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

Proceeding	92075108
Party	Plaintiff Miguel A Vidal Pulido
Correspondence Address	GEORGE L PRAJIN LOPEZ AND PRAJIN 500 NEWPORT CENTER DRIVE SUITE 600 NEWPORT BEACH, CA 92660 UNITED STATES Primary Email: gp@lopezprajin.com 949-706-1141
Submission	Other Motions/Submissions
Filer's Name	george l prajin
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Date	12/10/2020
Attachments	Pulido Response to Motion to Dismiss.pdf(218097 bytes) Pulido Response to Motion to Dismiss Notice of Reliance.pdf(116126 bytes) Pulido Response to Motion to Dismiss Ex A.pdf(190112 bytes) Pulido Response to Motion to Dismiss Ex B.pdf(102270 bytes)

**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.: 92075108

JORGE ERNESTO RAMIREZ- CEBALLOS,

Registrant.

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

**PETITIONER’S RESPONSE TO REGISTRANT’S MOTION TO DISMISS THE
AMENDED PETITION TO CANCEL**

Petitioner MIGUEL ANGEL VIDAL PULIDO, an individual (“Petitioner”) hereby responds to and opposes to the Motion to Dismiss the Amended Petition to Cancel Registration No. 5,985,963 (the “Mark”) pursuant to Rule 12(b) of the Federal Rules of Civil Procedure (“FRCP”) and Trademark Board Manual of Procedure (“TBMP”) § 503 filed with the Trademark Trial and Appeal Board (the “Board”) by Registrant JORGE ERNESTO RAMIREZ-CEBALLOS, an individual’s (“Registrant”) on or about November 20, 2020 (the “Motion”).

I. INTRODUCTION

Registrant's damage to Petitioner's more than 25 years of use of, and investment in, the Banda Maguey name now embodied in Petitioner's Mark grants Petitioner the standing needed to assert his Petition for Cancellation of the Mark based on likelihood of confusion and other grounds. The Board therefore has clear jurisdiction to consider the Mark's cancellation, even if one such ground – cancellation based on fraud – is not pleaded with specificity. And if the Board finds that Petitioner has not adequately plead sufficient specificity for his claim of cancellation based on fraud, leave to amend to allow Petitioner the opportunity to plead additional facts must be granted.

II. STATEMENT OF FACTS

1. In or about April 1991, in Villa Corona, Jalisco, México, Petitioner 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 (collectively, the "Founding Members") formed the musical group known as Banda Maguey.
2. In or about April 1991, Petitioner and the Founding Members formed a Mexican Partnership (the "Partnership") to conduct all business relating to Banda Maguey and to commercially exploit the Banda Maguey Trademark.
3. The Partnership first used the Banda Maguey Trademark in commerce in the United States at least as early as April 1991, first used the Banda Maguey Trademark in commerce in the United States at least as early as May 1, 1994, and is now using the Banda Maguey Trademark in such commerce.

4. On August 8, 1997, the Partnership applied for a trademark registration with the United States Patent and Trademark office (“USPTO”). The application matured into Registration No. 2198067 on October 20, 1998 (the “Maguey Registration”).
5. On November 12, 2006, the Partnership assigned its rights in the Maguey Registration to Petitioner.
6. Thereafter, the Partnership was dissolved and Petitioner and the then members of Banda Maguey formed a Mexican Corporation under the name Xopillyn SC (“Xopillyn”) to conduct Banda Maguey business and commercially exploit the Banda Maguey Trademark.
7. In conjunction with such dissolution, Petitioner assigned his rights in the Maguey Registration to Xopillyn, of which he was an owner.
8. On March 23, 2018, Jose Rosario Cisneros, wrongfully assigned Xopillyn’s rights in the Maguey Registration to Registrant.
9. Because neither Petitioner nor any of the owners of Xopillyn with authority to authorize the transfer ever consented to the March 23, 2018 assignment from Xopillyn to Registrant, such assignment was invalid.
10. Registrant knew that the March 23, 2018 assignment was not authorized by the relevant owners of Xopillyn, but knowingly filed the fraudulent assignment with the USPTO anyway in order to fraudulently procure the Maguey Registration.
11. On January 15, 2019, 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 “Entertainment services in the nature of presenting live musical performances” and with a claimed first use date in

