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

Proceeding	92048199
Party	Plaintiff Juan Antonio De La Cruz Gonzalez
Correspondence Address	Jeffrey M. Furr 2622 Debolt Road Utica, OH 43080 UNITED STATES jeffmfurr@aol.com
Submission	Brief on Merits for Plaintiff
Filer's Name	Jeffrey Furr
Filer's e-mail	jeffmfurr@aol.com, slsesq@hotmail.com
Signature	/jmf/
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In the Matter of Registration No. 2881888

.....X
JUAN ANTONIO DE LA CRUZ GONZALEZ, .
Petitioner, .
v. . Cancellation
YOUSSEF MEHANNA and SUSANA DE LA CRUZ, . No. 92048199
JOINT VENTURE, .
Respondents. .
.....X

PEITIONER’S BRIEF IN SUPPORT OF CANCELLATION OF TRADEMARK

2881888

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III. DESCRIPTION OF THE RECORD

1. Petitioner's Deposition of Juan Antonio De La Cruz ("Petitioner Gonzalez Depo.") taken July 10, 2009 at 9:45 am.
2. Exhibits for Petitioner's Deposition of Juan Antonio De La Cruz ("Petitioner Gonzalez Depo. Exhibits") taken July 10, 2009 at 9:45 am.
3. Petitioner's Deposition of Juan Antonio De La Cruz as representative for Aдови Cosmetica Capilar ("Petitioner Aдови Depo.") taken July 10, 2009 at 10:39 am.
4. Exhibits for Petitioner's Deposition of Juan Antonio De La Cruz as representative for Aдови Cosmetica Capilar ("Petitioner Aдови Depo. Exhibits") taken July 10, 2009 at 10:39 am.
5. Petitioner's Discovery Deposition of Susana De La Cruz ("Petitioner Cruz Depo.") taken December 9, 2008 at 10:00 am.
6. Petitioner's Discovery Deposition of Youssef Mehanna ("Petitioner Mehanna Depo.") taken December 9, 2008 at 10:00 am.
7. Petitioner Notice of Reliance Dominican Republic Trademark Records for the KUZ mark.
8. Certified Status copy of Registration No. 2,881,888, dated September 7, 2004 for the trademark KUZ.
9. Petitioner's Response to Respondents' First Set of Interrogatories.
10. Petitioner's Response to Respondents' Second Set of Interrogatories.
11. Petitioner's Response to Respondents' Request for Admissions.
12. Respondent's Discovery Deposition of Juan Antonio de la Cruz Gonzalez, ("Respondent Gonzalez Depo."), taken on November 21, 2008.

13. Exhibits for Respondent's Discovery Deposition of Juan Antonio de la Cruz Gonzalez, ("Respondent Gonzalez Depo. Exhibits"), taken on November 21, 2008.
14. Respondent's Deposition of Susana de la Cruz ("Respondent Cruz depo.") taken on October 14, 2009.
15. Exhibits for Respondent's Deposition of Susana de la Cruz ("Respondent Cruz depo. Exhibit") taken on October 14, 2009.

VI. STATEMENT OF THE ISSUES

The Petitioner is Juan Antonio De la Cruz Gonzalez, an individual with an address of c/Isabel De Torre, #26 Cerro De Arroyo Hondo 3ro, Santo Domingo, Dominican Republic, believes that he is, and will continue to be, damaged by US Trademark Registration 2881888 for the mark KUZ in International Class 003 for “Hair care preparations, namely shampoos, conditioners and hair dyeing preparations” and hereby requests cancellation of same.

The Petitioner registered and is the owner of the mark KUZ in the Dominican Republic in 2000. The Petitioner has owned the trademark in the Dominican Republic since 2000 with an IP Registration Number 127035 and an Industrial Registration Number 22095. Petitioner is the president, managing officer and major shareholder of his company, Adova Costemic Capalar, to which he gives permission to use the KUZ mark and to which has enforcement rights. Petitioner provided his products, under the KUZ mark, to Susana de La Cruz, Respondent, for distribution in the United States under the KUZ mark. Susana de La Cruz served as a distributor for the Petitioner.

