

TTAB

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

FORT JAMES OPERATING	)	
COMPANY and GEORGIA-PACIFIC	)	
CORPORATION,	)	Reg. No. 940,243
	)	
Petitioners,	)	Mark: BRAWNY
	)	
v.	)	Cancellation No. 92044396
	)	72399973
BRAWNY PLASTICS, INC.,	)	
	)	
Registrant.	)	

**PETITIONERS' BRIEF IN OPPOSITION TO MOTION TO DISMISS**

These proceedings arise out of Brawny Plastics Inc.'s fraudulent renewal of U.S. Registration No. 940,243 ("the '243 Registration"). Fort James Operating Company and Georgia-Pacific Corporation's (collectively, "Petitioners" or "Georgia Pacific") *Petition for Cancellation* ("the Petition") clearly states Petitioners' claim of fraud on the Patent and Trademark Office ("the PTO") with particularity; and BPI and Nextep have not proven that dismissal is warranted on the basis that Nextep is an indispensable party. As such, the Board should deny *Brawny Plastics Inc. and Nextep, Inc.'s<sup>1</sup> Motion to Dismiss For Failure to State a Claim For Which Relief Can Be Granted Pursuant to Fed. R. Civ. P. 12(b)(6); and Failure to Join an Indispensable Party Pursuant to Fed. R. Civ. P. 12(b)(7)* ("Motion to Dismiss").



06-07-2005

U.S. Patent & TMO/TM Mail Rcpt Dt. #64

<sup>1</sup> Nextep, Inc., the alleged assignee of U.S. Registration No. 940,243, joined Brawny Plastics in its Motion to Dismiss. Nextep, Inc. has not been made a party to these proceedings and consequently is not entitled to file dispositive motions in these proceedings.

## **I. STATEMENT OF FACTS**

Georgia-Pacific filed the Petition against BPI on March 24, 2005. A copy of Georgia-Pacific's Petition (showing this filing date) is attached hereto as Exhibit 1. At all times prior to Georgia-Pacific's filing of the Petition, the PTO's online records indicated that Brawny Plastics, Inc. was the record owner of the '243 Registration. Although BPI and Nextep allege that BPI assigned the '243 Registration to Nextep in 2003, apparently neither BPI nor Nextep attempted to notify the PTO of the alleged assignment for quite some time, and ultimately, the PTO did not issue a Notice of Recordal of Assignment until March 24, 2005. A copy of the PTAS record of the Notice of Recordal of Assignment is attached hereto as Exhibit 2.

## **II. ARGUMENT AND CITATION OF AUTHORITIES**

### **A. Dismissal is Not Warranted Under Rule 12(b)(6)**

#### **1. Rule 12(b)(6) Requires the Board to Construe the Allegations in the Petition in Favor of Petitioners**

Brawny Plastics, Inc. ("BPI") and Nextep, Inc. ("Nextep") have not alleged any facts or legal authority to justify their request for a dismissal pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

The sole factual allegation raised by BPI and Nextep in support of their request for dismissal pursuant to Rule 12(b)(6) is that Nextep "is the only proper party to the Cancellation proceeding." (Motion to Dismiss, p. 2, ¶ 2.) However, the Petition named the proper party, i.e., BPI, the owner of record according to the PTO online database on the date the Petition was filed, March 24, 2005.

BPI and Nextep simply expect the Board to assume the truth and validity of their statement that Nextep is the proper party based on their contention that the assignment of the

'243 Registration was valid. However, as discussed more fully below, when analyzing a motion to dismiss pursuant to Rule 12(b)(6), the applicable legal standard requires that the Board accept as true all material allegations in the Petition, and to construe them in the light most favorable to the **nonmoving** parties, **not** the moving parties. Thus, for the purpose of analyzing the current motion, the Board must accept as true Georgia-Pacific's allegation that BPI fraudulently renewed the '243 Registration. Consequently, BPI could not have subsequently assigned the (void) '243 Registration to Nextep.<sup>2</sup> As such, BPI and Nextep have shown no facts sufficient to support their 12(b)(6) motion for dismissal.

## **2. None of Registrant's Cited Authorities Supports Dismissal**

Furthermore, BPI and Nextep have failed to cite proper legal authority in support of their motion. Rather, BPI and Nextep have liberally cited one U.S. Code section – 15 U.S.C. § 1119

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<sup>2</sup> BPI and Nextep cite Procter & Gamble Co. v. Paragon Trade Brands, Inc., 917 F. Supp. 305, 312, 38 U.S.P.Q.2d 1678 (D. Del. 1995) for the proposition that “[w]hen rights are **properly** assigned, the assignor retains no rights in that which was assigned, and has no stake in the outcome of its litigation.” (Motion to Dismiss, p. 3-4., emphasis added.) Again, this authority might be persuasive, if the applicable legal standard for analyzing a motion to dismiss required the Board to analyze the facts at issue – namely, whether BPI committed fraud on the PTO – in favor of the moving parties, Nextep and BPI. Clearly, this is not the applicable legal standard, making this case inapposite to the facts at hand, as it cannot be assumed the assignment at issue here was proper.

