

ESTTA Tracking number: **ESTTA1248889**

Filing date: **11/18/2022**

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	Trasco LLC		
Entity	LLC	Citizenship	New Jersey
Address	333B U.S. 46W BUILDING B UNIT 140 FAIRFIELD, NJ 07004 UNITED STATES		

Attorney information	MARK BERKOWITZ TARTER KRINSKY & DROGIN LLP 1350 BROADWAY, 11TH FLOOR NEW YORK, NY 10018 UNITED STATES Primary email: tmdocket@tarterkrinsky.com Secondary email(s): mberkowitz@tarterkrinsky.com 2122168000		
Docket no.	87841-14		

Registration subject to cancellation

Registration no.	5271842	Registration date	08/22/2017
Register	Principal		
International registration no.	NONE	International registration date	NONE
Registrant	COSRX INC. 5F, 231, TEHERAN-RO, GANGNAM-GU SEOUL, 06142 REPUBLIC OF KOREA		

Goods/services subject to cancellation

Class 003. First Use: Aug 22, 2014 First Use In Commerce: Jun 1, 2015 All goods and services in the class are subject to cancellation, namely: Cosmetics, namely, facial toner, facialcleansers, facial moisturizers, facial lotion, facial serums; Cosmetics for face and body, namely, skin essence, skin and body creams contained in ampules; Make-up; Eye creams; Cosmetic kits comprised of lipstick, lip gloss; Facial mask pack
--

Grounds for cancellation

Mark never used in commerce	Trademark Act Section 14(6)
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 CosRX.pdf(21070 bytes)
-------------	--

Signature	/Mark Berkowitz/
-----------	------------------

Name	Mark Berkowitz
------	----------------

Date	11/18/2022
------	------------

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

TRASCO LLC,

Petitioner,

v.

COSRX INC.,

Registrant.

Cancellation No.

Mark COSRX

Serial No. 86806138

Reg. No.: 5,271,842

Filed: November 2, 2015

Registered: October 18, 2016

PETITION FOR CANCELLATION

Petitioner Trasco LLC (hereinafter “Petitioner”) believes that it will be damaged by the continued registration of the mark COSRX (the “Mark”) for “Cosmetics, namely, facial toner, facial cleansers, facial moisturizers, facial lotion, facial serums; Cosmetics for face and body, namely, skin essence, skin and body creams contained in ampules; Make-up; Eye creams; Cosmetic kits comprised of lipstick, lip gloss; Facial mask pack” in International Class 3 as shown in Registration No. 5,271,842 (the “Registration”), and hereby petitions to cancel same.

In support of its Petition, Petitioner alleges as follows:

1. Petitioner is a New Jersey corporation having a place of business in Fairfield, New Jersey.
2. Petitioner has sold in the United States consumer products, including products lawfully bearing the Mark.
3. On information and belief, Cosrx Inc. (hereinafter “Registrant”) is a company organized under the laws of Korea, with a principal place of business at 5f, 231, Teheran-Ro, Gangnam-Gu, Seoul, Republic of Korea 06142.

4. On information and belief, Registrant has sold in the United States products under the Mark.

5. Registrant has repeatedly attempted to exclude Petitioner from the United States market by invoking the Registration sought to be cancelled herein.

6. If Registrant is permitted to maintain the registration herein sought to be cancelled, (a) Registrant will remain in a position to harass Petitioner, and (b) Petitioner and the public could be deprived of their lawful rights to continue to distribute products bearing the Mark in the United States.

7. Petitioner would thus be injured by the Registrant's continued registration of the Mark.

No Bona Fide Intent to Use at the Time of Filing of the Application

8. The Registration is void *ab initio* because the initial applicant did not have a bona fide intent to use the mark at the time that the application was filed.

9. The November 2, 2015 application, which was assigned Serial No. 86806138 ("Application"), identified Sang Hun Jun ("Applicant") as the owner.

10. The Application identified 15 U.S.C. § 1051(b) as the filing basis.

11. On information and belief, the Applicant did not have a bona fide intent to use the mark at the time that the application was filed.

12. On information and belief, Applicant is the founder of Registrant.

13. On information and belief, Registrant was formed as a corporation in or around 2013, before the filing of the Application.