Petitioner ended his commercial relationship with Susana de La Cruz as she defaulted on payments to Petitioner. Susana de La Cruz started selling products from other sources under the KUZ mark in the United States. Susana de La Cruz and her partner and husband, Youssef Mehanna applied for and registered the KUZ mark in the United States, Serial No. 2881888 using the Petitioner’s own goods as the specimen of use as provided to Respondent as a distributor for the Petitioner.

The Respondent has prevented Petitioner from registering its own KUZ mark and has prevented the Petitioner from importing its own products under its prior used and original KUZ mark.

Respondent's use of KUZ falsely suggests an association with or approval by Petitioner of Respondent's goods, and creates confusion in the marketplace, as customers will assume Respondent's goods are authorized or endorsed by Petitioner. Such false association will cause harm to Petitioner. The use by Respondent of KUZ for the goods listed in the subject registration is likely to create the erroneous impression that Respondent's goods originate with, are sponsored or promoted by, come from or are otherwise associated with Petitioner or Petitioner's goods and services in violation of Section 2(d) of the Lanham Act, 15 U.S.C. 1052(d).

The Petitioner has been and will continue to be damaged by continuance of said Registration 2881888 so long as the registration sought to be cancelled herein is maintained on the Register.

Witnesses

Juan Antonio De La Cruz Gonzalez - Mr. Gonzalez was the one that originally came up with the KUZ mark including the butterfly design (Petitioner Gonzalez Depo.5:13-6:7). This fact is not disputed by the parties. He has the ownership rights to the KUZ mark in Santa Domingo, (Petitioner's Notice of Reliance, Dominican Republic Trademark Records and Cruz testimony for Petitioner, Petitioner Gonzalez depo., Exhibit 2). He has given Adovi Cosmetica Capilar the rights to use the mark as he is the Manager and a

major shareholder of the company (Petitioner Adovi Depo.4:16-20). He has enforcement rights for the company and the KUZ mark (Petitioner Adovi Depo.5:9-12). Ms. Susana De La Cruz is Mr. Gonzalez' sister and Mr. Hehanna is married to her. Mr. Gonzalez testified for himself and separately for Adovi Cosmetica Capilar.

Susana De La Cruz - Ms. La Cruz was a distributor for Mr. Gonzalez and Adobe Costemica Caplir. She used the Petitioner's goods for the specimen of use for Registration No. 2881888. She is the sister of Mr. Gonzalez and the wife of Mr. Hehanna. Ms. La Cruz is a shareholder of Adovi Cosmetica Capilar.

Youssef Mehanna – Mr. Mehanna is the husband of Ms. La Cruz and a Respondent.

V. LAW AND ARGUMENT

A person “who believes that he is or will be damaged ... by the registration of a mark on the principal register”, may petition to cancel the registration under 15 U.S.C. § 1064; see also Golden Gate Salami Co. v. Gulf States Paper Corp., 332 F.2d 184, 188,; 141 U.S.P.Q. 661, 664 (CCPA 1964). To obtain cancellation of the registration, the petitioning party must show both standing and valid grounds for cancellation. Cunningham v Laser Golf Corp., 22F.3d 943, 945 (Fed Cir. 2000).