Likewise, BPI and Nextep cite Premier Dental Products Company v. Darby Dental Supply Co. Inc., 794 F.2d 850, 230 U.S.P.Q. 223 (3d Cir. 1986) for the proposition that dismissal is required when a trademark has been properly assigned and the assignee is not a party to the suit. Once again, BPI and Nextep improperly expect the Board to assume the validity of BPI's renewal of the '243 Registration, rather than analyzing the facts at issue in favor of the nonmoving parties. Additionally, Premier Dental Products Company does not analyze dismissal of a lawsuit for an alleged failure to name a party in interest. Rather, in that case, the court analyzed the alleged assignment of the trademark IMPREGUM to plaintiff Premier Dental, to determine whether plaintiff had standing (as an American company and owner of the assigned mark) to obtain injunctive relief pursuant to 19 U.S.C. § 1526 of the Tariff Act. Premier Dental Products Company, 794 F.2d at 853-54.

– and primarily relied upon one case – Informix Software Inc. v. Oracle Corp., 927 F. Supp. 1283, 1285, 40 U.S.P.Q.2d 1153 (N.D. Ca. 1996) – as authority for their assertion that dismissal pursuant to Rule 12(b)(6) is appropriate when the alleged real party in interest is not a party to the cancellation proceeding. Neither the cited code section nor the cited case supports BPI and Nextep’s request for a 12(b)(6) dismissal. For example, 15 U.S.C. § 1119 does not address 12(b)(6) dismissals; rather, it grants jurisdiction to the United States District Courts over trademark cancellation proceedings, and grants such courts the authority to order the PTO to rectify the Principal Register with respect to trademark registrations owned by any party to an action pending in a United States District Court.<sup>3</sup> Similarly, Informix Software Inc. is factually inapposite to the factual circumstances of the current proceeding. In Informix Software Inc., the Northern District of California held that a plaintiff could not bring an action for cancellation of a trademark registration solely against an exclusive licensee (as opposed to the owner of the federal registration for the trademark). Informix Software Inc., 927 F. Supp. at 1286. Clearly the facts of Informix Software Inc. are distinguishable from the current proceedings because Georgia-Pacific did not bring suit against a licensee of the mark underlying the ‘243 Registration. Rather, Georgia-Pacific filed these proceedings against BPI – the entity that was

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<sup>3</sup> 15 U.S.C. § 1119 provides:

In any action involving a registered mark the court may determine the right to registration, order the cancelation of registrations, in whole or in part, restore canceled registrations, and otherwise rectify the register with respect to the registrations of any party to the action. Decrees and orders shall be certified by the court to the Director, who shall make appropriate entry upon the records of the Patent and Trademark Office, and shall be controlled thereby.

identified in the PTO's online records as the owner of the '243 Registration prior to the initiation of these proceedings on March 24, 2005.<sup>4</sup>

Although BPI and Nextep's 12(b)(6) motion does not properly analyze a request for a dismissal pursuant to Rule 12(b)(6), out of an abundance of caution, Petitioners briefly address below the sufficiency of the allegations set forth in the Petition.

**3. Georgia-Pacific's *Petition For Cancellation* states a claim for relief.**

In the context of a cancellation proceeding, a proper 12(b)(6) motion should address the sufficiency of the claims set forth in the petition for cancellation and whether the petition alleges such facts that would, if proven, establish that the petitioner is entitled to the relief sought; that is, whether the petitioner has alleged (1) standing to maintain the proceeding; and (2) a valid ground for canceling the subject registration. See T.B.M.P. Rule 503.02; see also Lipton Industries, Inc. v. Ralston Purina Co., 670 F.2d 1024, 1030, 213 U.S.P.Q. 185 (C.C.P.A. 1982). In evaluating a motion to dismiss, the Board will construe the complaint for cancellation in the light most favorable to petitioners. See Saint-Gobain Abrasives, Inc. v. Unova Industrial Automation Systems, Inc., 2003 WL 880554, \*3, 66 U.S.P.Q.2d 1355, (T.T.A.B. 2003), citing Baroid Drilling Fluids Inc. v. Sun Drilling Products, 24 U.S.P.Q. 1048 (T.T.A.B. 1992). Additionally, the Board should accept as true all material allegations in the Petition, and construe them in the light most favorable to the nonmoving party. See T.B.M.P. Rule 503.02. Finally, "[i]n analyzing whether to grant a Rule 12(b)(6) motion, the court should keep in mind that

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<sup>4</sup> As will be addressed in Section B, *infra* at 7-8, apparently the assignment document was filed the day Petitioners commenced these proceedings. That filing does not change the fact that Petitioners correctly named the Registrant of record on March 24, 2005 as a party to this proceeding.

dismissal is disfavored and should be granted only in ‘extraordinary’ cases.” Informix Software Inc. v. Oracle Corp., 927 F. Supp. at 1285.