commerce of February 17, 2019 (the “Mark”). The Mark, based in part on Registrant’s claim to ownership of the fraudulently obtained Maguey Registration, via a May 15, 2019 Response to Office Action, matured into registration number 5985963 on February 11, 2020.

12. Accordingly, Registrant knowingly made false statements to the USPTO regarding Registrant’s ownership of the Maguey Registration obtained by way of a knowingly false assignment, with the intent to induce authorized agents at the USPTO to grant registration of the Mark. And, in fact, the USPTO reasonably relied upon such statements to grant registration of the Mark.
13. Thus, after filing application Serial No. 88900353 on May 4, 2020 for the mark BANDA MAGUEY in in International Class 41, for “Entertainment, namely, live music concerts” services and with a first use date in commerce of May 1, 1994 (“Petitioner’s Mark”), Petitioner filed his initial Petition to cancel the Mark on September 4, 2020.
14. At around the same time, on June 5, 2019, Petitioner filed a Petition to Cancel the Maguey Registration, bearing Case No. 92071438, on the basis that such registration was procured by fraud (the “Prior Petition to Cancel”). The Board granted the Prior Petition on September 28, 2019.
15. As alleged in the Petition, Petitioner possesses a property right to commercially exploit the Banda Maguey Trademark and recognized and did exploit such right consecutively for over 25 years throughout the World, including the United States, by: 1) recording and releasing, or allowing to be released in exchange for

compensation, over 16 albums; and 2) performing live musical concerts at venues throughout the United States.

16. For over 25 years, Petitioner, along with Banda Maguey's members, have also expended great time and money building the musical group's recognition by the public as Banda Maguey.

17. Petitioner, along with Banda Maguey's members, have therefore developed extensive goodwill throughout the United States with respect to the Banda Maguey Trademark.

18. Petitioner, along with Banda Maguey's members, have further spent substantial sums in the advertising and promotion under the Banda Maguey Trademark throughout the United States.

19. As a result of 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, Petitioner has inherited and garnered for the Banda Maguey Trademark a most valuable reputation.

20. On October 14, 2020, Registrant filed a Motion to Dismiss the Petition pursuant to FRCP 12(b)(6) of the Federal Rules of Civil Procedure.

21. On October 28, 2020, Petitioner filed the Amended Petition at issue here, on the grounds that the Mark is a substantial duplicate of Petitioner's Mark applied to identical services and is therefore likely to cause confusion, mistake, or deception within the meaning of Section 2(d) of the Trademark Act, as well as a false connection between Petitioner's group Banda Maguey and Registrant, which will

result in damage and injury to Petitioner from the interference with Petitioner's valuable senior rights to commercially exploit the Banda Maguey Trademark.

III. THE BOARD HAS JURISDICTION OVER THIS PETITION

As Registrant admits, the Board is an administrative agency empowered to determine the right to register a trademark. 15 U.S.C. §§ 1067 & 1068. If a mark has been on the Principal Register for less than five years, the Board has jurisdiction to determine cancellation of a registration on “any grounds that would have prevented registration in the first place...” *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 945-946 (Fed. Cir. 2000) A common ground for cancellation is where a likelihood of confusion, pursuant to Section 2 of the Lanham Act, exists between the mark sought to be cancelled and a mark for which the party seeking cancellation can establish prior use or prior registration. *Cunningham*, 222 F.3d at 946; see also 3 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* § 20:41 (4th ed. 1996 & Sup.1999)

The Mark Petitioner seeks to cancel here has been registered to the Principal Register since February 11, 2020 (i.e., less than five years), and therefore the Board has jurisdiction to determine *several* grounds for cancellation sought via the Petition. Most notably, the Petition seeks cancellation of the Mark because “the use and registration of the Mark is likely to cause confusion, mistake, or deception within the meaning of Section 2(d) of the Trademark Act.” Given Petitioner’s Mark’s priority rights by way of significant prior use over more than 25 years, cancellation of the Mark under such basis is well within the Board’s jurisdiction to determine.