A Petitioner bears the burden of proving a substantive ground for cancellation of a mark by the preponderance of the evidence, see, e.g., Kohler Co. v Baldwin Hardware Corp., 82 USPQ.2s 1100, 1105-06 (TTAB 2007)(opposition sustained based upon common law trademark); Hydro-Dynamics Inc. v George Putnam & Co Inc., 1 USPQ.2d

1772, 1773 (Fed. Cir. 1987). Kohler, 82 USPQ.2d at 1106 (common law rights may form basis of opposition – “To establish priority, the petitioner must show proprietary rights in the mark that produce a likelihood of confusion... [which] may arise from a prior registration or service mark use, prior use as a trade name, prior use analogous to trademark or service mark use, or any other use sufficient to establish proprietary rights”

A. Petitioner Has Standing To Bring This Action.

Standing is a threshold inquiry directed solely to establish an opposing party’s interest in the proceeding. Hargo v. Pro Football Inc., 30 USPQ2d 1828, 1830 (TTAB 1994). “The purpose in requiring standing is to prevent litigation where there is not real controversy between the parties, i.e., where a plaintiff is more than a mere intermeddler.”

Id. In this regard the Board has previously stated

“The continuing pronouncements of the Federal Circuit leave us with the understanding that there is a low threshold for a plaintiff to go from being a mere intermeddler to one with an interest in the proceeding. The Court has stated that an opposer need only show ‘a personal interest in the outcome of the case beyond that of the general public.’ [Citations omitted]. Once this threshold has been crossed the opposer may rely on any ground that negates applicant’s right to the registration sought.” Estate of Biro v. Bic Corp., 18 USPQ.2d 1382, 1385 (TTAB 1991).

A party may establish its standing to cancel by showing that it has a “real interest” in the case, that is, a personal interest in the outcome of the proceeding and a reasonable basis for its belief in damage. Ritchie v. Simpson, 50 USPQ2d 1023, 1025

(Fed. Cir. 1999). A real interest in the proceeding and a reasonable belief of damage may be found where plaintiff asserts a claim of likelihood of confusion that is not wholly without merit. Time Warner Entertainment Co. v. Jones, 65 USPQ.2d 1650, 1657 (TTAB 2002).

Here the Petitioner has a prior use of the KUZ mark. The Petitioner actually came up with the KUZ mark (Petitioner Gonzalez Depo.5:13-6:7) and sold its goods through the Respondent (Respondent Cruz Depo. 15:8-23:18, Exhibit 2) and others. The Respondent misappropriated the KUZ mark for her own benefit as well as using that trademark to prevent the Petitioner from importing their goods that were previously sold in the United States (Petitioner Adovi Depo. 19:3-20:13, Exhibit 6) and from receiving their rightful trademark for the KUZ mark for Serial Number 77281582 (Respondent Gonzalez Depo. 11:13-21). These actions by the Respondent give the Petitioner standing to bring this case.

B. Petitioner has Priority In and To the KUZ Mark.

The hallmark of trademark rights is use. See, e.g., In re International Flavors & Fragrances Inc., 51 USPQ.2d 1513, 1516 (Fed. Cir. 1999). “The owner of a trademark need not register his or her mark in accordance with the Lanham Act in order to use the mark in connection with goods or to seek to prevent others from using the mark.” Id. Accordingly, an opposer “may establish its prior proprietary rights in a mark through actual use or through use analogous to trademark use such as in advertising brochures, trade publications, catalogues, news paper advertisements and Internet websites which create a public awareness of the designation as a trademark identifying the party as a

source.” Fram Trak Indus., Inc. v Wiretracks, 77 USPQ.2d 2000, 2004-05 (TTAB 2006)(citing to 15 U.S.C. §§ 1052(d) and 1127); see also T.A.B. Systems v. PacTel Teletrac, 37 USPQ.2d 1879, 1881 (Fed. Cir. 1996).

Where a Respondent owns a valid and subsisting registration of its mark that predates any claimed date of first use alleged by Petitioner, there is no genuine issue with respect to priority. National Football League v. Jasper Alliance Corp., 16 U.S.P.Q.2d 1212, 125 (T.T.A.B. 1990)(citing Borge Warner Corp. v Pneumatic Hydraulic Dev. Co., Inc., 185 U.S.P.Q. 181, 182-83 (T.T.A.B. 1975)); see also King Candy Co., Inc. v. Eunice King’s Kitchen, Inc., 182 U.S.P.Q.108, 110 (C.C.P.A. 1974).