**i. Georgia-Pacific’s *Petition for Cancellation* sufficiently alleges standing.**

To plead its standing, a plaintiff need only show that it has a real interest in the outcome of the proceeding. See Saint-Gobain Abrasives, Inc. v. Unova Industrial Automation Systems, Inc., 2003 WL 880554, \*3, 66 U.S.P.Q.2d 1355, (T.T.A.B. 2003) (“Here, plaintiff has alleged the interest necessary ... by asserting its competitive uses of stripes and bands in various colors ...”). In this case, Petitioners have sufficiently shown that they have a real interest in the outcome of the proceeding by alleging the following facts in the Petition: (a) Petitioners own BRAWNY Registrations (See Petition for Cancellation at ¶ 5); (b) Petitioners have invested substantial funds in using and promoting their BRAWNY Marks (See id. at ¶ 8); (c) the BRAWNY mark that is the subject of the ‘243 Registration is being misused, by or with BPI’s permission, to the detriment of Petitioners; and (d) Petitioners will be damaged by the continued registration of the mark underlying the ‘243 Registration. (see id., generally and at Opening Paragraph.) These allegations clearly demonstrate Georgia-Pacific’s standing in these proceedings, particularly in view of the Board’s liberal standing policy, which indicates that the public interest is served in “broadly interpreting the class of persons Congress intended to be allowed to institute cancellation proceedings.” Lipton Industries, Inc., 670 F.2d at 1030.

**ii. The Petition for Cancellation alleges with particularity a valid ground for canceling the ‘243 Registration**

The Petition alleges that BPI made false and fraudulent statements knowingly intended to mislead the PTO regarding BPI’s continued use of the BRAWNY mark in commerce, and that such conduct warrants cancellation of the ‘243 Registration. (Petition for Cancellation at ¶14.)

The Board has recognized that this exact conduct constitutes fraud on the PTO sufficient to warrant cancellation of a registration. See The Toro Co. v. Grassmasters, Inc., 2003 WL 255744, \*9 (T.T.A.B. 2003) (where a registrant “files a verified renewal application stating that his registered mark is currently in use in interstate commerce and that the label attached to the application shows the mark as currently used when, in fact, he knows or should know that he is not using the mark as registered and that the label attached to the registration is not currently in use, he has knowingly attempted to mislead the PTO.”); see also 1 J. Thomas McCarthy, Trademarks and Unfair Competition, § 20:58 (Fraudulent sections 8 and 9 affidavits can constitute fraud in “obtaining” a registration sufficient for cancellation.).

Clearly, there is no question that the Petition sufficiently alleges that Petitioners have standing to bring this action and that Petitioners have pled valid legal grounds that warrant the cancellation of the ‘243 Registration. As such, the Board should deny BPI and Nextep’s Motion to Dismiss for movants’ failure to prove that dismissal is warranted pursuant to Rule 12(b)(6).

**B. Dismissal is Not Warranted Under Rule 12(b)(7)**

Likewise, the Board should deny the Motion to Dismiss because BPI and Nextep have failed to prove that dismissal is warranted pursuant to Rule 12(b)(7).

As a preliminary matter, it must be noted that the factual allegations supporting BPI and Nextep’s request for a 12(b)(7) dismissal inaccurately cite the procedural posture of Georgia-Pacific’s Petition, making it appear that Georgia-Pacific had nefarious motives in filing the Petition against BPI instead of Nextep. This is simply untrue. Georgia-Pacific filed the Petition on March 24, 2005, **not** March 28, 2005, as alleged by BPI and Nextep in the Motion to Dismiss. (See Motion to Dismiss, p. 2, ¶ 1.) See Exhibit 1. Coincidentally, the purported assignment of

the '243 Registration was also recorded by the PTO on the same day – March 24, 2005. See Exhibit 2. BPI and Nextep's Motion to Dismiss alleges that Georgia-Pacific filed its Petition **after** the assignment was recorded, (Id., p. 3, ¶3), and that Georgia-Pacific "chose to play games by naming BPI rather than Nextep..." (Id., p. 7, ¶1.) Georgia-Pacific can only assume that BPI and Nextep's inaccurate reporting of these facts was an oversight. Nonetheless, the record must be clear that Georgia-Pacific had no bad faith intentions in filing the Petition against BPI. Rather, Georgia-Pacific simply filed the Petition against the record owner of the '243 Registration – BPI.

