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Filing date: **01/19/2012**

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	COLOSSEUM ATHLETICS CORPORATION		
Entity	Corporation	Citizenship	California
Address	2400 S. Wilmington Ave. Compton, CA 90220 UNITED STATES		

Attorney information	Bub-Joo S. Lee Lee Anav Chung LLP 520 S. Grand Ave. Suite 1070 Los Angeles, CA 90071 UNITED STATES bjslee@leeanavchung.com, jaychung@leeanavchung.com Phone:(213) 341-1602
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**Registration Subject to Cancellation**

Registration No	3835136	Registration date	08/17/2010
International Registration No.	NONE	International Registration Date	NONE
Registrant	COLLOSEUM Holding AG Eisenbahnweg 86 CH-4125 Riehen  SWITZERLAND		

**Goods/Services Subject to Cancellation**


Class 025. All goods and services in the class are cancelled, namely: Clothing, namely, belts, arm warmers, hand warmers, knee warmers, neck tubes, wrap arounds, corsets, foulards, trousers, sweatshirts, shirts, capes, coats, skirts; footwear; headgear, namely, hat and caps
Class 035. Cancelled goods and services in the class: Advertising; business organization and management advice, particularly in the field of franchising


**Grounds for Cancellation**

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Priority and likelihood of confusion	Trademark Act section 2(d)

Related Proceedings	No pending proceedings before TTAB. Petitioner is currently prosecuting U.S. TM App. Ser. Nos. 85294132 and 85294199.
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**Marks Cited by Petitioner as Basis for Cancellation**

U.S. Application No.	85294199	Application Date	04/13/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	COLOSSEUM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1992/12/01 First Use In Commerce: 1992/12/01 Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms		

U.S. Application No.	85294132	Application Date	04/13/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	C COLOSSEUM		
Design Mark			
Description of Mark	The mark consists of the letter C in a stylized font on top of the word "COLOSSEUM".		
Goods/Services	Class 025. First use: First Use: 1992/12/01 First Use In Commerce: 1992/12/01 Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	C COLOSSEUM		
Goods/Services	Athletic apparel, namely, shirts, pants, jackets, hats and caps, and athletic uniforms		

Attachments	85294199#TMSN.jpeg ( 1 page )( bytes ) 85294132#TMSN.jpeg ( 1 page )( bytes ) 20120119 Colosseum Athletics Petition for Cancellation v 1 00 FILED.pdf ( 17 pages )(89312 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	/Bub-Joo S Lee Esq/
Name	Bub-Joo S. Lee
Date	01/19/2012

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

In the matter of Trademark Registration No. 3,835,136  
For the mark: COLLOSEUM  
Date registered: August 17, 2010

COLOSSEUM ATHLETICS CORP.

Petitioners,

v.

COLLOSEUM HOLDING AG

Registrant

Cancellation No.: \_\_\_\_\_

**PETITION TO CANCEL**

**PETITION TO CANCEL**

Petitioner COLOSSEUM ATHLETICS CORPORATION is the owner of the trademarks COLOSSEUM and C COLOSSEUM, with address at 2400 S. Wilmington Ave., Compton, California 90220 (“Petitioner” or “Colosseum Athletics”).

To the best of Petitioner’s knowledge, the name and address of the current owner of U.S. Trademark Registration No. 3,835,136 for COLLOSEUM (the “Registration”) is COLLOSEUM Holding AG, with address at Eisenbahweg 86 CH-4125, Riehen, Switzerland (“Registrant”).

For the reasons alleged in greater detail below, Petitioner believes that it is currently damaged, and will continue to be damaged, by the Registration, and hereby petitions to cancel the same.

Petitioner alleges the following grounds for cancellation:

**A. PETITIONER IS THE OWNER OF THE TRADE NAME AND TRADEMARK “COLOSSEUM,” AND THE TRADEMARK “C COLOSSEUM.”**

1. Petitioner is the owner of the trademark and trade name COLOSSEUM, and the trademark C COLOSSEUM, and has used the same in U.S. commerce since at least 1992.

