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Filing date: **11/03/2008**

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	Browhaus Pte Ltd		
Entity	private limited company	Citizenship	Singapore
Address	1 Scotts Road #19-04/05 Shaw Center Singapore, ID 228208 SINGAPORE		

Attorney information	Jack L. Most, Esq. Goetz Fitzpatrick LLP One Penn Plaza - Suite 4401 NEW YORK, NY 10119 UNITED STATES jmost@goetzfitz.com Phone:212-695-8100
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Registration Subject to Cancellation

Registration No	3420788	Registration date	04/29/2008
Registrant	Brauhaus Incorporated 6904 Clinton Street Los Angeles, CA 90036 UNITED STATES		

Goods/Services Subject to Cancellation

Class 044. First Use: 2007/12/01 First Use In Commerce: 2007/12/01 All goods and services in the class are cancelled, namely: Beauty salons
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Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
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Attachments	Brauhaus.Petition for Cancellation.Browhaus.pdf (5 pages)(151075 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	/jlm/
Name	Jack L. Most, Esq.
Date	11/03/2008

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

BROWHAUS PTE LTD.,

Petitioner,

v.

BRAUHAUS INCORPORATED,

Respondent.

Cancellation No.

Registration No.
3,420,788

PETITION FOR CANCELLATION

Browhaus Pte Ltd. (“Petitioner”), a private limited company organized under the laws of Singapore, having its corporate offices at 1 Scotts Road #19-04/05, Shaw Center, Singapore 228208, believes that it will be damaged by Registration No. 3,420,788 for the mark BRAUHAUS, and hereby petitions to cancel said registration.

The grounds for this petition are as follows:

1. According to the records of the United States Patent and Trademark Office (“USPTO”), Brauhaus Incorporated (“Respondent”) is the owner of the U.S. Registration No. 3,420,788 for the mark BRAUHAUS for “Beauty salons.”
2. Petitioner is the owner of U.S. Mark Application Serial No. 77/019510, filed on October 12, 2006, for the mark BROWHAUS & Design for “Hygiene and beauty care of human beings; eye brow trimming; eye brow threading; and eyelash perming.”
3. In an Official Action dated February 28, 2007, the USPTO Examining Attorney refused registration for the mark in U.S. Mark Application Serial No. 77/019510, citing, *inter*

alia, a potentially conflicting mark in a prior-filed pending application, namely, the then pending U.S. Mark Application Serial No. 78/705848.

4. Without conceding the correctness of that refusal to register, Petitioner requested suspension of U.S. Mark Application Serial No. 77/019510 on March 6, 2007. Petitioner will request the continued suspension of its application in view of the filing of this Petition for Cancellation.

5. On February 11, 2008, Respondent submitted a Request to Divide U.S. Mark Application Serial No. 78/705848.

6. The USPTO issued Respondent a Notice of Divisional Request on March 3, 2008. The request to divide U.S. Mark Application Serial No. 78/705848 was processed as follows:

7. Parent (original) U.S. Mark Application Serial No. 78/705848 contains the following goods: Class 3 For Eyebrow colors; eyebrow pencils; eye makeup; facial makeup; wax for hair removal; cosmetic oils; lipstick; makeup kits comprised of various cosmetics; lip gloss; eyeshadow; Class 5 For Applicator for applying hair growth stimulants containing hair growth stimulant; Class 8 For Tweezers; scissors; and Class 21 For Eyebrow brushes; stencils for applying makeup; applicator sticks for applying cosmetics.

8. Child application, U.S. Mark Application Serial No. 78/979944 contains the following services: Class 44 For Beauty salons.

9. A statement of use was filed on February 11, 2008 for the child application, Serial No. 78/979944.

10. Registration No. 3,420,788 issued from an application filed by Brauhaus Incorporated on September 2, 2005 for Serial No. 78/979944 – the child application. That application included a Declaration by Zoey Van Jones, President & CEO of Brauhaus

Incorporated, dated February 3, 2008, verifying that applicant Brauhaus Incorporated, was using the mark BRAUHAUS for the following services: “Beauty salons.”

11. On information and belief, at the time of the signing of the Declaration by Ms. Van Jones and at the time of filing the application, the mark BRAUHAUS was not in use for some or all of the services later identified in the child application, Serial No. 78/979944, and Ms. Van Jones and Applicant knew or should have known that said mark was not in use for some or all of the services.

12. On February 11, 2008, in connection with what would become the child application, Serial No. 78/979944, Respondent submitted a Statement of Use to the USPTO. Respondent’s Declaration included a statement verifying that the mark BRAUHAUS “was first used by Applicant on or before December 1, 2007 and was first used in interstate commerce on or before December 1, 2007, in connection with “Beauty salons” in International Class 44.”

13. On information and belief, the aforementioned statement is fraudulent in that Respondent has never used the mark in interstate commerce.

14. On information and belief, the verified statement signed by the President and CEO of Brauhaus Incorporated and submitted as part of Application Serial No. 78/705848, which would later be incorporated into the child application, Serial No. 78/979944, contained knowingly false material representations of fact, and therefore constituted fraud in the procurement of Registration No. 3,420,788. As a consequence, Registration No. 3,420,788 in its entirety is void *ab initio*.


15. Petitioner is likely to be damaged by continuance of said registration covering said services, and Petitioner’s use of its mark and its right to registration thereof will be impaired by the continued registration of said mark of Respondent for said services.

WHEREFORE, Petitioner prays that Registration No. 3,420,788 be cancelled and this Petition for Cancellation be sustained.

Date: November 3, 2008

Respectfully Submitted,

BROWHAUS PTE LTD.

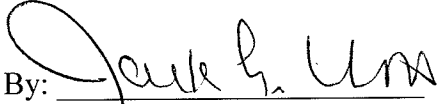
By: 
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Attorney for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 3rd day of November, 2008, a true copy of the foregoing PETITION FOR CANCELLATION was served by first-class mail, postage pre-paid on each the following:

Brauhaus Incorporated
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