

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

.....
BODYONICS, LTD

Opposition No. 91176901

Opposer

v.

Application Serial No. 78/862294

JEFFREY LEE KAPLAN,
ILIE IONCESCU

Published in the Official Gazette of
April 3rd 2007

Registrant

MARK: ENERGY POPPERS

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MOTION TO SUSPEND OPPOSITION HEARING

Jeffery Lee Kaplan & Ilie Ioncescu hereby request a suspension of the opposition hearing until the Boards decision on Registrant's Petition to Cancel Opposer's mark "POPPERS" Registration No. 2,447,371 is heard and decided.

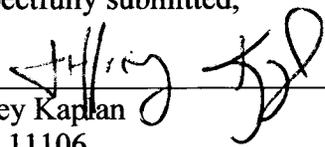
PETITION TO CANCEL MARK "POPPERS"

Registrant has filed a Petition to Cancel the Opposer's mark "POPPERS" based on the grounds that the mark was fraudulently applied for. (Attached as Exhibit A)

The outcome of the Petition to Cancel will greatly affect the final decision to the pending Opposition and therefore said Opposition should be suspended accordingly.


09-24-2007

Respectfully submitted,



Jeffrey Kaplan
POB 11106
Ft Laud Fl. 33339
(954) 793-0637



Ilie Ionescu

9/21/07

CERTIFICATE OF MAILING

It is hereby certified that the attached Petition for Cancellation and check are being deposited with the US Postal Service addressed to the Hon. Commission for Trademarks, P.O.B. 1451, Alexandria, VA 22313 this 21 day of September marked first class mail, postage prepaid. A copy of this mailing is also being forwarded, via First Class postage through the US Postal Service to Jay A. Geller, Esq, West Tower Suite 400, 2425 W. Olympic Bl. Santa Monica, CA 90404

9/21/07



Jeffrey Kaplan

Exhibit A

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

In the matter of Trademark Registration No. 2,447,371
For the Mark "Poppers" in typed form
Date Registered on May 1st 2001

Cancellation No.

Jeffery Kaplan and Ilie Ioncescu
POB 1106
Ft. Lauderdale, Fl. 33339

Petitioner

v.

Bodyonics Ltd.
200 Adams Blvd
Farmingdale, NY 11735

Registrant

_____/

PETITION TO CANCEL

Jeffrey Kaplan and Ilie Ioncescu, individuals, (hereinafter the "Petitioner") whose address is P.O.B. 11106 Ft Lauderdale Fl. 33339 acting pro se, hereby petition the Trademark and Appeal Board for cancellation of Registered Mark, No. 2,447,371, "POPPERS" (hereinafter "Registered Mark") and states:

1. To the best of Petitioner's knowledge, the name and address of the current owner of the Registered Mark is Bodyonics Ltd, (hereinafter "Registrant") a Delaware Corporation, whose last known address is 200 Adams Blvd, Farmingdale, N.Y. 11735.

2. Absent Cancellation, Petitioner will be damaged by the Registered Mark, and hereby petitions to cancel the same.

I. STANDING

3. On or about April 14th 2006, Petitioner filed an intent-to-use application for Trademark Serial No. 78/862294, "ENERGY POPPERS" in typed form" (hereinafter the "Application") for use as an energy boosting nasal preparation.

4. On or about March 14th 2007 Petitioner's pending mark "ENERGY POPPERS" (hereinafter the "ENERGY POPPERS") was approved for publication on April 3rd 2007.

5. On or about April 20th 2007 Registrant filed a Notice of Opposition No. 91176901 (hereinafter the "Notice of Opposition") claiming a likelihood of confusion pleading and on or about August 13th 2007 filed an amended Notice of Opposition claiming Petitioner's mark is merely descriptive and or generic and therefore cannot be a trademark.

6. Petitioner reasonably believes that it was damaged by these oppositions.

II. GROUND FOR CANCELLATION

FRAUD

7. Petitioner alleges that Registrant fraudulently obtained the registration of it's alleged mark by deliberately, willfully and falsely representing to the P.T.O. that it's alleged mark was not deceptively misdescriptive and stating their product is a dietary and nutritional supplement and not a stimulate.

8. Upon information and belief the Registrant's products ingredients and the advertising of such products indicates they are in fact stimulates.

9. Upon information and belief the Registrant's mark was initially refused registration under Section 2(e)(1) "Mark is Deceptively Misdescriptive" whereby the Examiner in her Office Action No. 1 through her research determined the descriptive term "POPPERS" is considered throughout the world to be a stimulate.

10. In the alternative, if Applicant argued that its product was a stimulate the Examiner indicated she would also refuse registration under Section 2(e)(1) because the proposed mark merely describes the goods.

11. Upon information and belief Registrant replied to the Office Action No. 1 and made false representations that their product was not a stimulate. At the time the false representations were made, Registrant knew they were false.

12. Registrant made these materially false representations with a deliberate intent to induce the PTO to approve its application for registration. These materially false statements were false at the time they were made and they are still false today.

13. The Patent and Trademark Office relied on Registrant's materially false statements in approving the application for registration and but for these false statements and representations the application would have not been approved for publication.

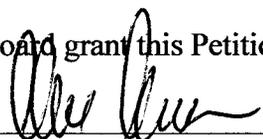
III. REGISTRANT'S MARK HAS BECOME GENERICIZED

14. A genericized trademark is a trademark or brand name that has become the colloquial or generic description for or synonymous with a particular class of product or service. Classic examples include escalator, zipper, scotch tape, Band-Aid and Q-Tips. The generic word Poppers standing alone is associated with stimulates and is sold all over the world through dozens of different companies. The generic word Poppers standing alone is not a source indicator and does not have trademark protection.

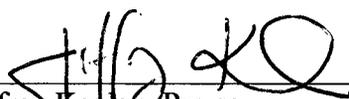
15. Upon information and belief Registrant's mark "POPPERS" is not used as a Trademark . In fact Registrant's own product labels use the word Poppers in a generic form.

WHEREFORE, Petitioner respectfully requests that the Trademark and Trial Appeal

Board grant this Petition for Cancellation



Ilie Ioncescu



Jeffrey Kaplan, Pro se
POB 11106 Ft. Laud. Fl. 33339
(954)793-0637

Dated: 9/4/07

CERTIFICATE OF MAILING

It is hereby certified that the attached Petition for Cancellation and check are being deposited with the US Postal Service addressed to the Hon. Commission for Trademarks, P.O.B. 1451, Alexandria, VA 22313 this 3rd day of September marked first class mail, postage prepaid. A copy of this mailing is also being forwarded, via First Class postage through the US Postal Service to Jay A. Geller, Esq, West Tower Suite 400, 2425 W. Olympic Bl. Santa Monica, CA 90404

