

ESTTA Tracking number: **ESTTA908602**

Filing date: **07/11/2018**

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	Viacom International Inc.		
Entity	Corporation	Citizenship	Delaware
Address	1515 Broadway New York, NY 10036 UNITED STATES		

Attorney information	Catherine E. Maxson Davis Wright Tremaine LLP 1201 Third Ave., Suite 2200 Seattle, WA 98101 UNITED STATES Email: SeattleTrademarkDocket@dwt.com, catherinemaxson@dwt.com, christinakim@dwt.com, loriwilliams@dwt.com, BrendaNixdorf@dwt.com Phone: 206-757-8098
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Registration Subject to Cancellation

Registration No.	4369749	Registration date	07/16/2013
Registrant	Youakim, George 437 W. 54th st #1a New York, NY 10019 UNITED STATES Email: gyouakim@gmail.com		

Goods/Services Subject to Cancellation

Class 041. First Use: 2012/06/01 First Use In Commerce: 2012/06/18 All goods and services in the class are subject to cancellation, namely: Presentation of live show performances; presentation of live musical performances; providing a website featuring presentation of live musical performances

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
No use of mark in commerce before application, amendment to allege use, or statement of use was filed	Trademark Act Sections 14(1) and 1(a), (c), and (d)
Abandonment	Trademark Act Section 14(3)
Dilution by blurring	Trademark Act Sections 14(1) and 43(c)
Dilution by tarnishment	Trademark Act Sections 14(1) and 43(c)
Other	Lack of bona fide intent to use the mark in U.S. commerce, pursuant to Trademark Act Section 1(b)

Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	1872329	Application Date	11/10/1993
Registration Date	01/10/1995	Foreign Priority Date	NONE
Word Mark	UNPLUGGED		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 009. First use: First Use: 1991/07/00 First Use In Commerce: 1991/07/00 pre-recorded videos featuring entertainment and applicant's television programs; musical sound recordings</p> <p>Class 025. First use: First Use: 1993/02/00 First Use In Commerce: 1993/02/00 [T-shirts]</p> <p>Class 041. First use: First Use: 1989/11/26 First Use In Commerce: 1989/11/26 entertainment services; namely, an ongoing television series featuring acousticperformances by musicians and bands</p>		

U.S. Registration No.	1933261	Application Date	12/20/1994
Registration Date	11/07/1995	Foreign Priority Date	NONE
Word Mark	UNPLUGGED		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1993/12/01 First Use In Commerce: 1993/12/01 song books		

U.S. Registration No.	2890029	Application Date	06/04/2001
Registration Date	09/28/2004	Foreign Priority Date	NONE
Word Mark	UNPLUGGED		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2002/01/01 First Use In Commerce: 2002/01/01 ENTERTAINMENT SERVICES IN THE NATURE OFRADIO PROGRAMS IN THE FIELD OF MUSIC		

U.S. Application No.	87039894	Application Date	05/17/2016
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	UNPLUGGED		

Design Mark	UNPLUGGED
Description of Mark	NONE
Goods/Services	Class 041. First use: First Use: 1989/11/26 First Use In Commerce: 1989/11/26 Entertainment services in the nature of continuing program series featuring live action, comedy and drama in the field of music and acoustic performances by musicians and bands provided through cable television, broadcast television, internet, video-on-demand, and through other forms of transmission media; providing online information in the field of entertainment concerning television programs featuring music and acoustic performances by musicians and bands

Attachments	87039894#TMSN.png(bytes) BROADWAY UNPLUGGED - Petition to Cancel.pdf(57730 bytes) Exhibit A.pdf(721833 bytes)
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Signature	/Catherine E. Maxson/
Name	Catherine E. Maxson
Date	07/11/2018

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

IN THE MATTER OF REGISTRATION

Mark: BROADWAY UNPLUGGED
Registrant: George Youakim
Reg. No.: 4369749
Registered: July 16, 2013

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	:	
VIACOM INTERNATIONAL INC.,	:	
	:	
Petitioner,	:	Cancellation No. _____
	:	
v.	:	
	:	
GEORGE YOUAKIM,	:	
	:	
Registrant.	:	
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PETITION TO CANCEL

Viacom International Inc., a Delaware corporation with its principal place of business at 1515 Broadway, New York, New York, 10036 (“Viacom” or “Petitioner”), believes that it will be damaged by Registration No. 4369749 owned by George Youakim (“Registrant”) for the designation BROADWAY UNPLUGGED (“Registrant’s Mark”) covering “presentation of live show performances; presentation of live musical performances; providing a website featuring presentation of live musical performances” in International Class 41 (the “Registration”), and hereby petitions to cancel same in accordance with 15 U.S.C. § 1064.