Although it is not the only – or even primary – basis of cancelation, the Petition *also* seeks cancellation of the Mark on the grounds that Registrant knowingly made fraudulent statements to the USPTO regarding Registrant’s rights in the Maguey Registration initially was standing in the way of Registrant obtaining the Mark. The Board has jurisdiction over this question nonetheless.

Conolty v. Conolty O'Connor NYC LLC, 111 U.S.P.Q. 2d 1302, 1309 (TTAB 2014); see also *Holiday Inn v. Holiday Inns, Inc.*, 534 F.2d 312 (CCPA 1976) (“One must be the owner of a mark before it can be registered.”) Furthermore, the Board is authorized to determine issues of contract or corporate law when such issues relate to the question of whether an application was void as contended here. *Argo & Co., Inc. v. Springer et al.*, 189 U.S.P.Q. 581 (TTAB 1976) (Finding that an attempt to incorporate had been defective and that ownership of the mark actually lay with the individuals behind the attempted incorporation.)

The Board is thus authorized to consider the Petition to cancel the Mark on the basis of likelihood of confusion and other grounds.

IV. PETITIONER HAS STANDING TO BRING CANCELLATION ACTION

Standing to bring a cancellation petition is conferred by Section 13 of the Lanham Act to any person with a belief that such person would suffer some kind of damage if the mark at issue is registered. *Ritchie v. Simpson*, 170 F.3d 1092, 1095 (Fed. Cir. 1999) (citing 15 U.S.C. § 1063.). To assert standing, two additional judicially created requirements must be established beyond the requirements set forth in Section 13. “[T]he opposer must have a ‘real interest’ in the proceedings and must have a ‘reasonable’ basis for his belief of damages.” *Ritchie*, 170 F.3d at 1095.

First, Petitioner has established a “real interest” in this proceeding because Petitioner has filed for Petitioner’s Mark on the basis of his continuous use of the Banda Maguey Trademark in commerce for over 25 years. Petitioner has also set forth that whatever rights Xopillyn previously possessed in the Maguey Registration were terminated when Petitioner’s Prior Petition to Cancel on the basis of Registrant’s fraudulent assignment of such registration was granted. And even if rights in the Banda Maguey Trademark somehow reverted back to Xopillyn because it possessed the Maguey Registration for a period of time, rather than Petitioner and other band member

individually based on their use of the Banda Maguey Trademark long before Xopillyn's formation, Petitioner has established a personal ownership interest in Xopillyn.

Second, Petitioner has established a reasonable basis in fact for the existence of damages by setting forth the substantial nature of Petitioner's investment into the use, development, and promotion of the Banda Maguey Trademark over 25 years. Establishing a belief in damages is a matter for proof, but for purposes of ruling on a motion to dismiss for want of standing, a reviewing court must accept as true all well-pled and material allegations of the petition and must construe its contentions in favor of the petitioning party. *Ritchie*, 170 F.3d at 1097-1098. Here, Petitioner has properly alleged that he has expended substantial sums building and promoting Banda Maguey and the Banda Maguey Trademark over many years, and thus the confusingly similar Mark would cause commercial harm as a result of the likelihood of confusion created between it and the Banda Maguey Trademark.

Accordingly, Petitioner possesses a real interest in this proceeding, and a reasonable basis in fact for his belief that damages will occur to him if the Mark is not cancelled.

