

ESTTA Tracking number: **ESTTA884132**

Filing date: **03/19/2018**

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	VAPORUS HOLDINGS INC.		
Entity	Corporation	Citizenship	Canada
Address	9704 Route Transcanadienne Montreal, QC H4S 1V9 CANADA		

Attorney information	FREDERICK PINTO PINTO LEGAL 99 Prince Street Suite 701 Montreal, QC H3C 2M7 CANADA Email: fpinto@pintolegal.ca, mchevalier@pintolegal.ca, aperillat@pintolegal.ca Phone: +1-514-941-3551		
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### Registrations Subject to Cancellation

Registration No.	4802101	Registration date	09/01/2015
Registrant	Vaporous Technologies, LLC 2170 W. 190th St. Torrance, CA 90504 UNITED STATES		

### Goods/Services Subject to Cancellation

Class 034. First Use: 2013/12/31 First Use In Commerce: 2013/12/31 All goods and services in the class are subject to cancellation, namely: Portable electric oral vaporizers for smoking purposes; Parts and accessories for portable electric oral vaporizers for smoking purposes, namely, atomizers and mouthpieces sold as a component of electric oral vaporizers; and travel cases specially adapted for portable electric oral vaporizers
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### Grounds for Cancellation

Fraud on the USPTO	Trademark Act Section 14(3); In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)		
Registration No.	4802100	Registration date	09/01/2015
Registrant	Vaporous Technologies, LLC 2170 W. 190th St. Torrance, CA 90504 UNITED STATES		

## Goods/Services Subject to Cancellation

Class 034. First Use: 2013/12/31 First Use In Commerce: 2013/12/31 All goods and services in the class are subject to cancellation, namely: Portable electric oral vaporizers for smoking purposes; Parts and accessories for portable electric oral vaporizers for smoking purposes, namely, atomizers and mouthpieces sold as a component of electric oral vaporizers; and travel cases specially adapted for portable electric oral vaporizers
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Attachments	4802100_Petition_Cancel_2018-03-14.pdf(59866 bytes ) 4802101_Petition_Cancel_2018-03-14.pdf(50292 bytes )
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Signature	/FREDERICK PINTO/
Name	FREDERICK PINTO
Date	03/19/2018

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

Registration No. 4802100

**PETITION FOR CANCELLATION**

Petitioner: Vaporus Holdings Inc.  
Type: Corporation  
Country of Incorporation: Canada  
Address: 9704 Route Transcanadienne  
Montréal, QC H4S 1V9 Canada

Registrant: Vaporous Technologies, LLC  
Address: 2170 W. 190th St.  
Torrance, 90504 CA United States

Frederick Pinto  
99, Prince Street  
Suite 701  
Montreal, Quebec  
Canada, H3C 2M7

*Attorney for the Petitioner*

## PETITIONER'S PETITION FOR CANCELLATION

Vaporus Holdings, Inc. (the "**Petitioner**") believes that it is damaged by Registration No. 4802100 (the "**Cited Mark**"). Petitioner has been refused registration of its trademark VAPORUS, Serial No. 86856716, because of a likelihood of confusion with the Cited Mark. Petitioner hereby petitions to cancel the Cited Mark under the provisions of 15 U.S.C. §1064(3). The Petitioner submits the following as grounds for cancellation:

1. The Petitioner is a manufacturer and seller of vaping products, including electronic cigarettes, electronic cigarette accessories and e-liquids for use with electronic cigarettes. The Petitioner's products are meant to be used only with products that do not contain marihuana or any other illegal substance, and they are marketed accordingly.
2. Upon information and belief, Vaporous Technologies, LLC (the "**Registrant**") is a corporation with its principal place of business at 2170 W. 190th St., Torrance, 90504 CA United States.
3. On June 13, 2014, the Registrant filed with the United States Patent and Trademark Office the application to register the Cited Mark to be used in connection with the following goods:

*Portable electric oral vaporizers for smoking purposes; Parts and accessories for portable electric oral vaporizers for smoking purposes, namely, atomizers and mouthpieces sold as a component of electric oral vaporizers; and travel cases specially adapted for portable electric oral vaporizers.*

4. The Cited Mark was registered with the United States Patent and Trademark Office on September 1<sup>st</sup>, 2015.

**First Basis for Cancellation – Unlawful Use**

5. Trademarks registered with the United States Patent and Trademark Office shall be used in connection with goods and services that are lawful under the United States federal laws (*Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127*).
6. The Trademark Manual of Examining Procedure provides at s. 907 that:

*Use of a mark in commerce must be lawful use to the basis for federal registration of the mark.*

7. Upon information and belief, the Registrant is currently using the Cited Mark to sell products that are not lawful under the United States *Controlled Substance Act*.
8. Upon information and belief, the Registrant is currently using the Cited Mark to sell goods to be used for the consumption of marihuana, and is marketing these goods by promoting the use of marihuana.
9. 21 U.S.C. §§812 and 841(a)(1) prohibits the manufacturing or distribution, or possession with intent to manufacture or distribute, of marihuana.
10. Under 21 U.S.C. §863, it is unlawful for any person to sell or offer for sale drug paraphernalia.
11. 21 U.S.C. §863(d) defined "drug paraphernalia" as:  
*any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, possession of which is unlawful under this subchapter.*
12. Possession of marihuana is unlawful under 21 U.S.C. §844.

13. The Registrant is therefore using the Cited Mark strictly for unlawful use.

**Second Basis for Cancellation: Fraud**

14. The application to register the Cited Mark is filed on the basis of use in commerce under 15 U.S.C. §1051(a).

15. U.S.C. §1051(a) provides that

*(4) The applicant shall comply with such rules or regulations as may be prescribed by the Director. The Director shall promulgate rules prescribing the requirements for the application and for obtaining a filing date herein.*

16. The Trademark Manual of Examining Procedure of the United States Patent and Trademark Office provides at s. 907 that:

*Use of a mark in commerce must be lawful use to the basis for federal registration of the mark.*

17. As stated here forth, the Registrant use of the Cited Mark does not constitute lawful use under the United States *Controlled Substance Act*.

18. The United States Patent and Trademark Office relied upon the Registrant's material false statements in allowing the registration of the Cited Mark.

19. The United States Patent and Trademark Office would not have allowed the registration of the Cited Mark absent the Registrant's false statements.

**WHEREFORE**, the Petitioner requests that Registration No. 4802100 be cancelled pursuant to 15 U.S.C. §1064(3) on the basis that (1) the Cited Mark is used for unlawful purposes under the United States law and (2) the registration of the Cited Mark has been obtained by fraudulent representations to the United States Patent and Trademark Office.

Dated March 14<sup>th</sup>, 2018.

Respectfully submitted,

/FREDERICKPINTO/

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FREDERICK PINTO  
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Suite 701  
Montreal, Quebec  
Canada, H3C 2M7

*Attorney for the Petitioner*



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

Registration No. 4802101

**PETITION FOR CANCELLATION**

Petitioner: Vaporus Holdings Inc.  
Type: Corporation  
Country of Incorporation: Canada  
Address: 9704 Route Transcanadienne  
Montréal, QC H4S 1V9 Canada

Registrant: Vaporous Technologies, LLC  
Address: 2170 W. 190th St.  
Torrance, 90504 CA United States

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*any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, possession of which is unlawful under this subchapter.*
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19. The United States Patent and Trademark Office would not have allowed the registration of the Cited Mark absent the Registrant's false statements.

**WHEREFORE**, the Petitioner requests that Registration No. 4802101 be cancelled pursuant to 15 U.S.C. §1064(3) on the basis that (1) the Cited Mark is used for unlawful purposes under the United States law and (2) the registration of the Cited Mark has been obtained by fraudulent representations to the United States Patent and Trademark Office.

Dated March 14<sup>th</sup>, 2018.

Respectfully submitted,

/FREDERICKPINTO/

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