2. Petitioner COLOSSEUM ATHLETICS CORPORATION was incorporate in California in 1992. Petitioner is in the business of designing, making, marketing, and selling apparel and headgear. **Since 1992**, Petitioner has used the name COLOSSEUM to describe itself and its business. Petitioner has used the trade name COLOSSEUM continuously since its incorporation, and it has never abandoned the same.

3. Petitioner has used the trademarks COLOSSEUM and C COLOSSEUM **since at least 1992** in connection with a broad range of goods that it designed, made, offered for sale, and sold in commerce. By way of example only, since at least 1992, Petitioner has continuously used and applied the COLOSSEUM trademark to headgear, such as hats, caps, and other similar goods offered for sale and sold by Petitioner. Petitioner has also continuously used and applied the COLOSSEUM and C COLOSSEUM trademarks since at least 1999 to various articles of clothing in addition to headgear, including shirts, pants, jackets, athletic uniforms, and other similar goods offered for sale and sold by Petitioner. Petitioner has used the trademarks COLOSSEUM and C COLOSSEUM continuously and has never abandoned them.

4. Petitioner has used the COLOSSEUM and C COLOSSEUM trademarks and trade name continually and extensively over a period of close to twenty (20) years, so that an association has been created between the said trademarks and trade name, on the one hand, and Petitioner, on the other hand.

5. Petitioner’s use of the COLOSSEUM and C COLOSSEUM trademarks and trade name has resulted in development of a trade identity.

6. Petitioner's use of the said trademarks and trade name has been open, public, and uninterrupted, and has created in the mind of the buyers, including, without limitations, distributors, wholesalers, and the purchasing public and consumers, an association of the designation with the Petitioner's goods.

**B. PETITIONER ADOPTED AND USED THE TRADEMARKS AND TRADE NAME "COLOSSEUM" AND "C COLOSSEUM" PRIOR TO REGISTRANT'S ADOPTION OR USE OF THE TERM "COLLOSEUM."**

7. Petitioner's adoption and use of the trademarks and trade name COLOSSEUM and C COLOSSEUM anticipate and predate Registrant's adoption of the term "COLLOSEUM" by a wide margin. Petitioner is informed and believes, and thereon alleges, that as of this date, Registrant has not used the term "COLLOSEUM" in commerce in the United States. In any event, Petitioner alleges upon information and belief that it adopted and first used the trademarks and trade name COLOSSEUM and C COLOSSEUM in U.S. interstate commerce well before Registrant adopted or used the term "COLLOSEUM" in this country or elsewhere.

8. More importantly, Petitioner states that its adoption and first use of the trademarks and trade name COLOSSEUM and C COLOSSEUM predate the **September 12, 2006** filing date of Registrant's U.S. trademark/service application Serial No. 79,029,502, which matured as U.S. Trademark Registration No. 3,835,136.

9. Additionally, Petitioner's adoption and first use of its trademarks and trade name also predate the **July 22, 2003** registration date of Registrant's International (Madrid Protocol/WIPO) Registration No. 0808022.

10. Finally, Petitioner has adopted and used the trademark consisting of letter “C” in a stylized font on top of the word “COLOSSEUM” since at least 2002 in connection with a variety of articles of clothing and headgear that it designed, offered for sale, and sold (the “Stylized C COLOSSEUM trademark”). The Stylized C COLOSSEUM trademark is depicted below:



11. Petitioner has used and applied the stylized C COLOSSEUM trademark in the format depicted above on its goods since at least 2002, continuously and without interruption or abandonment, to hats, caps, shirts, pants, jackets, athletic uniforms, and other similar articles of apparel made, offered for sale, and sold by Petitioner.

12. Since 1992, Petitioner’s use of the trademarks and trade name COLOSSEUM and C COLOSSEUM have been public, extensive, and widespread. By way of example, as of 2003, headgear and apparel bearing Petitioner’s trademarks were marketed and sold in thirty eight (38) U.S. states. As of 2006, goods bearing Petitioner’s trademarks were being sold in forty six (46) U.S. states. As of 2009, goods bearing Petitioner’s trademarks were being sold in all fifty (50) states of the Union, plus the District of Columbia.