The specific grounds for this petition are as follows:

A. Petitioner Viacom International Inc.

1. Petitioner’s parent company, Viacom Inc., is a premier global media company that develops and delivers compelling entertainment content to audiences through a variety of

media platforms, including television, motion pictures, online and mobile.

2. Petitioner, through its divisions Viacom Media Networks and Viacom International Media Networks, has the greatest television coverage among global entertainment companies, reaching almost 530 million households in more than 180 countries and territories with 250 locally programmed and operated television channels in more than 40 languages, and through more than 500 digital media properties. Viacom Media Networks, which includes such popular and well-known networks as MTV, VH1, BET, CMT, Nickelodeon, and Comedy Central, comprises the largest portfolio of ad-supported cable networks in the United States in terms of audience share.

3. Petitioner, through Viacom Media Networks, operates the world-famous television network MTV, which rose to prominence through its music-related programming following its launch in 1981. MTV is a global youth culture and entertainment brand and one of the most-watched television networks in the United States. In September 2017, MTV reached approximately 945 million cumulative television subscribers in 179 countries worldwide.

4. Petitioner also owns and operates, among others, the website located at www.mtv.com, as well as MTV pages on the social media sites Facebook, Twitter, Instagram, and Tumblr (collectively, the “MTV Online Properties”). In the quarter ended September 30, 2017, the MTV Online Properties in the aggregate averaged approximately 11.5 million monthly unique visitors domestically and approximately 48 million content video streams each month. MTV has garnered 245 million cumulative followers across various social media platforms.

5. In November 1989, MTV launched its UNPLUGGED television series, which showcases a different musical artist, usually playing acoustic music, in each episode. Episodes

from MTV's UNPLUGGED series are available on MTV's website, other online platforms, as well as on DVD.

6. The UNPLUGGED series has enjoyed exceptional success, earning a number of awards and nominations, including a George Foster Peabody Award, a Day Time Emmy Award for *Outstanding New Approaches – Daytime Entertainment*, and 5 Prime Time Emmy Nominations for *Outstanding Variety, Music or Comedy Series* (3 nominations), *Outstanding Technical Direction/Camera/Video for a Series* (1 nomination), and *Outstanding Individual Achievement in Sound Mixing for a Variety or Music Series* (1 nomination). The UNPLUGGED series also spawned multiple soundtrack albums which garnered two Grammy Awards for *Album of the Year* (Eric Clapton and Tony Bennett), one Grammy Award for *Best Alternative Music Album* (Nirvana), and one Grammy Award for *Best Latin Pop Album* (Shakira).

7. In addition to Petitioner's common law rights in its UNPLUGGED mark, Petitioner owns the trademarks shown in the chart below, as well as the federal registrations and pending application and all of the goodwill represented by same:

Mark	Reg. No. / Ser. No.	Goods / Services	First Use
UNPLUGGED	RN: 1872329	<u>Int'l Class 09</u> : pre-recorded videos featuring entertainment and Registrant's television programs; musical sound recordings <u>Int'l Class 41</u> : entertainment services; namely, an ongoing television series featuring acoustic performances by musicians and bands	<u>Int'l Class 09</u> : July 1991 <u>Int'l Class 41</u> : November 26, 1989
UNPLUGGED	RN: 1933261	<u>Int'l Class 16</u> : songbooks	<u>Int'l Class 16</u> : December 1, 1993
UNPLUGGED	RN: 2890029	<u>Int'l Class 41</u> : entertainment services in the nature of radio programs in the field of music	<u>Int'l Class 41</u> : January 1, 2002
UNPLUGGED	SN: 87039894	<u>Int'l Class 41</u> : entertainment services in the nature of continuing program series featuring live action, comedy and drama in the field of music and acoustic performances by musicians and bands provided through cable television, broadcast television, internet, video-on-demand, and through other forms of	<u>Int'l Class 41</u> : : November 26, 1989

		transmission media; providing online information in the field of entertainment concerning television programs featuring music and acoustic performances by musicians and bands	
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In accordance with Rule 2.122 of the Trademark Rules of Practice, a current printout of the aforesaid registrations and pending application from the electronic database of the PTO showing the current status and title of the registration is attached hereto as Exhibit A and submitted into evidence on behalf of Petitioner. (Petitioner’s UNPLUGGED marks referenced in the table above will hereinafter be referred to collectively as the “UNPLUGGED Marks.”) Registration Nos. 1872329, 1933261, and 2890029 for the mark UNPLUGGED are also incontestable pursuant to 15 U.S.C. § 1065.

