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

Proceeding	92061456
Party	Plaintiff Graphic Armor, LLC
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Submission	Motion to Amend Pleading/Amended Pleading
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Date	07/13/2015
Attachments	First Amended Petition to Cancel.pdf(97656 bytes)

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

Graphic Armor, LLC,
Petitioner,

v.

Church & Dwight Co., Inc.,
Registrant.

In re

Registration No. 4,081,154

For the Mark: ARMOR

Date of Registration: January 3, 2012

Registration No. 4,133,033

For the Mark: ARMOR (+ Design)

Date of Registration: April 24, 2012

Registration No. 4,147,686

For the Mark: ARMOR

Date of Registration: May 22, 2012

FIRST AMENDED PETITION TO CANCEL

Graphic Armor, LLC (“Petitioner”), a Florida limited liability company having its principal place of business at 1200 N. Federal Highway, Suite 200, Boca Raton, FL 33432, believes it is or will be damaged by Registration Nos. 4,081,154; 4,133,033; and 4,147,686, all owned by Church & Dwight Co., Inc. (“Registrant”), and hereby petitions to cancel the same under the provisions of 15 U.S.C. § 1064(1). As grounds for cancellation, Petitioner asserts:

General Allegations

1. On September 3, 2014, Petitioner, as owner of the mark GRAPHIC ARMOR, filed Application Serial No. 86/383,755 to register GRAPHIC ARMOR in Class 010 for “Condoms” and in Class 040 for “Contract manufacturing in the field of condoms” in Class

040. Current status and title copy of Petitioner's application is attached as **Exhibit A**, which is being pleaded into the record under 37 C.F.R. § 2.126.

2. On December 16, 2014, Petitioner's application was refused registration based on likelihood of confusion with Registration No. 4,081,154 for ARMOR registered in Class 010 for "Condoms"; Registration No. 4,133,033 for ARMOR (+ Design) registered in Class 005 for "Personal sexual lubricants" and Class 010 for "Condoms, lubricants sold as an integral component of condoms"; and Registration No. 4,147,686 for ARMOR registered in Class 010 for "Lubricants sold as an integral component of condoms."
3. Petitioner's application to register GRAPHIC ARMOR was filed on an actual use in commerce basis of January 1, 2010.
4. Both Petitioner and Registrant sell, offer for sale, and/or distribute condoms and/or lubricants for use with condoms.
5. Petitioner's continued use of the mark GRAPHIC ARMOR predates the dates of use in commerce listed in Registration No. 4,081,154 for ARMOR, claiming a date of use in commerce of September 1, 2011; Registration No. 4,133,033 for ARMOR (+ Design), claiming a date of use in commerce of October 2011; and Registration No. 4,147,686 for ARMOR, claiming a date of use in commerce of September 1, 2011.
6. Petitioner's continued use of the mark GRAPHIC ARMOR also predates the dates of first use listed in Registration No. 4,081,154 for ARMOR, claiming a date of first use of September 2, 2010; Registration No. 4,133,033 for ARMOR (+ Design), claiming a date of first use of October 2011; and Registration No. 4,147,686 for ARMOR, claiming a date of first use of September 2, 2010.

7. Petitioner's continued use of the mark GRAPHIC ARMOR also predates the application filing dates listed in Registration No. 4,081,154 for ARMOR, filed Nov. 1, 2010 (Ser. No. 85/166,387); Registration No. 4,133,033 for ARMOR (+ Design), filed April 4, 2011 (Ser. No. 85/284,939); and Registration No. 4,147,686 for ARMOR, filed March 23, 2011 (Ser. No. 85/274,591).
8. Registrant's marks have been registered less than five years and Petitioner is entitled to seek cancellation of Registrant's registrations pursuant to 15 U.S.C. § 1064(1).

Ground I – Likelihood of Confusion

9. Petitioner realleges and revers paragraphs one (1) through eight (8) as if fully set forth herein.
10. Petitioner possesses common-law rights in its mark based on its continued use in commerce, with respect to the goods/services listed in Application Serial No. 86/383,755, before Registrant's use, and therefore has priority of use over the marks in Registrant's registrations pursuant to Trademark Act § 2(d), 15 U.S.C. § 1052(d).
11. Registrant's registrations and use of the marks in Registration Nos. 4,081,154; 4,133,033; and 4,147,686 create a likelihood of confusion within the meaning of Trademark Act § 2(d), 15 U.S.C. § 1052(d).

WHEREFORE, Petitioner prays that Registration Nos. 4,081,154; 4,133,033; and 4,147,686 be canceled and that this Petition for Cancellation be sustained in favor of Petitioner.

Ground II – Failure to Function as a Trademark

12. Petitioner realleges and revers paragraphs one (1) through eight (8) as if fully set forth herein.
13. At all times material hereto, the word ARMOR is and was not used by Registrant as a source indicator for the good, condoms.

14. At all times material hereto, the word ARMOR is and was not used by Registrant to distinguish and/or identify condoms from the same or similar goods made, manufactured, or sold by others.
15. With regard to Registration No. 4,081,154, Petitioner asserts the name ARMOR does not function as a trademark for the good, "Condoms," as required by Section 45 of the Trademark Act.
16. With regard to Registration No. 4,133,033 for ARMOR (+ Design), Petitioner asserts the same does not function as a trademark for the good, "Condoms," as required by Section 45 of the Trademark Act.
17. Petitioner will be harmed should Registration Nos. 4,081,154 and 4,133,033 not be cancelled, in whole or in part, as the word ARMOR does not function as a trademark for the good, Condoms.

WHEREFORE, Petitioner prays Registration No. 4,081,154 be canceled in whole, that Registration No. 4,133,033 be cancelled in part with regard to the good "Condom" in class 010, and that this Petition for Cancellation be sustained otherwise in favor of Petitioner.

Dated: July 13, 2015

Respectfully submitted,

The Concept Law Group, P.A.

By:



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Certificate of Service

I certify that on July 13, 2015, the foregoing FIRST AMENDED PETITION TO CANCEL is being served via EMAIL (as agreed to by the Parties) and U.S. Mail to:

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