13. In 2003, Petitioner sold over \$28 Million in clothing and headgear bearing its trademarks. In 2006, Petitioner sold over \$23 Million in clothing and headgear bearing its trademarks, consisting of over 2,000,000 pieces of clothing, hats, and caps. As of 2010, Petitioner’s annual sales approached \$50 Million, and Petitioner distributed and sold close to 5,000,000 pieces of clothing and assorted headgear throughout the United States.

14. During the relevant time period, Petitioner also engaged in extensive advertising

activities, including attendance at trade shows, in order to promote its brand and its products. In 2003, Petitioner expended close to \$350,000 on advertising activities, including attending and exhibiting at trade shows. In 2006, Petitioner expended over \$150,000 on similar advertising activities.

15. Since 2000, Petitioner has made consistent sales to Finish Line, a premium retailer of collegiate and athletic apparel and accessories, which operates in 645 shopping malls across the United States. Petitioner has also developed an extensive network of sales representatives, tasked with promoting, advertising, and selling its products throughout the United States.

16. By virtue of all these activities, Petitioner's trademarks and trade name COLOSSEUM and C COLOSSEUM have become well and favorably known and famous in the industry and to the general public, and have come to identify and distinguish Petitioner and its business, as well as the origin, source, and quality of its products.

17. As of 2003 and continuing thereafter, Petitioner had already built up substantial goodwill and value in the aforementioned trademarks and trade name. The trademarks and trade name COLOSSEUM and C COLOSSEUM have acquired a strong secondary meaning in the minds of the purchasing public and in the industry.

18. In summary, as a result of its first adoption, and extensive and uninterrupted use of the trademarks and trade name COLOSSEUM and C COLOSSEUM in U.S. interstate commerce, Petitioner owns and holds superior rights to the said marks and name, as described in greater detail below.



**C. REGISTRATION, AND CONTINUING REGISTRATION, OF THE  
“COLLOSEUM” REGISTRATION WILL CONFUSE AND DECEIVE THE  
PUBLIC AND THE BUYERS OF PETITIONER’S GOODS.**

19. Registrant filed an application in the United States for the federal registration of the term “COLLOSEUM” on **September 12, 2006**. This was more than ten (10) years after Petitioner had first adopted and commenced use of the trademarks and trade name COLOSSEUM and C COLOSSEUM in U.S. interstate commerce.

20. The U.S. Patent and Trademark Office (“USPTO”) allowed Registrant’s term “COLLOSEUM” to register, and Registration issued on August 17, 2010.

21. Registrant identified and claimed the following goods and services, among other things, in its Registration:

- a. “Clothing, namely, belts, arm warmers, hand warmers, knee warmers, neck tubes, wrap arounds, corsets, foulards, trousers, sweatshirts, shirts, capes, coats, skirts; footwear; headgear, namely, hat and caps” in International Class 025 (emphasis added).
- b. “Advertising; business management; business administration; business organization and management advice, particularly in the field of franchising” in International Class 035.

22. For the reasons described in greater detail above, Petitioner owns and holds prior rights to the trademarks and trade name COLOSSEUM and C COLOSSEUM as used in connection with clothing and headgear, including shirts, pants, jackets, footwear, athletic uniforms, and hats and caps. All these goods fall within the scope of International Class 025.

23. Registrant’s term “COLLOSEUM” is confusingly similar to Petitioner’s trademarks and trade name COLOSSEUM and C COLOSSEUM. Petitioner holds prior and superior rights to COLOSSEUM and C COLOSSEUM, in relation to Registrant’s term “COLLOSEUM,” by virtue to Petitioner’s continuous use of the said marks in U.S. commerce,

going back to 1992.

24. Because of the similarities between the Registrant's mark, on the one hand, and the Petitioner's trademarks and trade name, on the other hand, and the similarities and overlap between the goods on which these terms and marks are applied, or are associated with, it is virtually certain that Registrant's Registration for "COLLOSEUM," if allowed to stand, will cause confusion and mistake in the marketplace, and confuse and deceive buyers and the consuming public about the source and origin of the goods with which "COLLOSEUM" is associated, to the detriment of Petitioner and its own trademarks and trade name.

