

ESTTA Tracking number: **ESTTA459182**

Filing date: **02/29/2012**

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	P.T. Saraina Koat Mentawai		
Entity	limited liability company	Citizenship	Indonesia
Address	Perum Batang Kabung Asri Blok C No. 3 Simp. Lalang, Tabing Padang, West Sumatera, 25127 INDONESIA		

Attorney information	Damian Moos The Law Office of Damian Moos, P.C. 120 Vantis, Suite 300 Aliso Viejo, CA 92656 UNITED STATES damian@damianmooslaw.com Phone:714-465-0665		
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Registrations Subject to Cancellation

Registration No	4078032	Registration date	12/27/2011
Registrant	RAIHANA HEUER P.T. KANDUI BEACH VILLAS POLAMAS BLOK L # 3 PADANG WESTERN SUMATRA, 25000 INDONESIA		

Goods/Services Subject to Cancellation

Class 043. First Use: 2004/01/15 First Use In Commerce: 2006/10/20 All goods and services in the class are cancelled, namely: Health resort services, namely, providing food and lodging that specialize in promoting patrons' general health and well-being; Resort hotels; Resort lodging services

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)		
Registration No	4052051	Registration date	11/08/2011
Registrant	RAIHANA HEUER P.T. KANDUI BEACH VILLAS POLAMAS BLOK L # 3 PADANG WESTERN SUMATRA, 25000 INDONESIA		

Goods/Services Subject to Cancellation

Class 043. First Use: 2010/12/01 First Use In Commerce: 2010/12/01 All goods and services in the class are cancelled, namely: Resort lodging services
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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)
Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Petitioner as Basis for Cancellation

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	KANDUI		
Goods/Services	International Class 043: Health resort services, namely, providing food and lodging that specialize in promoting patrons' general health and well-being; Resort hotels; Resort lodging services.		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	KANDUI RESORT		
Goods/Services	International Class 043: Health resort services, namely, providing food and lodging that specialize in promoting patrons' general health and well-being; Resort hotels; Resort lodging services.		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Design Mark	 <p style="text-align: center;">KANDUI RESORT MENTAWAI ISLANDS</p>		
Goods/Services	International Class 043: Health resort services, namely, providing food and lodging that specialize in promoting patrons' general health		

	and well-being; Resort hotels; Resort lodging services.
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U.S. Application/ Registration No.	NONE	Application Date	NONE
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Registration Date	NONE
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Design Mark	 KANDUI RESORT MENTAWAI ISLANDS, INDONESIA
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Goods/Services	International Class 043: Health resort services, namely, providing food and lodging that specialize in promoting patrons' general health and well-being; Resort hotels; Resort lodging services.
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U.S. Application/ Registration No.	NONE	Application Date	NONE
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Registration Date	NONE
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Design Mark	
Goods/Services	International Class 043: Health resort services, namely, providing food and lodging that specialize in promoting patrons' general health and well-being; Resort hotels; Resort lodging services.

Attachments	kanduiresort_logo.jpg kanduiresort_logo2.jpg kanduiresort_logo3.jpg Petition to Cancel.pdf (5 pages)(2745826 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	/Damian Moos/
Name	Damian Moos
Date	02/29/2012

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

In the matter of trademark Registration No. 4,078,032
For the mark: KANDUI
Date registered: December 27, 2011

In the matter of trademark Registration No. 4,052,051
For the mark: KANDUI VILLAS
Date registered: November 8, 2011

P.T. SARAINA KOAT MENTAWAI

Petitioner,

Cancellation No.

v.

PETITION TO CANCEL

RAIHANA HEUER,

Registrant.

PETITION TO CANCEL

Petitioner, P.T. SARAINA KOAT MENTAWAI, with address at Perum Batang Kabung Asri, Blok C No. 3 Simp. Lalang, Tabing, Padang, West Sumatera, Indonesia, 25127 ("Petitioner") is an Indonesian limited liability company.

To the best of Petitioner's knowledge, the name and address of the current owner of U.S. Registration No. 4,078,032 for KANDUI and U.S. Registration No. 4,052,051 for KANDUI VILLAS (the "Registrations") is Raihana Heuer, P.T. Kandui Beach Villas Polamas Blok L # 3 Padang, Western Sumatra 25000, Indonesia ("Registrant").

Petitioner is currently and will continue to be damaged by the Registrations, as more fully detailed below, and hereby petition to cancel the same.

