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

Proceeding	92050616
Party	Plaintiff Riowell, LLC
Correspondence Address	Rakesh M. Amin Amin Talati, LLC 444 N. Orleans St. Suite 400 Chicago, IL 60654 UNITED STATES ryan@amintalati.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Ryan M. Kaiser
Filer's e-mail	ryan@amintalati.com
Signature	/Ryan M. Kaiser/
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Registration No.: 3,228,958

For the Mark: LEAN FOR LIFE

Date Registered: April 17, 2007

Riowell, LLC)	
)	
Petitioner,)	
)	
)	Cancellation No. 92050616
v.)	
)	
Lindora, Inc.)	
)	
Registrant.)	
)	

FIRST AMENDED PETITION FOR CANCELLATION

Petitioner Riowell, LLC, is a Limited Liability Corporation organized and existing under the laws of the state of Texas, with a principal place of business at 13105 Northwest Freeway, Suite 1200, Houston, TX 77040. To the best of the Petitioner’s knowledge, the current owner of the subject Registration (Serial No. 3,228,958) is Lindora, Inc. (“Registrant”), having an address of 3505 Cadillac Avenue, Suite N-2, Costa Mesa, California 92626. Petitioner believes it will be damaged by Registration No. 3,228,958 for the mark LEAN FOR LIFE and hereby petitions to cancel the same. The grounds for cancellation are as follows:

COUNT I – Likelihood of Confusion

1. Petitioner is the owner of the pending application having serial number 77/679,688 (hereafter “Petitioner’s Application”) for the “LEANLIFE” mark (hereafter “Petitioner’s Mark”).

2. Petitioner's Application was filed on February 27, 2009.
3. The goods identified in Petitioner's Application include "dietary supplements" in international class 005.
4. Petitioner and its predecessor-in-interest owned Federal Trademark Registration Number 1,827,182 for the "LEANLIFE" mark.
5. Petitioner filed its application for registration of the '182 mark on June 14, 1993. Registration was subsequently granted on March 22, 1994 based on a date of first use in commerce of December 10, 1992. Registration of the '182 mark was inadvertently cancelled on December 25, 2004.
6. On December 29, 2004, Petitioner filed a new application to re-register its LEANLIFE mark.
7. Petitioner's December 29, 2004 application was refused because the examiner determined that LEANLIFE was likely to cause confusion with Registrant's "LEAN FOR LIFE" mark, Registration No. 3,228,958 (hereafter "Registrant's Mark").
8. Registrant's filed an application for registration of Registrant's Mark on December 13, 2002, and obtained registration thereof on April 17, 2007. Registrant's claimed date of first use is listed as simply "1994".
9. Registrant's Mark, as applied to the goods identified in Registration No. 3,228,958, is likely to cause confusion and mistake and to deceive, and to mislead consumers and/or the trade into believing that such goods are in some way sponsored by, affiliated with and/or connected to Petitioner, with consequent injury to Petitioner and the consuming public, in violation of Section 2(d) of the

Lanham Act, 15 U.S.C. § 1052(d). Specifically, the goods identified in Registration No. 3,228,958, and complained of in this petition (hereafter “Registrant’s Goods”) are: “dietetic substances, namely, multi-vitamins, ketosis sticks for determining fat burning status; and meal replacement powder drink in various flavors to be used in connection with medical clinics oriented to weight management and weight loss” in international class 005; “meal replacement, namely, puddings, hot chocolate and pudding mixes in various flavors to be used in connection with medical clinics oriented to weight management and weight loss” in international class 030; and “meal replacement, namely, chocolate drink in the nature of vegetable-based chocolate food beverages, snacks, namely, protein based nutrient-dense snack bars, soy nuts and soups” in international class 029.

10. Petitioner (through its predecessor(s)-in-interest) has continuously used Petitioner’s Mark in interstate commerce since at least as early as December 10, 1992.
11. Petitioner has priority based on prior continuous use in commerce of the substantially similar mark “LEANLIFE” in connection with dietary supplements as set forth in Petitioner’s Application.
12. Petitioner has spent a considerable amount of money marketing and promoting its products bearing Petitioner’s Mark. As a result of this investment, Petitioner has developed substantial goodwill and widespread recognition as the source of products sold under the “LEANLIFE” name. This goodwill and recognition has

occurred since prior to Registrant's December 13, 2002 filing date and claimed "1994" date of first use.

13. Petitioner will be damaged by Registration No. 3,228,958 because such registration will support and assist Registrant in misleading the public and will give the color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

WHEREFORE, Petitioner believes that it will be damaged by Registration No. 3,228,958 and prays that this Petition for Cancellation of that Registration, in its entirety, be granted.

COUNT II – Registrant's Mark is Descriptive

14. Petitioner repeats and re-alleges paragraphs 1-13 above as though set forth fully herein.
15. The expression "LEAN FOR LIFE" is used throughout the supplement, health care and weight-loss industries and in the media to generally describe the goods listed in Registrant's registration.
16. The expression "LEAN FOR LIFE" immediately describes a function, feature or characteristic of the goods marketed by Registrant and identified in the registration being opposed.
17. Registrant has admitted under oath that the LEAN FOR LIFE mark is intended connote and promote the impression of healthy weight loss and long-term weight management (*i.e.* to help consumers stay "LEAN FOR LIFE").

18. Because Registrant's Mark is comprised entirely of a merely descriptive term, Registration No. 3,228,958 ("LEAN FOR LIFE") is not entitled to federal registration.
19. Petitioner has been, and believes it will continue to be, damaged by the continued existence of Registrant's registration for the term LEAN FOR LIFE.

WHEREFORE, Petitioner believes that it will be damaged by Registration No. 3,228,958 and prays that this Petition for Cancellation of that Registration, in its entirety, be granted.

No fee is believed due, as this is an Amended Notice of Opposition.

Dated: April 29, 2010

Respectfully Submitted,
AMIN TALATI, LLC

/s/ Rakesh M. Amin
Rakesh M. Amin
Ryan M. Kaiser
Attorneys for Opposer
Amin Talati, LLC
225 N. Michigan Ave.
Suite 700
Chicago, IL 60601