The Motion to Dismiss is a transparent attempt to dispose of these proceedings on the basis of scant, if any, proper legal authority. For example, although Georgia-Pacific does not concede that joinder of Nextep is necessary in this case, BPI and Nextep have clearly requested overly broad, drastic relief by requesting that the Board dismiss these proceedings, in lieu of simply requesting that Nextep be joined as a party. Further, BPI and Nextep have undermined their credibility further by simply urging the Board to dismiss these proceedings because "joinder [of Nextep] is not feasible in the instant case..." (Motion to Dismiss, p. 5, ¶ 3) and by providing the Board with no facts to support this conclusion except that "joinder would leave BPI as a named party, and BPI has no remaining ownership in the '243 Reg." (Id., p. 5, ¶ 3.) This is simply not a valid justification for a claim that joinder of a party is "not feasible" under Rule 19(a) of the Federal Rules of Civil Procedure.<sup>5</sup>

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<sup>5</sup> Rule 19(a) provides:

(a) Persons to be Joined if Feasible.

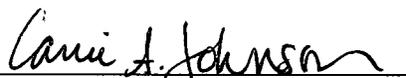
A person who is **subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in**

Because these proceedings arise out of BPI's fraudulent renewal of U.S. Registration No. 940,243 ("the '243 Registration"), it is proper that they proceed between Petitioners and BPI. BPI and Nextep have failed to prove that Nextep is an indispensable party. Accordingly, the Board should deny the current Motion to Dismiss.

### III. CONCLUSION

For all of the reasons discussed herein, Petitioners oppose Nextep and BPI's Motion to Dismiss and respectfully request that the Board deny BPI and Nextep's motion.

Respectfully Submitted,

  
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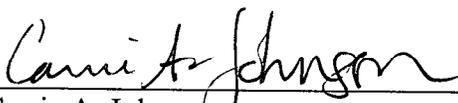
**the action if** (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and joinder of that party would render the venue of the action improper, that party shall be dismissed from the action.

Fed. R. Civ. Pro. 19(a)(emphasis added).

CERTIFICATE OF EXPRESS MAILING (No. EV 607732390 US)

I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 in an envelope addressed to the Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451 on June 6, 2005.

BY:

  
Carrie A. Johnson

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

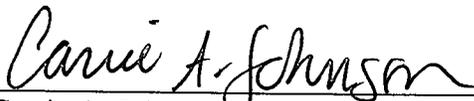
FORT JAMES OPERATING	)	
COMPANY and GEORGIA-PACIFIC	)	
CORPORATION,	)	Reg. No. 940,243
	)	
Petitioners,	)	Mark: BRAWNY
	)	
v.	)	Cancellation No. 92044396
	)	
BRAWNY PLASTICS, INC.,	)	
	)	
Registrant.	)	

**CERTIFICATE OF SERVICE**

This is to certify that I have this day served a true and correct copy of the foregoing PETITIONERS' BRIEF IN OPPOSITION TO MOTION TO DISMISS by depositing same in the United States mail, properly addressed with sufficient postage affixed thereto to ensure delivery to:

Michael D. Rounds  
Matthew D. Francis  
WATSON ROUNDS  
5371 Kietzke Lane  
Reno, NV 89511

June 6, 2005

  
Carrie A. Johnson

TTAB

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

FORT JAMES OPERATING )  
COMPANY and GEORGIA-PACIFIC )  
CORPORATION, )

Petitioners, )

v. )

BRAWNY PLASTICS, INC., )

Registrant. )

12399913

REGISTRATION NO.: 940,243

Mark: BRAWNY

CANCELLATION NO.: \_\_\_\_\_

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

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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.

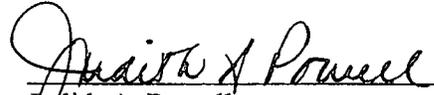
17. For all of the foregoing reasons, U.S. Registration No. 940,243 should therefore be canceled pursuant to 15 U.S.C. §1064(3).

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:



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1100 Peachtree Street

Atlanta, Georgia 30309

(404) 815-6500

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



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
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OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231



MARCH 25, 2005

PTAS

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RENO, NV 89511

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RECORDATION DATE: 03/24/2005

REEL/FRAME: 003052/0694  
NUMBER OF PAGES: 5

BRIEF: ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL.

ASSIGNOR:

BRAWNY PLASTICS, INC.

DOC DATE: 08/06/2003  
CITIZENSHIP: ILLINOIS  
ENTITY: CORPORATION

ASSIGNEE:

NEXTEP, INC.  
P.O. BOX 11188  
RENO, NEVADA 89510

CITIZENSHIP: NEVADA  
ENTITY: CORPORATION

APPLICATION NUMBER: 72399973  
REGISTRATION NUMBER: 940243

FILING DATE: 08/12/1971  
ISSUE DATE: 08/08/1972

MARK: BRAWNY

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

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