V. PETITIONER'S CLAIM FOR FRAUD IS PROPERLY PLED

A third party may petition to cancel a registered trademark on the ground that the "registration was obtained fraudulently." 15 U.S.C. § 1064(3). "Fraud in procuring a trademark registration or renewal occurs when an applicant knowingly makes false, material representations of fact in connection with his application." *In re Bose Corp.*, 580 F.3d 1240, 1243 (Fed.Cir.2009) (quoting *Torres v. Cantine Torresella S.r.l.*, 808 F.2d 46, 48 (Fed.Cir.1986)). The party seeking cancellation of a registration for fraudulent procurement bears the burden of establishing an intent to deceive – though such intent may be established through indirect and circumstantial evidence. *In re Bose Corp.*, 580 F.3d at 1243-1245.

First, as argued above, Petitioner has standing to claim fraud via his ownership of Petitioner's Mark and his 25-plus years of continuous use of the Banda Maguey Trademark in commerce, and has shown damages that will occur if Registrant is allowed to continue commercially exploiting the confusingly similar Mark. Any prior transfer of ownership of the Maguey Registration to Xopillyn is also irrelevant now that the Maguey Registration has been cancelled via the Board's granting of the Prior Petition to Cancel. But even if rights in the Banda Maguey Trademark via its previous possession of the Maguey Registration somehow reverted back to Xopillyn after the Maguey Registration's cancellation, Petitioner has set forth an ownership interest in Xopillyn as well.

Second, Petitioner has established a claim for fraud by setting forth clear and convincing evidence of Registrant's knowledge that the assignment of the since-cancelled Maguey Registration was fraudulent, which assignment formed the basis for Registrant's ability to obtain the Mark. By alleging that Petitioner as a member of Xopillyn did not consent to the assignment of the Maguey Registration, Petitioner has set forth actual *proof* that no authorization to transfer the Maguey Registration to Registrant occurred. And to the extent Registrant knew this when he represented to the USPTO via a May 5, 2019 Response to Office Action that he possessed "rights" in the Maguey Registration, Registrant knowingly used the fraudulent assignment as a means to obtain registration of the Mark.

The Board has also already agreed with Petitioner that the assignment of the Maguey Registration to Registrant was fraudulent and ineffective, granting the Prior Petition to Cancel the Maguey Registration on September 28, 2019. *See* Exhibits "A" and "B" to Petitioner's Notice of Reliance. Thus, Petitioner's claim for fraud is not "unsustainable" and premised on "a series of

unfounded conclusory allegations.” It is a claim based on actual Board precedent establishing knowingly false statements made by Registrant to the USPTO with the intent to deceive.

Accordingly, Petitioner has properly asserted a claim for fraud and the cancellation of the Mark on the basis of such claim, among others.


VI. LEAVE TO AMEND SHOULD BE GRANTED

If this Court does find any deficiencies with Petitioner’s pleaded claims, however, leave to amend the Petition should be granted before the Petition, or any of its claims, are dismissed. As set forth in TMBP § 503.03: “If no amended complaint is submitted in response to a motion to dismiss for failure to state a claim...and the Board finds...that the complaint fails to state a claim...the Board generally will allow the plaintiff an opportunity to file an amended pleading.” At a minimum, Petitioner should be given further opportunity to plead additional facts set forth by way of Petitioner’s Request for Judicial Notice here, to establish the invalidity of the assignment of the Maguey Registration to Registrant, which forms the basis of Petitioner’s claim for cancellation based on fraud.

VII. CONCLUSION

For the foregoing reasons, Registrant’s Motion should be denied and the Petition to cancel the Mark should be allowed to proceed.

Dated: December 9, 2020

Respectfully,

George L. Prajin, Esq., LLM
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Petitioner's Response to Registrant's Motion to Dismiss the Petition to Cancel was served via mail to:

Alice M. Cabrera
Solid Rep, LLC
P.O. Bo 400
Bayamon, PR 00960
Phone: 787-647-6336
acabrera@solidreptm.com

December 10, 2020

A handwritten signature in black ink, appearing to read 'G. Prajin', with a stylized flourish at the end.