8. Petitioner’s UNPLUGGED Marks are distinctive and became famous long prior to the filing and/or priority date of Registrant’s application to register Registrant’s Mark and, upon information and belief, long prior to any use of Registrant’s Mark in United States commerce by Registrant.

9. As a result of the long, extensive and widespread use and promotion of Petitioner’s UNPLUGGED Marks, consumers have become accustomed to associating marks that consist of or contain the term UNPLUGGED with Petitioner, particularly when used in connection with music or music-related goods or services.

B. Registrant George Youakim

10. Upon information and belief, Registrant is an Australian individual with an address of 437 W. 54th Street, #1A, New York 10019.

11. On or about April 23, 2012, Registrant filed an application to register BROADWAY UNPLUGGED in connection with “presentation of live show performances; presentation of live performances; providing a website featuring presentation of live

performances” in International Class 41 on an intent to use basis, pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. §1051(b) (the “Application”).

12. On or about November 9, 2012, Registrant amended the application to cover “presentation of live show performances; presentation of live musical performances; providing a website featuring presentation of live musical performances” in International Class 41 (“Registrant’s Services”) and disclaimed the exclusive right to use “BROADWAY” apart from BROADWAY UNPLUGGED as a whole.

13. On or about April 23, 2013, Registrant filed a Statement of Use stating that Registrant’s Mark was “in use in commerce on or in connection with all of goods/services” and that the designation had been “first used in commerce at least as early as 06/18/2012, and is now in use in such commerce,” pursuant to Section 1(d) of the Lanham Act, 15 U.S.C. § 1051(d) (the “Statement of Use”).

14. Registrant submitted a specimen with the Statement of Use described as “the social marketing budget for Broadway Unplugged, and also shows the online presence of the show through its website www.broadwayunplugged.com. There is also a PDF of a press release showing the return season of Broadway Unplugged” (the “Specimen”).

15. The second page of the Specimen, which appears to be the home page of www.broadwayunplugged.com, states “Launched June 18th 2012 in Sydney, Broadway Unplugged played a successful first season in Sydney and Brisbane.”

16. The third and fourth pages of the Specimen, which appear to be a press release, states “*Broadway Unplugged*, Sydney’s favourite industry event is returning for a new year of entertainment, kicking off at The Vanguard in Newtown on Monday January 25.” The press

release states that the address of The Vanguard is “42 King Street, Newtown,” which upon information and belief, is located in a suburb of Sydney, Australia.

17. On or about July 16, 2013, the United States Patent and Trademark Office (the “USPTO”) issued the Registration.

18. The Application, and the resulting Registration, is without Petitioner’s authorization, consent, or prior knowledge.

19. Upon information and belief, Registrant did not have the requisite intent to use Registrant’s Mark as a trademark in United States commerce in connection with “presentation of live show performances; presentation of live musical performances; providing a website featuring presentation of live musical performances” in International Class 41(as amended) at the time he filed the Application.

20. Upon information and belief, Registrant was not using Registrant’s Mark as a trademark in United States commerce in connection with “presentation of live show performances; presentation of live musical performances; providing a website featuring presentation of live musical performances” in International Class 41 as stated in his sworn declaration at the time he filed the Statement of Use.

21. Upon information and belief, Registrant is not currently using, nor has he used since the issuance of the Registration, Registrant’s Mark as a trademark in United States commerce in connection with “presentation of live show performances; presentation of live musical performances; providing a website featuring presentation of live musical performances” in International Class 41.

COUNT I
LIKELIHOOD OF CONFUSION

22. Petitioner repeats and realleges each and every allegation set forth in paragraphs 1 through 21 hereof as if fully set forth herein.

23. Petitioner's UNPLUGGED Marks are highly distinctive in relation to Petitioner's products and services. Further, due to the success of Petitioner's products and services bearing Petitioner's UNPLUGGED Marks over a period of over 25 years, the UNPLUGGED Marks have become famous in the United States.

