

ESTTA Tracking number: **ESTTA555759**

Filing date: **08/23/2013**

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 | Gnu Foods, LLC | | |
| Entity | Limited Liability Company | Citizenship | New York |
| Address | 1123 Broadway Suite 705 New York, NY 10010 UNITED STATES | | |

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| Attorney information | Michael Chiappetta Fross Zelnick Lehrman & Zissu, P.C. 866 United Nations Plaza 6th Floor New York, NY 10017 UNITED STATES mc@fzlj.com Phone:2128135963 |
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Registration Subject to Cancellation

| | | | |
|-----------------|-----------------------------------------------------------------------------------------------|-------------------|------------|
| Registration No | 4284101 | Registration date | 01/29/2013 |
| Registrant | Janavs, Paul 4350 Von Karman Avenue, 4th Floor Newport Beach, CA 92660 UNITED STATES | | |

Goods/Services Subject to Cancellation

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|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Class 030. First Use: 2012/03/11 First Use In Commerce: 2012/08/23 All goods and services in the class are cancelled, namely: Ready to eat, cereal derived food bars |
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Grounds for Cancellation

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|-------------------------------------------------|---------------------------------------------|
| <i>Torres v. Cantine Torresella S.r.l.Fraud</i> | 808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986) |
| Other | Non-Use of Trademark |

| | |
|-------------|-------------------------------------------------|
| Attachments | Petition to Cancel (F1292637).PDF(19232 bytes) |
|-------------|-------------------------------------------------|

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 | /Michael Chiappetta/ |
| Name | Michael Chiappetta |

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|------|------------|
| Date | 08/23/2013 |
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Registration No. 4,284,101

GNU FOODS, LLC,

Petitioner,

-against-

PAUL JANA VS,

Respondent.

PETITION FOR CANCELLATION

Petitioner, Gnu Foods, LLC, a New York limited liability company with a principal place of business at 1123 Broadway, Suite 705, New York, New York 10010, believes that it is and will be damaged by the continued registration of U.S. Registration No. 4,284,101 and hereby petitions to cancel same. As grounds for its petition for cancellation, Petitioner, by its attorneys Fross Zelnick Lehrman & Zissu, P.C., alleges as follows:

Respondent's U.S. Registration No. 4,284,101 For LOVE MY FIBER

1. Upon information and belief, respondent Paul Janavs ("Respondent") is an individual with a residence at 4350 Von Karman Avenue, 4th Floor, Newport Beach, California 92660-2043.

2. On October 21, 2011, Respondent filed Application Serial No. 85/453,695 to register the mark LOVE MY FIBER for "ready to eat, cereal derived food bars; ready to eat cereals" in International Class 30 based on an intent to use the mark under section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b).

3. On February 22, 2012, Application Serial No. 85/453,695 was published in the Official Gazette, and on May 8, 2012 the United States Patent and Trademark Office (the “USPTO”) issued a Notice of Allowance on the application.

4. On October 31, 2012, Respondent filed a Statement of Use (the “Statement of Use”) covering the goods “ready to eat, cereal-derived bars” in Application Serial No. 85/453,695, along with a specimen of use allegedly depicting packaging for a LOVE MY FIBER product (the “Specimen”), alleging first use of the LOVE MY FIBER mark in connection with such goods as early as March 11, 2012, first use in commerce at least as early as August 23, 2012 and that the mark was in use as of the date of the Statement of Use. Respondent requested that the USPTO divide out the goods “ready-to-eat cereals.”

5. On December 5, 2012, the USPTO granted Respondent’s request to divide the application into parent application Serial No. 85/453,695 for the goods “ready-to-eat cereals” (the “Parent Application”) and child application Serial No. 85/978,225 for the goods “ready to eat, cereal-derived food bars” (the “Child Application”).

6. On December 28, 2012, the USPTO accepted Respondent’s Statement of Use with respect to the goods identified in the Child Application and on January 29, 2013, issued Registration No. 4,284,101 to Respondent for the mark LOVE MY FIBER in connection with “ready to eat, cereal-derived food bars” in International Class 30.

6. On or about June 10, 2013, the USPTO issued a Notice of Abandonment with respect to the Parent Application as no Statement of Use or extension of time to file a Statement of Use had been filed within the applicable period. Respondent did not file a petition to revive the Parent Application.

Petitioner's Application for FIBERLOVE

7. On February 8, 2013, Petitioner filed Application Serial No. 85/841,356 (the "Petitioner's Application") to register the mark FIBERLOVE in connection with "fruit and nut-based bars" in International Class 29, and "cereal and grain-based food bars" in International Class 30, based on an intent to use the mark under Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b).

