

ESTTA Tracking number: **ESTTA275579**

Filing date: **04/01/2009**

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

Proceeding	92046807
Party	Defendant Great Brands of Europe, Inc.
Correspondence Address	Kyoko Imai Oblon Spivak McClelland Maier & Neustadt 1940 Duke Street Alexandria, VA 22314 UNITED STATES KImai@oblon.com
Submission	Motion to Dismiss - Rule 12(b)
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Attachments	92046807-Dismis.pdf (4 pages)(75456 bytes)

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

_____)	
FIJI WATER COMPANY LLC;)	
PARAMOUNT INTERNATIONAL)	
EXPORT, LTD.,)	
)	
Petitioners,)	
v.)	Cancellation No.: 92/046,807
)	Registration No. 2,523,167
DANONE WATERS OF AMERICA, INC.)	Mark: UNTOUCHED BY MAN.
by change of name from)	PERFECT BY NATURE
GREAT BRANDS OF EUROPE, INC.)	
)	
Respondent.)	
_____)	

The Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

RESPONDENT’S MOTION TO DISMISS

Respondent, Danone Waters of America, Inc.,¹ through its undersigned counsel, hereby moves for an order dismissing Fiji Water Company LLC and Paramount International Export, Ltd's above-captioned Petition. The Petition should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted. Petitioners failed to plead standing for either Petitioner, and failed to plead a ground for cancellation.

¹ Respondent is filing, on the same date as this Motion to Dismiss, a Motion to Change the Caption of this proceeding to reflect the change of name from Great Brands of Europe, Inc., to Danone Waters of America, Inc.

A party filing a Petition to Cancel must show that it has a "real interest" in the case. 15 U.S.C § 1064; TBMP §303.03. Petitioners failed to allege facts that either Petitioner has a "real interest" and a "direct and personal stake" in the outcome of the proceeding. *Ritchie v. Simpson*, 50 USPQ2d 1023, 1025 (Fed. Cir. 1999). Rather, Petitioners allege only that they "desire to use UNTOUCHED BY MAN in connection with bottled water." Petition ¶ 1. This allegation of a mere possibility of future injury is insufficient to establish standing for purposes of a Petition for Cancellation.

Furthermore, the Petition for Cancellation does not set forth factual allegations sufficient for a *prima facie* case of abandonment. *Otto International Inc. v. Otto Kern GmbH*, 83 USPQ2d 1861, 1863 (TTAB 2007). Specifically, Petitioners alleged neither three consecutive years of non-use, nor facts showing both a shorter period of non-use coupled with an intent not to resume use. 15 U.S.C. §1127.

Accordingly, Respondent respectfully requests that the Petition for Cancellation be dismissed.

Respectfully submitted,

DANONE WATERS OF AMERICA, INC.

By: 
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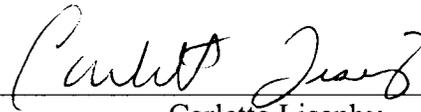
Date: April 1, 2009

JHK/KI/cli {553207_1.DOC}

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing RESPONDENT'S MOTION TO DISMISS was served on counsel for Petitioners, this 1st day of April, 2009, by sending same via First Class mail, postage prepaid, to:

Brian W. Kasell, Esq.
Rod S. Berman, Esq.
JEFFER MANGELS BUTLER & MARMARO LLP
1900 Avenue of the Stars, 7th Floor
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A handwritten signature in cursive script, appearing to read "Carlette Lisenby", is written over a horizontal line.

Carlette Lisenby