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

Proceeding	92061951
Party	Defendant Great Concepts, LLC
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

CHUTTER, INC.,)	
)	
Petitioner,)	CANCELLATION NO. 92061951
)	
v.)	
)	
GREAT CONCEPTS, LLC,)	
)	
<u>Registrant.</u>)	

**GREAT CONCEPTS, LLC’S REPLY BRIEF IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT UNDER FED.R.CIV.P. 56
REGARDING CHUTTER, INC.’S PETITION TO CANCEL**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Registrant Great Concepts, LLC (“Registrant”) respectfully submits the following reply brief in support of its motion for summary judgment based on the doctrine of res judicata with respect to Petitioner Chutter, Inc.’s (“Petitioner”) Petition to Cancel Registration No. 2,929,764 (the “Registration”).

I. INTRODUCTION

Both parties agree that “a second suit will be barred by claim preclusion if: (1) there is identity of parties (or their privies); (2) there has been an earlier final judgment on the merits of a claim; and (3) the second claim is based on the same set of transactional facts as the first.” *Jet, Inc. v. Sewage Aeration Sys.*, 223 F.3d 1360, 1362 (Fed. Cir. 2000). Petitioner’s opposition brief concedes certain elements of the claim preclusion test have been met. The remaining areas of dispute, however, do not genuinely create issues of fact that can prevent the Board for granting Registrant’s motion for summary judgment.

Firstly, Petitioner conceded that it is in privity with its predecessor-in-interest to the DAN TANA’S mark, Dan Tana, with respect to Petitioner’s application for restaurant services. But because Dan Tana assigned all rights of his rights and interests in the DAN TANA’S mark to Petitioner, including his common law rights and the associated goodwill of the business symbolized by the mark, Petitioner is in privity with Dan Tana as to DAN TANA’S mark as a

whole irrespective of any subsequent applications to register the mark. Accordingly, the first claim preclusion element is met.

Secondly, Petitioner has also conceded that there was a final judgment on the merits of a claim in the Prior Cancellation Proceeding. Notwithstanding this concession, Petitioner provides the veiled suggestion that doctrine of claim preclusion requires that the prior tribunal actually consider the substantive issues of the present cause of action, even though this requirement pertains only to the doctrine of issue preclusion. Because there is no genuine dispute that the Prior Cancellation Proceeding was a final adjudication on the merits, the second claim preclusion element is also met.

Finally, there is no genuine dispute that the present petition to cancel is based on the same set of transactional facts as the Prior Cancellation Proceeding. Petitioner bases its opposition on the fact that the Prior Cancellation Action featured a different cause of action than the present Petition to Cancel, but this clearly is not the standard for determining whether the two actions had the same transactional facts. Instead, the Board is to consider the vehicle with which the claims were made and the type of relief sought, and the two actions will have the same set of transactional facts if the cause of action in the current proceeding “could have” been raised in the prior proceeding. Because the Petitioner seeks the same relief using the same cancellation mechanism against Registrant in the current proceedings as its predecessor sought in the Prior Cancellation Proceeding, and because Petitioner’s predecessor easily “could have” raised the fraud claim, the set of transactional facts is the same between the two actions. Accordingly, the third claim preclusion element is met, and the present Petition to Cancel should be dismissed on res judicata grounds.

II. ARGUMENT

- A. Petitioner Cannot Genuinely Dispute That the Parties to the Prior Cancellation Proceeding and the Current Cancellation Proceeding Are the Same, Since Petitioner Is the Successor-in-Interest of “All Rights” in and to the DAN TANA’S Mark and Its Goodwill.

Petitioner concedes in its opposition brief that “it is in privity with Dan Tana with respect

to the ‘restaurant services’ identified in the 290 Application.” Petitioner’s Opposition Brief, TTABVUE No. 10, p. 6. Thus, the only point of dispute relating to privity is whether Petitioner and its predecessor-in-interest, Dan Tana, are also in privity with respect to the DAN TANA’S mark as it is used for pasta or marinara sauce. But because Dan Tana assigned to Petitioner “all right, title, and interest in and to the Trademark in the U.S., including all common law rights, the goodwill of the business symbolized by the Trademark, and all rights to sue...,” Petitioner is in complete privity with Dan Tana for the DAN TANA’S mark as such, irrespective of any subsequent applications to register the mark by Petitioner. *See* Declaration of Bruce W. Baber (“Baber Decl.”), ¶ 3, Ex. A, § 1.1.

“In trademarks, the concept of privity generally includes, inter alia, the relationship of successive owners *of a mark* (e.g., assignor and assignee, or survivor of a merger)...” *Warren Distribution, Inc.*, 115 U.S.P.Q.2d 1667 (P.T.O. Aug. 10, 2015) (emphasis added). Dan Tana was the owner of the DAN TANA’S mark as applied to the goods recited in Registration Nos. 3,420,716 and 3,420,717¹, as well as the goodwill of the business symbolized by the mark. Baber Decl., ¶ 3, Ex. A. Petitioner then became the owner of the DAN TANA’S mark when Dan Tana assigned all of his rights in the mark, “including all common law rights.” Baber Decl., ¶ 3, Ex. A, § 1.1. Despite this clear single source of Petitioner’s DAN TANA’S mark and all of its common law rights, Petitioner now proposes the novel argument that its “rights in the DAN TANA’S mark for marinara sauce are not connected to Dan Tana and [Petitioner] is not Mr. Tana’s successor with respect to those rights.” Petitioner’s Opposition Brief, TTABVUE No. 10, p. 4.