25. Petitioner respectfully submits that the Registration should be cancelled, in its entirety or in part, because Registration was improvidently issued in contravention of Section 2(d) of the Lanham Act, 15 U.S.C. §§ 1051 et seq., in that Registrant's term "COLLOSEUM," considering the goods in connection with which each mark is used, is likely to be confused with the trademarks and trade name previously used by Petitioner and not abandoned.

**D. THE REGISTRANT IMPROPERLY ACQUIRED FEDERAL TRADEMARK REGISTRATION FOR THE TERM "COLLOSEUM"**

26. Petitioner is informed and believes, and thereon alleges, that the registration of the term "COLLOSEUM" was obtained fraudulently under Section 14(c) of the Lanham Act. Petitioner alleges upon information and belief that on or prior to September 12, 2006, when Registrant moved to file its application to register the term "COLLOSEUM" in the United States, Registrant and/or its agents actually knew that (a) trademarks COLOSSEUM and C COLOSSEUM, which were virtually identical and/or phonetically indistinguishable to Registrant's purported mark, were owned and in use by Petitioner, (b) that Petitioner held prior rights in the said trademarks, which rights were superior to Registrant's rights in the purported mark "COLLOSEUM," and (c) the Petitioner's trademarks and trade name, on the one hand, and

the Registrant's purported mark, on the other hand, were confusingly similar; nevertheless, Registrant filed and prosecuted a trademark application for the term "COLLOSEUM," alleging, implicitly or otherwise, that no one else had a right to use same or a similar mark in commerce, when it knew that such was not the case.

27. Petitioner is informed and believes, and thereon alleges, that when Registrant filed its application on September 12, 2006 for federal trademark registration of the term "COLLOSEUM," Registrant and/or its agents had actual knowledge of Petitioner's long standing, widespread, and public use of the trademarks and trade name COLOSSEUM and C COLOSSEUM in connection with articles of clothing and headgear in International Class 025.

28. Petitioner is further informed and believes, and thereon alleges, that Registrant continue to prosecute the foregoing application on or after April 24, 2010, even though Registrant and/or its agents at that time (a) had actual knowledge of Petitioner's continuing and public use in commerce of the trademarks and trade name COLOSSEUM and C COLOSSEUM in connection with articles of clothing and headgear in International Class 025, and (b) knew that the Petitioner's trademarks and trade name, on the one hand, and the Registrant's purported mark, on the other hand, were confusingly similar.

29. On August 17, 2010, Registrant was granted federal Registration No. 3,835,136 on the principal register for "COLLOSEUM" in International Classes IC014, IC018, and IC035, and International Class IC025 for "[c]lothing, namely, belts, arm warmers, hand warmers, knee warmers, neck tubes, wrap arounds, corsets, foulards, trousers, sweatshirts, shirts, capes, coats, skirts; footwear; headgear, namely, hats and caps" (Emphasis added).

30. Petitioner is informed and believes, and thereon alleges, that but for the actions and representations of the Registrant to the USPTO, registration of the term "COLLOSEUM" would have been denied by the USPTO.

**E. PETITIONER IS DAMAGED AND WILL CONTINUE TO BE DAMAGED BY THE REGISTRATION**

31. Petitioner realleges and incorporates by reference Paragraphs 1 through 30 above and the allegations therein as though fully set forth herein.

32. Registrant's continued registration of the Registration has caused, and will continue to cause, irreparable harm to Petitioner. Among other things: (a) Petitioner is the owner of valid trademarks and trade name COLOSSEUM and C COLOSSEUM; (b) Petitioner has used the said trademarks and trade names in U.S. commerce since at least 1992, and applied the same to or on goods made, offered for sale, and sold by Petitioner, and such use has been continuous, public, and without abandonment; (c) Registrant is in possession of the term "COLLOSEUM," which was registered as Trademark Registration No. 3,835,136; (d) Petitioner's adoption and use in commerce of the trademarks and trade name COLOSSEUM and C COLOSSEUM predate Registrant's adoption, use, and application for registration of the term "COLLOSEUM," and Petitioner holds superior rights to Registrant; and (e) Registrant's term "COLLOSEUM" is confusingly similar to Petitioner's trademarks and trade name COLOSSEUM and C COLOSSEUM, and Registrant's use and registration of the term is virtually certain to create confusion, mistake, and deceive the buyers, consumers, and the public at large as to the origin of the goods on which the foregoing term and/or the trademarks are applied.

