

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

FORT JAMES OPERATING)	
COMPANY and GEORGIA-PACIFIC)	
CORPORATION,)	
)	
Petitioners,)	REGISTRATION NO.: 940,243
)	
)	Mark: BRAWNY
v.)	
)	CANCELLATION NO.: _____
BRAWNY PLASTICS, INC.,)	
)	
Registrant.)	

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PETITION FOR CANCELLATION

Petitioners, Fort James Operating Company ("Fort James") and Georgia-Pacific Corporation ("Georgia-Pacific") (collectively, "Petitioners"), believe that they will be damaged by the continued registration of Registration No. 940,243 owned by Registrant, Brawny Plastics, Inc. ("Registrant"), and therefore petition the Board to cancel same. Pursuant to 37 C.F.R. §§ 2.111 and 2.112(a), and as grounds for cancellation, Petitioners allege as follows:

1. Petitioner Fort James is a Virginia corporation with a principal place of business located at 133 Peachtree Street, N.E., Atlanta, Georgia 30303. Fort James is a wholly-owned subsidiary of Petitioner Georgia-Pacific, a related company. Prior to its acquisition by Georgia-Pacific in 2000, Fort James' predecessor in interest was a major manufacturer and distributor of consumer products, including paper towels, tissue, napkins and related products.

2. Petitioner Georgia-Pacific is a Georgia corporation with a principal place of business located at 133 Peachtree Street, N.E., Atlanta, Georgia 30303. Georgia-Pacific is the



leading global producer of tissue products and one of the world's leading manufacturers and marketers of other consumer products, including but not limited to packaging and paper, as well as building products.

3. Petitioners manufacture, market, and distribute the Number 2 best-selling brand of paper towels in the United States under the well-known mark, BRAWNY®. Additionally, Petitioners manufacture, market, and distribute a top-selling napkin under the BRAWNY® Mark. Petitioners also manufacture, market, and distribute moistened wipes under the BRAWNY brand name and mark.

4. In addition, through a license agreement, Petitioners market and sell a wide variety of household cleaning tools and related goods under the BRAWNY brand name and mark, including brushes, brooms, sponges, cleaning cloths, scrubbers, and gloves.

5. Petitioner Fort James is the owner of, inter alia, the following trademark applications and registrations (hereinafter collectively referred to as the "BRAWNY Marks"):

Mark	Registration or Serial No.	Goods	Date of First Use
BRAWNY	1,062,207	Paper Towels	10/2/1974
 BRAWNY and Design	2,165,829	Paper Towels	1975
DO YOU KNOW A BRAWNY MAN?	2,766,328	Paper Towels and Paper Napkins	06/10/2002
BRAWNY	2,635,343	Paper Products Namely, Paper Napkins	01/21/2002

BRAWNY PROFESSIONAL	2,849,299	Paper Towels	09/30/1999
BRAWNY MAN	2,875,601	Paper Goods Namely, Calendars	04/18/2003
BRAWNY	2,929,823	Paper towels and napkins	10/15/2003
	78/278,384	Paper towels and napkins	10/01/2003
BRAWNY	78/307,170	Paper towel dispenser	12/29/2004
BRAWNY	78/307,171	Pre-Moistened Hand and Facial Wipes	03/10/2003
BRAWNY	78/307,174	Toilet bowl brush	07/19/2004
BRAWNY	78/307,184	Household cleaning Cloths	07/30/2004
BRAWNY	78/356,377	Scrub Sponges for cleaning, namely copper fiber Scrubbers, Stainless steel scrubbers, Plastic scrubbers, Nylon Scrubbers, Foam for General use, Disposable Latex Gloves	07/19/2004
BRAWNY	78/402,314	Household gloves made of rubber and cotton knit for general use, and disposable latex gloves, cleaning pads, scrubber sponges	07/19/2004
BRAWNY	78/404,561	Dust cloths	07/19/2004
BRAWNY	78/443,780	Household cleaning implements, namely, scrub brush, broom, dust pan, grout brush, squeegee and plunger	12/29/2004

6. Petitioners, together with their predecessors in interest, have continuously and exclusively used the BRAWNY Marks in connection with the above-identified goods since each

of the indicated dates of first use; cumulatively, the BRAWNY Marks have been in continuous use for more than thirty (30) years.