In addition to flouting the plain meaning of the assignment agreement, this new contention by Petitioner is belied by statements in both the Petition to Cancel and in Petitioner’s

¹ The registrations assigned to Petitioner were for clothings in International Class 25 (Registration No. 3,420,716) and table linen in International Class 24 (Registration No. 3,420,717). *See* Declaration of Frederick K. Taylor in support of Registrant’s Reply Brief (“Second Taylor Decl.”), ¶¶ 3-4, Exs. A & B. Even though neither registration was for restaurant services, Petitioner has conceded that it is in privity with Dan Tana with respect to the application to register the DAN TANA’s mark for restaurant services. This suggests that Petitioner recognizes its application to register the mark for restaurant services derives from the DAN TANA’S mark generally, including from the “goodwill of the business symbolized by the mark.”

application to register the DAN TANA’S mark for marinara sauce. Petitioner admitted in its Petition to Cancel that it currently “uses the DAN TANA’S mark” – as in a singular, common mark – “for both restaurant services and pasta sauce.” Petition to Cancel, ¶ 2. Petitioner has never asserted that its rights to the mark for its restaurant services differ from its rights to the mark for its pasta or marinara sauce. Additionally, Petitioner’s Voluntary Amendment to the ‘328 Application for marinara sauce specifically cites Registration No. 3,420,716 (use of DAN TAN’S for clothings), which was one of the Registrations assigned to Petitioner by its predecessor-in-interest, Dan Tana. *See* Second Taylor Decl., ¶ 5, Ex. C; Baber Decl., ¶ 3, Ex. A; Petition to Cancel, ¶ 4. Accordingly, the USPTO’s Trademark Status & Document Retrieval database record for the ‘328 Application acknowledges Registration No. 3,420,716 as a “Related Property.” *See* Second Taylor Decl., ¶ 6, Ex. D. It is clear that the ‘328 Application shares a connection to the general DAN TANA’S mark and its associated goodwill of the business symbolized by the mark.

Petitioner points to *Int’l Nutrition Co. v. Horphag Research, Ltd* for the proposition that “parties are in privity only with respect to an adjudication of rights in the property that was transferred” and not in privity for “property that was never transferred between the two.” *Int’l Nutrition Co. v. Horphag Research, Ltd.*, 220 F.3d 1325, 1329 (Fed. Cir. 2000). This does not mean, however, that a party can sever its privity with a prior owner of a mark simply by applying to register the transferred mark for a different use. The Federal Circuit vacated the Board’s decision finding privity in that case, because the Board improperly focused its attention solely on an assignment of a similar French trademark, even though the two proceedings at issue did “not in any way involve [the second party’s] rights in the French trademark.” *Id.* Unlike in *Int’l Nutrition*, however, both the Prior Cancellation Proceeding and the present cancellation proceeding involve property rights deriving directly from the DAN TANA’S mark that Dan Tana assigned to Petitioner.

The legal rule Petitioner proposes would allow any party that loses in a petition to cancel a registration to essentially have unlimited additional tries at the cancellation, so long as that party applied to register the mark in a different class. This would be an unreasonable end-run

around a tenet as foundational to federal civil procedure as claim preclusion. “Successive property relationships provide some of the oldest and best established rules for extending preclusion to nonparties.” 18 Charles A. Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure*, § 4462 (1981). Petitioner goes to great lengths to parse between its two rejected applications for standing purposes, but this distinction is immaterial for res judicata purposes. In spite of these efforts, Petitioner cannot genuinely dispute that it was in privity with its predecessor Dan Tana with respect to the mark DAN TANA’S, “including all common law rights, the goodwill of the business symbolized by the mark, and all rights to sue.” Baber Decl., ¶ 3, Ex. A. § 1.1.

B. **Despite Its Veiled and Flawed Arguments to the Contrary, Petitioner Acknowledges That “There Was a Final Judgment on the Merits” in the Prior Cancellation Proceeding.**

The second element for claim preclusion requires only that “there has been an earlier final judgment on the merits of a claim.” *Jet, Inc.* 223 F.3d at 1262. Petitioner explicitly states that it “does not contest ... that there was a ‘final judgment on the merits’ in the prior proceeding.” Petitioner’s Opposition Brief, p. 6. Accordingly, the second element for claim preclusion has indisputably been met.

Nevertheless, Petitioner still tries to use this element to sow the seeds of doubt regarding the general application of res judicata in this case by admonishing the Board against barring a claim “where the prior tribunal did not actually consider the substantive issues of the case.” Petitioner’s Opposition Brief, p. 7 n.4. For support, Petitioner cites to *Kearns v. Gen. Motors Corp.*, where the Federal Circuit cautioned against applying res judicata in cases where the prior action was dismissed on “procedural grounds.” *Kearns v. Gen. