

ESTTA Tracking number: **ESTTA828593**

Filing date: **06/21/2017**

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 has filed a petition to cancel the registration indicated below.

**Petitioner Information**

Name	Intellectual Holdings, S.A.		
Entity	Corporation	Citizenship	Guatemala
Address	19 Calle 5-47 Zona 10 Edificio Uni. 801 Guatemala City, 01010 GUATEMALA		

Attorney information	Matthew D. Kissner, Esq. Broad and Cassel LLP One North Clematis Street Suite 500 West Palm Beach, FL 33401 UNITED STATES Email: mkissner@broadandcassel.com Phone: 5618323300
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**Registration Subject to Cancellation**

Registration No.	5193024	Registration date	04/25/2017
Registrant	Listo, LLC PO Box 456 Harrisonburg, VA 22803 UNITED STATES Email: harold_furlow@hotmail.com, harold.g.furlow@gmail.com		

**Goods/Services Subject to Cancellation**


Class 029. First Use: 2017/02/27 First Use In Commerce: 2017/02/27 All goods and services in the class are subject to cancellation, namely: Cheese; Processed beans; Fruit jellies
Class 030. First Use: 2017/02/27 First Use In Commerce: 2017/02/27 All goods and services in the class are subject to cancellation, namely: Coffee; Hot sauce; Ketchup; Mayonnaise; Salad dressing; Seasonings

**Grounds for Cancellation**

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
Other	Right to cancellation pursuant to the Pan American Convention; Bad Faith

**Marks Cited by Petitioner as Basis for Cancellation**

U.S. Application No.	87393050	Application Date	03/30/2017
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ANA BELLY		
Design Mark			
Description of Mark	The mark consists of a woman in a blue chef's hat and blue chef's coat next to the words "Ana Belly" in red lettering to her right, with the woman and wording inside a white oval, and with a red ribbon along the bottom of the oval.		
Goods/Services	<p>Class 029. First use: First Use: 1959/00/00 First Use In Commerce: 2010/00/00 Food products; namely, mayonnaise; mustard; ketchup, salsa; sauces; seasonings;condiments; syrups; dressings; vinegars; flavored drinks; edible oils and fats</p> <p>Class 030. First use: First Use: 1959/00/00 First Use In Commerce: 2010/00/00 Food products; namely, mayonnaise; mustard; ketchup, salsa; sauces; seasonings;condiments; syrups; dressings; vinegars; flavored drinks; edible oils and fats</p>		

U.S. Application No.	87393020	Application Date	03/30/2017
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ANA BELLY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1959/00/00 First Use In Commerce: 2010/00/00 Food products; namely, mayonnaise; mustard; ketchup, salsa; sauces; season-		

	ings;condiments; syrups; dressings; vinegars; flavored drinks; edible oils and fats Class 030. First use: First Use: 1959/00/00 First Use In Commerce: 2010/00/00 Food products; namely, mayonnaise; mustard; ketchup, salsa; sauces; season-ings;condiments; syrups; dressings; vinegars; flavored drinks; edible oils and fats
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Attachments	87393050#TMSN.png( bytes ) 87393020#TMSN.png( bytes ) Petition for Cancellation.pdf(186472 bytes )
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Signature	/Matthew D Kissner/
Name	Matthew D Kissner
Date	06/21/2017

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

In the Matter of Registration No.: 5,193,024  
Registered: April 25, 2017

INTELLECTUAL HOLDINGS, S.A.,	)	
	)	
Petitioner,	)	
	)	Cancellation No. _____
v.	)	
	)	
LISTO, LLC,	)	
	)	
Registrant.	)	
_____	)	
	)	

**PETITION FOR CANCELLATION**

Petitioner, Intellectual Holdings S.A., a corporation organized and existing under the laws of Guatemala (“Petitioner”), believes that it will be damaged by the continued registration of the mark ANA BELLY (the “Registered Mark”) shown in U.S. Registration No. 5,193,024 (the “Registration”), registered on April 25, 2017 by Listo, LLC, a Virginia limited liability company (“Registrant”), and hereby petitions to cancel the Registration on the following grounds:

**INTRODUCTION**

1. Petitioner was founded in Guatemala by Mario Gabriel Ruano Batres in 1959.
2. Shortly thereafter, Petitioner adopted the trademark “Ana Belly” and began distributing and selling mayonnaise in Guatemala City, Guatemala under such mark.
3. Following Petitioner’s immediate local success in selling Ana Belly mayonnaise, Petitioner broadened its Ana Belly product line to include additional items

including mustard, sandwich spreads, ketchups, sauces, marmalades and jams, vinegar, cooking oil and pickled foods, among other products.

