

T TAB

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

In the matter of trademark registration No. 2780629

Filed July 31, 2001

For the registration VINICOL

Published in the Official Gazette on February 26, 2002

**RAINFOREST NUTRITIONALS, INC.** a  
Nevada Corporation,

Petitioner,

vs.

**JOHN ROSE**, an Individual,  
Applicant.

**Cancellation No.**



**01-26-2004**

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #78

PETITION TO CANCEL

The Petitioner in this matter is Rainforest Nutritionals, Inc. ("RNI"), a Nevada Corporation, whose principle place of business is located at 2533 North Carson Street, Carson City, Nevada, 89706. RNI is a real party in interest, believes that it has been and will continue to be damaged by the registration of "VINICOL" shown in registration number 2780629, and, having shown the requisite requirement of standing, hereby opposes the same.

Applicant, John Rose ("ROSE"), an individual, whose address is 11202 N. 24<sup>th</sup> Avenue, Phoenix, Arizona, 85029, filed an application for "VINICOL", Serial No. 78/125,662, on July 31, 2001, for use on dietary supplements in capsule form.

As grounds of opposition, it is alleged that:

1. Petitioner RNI is the rightful owner of U.S. Trademark Registration No. 2788819, issued on December 2, 2003, for the mark VINCARIA®.

2. RNI's registration of VINCARIA® was based on an application, Serial No. 78/169051, filed in the U.S. Patent and Trademark Office on September 29, 2002.
3. RNI's registration of VINCARIA® was based on a date of first use in commerce in May of 2001.
4. Petitioner RNI is the rightful owner of U.S. Trademark Application Serial No. 78/290072, filed on August 20, 2003, for the mark VINACOL™.
5. Petitioner RNI filed a preliminary amendment on January 23, 2004 to amend Application Serial No. 78/290072, to change the application to "VINICOL."
6. RNI's date of first use of "VINICOL" or is earlier than the date of June 30, 2001.
7. RNI's date of first use of VINCARIA® is earlier than ROSE's first use date of June 30, 2001 indicated in Registration No. 2780629 for VINICOL.
8. RNI's date of first use of "VINICOL" is earlier than ROSE's first use date of June 30, 2001 indicated in Registration No. 2780629 for VINICOL.
9. The Registrants use of, "VINICOL", is similar in sound and spelling to RNI's registered mark, VINCARIA®. The similar sound and spelling is likely to mislead or confuse consumers who are familiar with VINCARIA®, and who encounter VINICOL, into believing that RNI is the source of both, or an association exists between Opposer and Applicant.
10. The Registrants use of, "VINICOL", is similar in sound and spelling to RNI's trademark, VINICOL™. The similar sound and spelling is likely to mislead or confuse consumers who are familiar with RNI's VINICOL™ and who encounter ROSE's VINICOL, into believing that RNI is the source of both, or an association exists between Petitioner and Registrant
11. Applicant's only arguable use in commerce of VINICOL illegally uses RNI's trade secret and confidential formulations and methods for the goods listed in Registration No. 2780629 for VINICOL.
12. Applicant's only arguable use in commerce of VINICOL incorrectly implies an association or endorsement of Applicant's goods by RNI.

13. Consumers will encounter both RNI's VINICOL™ and ROSE's VINICOL in the same channel of trade, since the description of the goods is identical. Once again, ROSE's VINICOL will mislead and confuse consumers into believing that RNI is the source of both marks, or an association exists between Petitioner and Registrant.
14. RNI's use of "VINICOL™" to identify its goods in interstate commerce is prior to the Applicant's first use in interstate commerce.
15. ROSE is not (and was not, at the time of the filing of its application for registration) the rightful owner of the mark VINICOL (Registration No. 2780629).
16. ROSE did not have first use of the mark as of June 30, 2001 as listed in Registration No. 2780629 for VINICOL.
17. ROSE did not have first use of the mark in commerce as of July 15, 2001 as listed in Registration No. 2780629 for VINICOL.
18. Based on the foregoing, RNI is likely to suffer irreparable harm through the loss of confused consumers and the goodwill it has established through its continued use of VINICOL®.
19. Based on the forgoing, RNI respectfully requests that this Board cancel Registration No. 2780629 for VINICOL for the goods listed by the Registrant.

Respectfully submitted this 23<sup>rd</sup> day of January 2004.

By Michael F. Campillo

Michael F. Campillo SBN 019014  
Ellis & Venable P.C.  
101 N. First Ave., Suite 1875  
Phoenix, Arizona 85003  
Tel: 602-631-9100  
Fax: 602-631-9796

Attorneys for Opposer, Rainforest  
Nutritionals, Inc., a Nevada corporation.

CERTIFICATE OF MAILING BY "EXPRESS MAIL"

I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service in an envelope addressed to:

BOX TTAB  
FEE  
Assistant Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

on 1-23-04

By: Michael F. Campillo

Michael F. Campillo

EV269353498US

Typed or printed name of person mailing correspondence