

ESTTA Tracking number: **ESTTA742541**

Filing date: **04/26/2016**

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	Marcelo Marcelli		
Entity	Individual	Citizenship	UNITED STATES
Address	16113 SW 43rd St Miami, FL 33185 UNITED STATES		

Attorney information	Angelo M Martin Fears Nachawati, PLLC 4925 Greenville Ave, Ste. 715 Dallas, TX 75206 UNITED STATES ip@fnlawfirm.com, amartin@fnlawfirm.com, adam@fnlawfirm.com Phone:2144616223		
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Registration Subject to Cancellation

Registration No	3869101	Registration date	11/02/2010
International Registration No.	NONE	International Registration Date	NONE
Registrant	Torres, Enrique Hernandez-Pons Calz. San Bartolo Naucalpan No. 360 C.P. 11230, MEXICO		

Goods/Services Subject to Cancellation

Class 030. First Use: 0 First Use In Commerce: 0 All goods and services in the class are cancelled, namely: coffee, tea, cacao, sugar, rice, tapioca, sago, coffee substitutes; flour, cereals ready for consumption, bread, pastry; confectionery, namely, pastilles; honey, molasses syrup; flavored and sweetened gelatins; food leavening agents, yeast; salt, mustard; vinegar; sauces; spices; and ice

Grounds for Cancellation

Abandonment	Trademark Act Section 14(3)
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Attachments	2016-04-26 Petition to Cancel - FINAL - Maoila.pdf(149362 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	/Angelo M. Martin/
Name	Angelo M. Martin
Date	04/26/2016

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

In re: trademark Registration No. 3869101

In re Registration No.: 3869101

For the Mark: MAIOLA

Date of Registration: November 2, 2010

Marcelo Marcelli, Petitioner, v. Enrique Hernandez-Pons Torres, Registrant.	Cancellation No.
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PETITION TO CANCEL

Petitioner, Marcelo Marcelli, an individual having an address of 16113 SW 43rd St., Miami, FL 33185 believes that he is or will be damaged by Registration No. 3869101 and hereby petitions to cancel said the same.

As grounds of this Petition, it is alleged that:

1. On January 27, 2014, Petitioner filed App. Ser. No. 86410532 to register the design mark MAIOLI GOODS LLC for “Sauces; aoilis” (the “Design Mark”). Title and status copies of Petitioner’s application are attached as **Exhibit A**.
2. Petitioner was issued an initial Office Action for the Design Mark, dated January 20, 2015, which was based on a likelihood of confusion with the mark MAOILA (Registration No. 3869101), and subsequently a Notice of Abandonment on August 26, 2015.
3. Registrant’s application to register the mark in Registration No. 3869101 was filed with a Section 44(e) basis, in International Classes 029 and 030, on May 11, 2009 and was assigned App. Ser. No. 77733933.
4. Registrant’s Section 44(e) basis for filing was on based on two foreign registrations issued in Mexico (Foreign Registration Nos. 1080805 and 1081862), registered on January 23, 2009.

5. The goods and services identified in Registration No. 3869101 are “meats, fish, fowl, and game; meat extracts; fruit preserves and vegetable preserves; cooked and dried fruits and vegetables; jams; compotes; eggs; edible fats” in International Class 029 and “coffee, tea, cacao, sugar, rice, tapioca, sago, coffee substitutes; flour, cereals ready for consumption, bread, pastry; confectionery, namely, pastilles; honey, molasses syrup; flavored and sweetened gelatins; food leavening agents, yeast; salt, mustard; vinegar; sauces; spices; and ice” in International Class 030.
6. Since the issuance of the Final Office Action, Petitioner has done extensive research and found no actual use of the MAIOLA mark in connection with the currently listed products.
7. Further, Registrant has shown no interest in pursuing others that are using confusingly similar marks, or in continuing business under the MAIOLA mark.
8. Based upon information of Registrant’s non-use of the mark in Registration No. 3869101, Registrant’s mark MAIOLA has been abandoned within the meaning of Section 14(3) of the Lanham Act.
9. Petitioner alleges that Petitioner’s continued and legal use of Petitioner’s MAIOLI design mark will be impaired by the continued registration of said MAIOLA word mark(s) of Registrant.

WHEREFORE, Petitioner prays that Registration No. 3869101 be cancelled and that this Petition for Cancellation be sustained in favor of Petitioner.