7. Petitioners have sold billions of dollars worth of the above-identified products bearing the BRAWNY Marks. In the last five years alone, Petitioners have distributed more than 70 million cases of BRAWNY® paper towels in the United States alone, with gross sales exceeding \$1 billion.

8. Moreover, Petitioners have spent millions of dollars advertising and marketing its goods sold in connection with the BRAWNY Marks. In the last five years alone, Petitioners have expended over \$70 million in advertising and promoting BRAWNY® paper towels.

9. By virtue of the widespread sales and extensive advertising and promotion of Petitioners' products bearing the BRAWNY Marks, the BRAWNY Marks are well known by the general public and in the relevant industries, are recognized and relied upon as identifying Petitioners' goods and as distinguishing them from the goods and services of others, and have come to represent and symbolize extremely valuable goodwill belonging exclusively to the Petitioners.

10. By virtue of Petitioners' extensive use and promotion, Petitioners' BRAWNY Marks have acquired a high degree of distinctiveness.

11. By virtue of Petitioners' extensive use and promotion, Petitioners' BRAWNY Marks have become famous.

12. Upon information and belief, Registrant is an Illinois corporation, with an address of record of 2700 North Paulina Street, Chicago, Illinois 60614, and is the last listed owner (by assignment and change of corporate name) of U.S. Registration No. 940,243 for the designation

BRAWNY in International Class 20 for "polyethylene bags." Registrant claims a first use date of July 6, 1971 for this designation.

13. Upon information and belief, Registrant has abandoned any rights it may have claimed in its BRAWNY designation by failing to continuously use the mark in commerce.

14. Upon information and belief, in its May 1, 2003 Declaration of Use in Commerce for Renewal of Registration No. 940,243, Registrant made false and fraudulent statements knowingly intended to mislead the United States Patent and Trademark Office ("U.S.P.T.O.") regarding Registrant's continued use of the BRAWNY designation in commerce.

15. Upon information and belief, in the summer of 2003, Registrant attempted to transfer any rights it had to Registration No. 940,243 to a third party, Nextep, Inc. ("Nextep"). Upon information and belief, said conveyance of the registration, devoid of any goodwill of the business connected to Registrant's alleged use of the BRAWNY designation, was a sham transaction in contravention of the Lanham Act. Neither Registrant nor Nextep recorded this transfer with the U.S.P.T.O.

16. Registration No. 940,243 is now being used by, or with the permission of, Registrant so as to misrepresent the source of the plastic bags on or in connection with which Registrant's BRAWNY designation is being used.

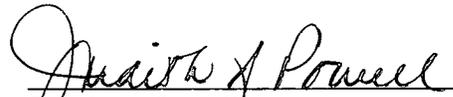
17. For all of the foregoing reasons, U.S. Registration No. 940,243 should therefore be canceled pursuant to 15 U.S.C. §1064(3).

18. Pursuant to 37 C.F.R. §§ 2.6(a)(16) and 2.112(a), please find enclosed herewith the required fee of \$600.00 and a duplicate copy of this Petition. The clerk is authorized to charge the Kilpatrick Stockton LLP Trademark Deposit Account No. 11-0860 for any additional fees.

WHEREFORE, Petitioner prays that Registrant's Registration No. 940,243 be canceled.

Dated: March 24, 2005

Respectfully Submitted:

A handwritten signature in cursive script, appearing to read "Judith A. Powell", written over a horizontal line.

Judith A. Powell

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Attorneys for Petitioners

CERTIFICATE OF EXPRESS MAIL

“EXPRESS MAIL” mailing number: EV607732125US

DATE OF DEPOSIT: March 24, 2005

DOCUMENT: PETITION FOR CANCELLATION AGAINST
U.S. REGISTRATION NO. 940,243

I hereby certify that this paper and fee is being deposited with the United States Postal Service “Express Mail Post Office to Addressee” service under 37 CFR 1.10 on date indicated above and is addressed to Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451.



Judith A. Powell