14. On information and belief, to the extent that any person had a bona fide intent to use the Mark, that person was Registrant and yet the intent-to-use application was filed in the name of Applicant.

15. An application filed under 15 U.S.C. § 1051(b) must be filed by the party who has a bona fide intention to use the mark in commerce as of the application filing date. See TMEP §1201. This defect cannot be cured by amendment or assignment. *See* TMEP 1201.02(b).

16. Accordingly, the Registration is void *ab initio*.

No Bona Fide Use by Applicant

17. On information and belief, there was no bona fide use of the Mark in United States commerce by the Applicant prior to the filing of its Statement of Use pursuant to 15 U.S.C. § 1051(d)

18. Specifically, to the best of Petitioner's knowledge, there was never a bona fide use in United States commerce of the Mark on or in connection with the identified goods by the Applicant before Applicant filed its Statement of Use pursuant to 15 U.S.C. § 1051(d) on June 12, 2017.

19. To the best of Petitioner's knowledge, any use of the Mark was made by Registrant, who was not the owner of the Mark at the time the Statement of Use was filed.

20. Registrant was not assigned the Registration until May 10, 2022, nearly five years after the Statement of Use was filed.

21. Accordingly, the Registration is void *ab initio*.

No Bona Fide Use of All Identified Goods

22. On information and belief, there was no bona fide use of the Mark in United States commerce on or in connection with nearly all the goods identified in the Registration prior to the filing of its Statement of Use pursuant to 15 U.S.C. § 1051(d) on June 12, 2017.

23. Specifically, to the best of Petitioner's knowledge, there was never a bona fide use in United States commerce of the Mark on or in connection with, at least, "Cosmetics for face and body, namely, skin essence, skin and body creams contained in ampules", "Make-up"

and “Cosmetic kits comprised of lipstick, lip gloss” before Applicant filed its Statement of Use pursuant to 15 U.S.C. § 1051(d) on June 12, 2017.

24. To the best of Petitioner’s knowledge, Applicant never used the Mark in United States commerce in connection with “Cosmetics for face and body, namely, skin essence, skin and body creams contained in ampules”, “Make-up” and “Cosmetic kits comprised of lipstick, lip gloss”.

Fraud

25. The Registration was procured unlawfully and through fraudulent misrepresentations to the U.S. Patent and Trademark Office (“USPTO”).

26. Specifically, Applicant procured the Registration through false statements made in the Application.

27. In the Application, Registrant represented to the USPTO that it had an intent to use the Mark in connection with “Cosmetics, namely, facial toner, facial cleansers, facial moisturizers, facial lotion, facial serums; Cosmetics for face and body, namely, skin essence, skin and body creams contained in ampules; Make-up; Eye creams; Cosmetic kits comprised of lipstick, lip gloss; Facial mask pack.”

28. Petitioner is informed and believes that the Applicant did not have a bona fide intent to use the Mark for each of the above goods at the time it filed the Application.

29. Petitioner is informed and believes that the Applicant had not made genuine, continuous use of the Mark for each of the above goods at the time it filed its Statement of Use on June 12, 2017, which alleged actual use in commerce as the date of its filing.

30. On information and belief, Applicant knew that its statements to the USPTO were false, but made them with the intention to deceive the USPTO so that it would, unaware of the non-use, issue the Registration for each of the recited goods.

31. The USPTO acted in reliance on these fraudulent statements when it issued the Registration.

32. Because Applicant procured the Registration by fraud, the Registration must be cancelled.

WHEREFORE, Petitioner requests that the cancellation be sustained and the Registration be cancelled.

Respectfully submitted,

Dated: New York, New York
November 18, 2022

By: / Mark Berkowitz /
Mark Berkowitz

TARTER KRINSKY & DROGIN LLP
1350 Broadway
New York, New York 10018
(212) 216-1166

Attorneys for Petitioner

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that on November 18, 2022, a copy of the foregoing **PETITION FOR CANCELLATION** is being electronically filed with the United States Patent and Trademark Office, Trademark Trial and Appeal Board, at <http://estta.uspto.gov/>.

/Mark Berkowitz/

Mark Berkowitz