4. Petitioner also broadened its geographic scope over time and commenced distributing and selling food products under the Ana Belly mark throughout Central and North America, including in El Salvador, Honduras, Nicaragua, Costa Rica, Cuba, the Dominican Republic and the United States, among other countries.

5. Petitioner has continuously used the trademark Ana Belly for decades in connection with the sale of food products in International Classes 29 and 30, and the Ana Belly mark remains well-known in many countries.

6. Petitioner first sold and distributed food products under the Ana Belly mark in the United States in 2006.

7. Petitioner's products sold under the Ana Belly trademark have received various national and international awards over the years, including the "Altimentacion America 1979" award, which was presented in Rio de Janeiro, Brazil, and the "Premio a la Calidad" award presented in Mexico City, Mexico.

8. Petitioner, directly and through affiliates, holds active trademark registrations regarding the word mark "Ana Belly" and Petitioner's "Ana Belly" logo in numerous countries. Such registrations include:

- (i) Registration Nos. 12,856 and 33,868 in Guatemala in International Classes 29 and 30, respectively;
- (ii) Registration Nos. 48270 and 48271 in Nicaragua in International Classes 30 and 31, respectively;
- (iii) Registration Nos. 58387, 58396 and 59477 in El Salvador in International Classes 30, 32 and 29, respectively;

- (iv) Registration Nos. 130169 and 73910 in Costa Rica in International Classes 30 and 29, respectively;
- (v) Registration No. 82083 in Honduras, in International Class 32; and
- (vi) Registration No. 232929 in the Dominican Republic, relating to International Classes 29 and 30.

## **PAN AMERICAN CONVENTION**

9. Article 7 of the *Inter-American Convention for Trademark and Commercial*

*Protection*, Feb. 20, 1929, 46 Stat. 2907 (the “Pan American Convention”), provides:

Any owner of a mark protected in one of the Contracting States in accordance with its domestic law, who may know that some other person is using or applying to register or deposit an interfering mark in any other of the Contracting States shall have the right to oppose such use, registration or deposit and shall have the right to employ all legal means, procedure or recourse provided in the country in which such interfering mark is being used or where its registration or deposit is being sought, and upon proof that the person who is using such mark or applying to register or deposit it, had knowledge of the existence and continuous use in any of the contracting States of the mark on which opposition is based upon goods of the same class, the opposer may claim for himself the preferential right to use such mark in the country where the opposition is made or priority to register or deposit it in such country, upon compliance with the requirements established by the domestic legislation in such country and by this Convention.

10. Further, Article 8 of the Pan American Convention provides:

When the owner of a mark seeks the registration or deposit of the mark in a Contracting State other than that of origin of the mark... he shall have the right to apply for and obtain the cancellation or annulment of the interfering mark upon proving, in accordance with the legal procedure of the country in which cancellation is sought, the stipulations in Paragraph (a) and those of either Paragraph (b) or (c) below: (a) That he enjoyed legal protection for his mark in another of the Contracting States prior to the date of the application for the registration or deposit which he seeks to cancel; and (b) that the claimant of the interfering mark, the cancellation of which is sought, had knowledge of the use, employment, registration or deposit in any of the Contracting States of the mark for the specific goods to which said interfering mark is applied, prior to adoption and use thereof or

prior to the filing of the application or deposit of the mark which is sought to be cancelled or (c) that the owner of the mark who seeks cancellation based on a prior right to the ownership and use of such mark, has traded or trades with or in the country in which cancellation is sought and that goods designated by his mark have circulated and circulate in said country from a date prior to the filing of the application for registration or deposit for the mark, the cancellation which is claimed, or prior to the adoption and use of the same.