The Petitioner has owned the trademark in the Dominican Republic since 2000 with an IP Registration Number 127035 and an Industrial Registration Number 22095 (Petitioner Gonzalez depo. Exhibit 2 and Petitioner’s Notice of Reliance).

The Respondent has admitted in her own testimony of the Petitioner’s prior date of usage in the United States as the Respondent was one of the Petitioner’s distributors in the United States (Respondent Cruz Depo. 15:8-23:18, Exhibit 2). The Respondent and Petitioner have both provided invoices for these sales in which the date of sales for which the Respondent has admitted that the dates are correct. Some of the Petitioner’s dates of use in the United States with sales to San Juan, Puerto Rico are May 5, 2003 and June 14, 2003(Respondent Adovi Depo. 8:16-13:5, Exhibit 1, Exhibit 2, Exhibit 3) (Respondent Cruz Depo. 15:8-23:18, Exhibit 2). The dates of some these invoices are May 5, 2003, June 14, 2003, July 29, 2003, July 30, 2003. Some of these dates were admitted to by the Respondent (Respondent Cruz Depo, see Exhibit 2). Ms. Cruz testified that she brought in products for the Petitioner in 1999 (Respondent Cruz depo. 34:12-22) to be

sold in the United States. All of these dates precede the Respondent's claimed date of first usage of August 24, 2003 in its application (Petitioner Gonzalez depo., Exhibit 1, Respondent Notice of Reliance, Trademark Certification).

Petitioner has attempted to use the KUZ mark in the United States continuously when not hampered by Respondents inappropriate actions as the Respondent misappropriated the KUZ mark for her own benefit to prevent the Petitioner from importing their goods that were previously sold in the United States (Petitioner Adovi Depo. 19:3-20:13, Exhibit 6).

There is no general issue of material facts that Petitioner has priority of rights.

C. Likelihood of Confusion.

In assessing the likelihood of confusion, the Trademark Trial & Appeal Board ("Board") considers the factors discussed in In re E. I. DuPont de Nemours & Co., 177 U.S.P.Q. 563, 567 (C.C.P.A. 1973)(the "DuPont factors"); see also Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En. 1772, 73 U.S.P.Q.2d 1689, 1691 (Fed. Cir. 2005); Carl Karcher Enters, Inc. v Stars Rests, Corp., 35 U.S.P.Q.2d 1125, 1126 (T.T.A.B. 1995). The DuPont factors that are pertinent to this proceeding include the (i) similarity of the marks; (ii) similarity of connotation; (iii) similarity of goods or services; (iv) condition of sale; (v) fame of the prior mark; (vi) number and nature of similar mark in use on similar goods or services; (vii) variety of good or services on which a prior mark is used; and (viii) similarity of channels of trade.

i. Similarity of the Marks

Petitioner's mark, KUZ, and Respondent's mark, KUZ, are the same. The Respondent copied Petitioner's mark exactly and used the Petitioner's own goods as the specimen of use (Petitioner's Cruz depo. 9:16-23, Petitioner's Gonzalez depo. 7:16-25).

Mark similarity takes on even greater importance in a likelihood of confusion analysis when the junior user's products directly compete with the senior user's products. Kos Pharmaceuticals, Inc. v. Andrx Corporation; Andrx Laboratories, Inc. 369 F.3d 700, 713 (3rd Cr. 2004)(citing A & H Sportswear, Inc. v. Victoria's Secret Stores, Inc., 237 F.3d 198, 216 (3rd Cir. 2000)(stating that "(w)hen goods are directly competing both precedent and common sense counsel that the similarity of the marks takes on greater prominence."). Where the good are directly competitive, the degree of similarity required to prove a likelihood of confusion is less than in the case of dissimilar products.

Respondent's mark KUZ is confusingly similar to Petitioner's mark KUZ because they are exactly equivalent.