The grounds for cancellation are as follows:

1. Registrant is the listed owner of the Registrations, which is she maintains are used for "Health resort services, namely, providing food and lodging that specialize in promoting

patrons' general health and well-being; Resort hotels; Resort lodging services" in International Class 043. She represented that, with respect to U.S. Registration No. 4,052,051 for KANDUI VILLAS, "the mark was first used at least as early as 12/01/2010, and first used in commerce at least as early as 12/01/2010." She further represented that, with respect to U.S. Registration No. 4,078,032 for KANDUI, "The mark was first used by the applicant, or the applicant's related company, licensee, or predecessor in interest at least as early as 01/15/2004, and first used in commerce at least as early as 10/20/2006, and is now in use in such commerce."

2. Since at least April 10, 2006, Petitioner has continuously used and presently uses "KANDUI RESORT" and "KANDUI" ("Petitioner's Marks") by themselves and in conjunction with other terms and symbols, as trademarks, in connection with an Indonesian resort/hotel that has operated and accommodated patrons since April 2006 ("Petitioner's Services").

COUNT I

(Priority of Use and Likelihood of Confusion)

3. Petitioner incorporates by reference paragraphs 1 through 4 as if fully stated herein.

4. Since prior to the filing dates in the Registrations, Petitioner has been using Petitioner's Marks in connection with Petitioner's Services.

5. Since prior to the claimed priority dates in the Registrations, Petitioner has been using Petitioner's Marks in connection with Petitioner's Services.

6. The services listed in the Registrations are either identical to or closely related to Petitioner's Services.

7. The subject mark of the Registrations so resembles Petitioner's Marks as to be likely to cause confusion, or to cause mistake, or to deceive when used in connection with the services listed in the Registrations.

8. The continuous registration of the subject of the Registrations is causing injury to Petitioner's business plans, is impairing its rights in Petitioner's Marks, is inconsistent with Petitioner's rights, and will continue to cause injury to Petitioner until the Registrations are cancelled.

COUNT II

(Fraud on the Patent and Trademark Office)

9. Petitioner incorporates by reference paragraphs 1 through 8 as if fully stated herein.

10. Petitioner alleges that Registrant knew she did not have rights in the subject marks of the Registrations when she submitted her application to the United States Patent and Trademark Office.

11. Since at least April 2006, Registrant has been an officer and shareholder in Petitioner. From April 2006 to June 2011, she was an employee of Petitioner. After a dispute between Petitioner and Registrant, Registrant's employment with Petitioner terminated and Registrant started a new resort operating under the name Kandui Villas, which first began operating in July 2011. Accordingly, Registrant is fully aware of the fact that Kandui Villas did not exist until July 2011, that Petitioner had used Petitioner's Marks since at least April 2006, and that the claimed dates of first use of the Registrations are undeniably false.

12. Petitioner alleges on information and belief that Registrant made false statements with the intent to induce authorized agents of the United States Patent and Trademark Office to grant the Registrations, and reasonably relying on the truth of said false statements, the USPTO did, in fact, grant these registrations to Registrant.

13. The continuous registration of the subject marks of the Registrations is causing injury to Petitioner's business plans, is impairing its rights in Petitioner's Marks, is inconsistent with Petitioner's rights, and will continue to cause injury to Petitioner until the Registrations are cancelled.

14. Registrant is not entitled to continued registration of the Registrations because Registrant committed fraud in the procurement of those registrations.

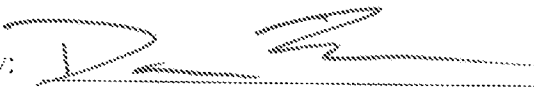
WHEREFORE, Petitioner prays that this cancellation be sustained and that United States Trademark Registration No. 4,078,032 for KANDUI and Registration No. 4,052,051 for KANDUI VILLAS be cancelled.

Respectfully Submitted,

P.T. SARAINA KOAT MENTAWAI

Dated: February 29, 2012

THE LAW OFFICE OF DAMIAN MOOS, P.C.

By: 

Damian M. Moos
Attorney for Petitioner P.T. Saraina Koat Mentawai

CERTIFICATE OF MAILING AND SERVICE

I certify that on February 29, 2012, the forgoing **PETITION TO CANCEL** is being electronically submitted to:

Trademark Trial and Appeal Board
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

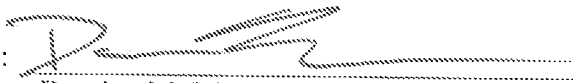
It is further certified that on February 29, 2012, the forgoing **PETITION TO CANCEL** is being served by mailing a copy thereof by first-class mail addressed to:

Raihana Heuer
P.T. Kandui Beach Villas
Polamas Blok L # 3 Padang
Western Sumatra 25000
Indonesia

Dated: February 29, 2012

THE LAW OFFICE OF DAMIAN MOOS, P.C.

By:


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Damian M. Moos
Attorney for Petitioner P.T. Saraina Koat Mentawai