8. In an Office Action dated May 18, 2013, the Examining Attorney refused registration of Petitioner's Application on the grounds that Petitioner's FIBERLOVE mark, when used on or in connection with the identified goods, so resembles the LOVE MY FIBER mark in Respondent's U.S. Registration No. 4,284,101 as to be likely to cause confusion, to cause mistake, or to deceive.

9. As such, Petitioner is being damaged by the continued registration of Respondent's U.S. Registration No. 4,284,101.

Respondent's Non-Use of The LOVE MY FIBER Mark

10. As of August 21, 2013, Respondent's website at www.lovemymyfiber.com does not offer any goods or services for sale, but rather indicates Respondent is "developing" products that "will be available soon." Also, Respondent, who signed the Statement of Use on October 31, 2012, confirmed verbally in early June 2013 that "[t]here's [no LOVE MY FIBER products] on the market yet, but LOVE MY FIBER is actually going to launch in the fall [of 2013]."

11. On information and belief, Respondent's Specimen, submitted to the USPTO on October 31, 2012 with Respondent's Statement of Use, depicts mock or prototype packaging, and not actual packaging used in U.S. commerce, as it does not include indicia required by the

Food and Drug Administration.

12. Based on the foregoing, Registrant has never used the LOVE MY FIBER mark in U.S. commerce in connection with “ready to eat, cereal-derived food bars” in International Class 30.

COUNT I – NO USE IN COMMERCE

13. Petitioner repeats the allegations contained in paragraphs 1 through 12 as if fully set forth herein.

14. Under Section 1(d) of the Trademark Act, 15 U.S.C. § 1051(d), to obtain a registration after a Notice of Allowance has issued on an application filed pursuant to Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), the applicant must file, together with a specimen of the mark “as used in commerce,” “a verified statement that the mark is in use in commerce and specifying the applicant’s date of first use of the mark in commerce... .”

15. On October 31, 2012, Respondent filed the Statement of Use under Section 1(d) of the Trademark Act, 15 U.S.C. § 1051(d), alleging that the LOVE MY FIBER mark was in use in commerce in connection with “ready to eat, cereal-derived bars” as of that date, and further that it had been in use as early as March 11, 2012 and in use in commerce at least as early as August 23, 2012.

15. However, as of October 31, 2012, as well as the alleged dates of first use, on information and belief, the LOVE MY FIBER mark was not in use in U.S. commerce in connection with the goods identified in the Registration.

16. Because the LOVE MY FIBER was not in use as of October 31, 2012, Respondent has not met the statutory requirement for use in commerce and thus, U.S. Registration No. 4,284,101 should be cancelled.

COUNT II – FRAUD

17. Petitioner repeats the allegations contained in paragraphs 1 through 16 as if fully set forth herein.

18. On October 31, 2012, Respondent filed the Statement of Use under Section 1(d) of the Trademark Act, 15 U.S.C. § 1051(d), alleging that the LOVE MY FIBER mark was in use in commerce in connection with “ready to eat, cereal-derived bars” as of that date, and further that it had been in use as early as March 11, 2012 and in use in commerce at least as early as August 23, 2012. Based on and in reliance upon the representations set forth in the Statement of Use, the USPTO issued the Registration.

19. On information and belief, and based on the foregoing allegations, Respondent’s statements set forth in the Statement of Use, including the representation that the LOVE MY FIBER mark was in use in commerce on October 31, 2012, were false.

20. On information and belief, Respondent knew that the foregoing statements were false when he made the statements.

21. On information and belief, Respondent made the foregoing false statement with intent to obtain a benefit, namely, registration of the LOVE MY FIBER mark, that it would not have obtained but for the misrepresentation. Specifically, because the mark was not in use in commerce, on information and believe, the false statement made by Respondent that the mark was in use in commerce was made with the intent to deceive the USPTO in order to obtain a federal trademark registration to which the Respondent would not otherwise be entitled.

22. The making and filing of the foregoing statement therefore constitutes fraud.

23. Petitioner is and will continue to be damaged by the continuing registration of the LOVE MY FIBER mark for the goods identified in U.S. Registration No. 4,284,101

WHEREFORE, Petitioner requests that the Registrations, U.S. Registration No. 4,284,101 be canceled.

Dated: New York, New York
August 23, 2013

Respectfully submitted,

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

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Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that this 23rd day of August, 2013, I caused a copy of the foregoing PETITION FOR CANCELLATION to be sent by First Class mail, postage pre-paid, to the Respondent, also Correspondent of Record, Paul Janavs. 4350 Von Karman Avenue, 4th Floor, Newport Beach, CA 92660.

/Michael Chiappetta/

Michael Chiappetta