

ESTTA Tracking number: **ESTTA997308**

Filing date: **08/23/2019**

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	114 Kenmare Associates, LLC		
Entity	limited liability company	Citizenship	New York
Address	106 Kenmare Street New York, NY 10012 UNITED STATES		

Attorney information	Tamara Carmichael OLSHAN FROME WOLOSKY LLP 1325 Avenue of the Americas New York, NY 10019 UNITED STATES tcarmichael@olshanlaw.com, aprovenio@olshanlaw.com 2124512300		
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Registration Subject to Cancellation

Registration No.	2675647	Registration date	01/14/2003
Registrant	DAVILA, FRIEDRICH KARL COLON 384 SECTOR JUAREZ GUADALAJARA, 44680 MEXICO		

Goods/Services Subject to Cancellation

Class 042. First Use: 1995/01/01 First Use In Commerce: 2000/08/18 All goods and services in the class are subject to cancellation, namely: RESTAURANTS AND BARS

Grounds for Cancellation

Abandonment	Trademark Act Section 14(3)
Fraud on the USPTO	Trademark Act Section 14(3); In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)

Attachments	Petition to Cancel LAS 9 ESQUINAS 2675647.pdf(404267 bytes)
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Signature	/Tamara Carmichael/
Name	Tamara Carmichael

Date	08/23/2019
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of U.S. Trademark Registration No. 2675647: LAS 9 ESQUINAS

114 Kenmare Associates, LLC,)	
Petitioner,)	
)	Cancellation No. _____
v.)	
)	
Friedrich Karl Davila,)	
_____ Respondent.)	

PETITION FOR CANCELLATION

Petitioner, 114 Kenmare Associates, LLC, believes that it will be damaged by the maintenance of U.S. Trademark Registration No. 2675647 on the Principal Register, and hereby petitions to cancel same under 15 U.S.C. §1064. As grounds for cancellation, Petitioner asserts:

1. 114 Kenmare Associates, LLC (“Petitioner”) is a New York limited liability company having a principal place of business at 106 Kenmare Street, New York, New York 10012.
2. Upon information and belief, Friedrich Karl Davila (“Respondent”) is a Mexico citizen having an address at 384 Sector Juarez, Guadalajara, Mexico 44680.
3. On January 14, 2003, LAS 9 ESQUINAS (“Respondent’s Mark”), owned by Respondent, registered on the Principal Register under U.S. Trademark Registration No. 2675647 for “restaurants and bars” in International Class 042.

COUNT I – ABANDONMENT

4. Petitioner realleges the allegations in Paragraphs 1 through 3.
5. Respondent obtained Registration No. 2675647 on January 14, 2003 and claims a date of first use in commerce as of August 18, 2000 for the LAS 9 ESQUINAS mark.
6. Petitioner is informed and believes that Respondent has since abandoned use, if

any, of the mark in U.S. Registration No. 2675647 with no intent to resume use.

7. Petitioner is informed and believes that the LAS 9 ESQUINAS mark is not being used by Respondent.

8. Petitioner is informed and believes that Respondent does not have *bona fide* use of the LAS 9 ESQUINAS mark in U.S. commerce.

COUNT II – FRAUD

9. Petitioner realleges the allegations in Paragraphs 1 through 8.

10. According to the USPTO records, on September 1, 2000, Respondent filed an application to register U.S. Registration No. 2675647 based upon an intent to use and on October 7, 2002 filed a statement of use. In reliance upon Respondent's statements made in the statement of use, the USPTO issued the registration for this mark on January 14, 2003.

11. In order to maintain this registration, Respondent thereafter filed declarations of use under Lanham Act, Section 8, on January 16, 2008 and on July 24, 2012.

12. Petitioner is informed and believes that the LAS 9 ESQUINAS mark is not being used by Respondent on any or all of the services in the Registration.

13. Respondent submitted knowingly false and deceptive statements to the USPTO at the time of filing the statement of use.

14. Respondent knew that the statements made to the USPTO in the statement of use were false and deceptive when Respondent made them. Namely, Respondent knew that the mark was not in use in commerce for all of the services in the application.

15. Respondent submitted knowingly false and deceptive statements to the USPTO at the time of filing the declarations of use pursuant to Lanham Act, Section 8.

16. Respondent knew that the statements made to the USPTO in the declarations of use were false and deceptive when Respondent made them. Namely, Respondent knew that

the mark was not in use in commerce for all of the services in the application.

17. Respondent made the knowingly false statements with the intent to procure and maintain a U.S. trademark registration to which it was not entitled.

18. The USPTO relied upon Respondent's knowingly false and deceptive statements in issuing and maintaining the registration. Had the USPTO known the true facts, the USPTO would not have issued or allowed the registration.

19. Petitioner is informed and believes that Respondent does not have *bona fide* use of the LAS 9 ESQUINAS mark in U.S. commerce.

WHEREFORE, Petitioner prays that U.S. Trademark Registration No. 2675647 be cancelled and that this Petition for Cancellation be sustained in favor of Petitioner.

Please debit our Deposit Account No. 504261 for the filing fee and for any additional necessary fees.

Please address all correspondence to: Tamara Carmichael, Esq., OLSHAN FROME WOLOSKY LLP, 1325 Avenue of the Americas, New York, New York 10019.

OLSHAN FROME WOLOSKY LLP

Date: August 23, 2019

/s/ Tamara Carmichael
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