When Respondent's mark is compared to a registered mark, "the points of similarity are of greater importance than the points of difference." Esso Standard Oil Co. v. Sun Oil Co., 229 F.2d 37, 108 USPQ 161 (D.C. Cir.), cert. denied, 351 U.S. 973, 109 USPQ 517 (1956); TMEP §1207.01(b).

When determining whether there is a likelihood of confusion under Section 2(d), the question is not whether people will confuse the marks, but rather whether the marks will confuse the people into believing that the goods they identify emanate from the same source. In re West Point-Pepperell, Inc., 468 F.2d 200, 175 USPQ 558 (C.C.P.A. 1972). For that reason, the test of likelihood of confusion is not whether the marks can be distinguished when subjected to a side-by-side comparison. The question is whether the marks create the same overall impression. Visual Information Inst., Inc. v. Vicon Indus. Inc., 209 USPQ 179 (TTAB 1980). The focus is on the recollection of the average purchaser who normally retains a general rather than specific impression of trademarks. Chemetron Corp. v. Morris Coupling & Clamp Co., 203 USPQ 537 (TTAB 1979); Sealed Air Corp. v. Scott Paper Co., 190 USPQ 106 (TTAB 1975); TMEP §1207.01(b).

Accordingly, this factor favors the Petitioner.

ii. Similarity of Connotation

Respondent's mark, KUZ, is the same as the Petitioner's mark, KUZ. This causes confusion as to source.

Accordingly, this factor favors the Petitioner.

iii. Similarity of the Goods and Services

The goods and/or services of the parties need not be identical or directly competitive to find a likelihood of confusion. Instead, they need only be related in some manner, or the conditions surrounding their marketing be such that they could be encountered by the same purchasers under circumstances that could give rise to the mistaken belief that the goods and/or services come from a common source. In re Martin's Famous Pastry Shoppe, Inc., 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); In re Melville Corp., 18 USPQ2d 1386, 1388 (TTAB 1991); In re Corning Glass Works, 229 USPQ 65 (TTAB 1985); In re Rexel Inc., 223 USPQ 830 (TTAB 1984); Guardian Prods. Co., Inc. v. Scott Paper Co., 200 USPQ 738 (TTAB 1978); In re Int'l Tel. & Tel. Corp., 197 USPQ 910 (TTAB 1978); TMEP §1207.01(a)(i).

The goods are related because they both include Hair care preparations, namely shampoos, conditioners and hair dyeing preparations. In fact the Respondent admits in her testimony (Petitioner's Cruz depo. 9:16-23, Petitioner's Gonzalez depo. 7:16-25) that the specimens of use for the filed with their Trademark Application, Serial Number 7832906 were supplied by the Petitioner and the company that he runs Adova Costemic Capalar.

Accordingly, this factor favors the Petitioner.

iv. Variety of Goods or Services on Which the Senior Mark Is Used

This factor weighs whether the senior user's mark is used on or in connection with a variety of goods or services as a house mark or "family" mark. Packard Press, Inc. v. Hewlett-Packard Co., 56 U.S.P.Q.2d 1351, 1353 (Fed. Cir. 2000). When the senior user's mark is used in connection with a variety of goods and services, the relevant public is more likely to associate with the senior user a similar mark used by a newcomer in connection with products or services identical or similar to those with which Petitioner's mark has been used. Thus, the likelihood of the association increases with the strength of the senior user's mark, which increases the likelihood of confusion. See Mobil Oil Corp. v. Pegasus Petroleum Corp., 2 U.S.P.Q.2d 1677, 1680 (2d Cir. 1987). Petitioner uses the mark for a large variety of goods.