24. Petitioner used and/or registered its UNPLUGGED Marks long prior to the filing and/or priority date of the Application and, upon information and belief, long prior to any use of Registrant's Mark in United States commerce by Registrant, giving Petitioner priority in the rights to its UNPLUGGED Marks over Registrant.

25. Registrant's Mark so resembles Petitioner's aforementioned previously used, and/or registered UNPLUGGED Marks that it is likely, when used in connection with Registrant's Services, to cause confusion, to cause mistake, or to deceive, with consequent injury to Petitioner and the public. This is particularly likely given that "BROADWAY" has been disclaimed, which demonstrates that UNPLUGGED is the dominant portion of the Registrant's mark.

26. Specifically, and without limitation, the marketing and sale of Registrant's Services under Registrant's Mark is likely to cause consumers to believe that Registrant's Services are those of Petitioner, that Registrant's Services are connected with Petitioner's products and services, and/or that Registrant is somehow related to or sponsored by Petitioner, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

COUNT II
NON-USE

27. Petitioner repeats and realleges each and every allegation set forth in paragraphs 1 through 26 hereof as if fully set forth herein.

28. On or about April 23, 2013, Registrant submitted to the USPTO a Statement of Use with a sworn declaration that Registrant's Mark was in use in commerce in connection with all of the services in the Registration.

29. Upon information and belief, Registrant was not using Registrant's Mark in connection with all of the services in the Registration in United States commerce at the time it submitted the Statement of Use.

30. Upon information and belief, Registrant has not used Registrant's Mark in connection with all of the services in the Registration in United States commerce at any time since the issuance of the Registration.

31. Accordingly, Registrant has not fulfilled the requirements under Section 1(d) of Lanham Act, 15 U.S.C. § 1051(d).

COUNT III
ABANDONMENT

32. Petitioner repeats and realleges each and every allegation set forth in paragraphs 1 through 31 hereof as if fully set forth herein.

33. In the alternative, if Registrant did have use of Registrant's Mark in connection with all of the services in the Registration in United States commerce at the time Registrant submitted the Statement of Use, upon information and belief, Registrant has not used Registrant's Mark in connection with one or more of Registrant's Services for at least three consecutive years in United States commerce.

34. Upon information and belief, Registrant has no intent to resume use of Registrant's Mark in connection with one or more of Registrant's Services in United States commerce.

35. Accordingly, Registrant's Mark has been abandoned, pursuant to Section 14(3) of the Lanham Act, 15 U.S.C. § 1064(3).

COUNT IV
LACK OF BONA FIDE INTENT

36. Petitioner repeats and realleges each and every allegation set forth in paragraphs 1 through 35 hereof as if fully set forth herein.

37. Upon information and belief, Registrant did not have a *bona fide* intent to use Registrant's Mark in connection with each of Registrant's Services in United States commerce on the date that Registrant filed the Application.

38. The Application, and the resulting Registration, is therefore void *ab initio*, pursuant to 15 U.S.C. § 1051(b).

COUNT V
DILUTION

39. Petitioner repeats and realleges each and every allegation set forth in paragraphs 1 through 38 hereof as if fully set forth herein.

40. Petitioner's UNPLUGGED Marks are highly distinctive in relation to Petitioner's products and services and, due to the success of Petitioner's products and services bearing Petitioner's UNPLUGGED Marks over a period of over 25 years, the marks have become famous in the United States.

41. Petitioner's UNPLUGGED Marks became famous long before the filing and/or priority date of the Application and, upon information and belief, long prior to any use of Registrant's Mark in United States commerce by Registrant.

42. Relevant consumers are likely to associate Registrant's Mark with Petitioner's UNPLUGGED Marks.

43. Registrant's Mark is likely to impair the distinctiveness of Petitioner's UNPLUGGED Marks.

44. Registrant's Mark is likely to blur or tarnish the public's positive associations with Petitioner's UNPLUGGED Marks.

45. Thus, the Registration is likely to cause dilution of the distinctive quality of Petitioner's UNPLUGGED Marks in violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125, causing injury to Petitioner.

WHEREFORE, Petitioner prays that this Petition to Cancel be sustained and that Registration No. 4369749 be cancelled.

Dated this 11th day of July, 2018.

Davis Wright Tremaine LLP
Attorneys for Viacom International Inc.