33. Registrant's continued registration of the Registration had caused, and will continue to cause, further harm and damage to Petitioner, as follows: (a) On or about April 13, 2011, Petitioner filed an application for federal registration of the mark "COLOSSEUM," identifying and claiming a variety of articles of apparel, hats and caps, and other goods in International Class IC025 (U.S. Trademark Serial No. 85,294,199, or the "199 Application").

(b) On the same date, Petitioner also filed a second application for federal registration of the mark “C COLOSSEUM” consisting of letter “C” in a stylized font, on top of the work “COLOSSEUM,” identifying and claiming the same goods in IC025 (U.S. Trademark Serial No. 85,294,132, or the “132 Application”).<sup>1</sup> (c) On or about July 19, 2011, the Trademark Examiner issued office actions in response to Petitioner’s ’199 Application and ’132 Application, refusing registration in both cases, citing the Registrant’s “COLLOSEUM” Registration. (d) In both instances, the Trademark Examiner stated that “[Section 2(d) – Likelihood of Confusion Refusal] Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 3835136 [that is, the “COLLOSEUM” Registration at issue in this Petition to Cancel] . . . . Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely that a potential consumer would be confused or mistaken or deceived as to the source of the goods and/or services of the applicant and registrant.”

34. According rights of federal registration to the Registrant for the term “COLLOSEUM” was, and is, inimical to a superior right of the Petitioner to use the similar trademarks and trade name (namely, COLOSSEUM and C COLOSSEUM) in connection with similar goods, such as articles of clothing, and hats and caps, and commercially related goods. As the owner of the trademarks and trade name COLOSSEUM and C COLOSSEUM, which are confusingly similar to Registrant’s term “COLLOSEUM,” Petitioner has a direct and personal stake in the outcome of the proceeding.

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<sup>1</sup> Petitioner had previously applied for and secured registration for its Stylized “C COLOSSEUM” trademark (U.S. Trademark Reg. No. 2,764,193, registered on September 16, 2003). Due to inadvertence, Petitioner overlooked the deadline to file the Declaration of Continued Use required under Section 8 of the Trademark Act. This was due to an oversight and excusable neglect, and was not caused by an intention to abandon the mark. In any event, USPTO cancelled the registration on or about April 24, 2010. In response,

35. Thus Petitioner has been directly damaged by the Registration of the term “COLLOSEUM,” which registration was in contravention of the Trademark Act, as further explained below.

### **COUNT I**

**REGISTRANT’S “COLLOSEUM” REGISTRATION SHOULD BE CANCELLED BECAUSE IT RESEMBLES MARKS AND TRADE NAMES PREVIOUSLY USED BY PETITIONER, AND IS LIKELY TO CAUSE CONFUSION AND MISTAKE, AND TO DECEIVE.  
15 U.S.C .§ 1052(d)**

36. Petitioner realleges and incorporates by reference Paragraphs 1 through 35 above and the allegations therein as though fully set forth herein.

37. Registrant’s “COLLOSEUM” registration resembles the trademark and trade name “COLOSSEUM,” and the trademark “C COLOSSEUM,” which have been previously used in the United States by Petitioner COLOSSEUM ATHLETICS CORPORATION, and have never been abandoned.

38. Registrant’s “COLLOSEUM” registration so resembles Petitioner’s trademarks and trade name, as to be likely, when used on or in connection with the goods or services claimed in the Registration (including, *without limitations*, articles of clothing, such as belts, arm warmers, hand warmers, knee warmers, neck tubes, wrap arounds, corsets, foulards, trousers, sweatshirts, shirts, capes, coats, skirts, headgear, such hat and caps, footwear, and other goods in International Class 025), to cause confusion and mistake, and to deceive the buyers and the public as to the source and origin of those goods and services.

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Petitioner filed the '132 Application.

