandhalaya Partnership and the Partnership Goods.

5. Shrinivas Sugandhalaya Partnership is the exclusive owner of the SHRINIVAS SUGANDHALAYA mark.

6. In addition to its common law rights in the SHRINIVAS SUGANDHAYALA mark, Shrinivas Sugandhalaya Partnership owns two U.S. federal trademark registrations that include the SHRINIVAS SUGANDHAYALA mark.

7. Shrinivas Sugandhalaya Partnership is owner of U.S. Trademark Registration No. 3,438,680 for SATYA SUPER HIT SINCE 1964 MADE IN INDIA EXPORT QUALITY SHRINIVAS SUGANDHALAYA P.B. NO. 2318 BANGALORE - 560 023 INDIA for Incense sticks, filed on September 1, 2004, and claiming a date of first use of December 31, 1996.

8. Shrinivas Sugandhalaya Partnership is owner of U.S. Trademark Registration No. 4,550,014 for the mark SATYA RAIN FOREST INCENSE, MFRS.: SHRINIVAS SUGANDHALAYA, SATYA, SATYA INIVAS S, NAG CHA HALAYA , SRINIVAS SUGANDHALAYA SATYA SAIBAB, S for Air fragrances preparations in the form of Agarbatti, Masala Batti, Incense Sticks, Masala Incense Sticks, Perfumed Incense Sticks, Dhoop Sticks, Dhoop Cones and Dhoop Powder, filed on October 19, 2012, claiming a date of first use of July 1, 2009.

9. Petitioner Shrinivas Sugandhalaya BNG LLP is an Indian limited liability partnership owned at least in part by Petitioner Balkrishna Setty. Petitioner Shrinivas Sugandhalaya BNG LLP manufactures, distributes and promotes the Partnership Goods under the SHRINIVAS SUGANDHALAYA mark with the permission of Shrinivas Sugandhalaya Partnership.

10. Registrant Shrinivas Sugandhalaya LLP is an Indian limited liability partnership owned at least in part by Mr. Nagraj Setty and Mrs. Kalpana N. Setty. Registrant Shrinivas Sugandhalaya LLP manufactures, distributes and promotes the Partnership Goods under the SHRINIVAS SUGANDHALAYA mark with the permission of Shrinivas Sugandhalaya Partnership.

11. Shrinivas Sugandhalaya Partnership has not assigned or otherwise conveyed any ownership rights in the SHRINIVAS SUGANDHAYALA mark to Registrant Shrinivas Sugandhalaya LLP, Mr. Nagraj Setty, Petitioner Shrinivas Sugandhalaya BNG LLP or Petitioner Balkrishna Setty.

12. Shrinivas Sugandhalaya Partnership has not abandoned its rights in the SHRINIVAS SUGANDHAYALA mark.

13. The trademark registration sought to be cancelled is Registration No. 4,865,759 for the mark SHRINIVAS SUGANDHALAYA LLP. (stylized) for air fragrance preparations in the form of incense sticks, agarbatti, masala incense sticks, perfumed incense sticks, dhoop sticks, dhoop cones and dhoop powder (“the ‘759 Registration”).

14. The ‘759 Registration is based upon U.S. Application Serial No. 86/545,029, filed on February 25, 2015, by Mr. Nagraj Setty, as the designated partner of Registrant Shrinivas Sugandhalaya LLP, and claiming a date of first use of November 20, 2014 (“the ‘029 Application”).

15. When Mr. Nagraj Setty, as the designated partner of Registrant Shrinivas Sugandhalaya LLP submitted the ‘029 Application, his declaration that no other person has the right to use the SHRINIVAS SUGANDHALAYA LLP. (stylized) mark in commerce was false because Shrinivas Sugandhalaya Partnership had priority based on its prior use of the SHRINIVAS SUGANDHAYALA mark.

16. As a result of Mr. Nagraj Setty’s willful misrepresentations to the U.S. Patent & Trademark Office, Registrant fraudulently obtained the ‘759 Registration.

