

ESTTA Tracking number: **ESTTA456067**

Filing date: **02/13/2012**

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	Mango#s Tropical Cafe, Inc.		
Entity	Corporation	Citizenship	Florida
Address	900 Ocean Drive Miami Beach, FL 33139 UNITED STATES		

Attorney information	David K. Friedland Friedland Vining, P.A. 1500 San Remo Ave. Suite 200 Coral Gables, FL 33146 UNITED STATES david.friedland@friedlandvining.com, jaime.vining@friedlandvining.com		
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Registration Subject to Cancellation

Registration No	4069821	Registration date	12/13/2011
Registrant	Borrego, Manuel 7424 Emmett Larkin Pl. El Paso, TX 79936 UNITED STATES		

Goods/Services Subject to Cancellation


Class 043. First Use: 2010/07/01 First Use In Commerce: 2010/08/01
All goods and services in the class are cancelled, namely: Restaurant and bar services


Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)


Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	3284057	Application Date	11/01/2000
Registration Date	08/28/2007	Foreign Priority Date	NONE
Word Mark	MANGO'S TROPICAL CAFE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 042. First use: First Use: 1991/03/00 First Use In Commerce: 1991/03/00 Restaurant and bar services


U.S. Registration No.	3108906	Application Date	01/06/2005
Registration Date	06/27/2006	Foreign Priority Date	NONE
Word Mark	MANGO'S MAMBO BAR		
Design Mark			
Description of Mark	The mark consists of a parrot with leaves behind it and one drum on each side.		
Goods/Services	Class 043. First use: First Use: 1997/12/01 First Use In Commerce: 1997/12/01 Restaurant and bar services		

U.S. Registration No.	3700648	Application Date	11/01/2000
Registration Date	10/27/2009	Foreign Priority Date	NONE
Word Mark	MANGO'S TROPICAL CAFE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1997/01/00 First Use In Commerce: 1997/01/00 Clothing, namely, infant's and children's underwear and bodysuits, t-shirts, sweatshirts, pants, sweatpants, shorts, tank-tops, halter tops, hats, jackets, shirts and sleepwear


U.S. Registration No.	3512984	Application Date	10/25/2000
Registration Date	10/07/2008	Foreign Priority Date	NONE

Word Mark	MANGO'S TROPICAL CAFE
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Design Mark	
Description of Mark	NONE
Goods/Services	Class 029. First use: First Use: 2007/04/02 First Use In Commerce: 2007/04/02 Prepackaged foods, namely, entrees consisting primarily of poultry Class 041. First use: First Use: 1994/03/01 First Use In Commerce: 1995/03/15 Computer services, namely, providing a website featuring entertainment information via a global computer network, namely, concert information, nightlife information, and entertainment information about music, singing, dancing, music videos

U.S. Registration No.	3649192	Application Date	11/01/2000
Registration Date	07/07/2009	Foreign Priority Date	NONE

Word Mark	MANGO'S TROPICAL CAFE
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Design Mark	
Description of Mark	<p>The mark consists of a parrot, four coconut palm fronds, and two coconuts centered in a circle which has two short parallel lines extending outward from both the top left and lower right quadrants of the circle. The word "MANGO'S" is centered above the circle, and the words "TROPICAL CAFE" are centered below the circle. The words "TROPICAL CAFE" are set off by two parallel lines, one above and one below these words.</p>
Goods/Services	<p>Class 006. First use: First Use: 1997/01/00 First Use In Commerce: 1997/01/00 METAL KEY CHAINS</p> <p>Class 016. First use: First Use: 1997/01/00 First Use In Commerce: 1997/01/00 Postcards, greeting cards, calendars and pens</p> <p>Class 024. First use: First Use: 1997/01/00 First Use In Commerce: 1997/01/00 Towels</p> <p>Class 032. First use: First Use: 1997/08/00 First Use In Commerce: 1997/08/00 Bottled drinking water</p> <p>Class 034. First use: First Use: 1997/01/00 First Use In Commerce: 1997/01/00 smoker's articles, namely, cigars, cigar cutters, cigarette lighters not of precious metal, and cigar boxes of non-precious metal</p>

Attachments	<p>75981783#TMSN.jpeg (1 page)(bytes) 78543089#TMSN.jpeg (1 page)(bytes) 76975197#TMSN.jpeg (1 page)(bytes) 76978791#TMSN.jpeg (1 page)(bytes) 76978957#TMSN.jpeg (1 page)(bytes) Petition to Cancel-Mango's TX - AS FILED.pdf (6 pages)(153521 bytes)</p>
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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	/David K. Friedland/
Name	David K. Friedland
Date	02/13/2012

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

Mango's Tropical Cafe, Inc.,
Petitioner,

v.

Manuel Borrego,
Registrant.