39. As described in greater detail hereinabove, Petitioner has used the mark COLOSSEUM as its trademark and trade name, and the mark C COLOSSEUM as its trademark, **since at least 1992** in connection with a broad range of goods that it designed, offered for sale, and sold. Since at least 1992, Petitioner has continuously used and applied the COLOSSEUM trademark headgear, such as hats and caps, and other similar goods, offered for sale and sold by Petitioner. Petitioner has also continuously used and applied the COLOSSEUM and C COLOSSEUM trademarks since at least 1999 to various articles of clothing, such as shirts, pants, jackets, athletic uniforms, and other similar goods, offered for sale and sold by Petitioner.

40. Since then, Petitioner has used the trademarks COLOSSEUM and C COLOSSEUM continuously and it has never abandoned them.

41. Petitioner's adoption and first use of the trademarks and trade name COLOSSEUM and C COLOSSEUM anticipated and predated Registrant's adoption of the term "COLLOSEUM" by a wide margin, and predated the application for federal registration filed by Registrant on **September 12, 2006** (that is, U.S. trademark/service application Serial No. 79,029,502, which registered as U.S. Trademark Registration No. 3,835,136).

42. In its Registration, Registrant has claimed the following goods in connection with the term "COLLOSEUM":

- c. "Clothing, namely, belts, arm warmers, hand warmers, knee warmers, neck tubes, wrap arounds, corsets, foulards, trousers, sweatshirts, shirts, capes, coats, skirts; footwear; headgear, namely, hat and caps" in International Class 025 (emphasis added).
- d. "Advertising; business management; business administration; business organization and management advice, particularly in the field of franchising" in International Class 035.

43. In comparison, and as explained hereinabove, Petitioner owns and holds prior rights on the trademarks and trade name COLOSSEUM and C COLOSSEUM used in connection

with clothing and headgear, including shirts, pants, jackets, footwear, athletic uniforms, and hats and caps.

44. Petitioner holds prior and superior rights to the trademarks and trade name COLOSSEUM and C COLOSSEUM. It is virtually certain that Registrant’s Registration for “COLLOSEUM,” if allowed to stand, will cause confusion and mistake in the marketplace, and deceive buyers and the consuming public about the source and origin of the goods with which “COLLOSEUM” is associated, to the detriment of Petitioner and its own trademarks and trade name.

45. Petitioner is further informed and believes, and thereon alleges, that if the Registration is allowed to stand, confusion, mistake, and deception is highly likely, if not assured, because of the following:

- a. The term claimed by the Registrant in its Registration is virtually identical to the trademarks and trade name owned and in prior use by Petitioner:

<u>Registrant’s Claimed Term</u>	<u>Petitioner’s Trademarks and Trade Name</u>
COLLOSEUM	COLOSSEUM C COLOSSEUM

The only difference between the term claimed by the Registrant and Petitioner’s marks is a minor difference in the spelling. Registrant’s term is phonetic equivalent to Petitioner’s marks, and the term and the marks sound very similar.

- b. The goods in International Class 025 claimed by the Registrant in its Registration (clothing, footwear, and headgear) are related to the goods in connection with which Petitioner has used and applied its trademarks (athletic apparel, and hats and caps).
- c. Several of the goods specifically claimed by Registrant (shirts, sweatshirts, coats, trousers, hats, and caps) are closely related or identical to the goods associated with Petitioner’s trademarks (shirts, jackets, pants, hats, and caps).
- d. The services in International Class 035 claimed by the Registrant in its Registration (advertising, business management, business administration, business organization and management advice, particularly in the field of franchising) is



likely to lead to confusion, mistake, and deception if the service is in the field of clothing or apparel retailing, sales, distribution, or franchising.

- e. The channels of trade for the goods offered for sale by the Registrant and Petitioner, namely, apparel and articles of clothing, are likely to be similar.

46. Petitioner realleges and incorporates by reference Paragraph 33 above and the allegations therein as though fully set forth herein, and points out that a Trademark Examiner has already contended that the Registrant's registration for "COLLOSEUM" so resembles Petitioner's trademark C COLOSSEUM as to be likely, when applied to the goods of the Petitioner, to cause confusion.