17. When Mr. Nagraj Setty, as the designated partner of Registrant Shrinivas Sugandhalaya LLP submitted the ‘029 Application, he did so without the knowledge or authorization of Petitioner Balkrishna Setty.

18. When Mr. Nagraj Setty, as the designated partner of Registrant Shrinivas Sugandhalaya LLP submitted the ‘029 Application, he did so without the authorization of Shrinivas Sugandhalaya Partnership.

19. When Mr. Nagraj Setty, as the designated partner of Registrant Shrinivas Sugandhalaya LLP submitted the ‘029 Application without the authorization of Petitioner

Balkrishna Setty and Shrinivas Sugandhalaya Partnership, he did so in violation of the Partnership Deed including, but not limited to, Section 13 thereof.

20. When Mr. Nagraj Setty, as the designated partner of Registrant Shrinivas Sugandhalaya LLP submitted the '029 Application without the authorization of Petitioner Balkrishna Setty and Shrinivas Sugandhalaya Partnership, he did so in violation of the Indian Partnership Act, 1932 including, but not limited to, Sections 12, 14 and 19 thereof.

21. Because the '029 Application was filed without the authorization of Petitioner Balkrishna Setty and Shrinivas Sugandhalaya Partnership and in violation of the Partnership Deed and the Indian Partnership Act, 1932, the '759 Registration is *void ab initio*.

22. In an attempt to prevent Registrant's misappropriation of the SHRINIVAS SUGANDHAYALA mark, arising from the fraudulent and unauthorized procurement of the '759 Registration by Registrant, Petitioner Balkrishna Setty authorized the filing of a Notice for Cancellation of the '759 Registration on behalf of Shrinivas Sugandhalaya Partnership, Opposition No. 92063512.

23. The filing of the Notice for Cancellation of the '759 Registration was consistent with and authorized by the Deed of Partnership and Indian Partnership Act, 1932.

24. Without the knowledge or authorization of Petitioner Balkrishna Setty or the authorization of Shrinivas Sugandhalaya Partnership, Mr. Nagraj Setty filed a Withdrawal of Petition to Cancel of Opposition No. 92063509, with prejudice.

25. Filing of the Withdrawal of Petition to Cancel of Opposition No. 92063509 was in violation of the Deed of Partnership including, but not limited to, Section 13 thereof.

26. Filing of the Withdrawal of Petition to Cancel of Opposition No. 92063509 was in violation of the Indian Partnership Act, 1932 including, but not limited to, Sections 12, 14 and 19 thereof.

27. Because the Withdrawal of Petition to Cancel of Opposition No. 92063509 was filed without the authorization of Petitioner Balkrishna Setty and Shrinivas Sugandhalaya Partnership and in violation of the Partnership Deed and the Indian Partnership Act, 1932, the Withdrawal of Petition to Cancel of Opposition No. 92063512 is *void ab initio*.

28. For the foregoing reasons, Petitioners are likely to be damaged by the continuance of the '759 registration.

WHEREFORE, Petitioners pray that Registration No. 4,865,759 be cancelled and that this Petition for Cancellation be sustained in favor of Petitioners.

This Petition pertains to one (1) International Classes, IC 003, and a total fee of \$300.00 under 37 CFR § 2.6(a)(16) is enclosed. The Commissioner is authorized to charge any further fees required to Deposit Account Number 504524, in the name of Maynard Cooper & Gale P.C.

Respectfully submitted,

/cbbrowning/

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Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was deposited with Federal Express on November 3, 2016 for overnight courier service to:

SHRINIVAS SUGANDHALAYA LLP
SAKI VIHAR ROAD, SAKINAKA
E - 105, ANSA INDUSTRIAL ESTATE
MUMBAI, MAHARASHTRA INDIA 400072

/s/ C. Brandon Browning

Attorney for Petitioners

CERTIFICATE OF TRANSMITTAL

I hereby certify that a true copy of the foregoing PETITION FOR CANCELLATION is being filed electronically with the TTAB via ESTTA on this day, November 3, 2016.

/s/ C. Brandon Browning

Attorney for Petitioners