ESTTA Tracking number: **ESTTA332212**
Filing date: **02/16/2010**

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

Proceeding	92050966
Party	Plaintiff Atlas Flowers, Inc. d/b/a Golden Flowers
Correspondence Address	Caroline G. Boehm Kalow & Springut LLP 488 Madison Ave., 19th Floor New York, NY 10022 UNITED STATES tbenschar@creativity-law.com, ms@creativity-law.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Tal S. Benschar
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Signature	/Tal S. Benschar/
Date	02/16/2010
Attachments	Stipulation to File Amended Petition for Cancellation.pdf (1 page)(34197 bytes) Amended Petition for Cancellation.pdf (6 pages)(181266 bytes)

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

In re Registration No. 3,074,073
Mark:

ATLAS FLOWERS, INC. d/b/a GOLDEN FLOWERS,	
Petitioner,	Cancellation No.: 92050966
- against -	
GOLDEN VISION FLOWER, INC.,	
Registrant.	

STIPULATION TO FILE AMENDED PETITION FOR CANCELLATION

In accordance with Rule 15, Federal Rules of Civil Procedure, and TBMP §§ 501 and 507, on this 12th day of February, 2010, the parties to the above proceeding, through their undersigned counsel, hereby STIPULATE that Petitioner Atlas Flowers, Inc. may file and serve an AMENDED PETITION FOR CANCELLATION in the form previously agreed upon by counsel.

KALOW & SPRINGUT LLP

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

In re Registration No. 3,074,073
Mark:

ATLAS FLOWERS, INC. d/b/a GOLDEN FLOWERS,	:	
Petitioner,	:	Cancellation No.: 92050966
- against -	:	
GOLDEN VISION FLOWER, INC.,	:	
Registrant.	:	

AMENDED PETITION FOR CANCELLATION

In accordance with Rule 15, Federal Rules of Civil Procedure, and TBMP § 314, and the Stipulation executed by the parties filed herewith, Petitioner Atlas Flowers, Inc., located at 2600 NW 79th Avenue, Miami, Florida 33122, believes that it will be damaged by the continued registration of the mark GOLDEN VISION FLOWER INC. and Design of Registration No. 3,074,073 owned by Golden Vision Flower, Inc. ("Registrant"), and hereby amends its petition to cancel the same pursuant to Section 14(1, 3) of the Lanham Trademark Act of 1946, 15 U.S.C. § 1064(1, 3).

As grounds therefore, Petitioner alleges as follows:

1. Petitioner is the owner of a Section 1(a) application for the mark GOLDEN FLOWERS, Serial No. 77/571,430, filed on September 16, 2008, for fresh cut flowers in International Class 31; and a Section 1(a) Application for the mark GOLDEN FLOWERS with Design, Serial No. 77/571,417, filed on September 16, 2008 for fresh cut flowers in International Class 31 (collectively the "Applications").

2. In separate Office Actions, both dated December 17, 2008, Registrant's GOLDEN FLOWER VISION INC. and Design Mark, Registration No. 3,074,073 ("Registrant's Mark"), registered for various flowers and horticultural products in International Class 31, was cited under Section 2(d) of the Trademark Act as a basis for refusing registration of Petitioner's respective marks in its Applications.

3. Upon information and belief, Petitioner's rights are superior and long prior in time to those of Registrant, Petitioner having commenced use of its mark at least as early as December 31, 2000, prior to the time Registrant began use of its mark in commerce or applied for registration of same.

4. Further, given the similarity between the parties' respective marks and the great similarity and closeness of the goods, there is a high likelihood of confusion if Registrant is permitted to continue use of its mark as registered for the goods listed therein.

5. Petitioner will be seriously injured if Registrant is permitted to have its certificate of registration remain of record, thereby obstructing the Applications for registration by Petitioner which already has been filed in the United States Patent and Trademark Office.