Cancellation No.:
Registration No.: 4,069,821
Mark: **MANGOS BAR & GRILL
and Design**
Registration Date: December 13, 2011




PETITION TO CANCEL

Pursuant to the provisions of 15 U.S.C. § 1064(3) and TBMP § 307.02, Petitioner, Mango's Tropical Cafe, Inc., a Florida corporation located and doing business at 900 Ocean Drive, Miami, Florida 33139 ("Petitioner"), believes that it is and will continue to be damaged by Registration No. 4,069,821 and hereby petitions to cancel the same.

As grounds for this Petition, Petitioner alleges as follows:

1. Petitioner owns the following United States Trademark Registrations:

	Registration No. 3,284,057	Restaurant and bar services, in International Class 42
	Registration No. 3,108,906	Restaurant and bar services, in International Class 43

	Registration No. 3,700,648	Clothing, namely, infant's and children's underwear and bodysuits, t-shirts, sweatshirts, pants, sweatpants, shorts, tank-tops, halter tops, hats, jackets, shirts and sleepwear, in International Class 25
	Registration No. 3,512,984	Prepackaged foods, namely, entrees consisting primarily of poultry, in International Class 29; Computer services, namely, providing a website featuring entertainment information via a global computer network, namely, concert information, nightlife information, and entertainment information about music, singing, dancing, music videos, in International Class 41
	Registration No. 3,649,192	Metal key chains, in International Class 6; Postcards, greeting cards, calendars and pens, in International Class 16; Towels, in International Class 24; Bottled drinking water, in International Class 32; smoker's articles, namely, cigars, cigar cutters, cigarette lighters not of precious metal, and cigar boxes of non-precious metal, in International Class 34

2. The foregoing registrations are hereinafter collectively referred to as the “MANGO’S Marks”. The MANGO’S Marks are well-known, distinctive, and famous trademarks that Petitioner has continuously and substantially exclusively used since at least as early as March 1991.

3. Petitioner's **MANGO'S** Marks have been heavily advertised and promoted in connection with Petitioner's restaurant and bar services for over 20 years. As a result of Petitioner's extensive use, the **MANGO'S** Marks are extremely strong and have garnered international recognition among the consuming public.

4. According to the Trademark Electronic Search System ("TESS") of the United States Patent and Trademark Office ("PTO"), Registrant Manuel Borrego ("Registrant") is the record owner of U.S. Trademark Registration 4,069,821 (the "'821 Registration") for the mark **MANGOS BAR & GRILL and Design**, as displayed below ("Registrant's Mark"), which registration issued on the Principal Register on December 13, 2011.



5. The '821 Registration, which issued December 13, 2011, alleges that Registrant's Mark has been in use in connection with "restaurant and bar services" in International Class 43 since July 1, 2010.

6. Registrant's Mark is confusingly similar to Petitioner's **MANGO'S** Marks in that Registrant's Mark mimics significant portions of the **MANGO'S** Marks. In addition, the overall commercial impressions of the marks are very similar, which erroneously suggests an affiliation with Petitioner.

7. In view of Petitioner's priority of use, the similarity of the parties' respective marks, and the overlapping nature of the parties' respective services, Petitioner believes that it is and is likely to continue to be damaged by the continued existence of the '821 Registration in that Registrant's Mark so resembles the **MANGO'S** Marks as to be likely to cause the public to be confused, mistaken, or deceived into believing that Registrant's services originate from Petitioner or are in some way related to, associated with, or sponsored by Petitioner.

8. Accordingly, Petitioner's continued and legal use of the **MANGO'S** Marks will be impaired by the continued registration of the '821 Registration. Registration of Registrant's Mark should therefore be cancelled pursuant to the provisions of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), in that Registrant's Mark consists of or comprises a mark which so resembles a mark previously used in the United States by Petitioner in respect of related services as to be likely to cause the public to be confused, mistaken or deceived.

9. In addition, the '821 Registration should be cancelled pursuant to the provisions of 15 U.S.C. § 1125(c), in that Registrant's use of its Mark in connection with related restaurant and bar services will cause the dilution of the distinctive quality of Petitioner's **MANGO'S** Marks.

10. Registrant's use of its Mark in connection with identical services as Petitioner will irreparably dilute the distinctive **MANGO'S** Marks and injure Petitioner's business reputation.

11. Finally, Registrant's Mark will injure Petitioner by impairing Petitioner's ability to register other marks in connection with restaurant, bar and related services.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Petition to Cancel be sustained and granted in favor of Petitioner and that Registration No. 4,069,821 be cancelled and removed from the Principal Register.

Date: February 13, 2012

Respectfully submitted,

FRIEDLAND VINING, P.A.



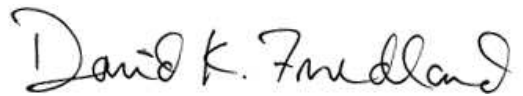
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Counsel for Petitioner Mango's Tropical Cafe, Inc.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the foregoing **PETITION TO CANCEL** was served upon the Registrant by delivering true and correct copies of same to Registrant and its counsel via Federal Express on February 13, 2012 as follows:

Manuel Borrego
7424 Emmett Larkin
El Paso, TX 79936



David K. Friedland