

ESTTA Tracking number: **ESTTA413965**

Filing date: **06/10/2011**

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	T. E. NEESBY, INC.		
Entity	Corporation	Citizenship	CA
Address	9909 N. MERIDIAN AVENUE FRESNO, CA 93720 UNITED STATES		

Attorney information	Angus Fox Law Offices of Angus Fox 4093 N. Imperial Way Provo, UT 84604-5386 UNITED STATES acfox3@gmail.com Phone:801-225-9000		
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Registration Subject to Cancellation

Registration No	2740222	Registration date	07/22/2003
Registrant	INTERPLEXUS, INC. 6613 S. 192nd Place #K103 Kent, WA 98032 UNITED STATES		

Goods/Services Subject to Cancellation

Class 005. First Use: 1994/08/01 First Use In Commerce: 1994/08/01 All goods and services in the class are cancelled, namely: Dietary supplements containing phosphorylated serine

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
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Related Proceedings	Interplexus Corporation vs. T. E. Neesby, Inc., Brian White and Sheryl White Case Number: 1:2011cv00597 Filed: April 13, 2011 Court: U.S. District Court for the Eastern District of California
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Attachments	WhiteBrian-Seriphos-PetitionCancel-2740222.pdf (4 pages)(45847 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	/angus fox/
Name	Angus Fox
Date	06/10/2011

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

In the matter of Registration No.: 2,740,222

For the mark SERIPHOS

Registration Date: July 22, 2003

T. E. NEESBY, INC.

Petitioner

vs.

INTERPLEXUS CORPORATION,

Registrant

PETITION FOR CANCELLATION

The Petitioner is T. E. Neesby, Inc. (hereinafter, "Neesby"), a California corporation having its principal place of business located at 9909 N. Meridian Avenue, Fresno, California 93720.

The Registrant is Interplexus Corporation (Hereinafter, "Interplexus"), a corporation organized under the laws of the State of Washington, and having its principal place of business located at 6613 S. 192nd Place, Suite K-103, Kent, Washington 98032.

The Petitioner believes that the trademark "SERIPHOS", which was filed as Trademark Application Serial No. 76/455,597 on September 30, 2002, and accorded Registration No. 2,740,222 on July 22, 2003, was procured by perjury and fraud, and hereby petitions to cancel the same.

The grounds for cancellation are as follows:

1. On September 10, 2002, Elias F. Ilyia, President of Registrant Interplexus, perjured himself by signing the Declaration which accompanied the submission of Trademark Application Serial No. 76/455,597.
2. By signing the Declaration, Mr. Ilyia averred, under penalty of perjury, that he believed that the applicant was entitled to use the mark Seriphos in commerce; and that "to the

best of his knowledge and belief, no other person, firm, corporation, or association has the right to use the above-identified mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his own knowledge are true and all statements made on information and belief are believed to be true.”

3. Mr. Ilyia knew that his averment in support of the trademark application for the mark Seriphos was a blatant prevarication, because he was fully aware that Petitioner Neesby was the owner of the mark, that Brian White—the principal shareholder and manager of Petitioner Neesby—had created the mark, that Petitioner Neesby had used the mark more than a year earlier than had Interplexus, that Petitioner Neesby was still using the mark, and that Brian White had given him permission to use the mark Seriphos as an identifier of a particular product which Neesby provided to him under a wholesale arrangement.

4. The history of product identified by the mark Seriphos spans more than twenty-one years.

5. In late 1990, Mr. Ilyia approached Brian White and asked if he could supply him with phosphatidylserine, which Interplexus Corporation would, then, distribute to its retail clientele. White told Ilyia that phosphatidylserine was not, normally, a synthesized, product, but that it was typically extracted from natural sources.

6. Brian White subsequently determined that the essential building block of phosphatidylserine is phosphorylated serine, which is listed in the Merk Index. That compound has been manufactured and sold under the trade names Vita Sprint B12 and Fosforina B12.

7. After further determining that it would be difficult for him to manufacture pure phosphorylated serine, Brian White contacted Mr. Ilyia months later and told him that he had found a way to produce phosphorylated serine in combination with phosphorylated ethanolamine, based on a process for making phosphorylated ethanolamine that White had been using to produce other products for years.

8. No later than March of 1991, Petitioner Neesby, under the supervision of Brian White, began providing samples of the mixture of the two phosphorylated compounds to independent physicians and to Interplexus.

9. Early in 1993, Brian White named the mixture of the phosphorylated compounds,

Seriphos. As early as March 3, 1993, Neesby was selling the phosphorylated product mixture to its own customers in bottles bearing Neesby's own labels, which were produced by Steele Printing of Fresno, CA. using an offset process. Those labels, which identified the bottled product as Seriphos, also listed the formulation ingredients, including levels of calcium, magnesium, phosphorous and L-serine in the product. The labels bore the following copyright notice: © 1993 T. E. Neesby, Inc.

10. Brian White told Mr. Ilyia that Interplexus was welcome to use the mark Seriphos for identifying the phosphorylated mixture product which Neesby provided to Interplexus.

11. In 1994, Interplexus Corporation began printing its own product labels for the phosphorylated mixture, using the mark Seriphos, and stating the formulation ingredients, as copied from the original Neesby labels.

12. It was clearly understood from the outset that both parties would be using the mark Seriphos, that Interplexus and Neesby would each supply its own customer base with the formulation developed by Brian White, with each party using the mark Seriphos to identify the same product. Both parties had been jointly selling the same product continuously since 1993 under the name Seriphos.

13. On September 30, 2002, without notifying Neesby, Interplexus filed the fraudulent trademark application for the name Seriphos.

14. In the latter half of 2010, Dr. Maroun E. El-khoury, the new managing director of Interplexus, informed Brian White that it had procured a registration of the Seriphos trademark, and threatened Neesby with trademark infringement if it did not stop selling Seriphos to its own customers. Following several months of negotiations, White refused to accede to Interplexus' anticompetitive demands, and in November, White cut off the supply of Seriphos to Interplexus.

14. Believing that its registration for the mark Seriphos had become incontestable, and apparently oblivious to the civil and criminal penalties associated with the commission of perjury in the filing of a fraudulent trademark application, Interplexus filed suit against Petitioner Neesby in U. S. District Court for the Eastern District of California on or about April 12, 2011 for trademark infringement, unfair competition, false advertising, and misappropriation of trade secret.

15. Registrant Interplexus' behavior is particularly egregious because it is using a fraudulently-procured trademark registration as a club to intimidate Petitioner Neesby, with the

intended goal of eliminating Neesby as a competitor in the neutraceutical marketplace and, thereby, monopolizing the U.S. market for phosphorylated serine.

16. Elias F. Ilyia committed perjury in the filing of U.S. trademark Application No. 76/455,597, thereby enabling Interplexus to obtain a registration of the Seriphos mark through fraud. In addition, the filing of a lawsuit in U.S. District Court to enforce the fraudulently-obtained registered trademark, is an attempt to restrain trade in violation of U.S. antitrust law under the Sherman Act.

17. Petitioner is being damaged and will continue to be damaged by registration of the mark Seriphos on the Principal Register of the United States Patent and Trademark Office, since by virtue of said registration, Registrant Interplexus has been able to file suit against Petitioner in U.S. District Court to enforce an intellectual property right to which it was never entitled.

18. The Petitioner hereby petitions to cancel Registrant's registered mark SERIPHOS in International Class 005, which registered mark corresponds to Registration No. 2,740,222.

Signed at Provo, Utah this 10th day of June, 2011.

By: /angus fox/
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