

ESTTA Tracking number: **ESTTA470991**

Filing date: **05/04/2012**

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	Menper Distributors, Inc.		
Entity	Corporation	Citizenship	Florida
Address	6500 N.W. 35TH AVENUE Miami, FL 33174 UNITED STATES		

Attorney information	Amaury Cruz Amaury Cruz, P.A. 1560 Lenox Ave., Suite 207 Miami Beach, FL 33139 UNITED STATES lex@lexarian.com Phone:3056042051		
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**Registration Subject to Cancellation**

Registration No	3723508	Registration date	12/08/2009
Registrant	PHARMADEL, LLC 178 VENTURE DRIVE SEAFORD, DE 19973 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 005. First Use: 2008/12/31 First Use In Commerce: 2008/12/31 All goods and services in the class are cancelled, namely: Athletes' foot lotions, powders, and preparations; anti-itch cream and anti-itch spray
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**Grounds for Cancellation**

Priority and likelihood of confusion	Trademark Act section 2(d)
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**Mark Cited by Petitioner as Basis for Cancellation**

U.S. Application No.	85361067	Application Date	06/30/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	HONGOCURA		

Design Mark	<b>HONGOCURA</b>
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 1973/02/28 First Use In Commerce: 1973/02/28 Fungal medications

Attachments	85361067#TMSN.jpeg ( 1 page )( bytes ) Petition to Cancel CURA HONGOS AND DESIGN.pdf ( 4 pages )(167408 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	/ac/
Name	Amaury Cruz
Date	05/04/2012

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

In Re:           Registration No. 3,723,508  
Registered:    December 8, 2009  
Mark:           CURA HONGOS  
Registrant:    Pharmadel, LLC

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MENPER DISTRIBUTORS, INC.	)	
	)	
Petitioner,	)	
	)	
v.	)	Cancellation No.
	)	
PHARMADEL, LLC	)	
	)	
Registrant.	)	
-----)	)	

**PETITION TO CANCEL**

Menper Distributors, Inc. ("Petitioner"), a corporation in the State of Florida, with a principal place of business at 6500 NW 35<sup>th</sup> Ave, Miami, FL 33147, believes that it is being damaged by Registration No. 3,723,508 ("Registration") for the designation CURA HONGOS AND DESIGN covering "athletes' foot lotions, powders, and preparations, anti-itch cream and anti-itch spray," in International Class 05, owned by Pharmadel, LLC, ("Registrant"), and hereby petitions to cancel the same.

As grounds for cancellation, Petitioner alleges that:

1. Petitioner is the owner of the common law rights to the mark HONGOCURA for "fungal medications."
2. Petitioner is now, and for many years has been, engaged in the manufacture, marketing and sale of fungal medication products.

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3. Since at least as early as February 28, 1973 and long prior to October 15, 2008, the filing date of the Registrant's application, Petitioner has manufactured, marketed and sold fungal medication products in connection with the trademark HONGOCURA.
4. Petitioner is the owner of the U.S. Trademark Application for HONGOCURA, Serial No. 85,361,067 for "fungal medications." Petitioner filed this application on June 30, 2011. The United States Patent and Trademark Office, on August 26, 2011, denied registration of the latter on the basis, among other things, of likelihood of confusion with Registrant's mark.
5. As a result of Petitioner's advertising, marketing and sale of its products bearing the HONGOCURA mark, its mark is known to and recognized by U.S. consumers as indicating source exclusively in Petitioner.
6. Registrant's CURA HONGOS AND DESIGN designation is substantially similar in sound, appearance, connotation, and commercial impression to Petitioner's HONGOCURA Mark. Further, the goods identified in the Application are identical or substantially similar to the products offered by Petitioner under its HONGOCURA Mark and fall squarely within the field of fungal medications.
7. As a result of the foregoing, consumers of Petitioner's HONGOCURA products who encounter Registrant's CURA HONGOS AND DESIGN designation used on or in connection with the goods identified in the Registration are likely to be confused, misled or deceived into thinking that the goods of Registrant are goods of Petitioner, or constitute a subset of

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Petitioner's HONGOCURA products or are in some way sponsored by or connected with Petitioner, thus causing Petitioner irreparable damage and injury in violation of Section 2(d) of the Lanham Act, 15 U.S.C. 1052(d).

8. Maintenance of the registration will give color of statutory rights to Registrant in violation and derogation of the long-standing prior and superior common law rights of Petitioner in its HONGOCURA Mark.

WHEREFORE, Petitioner believes that it is being damaged by the registration of Registrant's mark and prays that Registration No. 3,723,508 be cancelled.

Dated: May 3, 2012

Respectfully submitted,

By: \_\_\_\_\_/MR/\_\_\_\_\_  
Mario Roitman, Esq.  
Florida Bar No. 28337

Amaury Cruz, Esq.  
Florida Bar No. 898244

Amaury Cruz, P.A.  
1560 Lenox Avenue, Suite 207  
Miami Beach, FL 33139  
Phone:305-604-205  
Email: lex@lexarian.com

**AMAURY CRUZ, P.A.**

1560 Lenox Avenue, Suite 207, Miami Beach, FL • Telephone (305) 604-2051 • Facsimile (305) 604-2011

**CERTIFICATE OF SERVICE**

I hereby certify that this Petition to Cancel was served on Registrant Pharmadel, LLC via First Class Mail in an postage prepaid envelope addressed to Pharmadel, LLC., 178 Venture Drive, Seaford, DE 19973, on this 4th day of May, 2012.

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/MR/  
Mario Roitman, Esq.

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