Dated April 26, 2016.

Respectfully submitted,

FEARS | NACHAWATI, PLLC

/Angelo M. Martin/

Angelo M. Martin

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F. (214) 890.0712

CERTIFICATE OF SERVICE

I certify a true and correct copy of the foregoing document has been sent via U.S. mail to Registrant at the following address:

David A. Einhorn
Baker & Hostetler, LLP
45 Rockefeller Plz.
New York , New York 10111

/Angelo M. Martin/
Angelo M. Martin

Dated: April 26, 2016

EXHIBIT A

Trademark/Service Mark Application, Principal Register

Serial Number: 86410532

Filing Date: 09/30/2014

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86410532
MARK INFORMATION	
*MARK	\\TICRS\EXPORT16\IMAGEOUT\16\864\105\86410532\xml1\APP0002.JPG
SPECIAL FORM	YES
USPTO-GENERATED IMAGE	NO
LITERAL ELEMENT	Maioli Goods LLC
COLOR MARK	NO
*DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of the stylized words "Maioli Goods LLC". An image of a vegetables with a sun and barn in the background of the text.
PIXEL COUNT ACCEPTABLE	YES
PIXEL COUNT	940 x 538
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Marcelli, Marcelo
*STREET	16113 Sw 43 St
*CITY	Miami
*STATE (Required for U.S. applicants)	Florida
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	33185
PHONE	3054798577
EMAIL ADDRESS	chefmarcelomarcelli@gmail.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
LEGAL ENTITY INFORMATION	
TYPE	individual
COUNTRY OF CITIZENSHIP	Venezuela
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	030
*IDENTIFICATION	Sauces; aiolis

FILING BASIS	SECTION 1(b)
CORRESPONDENCE INFORMATION	
NAME	Marcelli, Marcelo
STREET	16113 Sw 43 St
CITY	Miami
STATE	Florida
COUNTRY	United States
ZIP/POSTAL CODE	33185
PHONE	3054798577
EMAIL ADDRESS	chefmarcelomarcelli@gmail.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
SIGNATURE INFORMATION	
SIGNATURE	/Marcelo Marcelli/
SIGNATORY'S NAME	Marcelo Marcelli
SIGNATORY'S POSITION	Owner
DATE SIGNED	09/30/2014

Trademark/Service Mark Application, Principal Register

Serial Number: 86410532

Filing Date: 09/30/2014

To the Commissioner for Trademarks:

MARK: Maioli Goods LLC (stylized and/or with design, see [mark](#))

The literal element of the mark consists of Maioli Goods LLC.

The mark consists of the stylized words "Maioli Goods LLC". An image of a vegetables with a sun and barn in the background of the text.

The applicant, Marcelo Marcelli, a citizen of Venezuela, having an address of

16113 Sw 43 St

Miami, Florida 33185

United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 030: Sauces; aiolis

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

The applicant's current Correspondence Information:

Marcelli, Marcelo

16113 Sw 43 St

Miami, Florida 33185

3054798577(phone)

chefmarcelomarcelli@gmail.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

Declaration

The signatory believes that: if the applicant is filing the application under 15 U.S.C. Section 1051(a), the applicant is the owner of the trademark/service mark sought to be registered; the applicant or the applicant's related company or licensee is using the mark in commerce on or in connection with the goods/services in the application, and such use by the applicant's related company or licensee inures to the benefit of the applicant; the specimen(s) shows the mark as used on or in connection with the goods/services in the application; and/or if the applicant filed an application under 15 U.S.C. Section 1051(b), Section 1126(d), and/or Section 1126(e), the applicant is entitled to use the mark in commerce; the applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the goods/services in the application. The signatory believes that to the best of the signatory's knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion or mistake, or to deceive. The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of the application or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Declaration Signature

Signature: /Marcelo Marcelli/ Date: 09/30/2014

Signatory's Name: Marcelo Marcelli

Signatory's Position: Owner

RAM Sale Number: 86410532

RAM Accounting Date: 10/01/2014

Serial Number: 86410532

Internet Transmission Date: Tue Sep 30 16:32:15 EDT 2014

TEAS Stamp: USPTO/BAS-XXX.XX.X.XX-201409301632153222

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Maioli Goods LLC