George L. Prajin, Esq. L.LM

**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.: 92075108

JORGE ERNESTO RAMIREZ- CEBALLOS,

Registrant.

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

PETITIONER’S NOTICE OF RELIANCE ON OFFICIAL RECORDS

Pursuant to Rule 2.122(e) of the Trademark Rules of Practice, 37 C.F.R. § 2.122(e), and Trademark Board Manual of Procedure (“TBMP”) § 704.07, Petitioner MIGUEL ANGEL VIDAL PULIDO, an individual (“Petitioner”) hereby makes of record and notifies Registrant JORGE ERNESTO RAMIREZ-CEBALLOS, an individual’s (“Registrant”) of Petitioner’s reliance on the following records:

1. A true and correct copy of the Petition for Cancellation of U.S. Trademark No. 2198067 (the “Maguey Registration”) on file with the Trademark Trial and Appeal Board

(“Board”) and printed from the Trademark Trial and Appeal Board Inquiry System (“TTABVUE”) on or about December 9, 2020, which is attached hereto as Exhibit “A” and incorporated herein by this reference. Petitioner will rely on the entire document to show that the First Petition to Cancel the Maguey Registration was filed with the Board on the basis of Registrant’s fraudulent transfer of such registration.

2. A true and correct copy of the Judgement cancelling the Maguey Registration on file with the Board and printed from TTABVUE on or about December 9, 2020, which is attached hereto as Exhibit “B” and incorporated herein by this reference. Petitioner will rely on the entire document to show that the First Petition to Cancel the Maguey Registration based on Registrant’s fraudulent transfer of such registration was granted by the Board.

Dated: December 9, 2020

Respectfully,



George L. Prajin, Esq., LLM
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Petitioner's Notice of Reliance on Official Records was served via mail to:

Alice M. Cabrera
Solid Rep, LLC
P.O. Bo 400
Bayamon, PR 00960
Phone: 787-647-6336
acabrera@solidreptm.com

December 10, 2020

A handwritten signature in black ink, appearing to read 'G. Prajin', is written above the printed name.

George L. Prajin, Esq. L.LM

EXHIBIT “A”

ESTTA Tracking number: **ESTTA978551**

Filing date: **06/05/2019**

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	MIGUEL A VIDAL PULIDO		
Entity	Individual	Citizenship	MEXICO
Address	83244 US Hwy 111 iNDIO, CA 92201 UNITED STATES		

Attorney information	George L. Prajin Lopez and Prajin 500 Newport Center Dr SUITE 600 Newport Beach, CA 92660 UNITED STATES gp@lopezprajin.com 9497061141		
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Registration Subject to Cancellation

Registration No.	2198067	Registration date	10/20/1998
Registrant	RAMIREZ- CEVALLOS, JORGE ERNESTO ZARAGOZA 124 - A SAN PEDRO TLAQUEPAQUE, 45200 MEXICO		

Goods/Services Subject to Cancellation

Class 041. First Use: 1991/04/00 First Use In Commerce: 1994/05/00 All goods and services in the class are subject to cancellation, namely: entertainment services, namely, live performances by a musical band
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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)
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Attachments	Banda Maguey.pdf(203558 bytes)
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Signature	/GLP/
Name	GEORGE L PRAJIN
Date	06/05/2019

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

In the Matter of Registration No. 2198067

Date of Issue: October 20, 1998

MIGUEL ANGEL VIDAL PULIDO

Petitioner,

v.