47. If Registrant is allowed to continue to maintain the Registration, Registrant will continue to improperly obstruct Petitioner's registration of Petitioner's trademarks COLOSSEUM and C COLOSSEUM, which have been used in commerce and in interstate commerce since at least as early as 1992, and well prior to Registrant's adoption, use, application for registration, or registration of the term "COLLOSEUM."

48. Because the term "COLLOSEUM" as claimed by Registrant is likely to cause confusion and mistake, and to deceive buyers and the public as to the source and origin of the goods and services associated Registrant seeks to associate with the same, Registrant's U.S. Registration 3,835,136 should be cancelled.

## **COUNT II**

**REGISTRANT'S "COLLOSEUM" REGISTRATION SHOULD BE CANCELLED BECAUSE  
IT WAS FRAUDULENTLY OBTAINED  
15 U.S.C. § 1064(3)**

49. Petitioner realleges and incorporates by reference Paragraphs 1 through 48 above and the allegations therein as though fully set forth herein.

- 50. Petitioner is informed and believes, and thereon alleges, that during the

prosecution of U.S. Registration No. 3,835,136, Registrant knowingly made false and material misrepresentations to the USPTO with the intent to mislead and deceive the USPTO into issuing a registration, as alleged in greater detail hereinabove.

51. Petitioner is informed and believes, and thereon alleges, that Registrant knew at the time it made the representations alleged herein to the USPTO, it knew that those representations were false and/or misleading, in that Registrant and/or its agents had actual knowledge of Petitioner's long standing, widespread, and public use of the trademarks and trade name COLOSSEUM and C COLOSSEUM in connection with articles of clothing and headgear in International Class 025.

52. Petitioner alleges upon information and belief that the said representations were material, and that the USPTO relied on the same when it determined that U.S. Registration No. 3,835,136 should issue, and that but for Registrant's representations and lack of candor, the USPTO would not have issued Registration No. 3,835,136.

53. Petitioner further alleges upon information and belief that Registrant's actions in connection with the prosecution of U.S. Registration No. 3,835,136 constitute fraud such that the said Registration is invalid and should be cancelled.


WHEREFORE, Petitioner respectfully requests that the Board grant Petitioner Colosseum Athletics' Petition to Cancel, and cancel U.S. Trademark Registration No. 3,835,136, in its entirety or in part, accordingly to proof at trial.

Please direct all correspondence relating to this Petition to Cancel to the attorneys for Petitioner on this matter at the address shown below.

A duly executed Certificate of Service is attached to this Petition to Cancel and filed concurrently herewith.

Dated: January 19, 2012

LEE ANAV CHUNG LLP

By 

Bub-Joo S. Lee, Esq.  
Jay J. Chung, Esq.

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Attorneys for Petitioner COLOSSEUM  
ATHLETICS CORP.

**CERTIFICATE OF SERVICE**

Cancellation Proceeding in  
Colosseum Athletics Corp. v. COLLOSEUM Holding AG

I hereby certify that a true and complete copy of the foregoing:

**PETITION TO CANCEL**

has been served on the Registrant, its domestic representative, and its counsel of record, by mailing said copy on January 19, 2012, via United States First Class Mail, postage prepaid, to:

Abelman, Frayne & Schwab  
Attn: Lawrence E. Abelman  
666 Third Avenue  
New York, NY 10017-5621

COLLOSEUM Holding AG  
Eisenbahnweg 86  
CH-4125 Riehen,  
SWITZERLAND

BOEHMERT & BOEHMERT  
Hollerallee 32  
28209 Bremen, GERMANY

BOEHMERT & BOEHMERT  
Postfach 10 71 27  
D-28071 Bremen, Germany

and by transmitting the said copy on January 19, 2012, via Overnight Courier Service (Federal Express), postage prepaid, to:

Abelman, Frayne & Schwab  
Attn: Lawrence E. Abelman  
666 Third Avenue  
New York, NY 10017-5621

COLLOSEUM Holding AG  
Eisenbahnweg 86  
CH-4125 Riehen,  
SWITZERLAND

BOEHMERT & BOEHMERT  
Hollerallee 32  
28209 Bremen, GERMANY

Dated: January 19, 2012



\_\_\_\_\_  
Serena Wu