

ESTTA Tracking number: **ESTTA249484**

Filing date: **11/18/2008**

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

**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

**Petitioner Information**

Name	Jerry V Mayeux		
Entity	Individual	Citizenship	UNITED STATES
Address	HC 66 Box 74 Deming, NM 88030 UNITED STATES		

Attorney information	Todd E. Rinner Rodey Dickason Sloan Akin & Robb, P.A. PO Box 1888 Albuquerque, NM 87103 UNITED STATES trinner@rodey.com Phone:505-765-5900		
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**Registration Subject to Cancellation**

Registration No	3286991	Registration date	08/28/2007
Registrant	Loveland Products, Inc. 7251 W. 4th Street Greeley, CO 80634 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 001. First Use: 2005/10/06 First Use In Commerce: 2006/05/00 All goods and services in the class are cancelled, namely: fertilizers for ornamental, turf, domestic, commercial and agricultural use
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**Grounds for Cancellation**

Priority and likelihood of confusion	Trademark Act section 2(d)
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**Mark Cited by Petitioner as Basis for Cancellation**

U.S. Registration No.	2364174	Application Date	03/01/1999
Registration Date	07/04/2000	Foreign Priority Date	NONE
Word Mark	C.A.L.F.A.		

Design Mark	<b>C.A.L.F.A.</b>
Description of Mark	NONE
Goods/Services	Class 001. First use: First Use: 1998/02/07 First Use In Commerce: 1998/02/07 Carboxylic acid liquid fertilizer additive for use with Plant Growth Regulators, Plant Growth Stimulants and Plant Growth Hormones, and Compositions for improving crop production efficiency, seed germination, rooting, transplanting, pollination, blooming and yield

Attachments	75651677#TMSN.gif ( 1 page )( bytes ) PBT - petition for cancellation1.pdf ( 4 pages )(387995 bytes ) PBT - Ex. A to petition for cancellation.PDF ( 1 page )(20386 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/toddrinner/
Name	Todd E. Rinner
Date	11/18/2008

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

In the Matter of Registration No. 3286991

Date of Issue: August 28, 2007

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Jerry V. Mayeux,

Petitioner,

v.

Cancellation No.: \_\_\_\_\_

Loveland Products, Inc.,

Registrant.

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

**PETITION FOR CANCELLATION**

Jerry V. Mayeux (“Mayeux” or “Petitioner”), an individual residing in New Mexico with an address of HC 66 Box 74, Deming, New Mexico, 88030, believes that he will be damaged by Registration No. 3286991, believed to be owned by Loveland Products, Inc. (“Registrant”) having a business address of 7251 W. 4th Street, Greeley, Colorado 80634, as it relates to goods in Class 01, namely “fertilizers for ornamental, turf, domestic, commercial and agricultural use,” and hereby petitions to cancel the registration of the mark C-ALPHA for those goods. As grounds therefor, it is alleged that:

1. Petitioner has adopted and continuously used the trademark C.A.L.F.A., either himself or through a related company or licensee, since at least as early as February 7, 1998, to the

present, in connection with the sale of “carboxylic acid liquid fertilizer additive for use with plant growth regulators, plant growth stimulants and plant growth hormones, and compositions for improving crop production efficiency, seed germination, rooting, transplanting, pollination, blooming and yield” in Class 01.

2. Petitioner has obtained U.S. Trademark Registration No. 2364174 covering the trademark C.A.L.F.A. for “carboxylic acid liquid fertilizer additive for use with plant growth regulators, plant growth stimulants and plant growth hormones, and compositions for improving crop production efficiency, seed germination, rooting, transplanting, pollination, blooming and yield” in Class 01. A copy of this registration is appended to this petition as Exhibit “A”.

3. Registration No. 2364174 was issued on July 4, 2000, and Section 8 and 15 affidavits have been filed pursuant to the provisions of the Lanham Act and the same have been accepted and acknowledged by the USPTO. Registration No. 2364174 has become incontestable and is owned by Petitioner as shown by the Records of the USPTO appended to his petition as Exhibit “A”.

4. Registration No. 3286991, sought to be cancelled, is for the trademark C-ALPHA, registered for use on “fertilizers for ornamental, turf, domestic, commercial and agricultural use” in Class 01. Such goods are closely related or identical to those on which Petitioner uses C.A.L.F.A. and for which Petitioner has registered C.A.L.F.A.

5. There is no issue as to priority of use. Petitioner’s registration issued approximately five (5) years prior to the first date of use of the Registrant’s mark (“first use” date of November 2005; “first use in commerce” date of May 2006).

6. Petitioner has expended considerable effort and expense in promoting its trademark C.A.L.F.A. and the goods sold under such mark, with the result that the purchasing public has

come to know, rely upon, and recognize the products of Petitioner by such mark. Petitioner has a valuable goodwill established in its mark.

7. If the Registrant is permitted to retain the registration sought to be cancelled, and thereby, the *prima facie* exclusive right to use in commerce the mark C-ALPHA on the closely related and sometimes identical goods sold by Registrant or Registrant's closely related company or licensee, there is a likelihood of confusion in trade will result, and has resulted, from concurrent use of Petitioner's mark and that of the Registrant to the detriment of Petitioner, who has expended considerable sums and effort in promoting its mark. The likelihood of confusion stems from, *inter alia*, the confusingly similar sound, appearance, and meaning of Registrant's mark as compared to the mark of Petitioner's registration.

8. Purchasers are likely to consider the goods of the Registrant sold under the mark C-ALPHA as emanating from Petitioner, and purchase such goods as those of the Petitioner, resulting in, *inter alia*, loss of sales to Petitioner. Petitioner is likely to continue suffering other damages as well as a result of the Registrant's use of its confusingly similar mark.

9. Concurrent use of Registrant's mark and Petitioner's mark may result in irreparable damage to Petitioner's reputation and goodwill, if the goods sold by Registrant are inferior, since purchasers are likely to attribute the source of the Registrant's goods to the Petitioner.

**Wherefore**, Petitioner deems that it is being damaged or will be damaged by Registration No. 3286991 and petitions for cancellation thereof as it relates to goods in Class 01.

Respectfully Submitted,

Rodey Dickason Sloan Akin & Robb, P.A.

By:



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**Int. Cl.: 1**

**Prior U.S. Cls.: 1, 5, 6, 10, 26 and 46**

**United States Patent and Trademark Office**

**Reg. No. 2,364,174**

**Registered July 4, 2000**

**TRADEMARK  
PRINCIPAL REGISTER**

**C.A.L.F.A.**

MAYEUX, JERRY V. (UNITED STATES CITIZEN)  
702 CORONADO ROAD  
CORRALES, NM 87048

FOR: CARBOXYLIC ACID LIQUID FERTILIZER  
ADDITIVE FOR USE WITH PLANT GROWTH REGU-  
LATORS, PLANT GROWTH STIMULANTS AND  
PLANT GROWTH HORMONES, AND COMPOSI-  
TIONS FOR IMPROVING CROP PRODUCTION EFFI-

CIENCY, SEED GERMINATION, ROOTING, TRANS-  
PLANTING, POLLINATION, BLOOMING AND  
YIELD, IN CLASS 1 (U.S. CLS. 1, 5, 6, 10, 26 AND  
46).

FIRST USE 2-7-1998; IN COMMERCE 2-7-1998.

SER. NO. 75-651,677, FILED 3-1-1999.

JEAN IM, EXAMINING ATTORNEY