Cancellation No.:

JORGE ERNESTO RAMIREZ- CEVALLOS,

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 ("Pulido"), believes that he will be damaged by Registration No. 2198067, 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. On or about April 1991, Petitioner Pulido and the Founding Members formed a Mexican Partnership (“Partnership”) to conduct all business relating to Banda Maguey and to commercially exploit the Banda Maguey Trademark.
3. The Partnership 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.
4. On August 8, 1997, the Partnership applied for a trademark registration with the United States Patent and Trademark office (“USPTO”. The application matured into Registration No. 2198067 on October 20, 1998 (“Maguey Registration”).
5. On November 12, 2006, the Partnership assigned its rights in the Maguey Registration to Petitioner Pulido.
6. On or about February 5, 2014, the Partnership was dissolved and Petitioner Pulido and the then members of Banda Maguey formed a Mexican Corporation under the name Xopillyn SC (“Xopillyn”) to conduct Banda Maguey business and commercially exploit the Banda Maguey Trademark.
7. On February 5, 2014, Petitioner Pulido assigned his rights in the Maguey Registration to Xopillyn, in which he was an owner.
8. On March 23, 2018, Jose Rosario Cisneros, wrongfully assigned Xopillyn’s rights in the Maguey Registration to Registrant Jorge Ernesto Ramirez Cevallos (“Cevallos”).
9. Because Petitioner Pulido nor any of the owners of Xopillyn ever consented to, or even knew of the March 23, 2018 assignment, the

assignment to Registrant Cevallos was invalid.

10. Registrant Cevallos knew that the March 23, 2018 assignment was not authorized by Petitioner Pulido nor the owners of Xopillyn, and therefore the registration was procured by fraud.
11. 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.
12. Petitioner Pulido has the right to exploit in commerce the Banda Maguey Trademarks, including the Maguey Registration.
13. For over 25 years, Petitioner Pulido, along with his band members, have expended great time and money building the musical group's recognition by the public as Banda Maguey.
14. Petitioner Pulido, along with Banda Maguey's members, have developed extensive goodwill throughout the United States with respect to its Banda Maguey trademark.
15. Petitioner Pulido, along with his band members, have spent substantial sums in the advertising and promotion under its Banda Maguey trademark throughout the United States.
16. 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.
17. By virtue of an ownership right in the Banda Maguey Trademark, including the Maguey Registration, Petitioner Pulido owns rights referred to in paragraph one (1) hereof and has standing to bring this petition for Cancellation of Registrant's mark.
18. Moreover, on information and belief, Registrant is not using, and has never used, the Banda Maguey trademark in

connection with live musical concerts.

19. On information and belief, Registrant was assigned the aforesaid Maguey Registration by knowingly making false or fraudulent statements and filing a fraudulent assignment to the USPTO.
20. On information and belief, said false statements and false assignment were made with the intent to induce authorized agents of the PTO to grant said registration, and reasonably relying upon the truth of said false statements, the PTO did, in fact, grant said registration to Registrant.
21. 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. Petitioner is damaged and will continue to be damaged because Registrant's continued registration of the Banda Maguey trademark stands as a bar to Petitioner's ability to federally register and protect his Banda Maguey trademark.
22. 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.
23. In view of the above allegations, Registrant is not entitled to continue registration of the alleged mark since, 1) upon information and belief Registrant committed fraud in the procurement of the subject registration.

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,
/GLP/
George L. Prajin, Esq., LLM
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

June 5, 2019

A handwritten signature in black ink, appearing to be 'G. Prajin', written in a cursive style.

George L. Prajin, Esq. L.LM

EXHIBIT “B”

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500
General Email: TTABInfo@uspto.gov

VV

September 5, 2019

Cancellation No. 92071438

Miguel A Vidal Pulido

v.

Jorge Ernesto Ramirez-Cevallos

By the Trademark Trial and Appeal Board:

On July 26, 2019, the Board issued a notice of default to Respondent because no answer had been filed.

No response to the notice of default has been filed.

Accordingly, judgment by default is hereby entered against Respondent, the petition to cancel is granted, and Registration No. 2198067 will be cancelled in due course by the Commissioner for Trademarks. *See* Fed. R. Civ. P. 55(b), and Trademark Rule 2.114(a).