Accordingly, this factor favors the Petitioner.

v. Similarity of Trade Channels and Conditions of Sale

It is well settled that where a trademark application describes goods or services broadly without limitation, it is presumed that the goods or services in that application move in all normal channels of trade. See, E.g., In re Linkvest, S.A., 24 U.S.P.Q. 2d at 1716, 1716 (T.T.A.B. 1992)(stating that where a registrant's goods are broadly identified as "computer programs recorded on magnetic disks," without any limitation, it is necessary to assume that the registrant's goods travel in the same channels of trade and are available to all classes of prospective purchasers of those goods as the cited mark). The Petitioner and Respondent have similar channels and conditions of sale as the Respondent

was selling the Petitioner's goods prior to misappropriating the KUZ trademark for their own uses. This indicates that the Respondent's and Petitioner's goods have the same or similar trade channels and conditions for sale.

The Petitioner and Respondent have similar trade channels and conditions of sale as the Respondent was original a distributor for the Petitioner.

Accordingly, this factor favors the Petitioner.

D. Cancellation based on Priority and Likelihood of Confusion

Given the Dupont factors the (i) similarity of the marks; (ii) similarity of connotation; (iii) similarity of goods or services; (iv) condition of sale; (v) fame of the prior mark; (vi) number and nature of similar mark in use on similar goods or services; (vii) variety of good or services on which a prior mark is used; and (vii) similarity of channels of trade, and the fact that the Petitioner has priority to the mark, the Respondent's KUZ mark should be cancelled.

E. Respondent was fully aware of Petitioner's senior use of the KUZ mark when it nonetheless chose to plow forward in an attempt to trample over and illegally secure for itself Petitioner's rights and goodwill in its KUZ trade name and trademark while intentionally misleading the Trademark Office.

By Respondent's own testimony and admission, (Respondent Cruz Depo. 15:8-23:18, Exhibit 2) that Respondent knew of Petitioner's use and desired continued use of the KUZ mark in the United States at time of the Respondent's filing for the KUZ mark, serial number 7832906. In fact, Respondent has testified that the specimen of use in their trademark application was actually provided by the Petitioner (Petitioner's Cruz depo. 9:16-23). This in of itself is a fraud on the trademark office. When applying for a trademark, an applicant is required to sign a sworn statement that

“ The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the application to be the owner of the trademark/service mark sought to be registered, or , if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance hereto as to be likely, when used on or in connection with the goods/service of such other persons, to cause confusion, or to cause mistake, or to deceive; and that all statements make of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.“

This sworn statement was signed (Petitioner Gonzalez depo. Exhibit 1, Respondent's Notice of Reliance) for serial number 7832906, which Petitioner's argues was a misrepresentation to the Trademark Office and fraud as to the fact that the Respondent has admitted to using the Petitioner's product for its specimen of use (Petitioner's Cruz depo. 9:16-23, Petitioner's Gonzalez depo. 7:16-25). This should result in the Respondent's trademark being cancelled.

The Board has stated that a party must plead and prove the following elements in support of a claim that the declaration in another's application for registration was executed fraudulently in that there was another, earlier use of the same mark or a confusingly similar mark at the time the declaration was signed:

1. that there was in fact another use, prior to applicant's use, of the same mark or a confusingly similar mark at the time the declaration was executed;
2. that the other user had legal rights superior to the rights of the applicant;
3. that the applicant knew that the other user had superior rights in the mark, and either believed that a likelihood of confusion would result from applicant use of its mark or had no reasonable basis for believing otherwise; and
4. that the applicant, by failing to disclose the facts to the Patent and Trademark Office, intended to procure a registration to which applicant was not entitled. See Ohio State University v Ohio University, 51 USPQ2d 1289, 1293 (TTAB 1999); Intellimedia Sports Inc. v. Intellimedia Corp., 43 USPQ2d 1203, 1206 (TTAB 1997).