/Catherine E. Maxson/
By: Catherine E. Maxson
Christina Kim
1201 Third Ave., Suite 2200
Seattle, WA 98101
(206)757-8098

EXHIBIT A



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Typed Drawing

Word Mark	UNPLUGGED
Goods and Services	IC 009. US 036. G & S: pre-recorded videos featuring entertainment and applicant's television programs; musical sound recordings. FIRST USE: 19910700. FIRST USE IN COMMERCE: 19910700
	(CANCELLED) IC 025. US 022 039. G & S: [T-shirts]. FIRST USE: 19930200. FIRST USE IN COMMERCE: 19930200
	IC 041. US 107. G & S: entertainment services; namely, an ongoing television series featuring acoustic performances by musicians and bands. FIRST USE: 19891126. FIRST USE IN COMMERCE: 19891126
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	74461389
Filing Date	November 10, 1993
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	October 18, 1994
Change In Registration	CHANGE IN REGISTRATION HAS OCCURRED
Registration Number	1872329
Registration Date	January 10, 1995
Owner	(REGISTRANT) Viacom International, Inc. CORPORATION DELAWARE 1515 Broadway New York NEW YORK 10036
	(LAST LISTED OWNER) VIACOM INTERNATIONAL INC. CORPORATION DELAWARE 1515 BROADWAY NEW YORK NEW YORK 10036
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	JOSEPH MOLKO

Type of Mark TRADEMARK. SERVICE MARK
Register PRINCIPAL
Affidavit Text SECT 15. PARTIAL SECT 8 (6-YR). SECTION 8(10-YR) 20150610.
Renewal 2ND RENEWAL 20150610
Live/Dead Indicator LIVE

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Word Mark UNPLUGGED

Goods and Services IC 016. US 002 005 022 023 029 037 038 050. G & S: song books. FIRST USE: 19931201.
FIRST USE IN COMMERCE: 19931201

Mark Drawing Code (1) TYPED DRAWING

Serial Number 74613446

Filing Date December 20, 1994

Current Basis 1A

Original Filing Basis 1A

Published for Opposition August 15, 1995

Registration Number **1933261**

Registration Date November 7, 1995

Owner (REGISTRANT) Viacom International Inc. CORPORATION DELAWARE 1515 Broadway
New York NEW YORK 10036

(LAST LISTED OWNER) VIACOM INTERNATIONAL INC. CORPORATION DELAWARE
1515 BROADWAY NEW YORK NEW YORK 10036

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record Joseph Molko

Prior Registrations 1872329

Type of Mark TRADEMARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20150923.

Renewal 2ND RENEWAL 20150923

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Typed Drawing

Word Mark	UNPLUGGED
Goods and Services	IC 041. US 100 101 107. G & S: ENTERTAINMENT SERVICES IN THE NATURE OF RADIO PROGRAMS IN THE FIELD OF MUSIC. FIRST USE: 20020101. FIRST USE IN COMMERCE: 20020101
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	78067196
Filing Date	June 4, 2001
Current Basis	1A
Original Filing Basis	1B
Published for Opposition	October 23, 2001
Registration Number	2890029
Registration Date	September 28, 2004
Owner	(REGISTRANT) VIACOM INTERNATIONAL INC. CORPORATION DELAWARE 1515 BROADWAY NEW YORK NEW YORK 10036 (LAST LISTED OWNER) VIACOM INTERNATIONAL INC. CORPORATION DELAWARE C/O LAURIE LAWRENCE-DILLON 1515 BROADWAY NEW YORK NEW YORK 10036
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	DANIEL CHUNG
Prior Registrations	1872329;2149704
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20140908.
Renewal	1ST RENEWAL 20140908 LIVE

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UNPLUGGED

Word Mark	UNPLUGGED
Goods and Services	IC 041. US 100 101 107. G & S: Entertainment services in the nature of continuing program series featuring live action, comedy and drama in the field of music and acoustic performances by musicians and bands provided through cable television, broadcast television, internet, video-on-demand, and through other forms of transmission media; providing online information in the field of entertainment concerning television programs featuring music and acoustic performances by musicians and bands. FIRST USE: 19891126. FIRST USE IN COMMERCE: 19891126
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	87039894
Filing Date	May 17, 2016
Current Basis	1A
Original Filing Basis	1A
Owner	(APPLICANT) VIACOM INTERNATIONAL INC. CORPORATION DELAWARE 1515 Broadway New York NEW YORK 10036
Attorney of Record	Jamie E. Platkin
Prior Registrations	1872329;1933261;2890029
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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