

ESTTA Tracking number: **ESTTA1079958**

Filing date: **09/04/2020**

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	Miguel A Vidal Pulido		
Entity	Individual	Citizenship	MEXICO
Address	83244 US HIGHWAY 111 INDIO, CA 92201 UNITED STATES		

Correspondence information	MIGUEL A VIDAL PULIDO 83244 US HIGHWAY 111 INDIO, CA 92201 UNITED STATES Primary Email: gp@lopezprajin.com 9497061141		
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**Registration Subject to Cancellation**

Registration No.	5985963	Registration date	02/11/2020
Registrant	RAMIREZ-CEBALLOS, JORGE ERNESTO ZARAGOZA 124 - A SAN PEDRO TLAQUEPAQUE, 45200 MEXICO		

**Goods/Services Subject to Cancellation**

Class 041. First Use: 2019/02/17 First Use In Commerce: 2019/02/17 All goods and services in the class are subject to cancellation, namely: Entertainment services in the nature of presenting live musical performances
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**Grounds for Cancellation**

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
Dilution by blurring	Trademark Act Sections 14(1) and 43(c)
Other	Registrant's group is Passing off as Petitioner,'s group creating a false connection between Registrant's and Petitioner's Group

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

U.S. Application No.	88900353	Application Date	05/04/2020
Registration Date	NONE	Foreign Priority	NONE

		Date	
Word Mark	BANDA MAGUEY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 1991/04/01 First Use In Commerce: 1994/05/01 Entertainment, namely, live music concerts		

Attachments	Original BAnda Maguey_Cancellation.pdf(163148 bytes )
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Signature	/GLP/
Name	George L Prajin
Date	09/04/2020

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

In the Matter of Registration No. 5985963

Date of Issue: February 11, 2020

MIGUEL ANGEL VIDAL PULIDO

Petitioner,

v.

Cancellation No.:

JORGE ERNESTO RAMIREZ- CEBALLOS,

Registrant.

Trademark Trial and Appeal Board  
U.S. Patent and Trademark Office  
P.O. Box 1451  
Alexandria, VA 22313-1451

**PETITION FOR CANCELLATION**

Petitioner Miguel Angel Vidal Pulido, a Mexican Citizen, having a place of business at 83244 US Hwy 111, Indio, California 92201 (“Petitioner Pulido”), believes that he will be damaged by Registration No. 5985963, and hereby petitions to cancel the same.

As grounds therefore, it is alleged that:

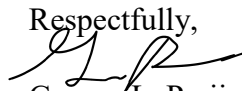
1. On or about April 1991, in Villa Corona, Jalisco, México, Petitioner Pulido along with Ernesto Solano Perez, Ibarra Torres Jose Martin Gerard, Luis Antonio Placencia, Samuel Vidal Pulido, Fernando Guardado Rosales, Francisco Ricardo Mendoza, Nelson Alejandro Mendoza, Jose Luis Mendoza Rosas, and Francisco Javier Bueno Hernandez formed the musical group known as Banda Maguey.
2. Petitioner Pulido first used the Banda Maguey trademark, at least as early as April 1991, and first used in commerce in the United States, at least as early as May 1, 1994, and is now in use in such commerce.
3. Petitioner Pulido, possesses a property right to commercially exploit the Banda Maguey Trademark and recognized and did so commercially exploit such right throughout the World, including without limit, the United States, consecutively for over 25 years, by: 1) recording and releasing over 16 albums, and by allowing such albums to be released in return for compensation; and 2) performing live musical concerts at venues throughout the United States.
4. Petitioner Pulido has the right to exploit in commerce the Banda Maguey Trademarks.
5. For over 25 years, Petitioner Pulido, has expended great time and money building the musical group's recognition by the public as Banda Maguey.
6. Petitioner Pullido, has developed extensive goodwill throughout the United States with respect to the Banda Maguey trademark.
7. Petitioner Pulido has spent substantial sums in the advertising and promotion under its Banda Maguey trademark throughout the United States.
8. By dint of its methods and the expenditure of considerable sums for promotional activities, advertising, and by virtue of the massive public interest and news coverage of Banda Maguey and excellence of its products and services, the Petitioner Pulido has inherited and garnered for his Banda Maguey trademark a most valuable reputation.

9. On January 15, 2019, the Registrant, filed application Serial No. 88262127 for the mark LA ORIGINAL BANDA MAGUEY !Y... PURO VILLA CORONA! Y SIGUE, Y SIGUE, in International Class 41, for the following services: “Entertainment services in the nature of presenting live musical performances” claiming a first use date in commerce of February 17, 2019 (“Registrant’s Mark”). Registrant’s Mark matured into registration number on February 11, 2020.
10. On May 4, 2020, Peitioner filed application Serial No. 88900353 for the Mark Banda Maguey in in International Class 41, for the following services: “Entertainment, namely, live music concerts”, claiming a first use date in commerce of May 1, 1994 (“Petitioner’s Mark”).
11. Registrant’s Mark is a substantial duplicate of Petitioner’s Mark and is applied to services which are used to provide the identical services as those provided by the Petitioner Pulido. Therefore, the use and registration thereof by Registrant’s Mark is likely to cause confusion, mistake, or deception within the meaning of Section 2(d) of the Trademark Act.
12. Further, a false connection between Petitioner’s group Banda Maguey and Registrant’s Group can be presumed. Registrant is passing off on Banda Maguey’s good will and secondary meaning and would wrongfully benefit form Petitioner’s good will and secondary meaning in his Banda Maguey marks. Moreover, even if such person should notice any difference whatever between the Petitioner’s Mark and the Registrant’s Mark, they would nevertheless be likely to believe and would be justified in so believing that the Registrant’s Mark and the Petitioner’s Mark are, in fact companion marks used by the same provider of services. Any such confusion in trade might result in loss of sales to the Petitioner. Furthermore, any defect, objection or fault found with the Registrant’s services marketed under its mark would necessarily reflect upon and seriously injure the reputation which the Petitioner has established for its services and products provided and merchandised under its mark.
13. Petitioner, prior to Registrant, in most geographically distinct market areas in the United States, has used the mark Banda Maguey for over 25 years, long prior to any use, if at all, by the Registrant of his mark. Petitioner’s Mark is clearly the senior mark with prior use.

14. Registrant's commercial use of the Maguey Registration has or will interfere with Petitioner's valuable property right to commercially exploit his Banda Maguey trademark, and amounts to a conversion of such rights from which Registrant has or will reap financial profit.
15. Petitioner is damaged and will continue to be damaged because Registrant's continued registration of the Banda Maguey trademark mark stands as a bar to Petitioner's ability to federally register and protect his senior Banda Maguey trademark.
16. If the Registrant is permitted to retain the registration sought to be cancelled, and thereby at least a *prima facie* exclusive right to the use of its mark, such registration would be a source of damage and injury to the Petitioner.
17. WHEREFORE, Registrant prays that the Cancellation be sustained and Registrant's Mark be Cancelled.

A duplicate copy of this Petition and the fee required in § 2.6(a)(16) is enclosed herewith.

WHEREFORE, the Petitioner prays that Registration No. 2198067 issued October 20, 1998 be cancelled.

Respectfully,  
  
George L. Prajin, Esq., LL.M.  
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Petition to Cancel via mail to:

RAMIREZ- CEVALLOS, JORGE ERNESTO  
ZARAGOZA 124 - A  
SAN PEDRO TLAQUEPAQUE MEXICO 45200

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September 4, 2020

George L. Prajin, Esq. L.LM