6. Registrant, if permitted to retain the registration herein sought to be cancelled and thereby retaining the prima facie exclusive right to the mark therein for the goods listed therein,

will be in a position to cause annoyance and to harass Petitioner in selling its said goods and raise doubts as to the right of Petitioner to use its own marks.

Lack of Use In Commerce

7. Registration No. 3,074,073 is for the following goods: "Cut flowers, dried flowers and live flowers; Flower bulbs; Flower seeds; Live flowering plants; Dried plants and live plants; Grass and grass seeds; Fresh herbs and raw herbs; Live orchids."

8. However, at deposition of Registrant by Ms. Shih Wen Huang, Registrant admitted that in fact it has *never* sold any of the products listed in its registration, apart from Live Orchids.

9. Further, even as to Live Orchids, upon information and belief there was no trademark use made by Registrant prior to January 19, 2006. (The instant registration began as an intent-to-use application under Section 1(b) of the Trademark Act. A Notice of Allowance issued on July 19, 2005, which required a Statement of Use to be filed within 6 months. Although one was filed on January 6, 2006, that Statement of Use was false and fraudulent, as set forth below. In fact, it appears that no "use in commerce" (as that term is defined in the Trademark Act) of the registered mark was ever made prior to January 19, 2006, the deadline under the Notice of Allowance.)

Fraud

10. On January 6, 2006, Registrant, filed a Statement of Use as required by the Trademark Act. (The underlying Statement of Use, however, was dated August 8, 2005) That document is of-record with the Trademark Office.

11. The Statement of Use was false in that it affirmed use of the subject mark for "Cut flowers, dried flowers and live flowers; Flower bulbs; Flower seeds; Live flowering plants; Dried plants and live plants; Grass and grass seeds; Fresh herbs and raw herbs; Live orchids."

However, Registrant has to date *never* used its mark (or indeed engaged in any commerce) with respect to any of the products listed other than Live Orchids.

12. The listing of these additional goods on the Statement of Use was material to the issuance of the registration. Had the Statement of Use only listed Live Orchids, then only a much more limited registration would have issued.

13. The circumstances of this submission strongly suggest that it was made with the intent to deceive, or at least with reckless disregard of the truth:

(a) As set forth above, Ms. Huang confirmed that Registrant has *never* in its entire corporate history since 2003 sold any products other than live orchids (and related packaging, such as pottery). She confirmed that the additional products listed in the Statement of Use and Registration were merely product categories which the company hoped to sell at some point in the future, but those plans have to date never materialized.

(b) Registrant is a small family owned company. Ms. Huang testified that her parents, who are based in Taiwan, own and manage the company. At most the company has had about a dozen employees, mostly low-level employees who work in its greenhouse. It is inconceivable that in 2005, when the Statement of Use was signed, that the signatory was not aware of what products the company was and was not selling.

(c) The Statement of Use appended as a specimen a tag which Ms. Huang was wholly unfamiliar and which she had no knowledge of the company ever using.

(d) That specimen lists all of the products listed in the Statement of Use and Registration. It appears that such Specimen was created solely for the purpose of the required filing with the Trademark Office and not actually used in Registrant's business.

(e) The Statement of Use is signed by a "Li Ying Chuang, President." At deposition, Ms. Huang confirmed that this was her mother, but that she was never President of the company (although she was and is a shareholder and director).

14. For all of the above reasons, the Statement of Use submitted was both false and fraudulent, and hence the Registration should be cancelled on the grounds that it was obtained by fraud.

WHEREFORE, Petitioner requests that this cancellation be sustained and that Registration No. 3,074,073 be cancelled.

Dated: New York, New York
February 16, 2010

Respectfully submitted,

KALOW & SPRINGUT LLP

By: _____

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(212) 813-1600

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing is being served by First Class mail upon the Registrant's counsel at:

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Lori T. Milvan, Esq.
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this 16th day of February , 2010

Tal S. Benschar