11. The Pan American Convention is self-executing and gives the Board the jurisdiction to cancel a registration for being in violation thereof.

12. The countries adhering to the Pan American Convention, or “Contracting States,” include Guatemala, Honduras, Nicaragua and the United States.

13. Petitioner maintains active trademark registrations regarding its Ana Belly trademarks in Guatemala, Honduras and Nicaragua, among other countries, and held such registrations prior to the date of Registrant’s application regarding the Mark.

14. Registrant had knowledge of the use, employment, registration or deposit of Petitioner’s Ana Belly mark in Guatemala, Honduras, Nicaragua or the United States.

15. Even assuming, *arguendo*, Registrant did not have such knowledge, Petitioner has traded in the United States and goods bearing the Ana Belly mark circulated in the United States prior to the date upon which Registrant filed its application for registration of the Mark.

#### **LIKELIHOOD OF CONFUSION**

16. Many years after Petitioner’s first use of the Ana Belly mark in the United States, Registrant filed Trademark Application Serial No. 87098251 regarding the Mark in International Classes 29 and 30 (“Registrant’s Application”), which application subsequently issued on April 25, 2017 as the Registration.

17. There is a likelihood of confusion between the Registered Mark and Petitioner's mark because (i) the marks are identical, (ii) the goods being sold are essentially identical and (iii) the goods being sold are classified in International Classes 29 and 30 for both Registrant and Petitioner.

18. Further, while the Registration only covers the word mark "Ana Belly," the specimen filed by Registrant in connection with its application reflects a logo that is an obvious replication of Petitioner's well-known Ana Belly logo, which logo has been used by Petitioner in the United States and is covered by a number of Petitioner's foreign trademark registrations referenced above.

19. There is no issue as to priority of use, as actual use by Registrant, if it has occurred, did not occur until February 27, 2017, as alleged in Registrant's Statement of Use.

20. Petitioner has expended considerable effort and expense in promoting its Ana Belly trademark and the goods sold under such mark for over ten years in the United States and for nearly fifty years in total, with the result that the purchasing public has come to know, rely upon and recognize the product of Petitioner by such mark.

21. Petitioner has established significant goodwill in its Ana Belly mark.

22. If Registrant is permitted to retain the Registration, and thereby the *prima facie* exclusive right to use the Mark in connection with goods identical to those sold by Petitioner, confusion in trade is likely to result from any concurrent use of Petitioner's mark and that of Registrant, which confusion may will be to Petitioner's significant detriment.

23. Purchasers are likely to consider the goods of Registrant sold under the Registered Mark as emanating from Petitioner, and purchase such goods as those of Petitioner, resulting in loss of sales and business opportunities to Petitioner.



24. Concurrent use of the Mark by Registrant and Petitioner would result in irreparable damage to Petitioner's reputation and goodwill if the goods sold by Registrant are inferior, as purchasers are likely to consider the Petitioner the source of Registrant's goods.

25. If Registrant is permitted to retain the Registration, a cloud will be placed on Petitioner's title in and to its Ana Belly trademark and on its right to enjoy the free and exclusive use thereof in connection with the sale of its goods, all to the great injury of Petitioner.

### **BAD FAITH**

26. Registrant had actual knowledge of the existence of Petitioner's Ana Belly mark prior to Registrant filing its application regarding the Mark.

27. Registrant filed its trademark application with a primary intention of either (i) profiting from the goodwill established by Petitioner or (ii) using the Registration as a means to negotiate a business arrangement with Petitioner.

28. Such intention was confirmed to Petitioner by way of correspondence from Registrant to Petitioner proposing a business arrangement while Registrant's Application remained pending and prior to any actual use of the Mark by Registrant.

## CONCLUSION

WHEREFORE, for the reasons set forth above, Petitioner respectfully requests that this Petition to Cancel Registration No. 5,193,024 be granted under 15 U.S.C. §1068, 46 Stat. 2907 and applicable law, and that such subject Registration be cancelled.

Dated: June 6, 2017.

Respectfully submitted,

*s/Matthew D. Kissner*

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