In this case, the Respondent knew of Petitioner's superior rights to the KUZ mark. The Respondent was a distributor for the Petitioner's products. The Respondent has testified that they were a distributor and that the Petitioner came up with the KUZ mark and the Respondent received invoices (Respondent Adovi Depo. 8:16-13:5, Exhibit 1, Exhibit 2, Exhibit 3) (Respondent Cruz Depo. 15:8-23:18, Exhibit 2) from the Petitioner and even used the Petitioner's product as its specimen of use (Petitioner's Cruz depo. 9:16-23, Petitioner's Gonzalez depo. 7:16-25). The Respondent knew a likelihood of confusion would result with the Petitioner's mark as the Respondent used the registered KUZ mark to prevent the Petitioner from importing their goods into the United States (Petitioner Adovi Depo. 19:3-20:13, Exhibit 6). The Respondent failed to disclose these facts to the Patent and Trademark Office with the intent to procure a registration to which the applicant was not entitled. Therefore the Respondent's KUZ mark, Serial Number 78329006 should be cancelled.

F. Improper Owner filed for the Trademark Registration

Section 1(a)(1) of the Lanham Act, 15 USC § 1051(a)(1), provides that the "owner" of a trademark used in commerce may request registration of the mark. The Trademark Rule specifically addresses the ownership requirement. An application filed in the name of an entity that did not own the mark as of the filing date of the application is void. See, Trademark Rule 2.71(d), 37 CFR § 2.71(d). See Huang v. Tzu Wei Chen Food Co. Ltd., 849 F.2d 1459, 1460, 7 USPQ2d 1335, 1336 (Fed. Cir. 1988) (application

filed in the name of individual two days after mark was acquired by newly formed corporation held void); In re Ton Yang Cement Corp., 19 USPQ2d 1689, 1691 (TTAB 1991)(application filed by joint venturer void where mark owned by joint venture).

Here the Respondent, Ms. Cruz was a shareholder of Adova Costemic Capalar but she did not have the rights to file for the KUZ mark in the name of the company and then later used the Registration of the KUZ mark against the very company of which she was a Shareholder (Petitioner Adovi Depo. 19:3-20:13, Exhibit 6). The Board has also held many times that a Distributor does not gain trademark right distributing a product or service. Here the Respondent was a Distributor for the Petitioner and all rights to the Trademark would rest with the Petitioner.

VI. CONCLUSION

For the foregoing reasons, the cancellation should be granted due to the Petitioner's prior use date and likelihood of confusion and given that the Respondent misrepresented the source of the goods in the specimen of use and that the Respondent knew of Petitioner's prior usage when filing for the mark thus committing a fraud on the Trademark Office. Petitioner has given the law that applies to the evidence and facts that the Board should hand down their final ruling in the favor of broad impartiality. Thus, all points powerfully support Respondent's mark being cancelled in this case.

Respondent, as the latecomer, had both the opportunity and the obligation to select a mark that would not be confusingly similar to Petitioner's KUZ trade name and

trademark. Instead, Respondent chose to move forward to illegally register Petitioner's KUZ mark.

Respondent's mark is identical, carry the identical pronunciation, and convey the same commercial impression. The record firmly establishes Petitioner's priority of use, continued use, and likelihood of confusion. Respondent's tactics should not be rewarded. As a newcomer and with knowledge of Petitioner's senior use, Respondent acted at its peril, and its registration for the KUZ mark should be cancelled.

Petitioner prays that this cancellation be awarded, and that Registration Number 2881888 be cancelled.

Respectfully submitted,

/jmf/
Jeffrey Furr, Esq.
2622 Debolt Road
Utica, Ohio 43080
(740) 892-2118
jeffmfurr@aol.com
Attorney for Petitioner
Cancellation No. 92048199

CERTIFICATE OF SERVICE

This is to certify that on March 10, 2010 a copy of the foregoing document was served on counsel for the Petitioner by electronic mail and first class mail delivery to: Sherry L. Singer, Attorney at Law, 1430 Broadway, Suite 1101, New York, NY 10018 and filed electronically with the Trademark Trial and Appeal Board.

/jmf/
Jeffrey M Furr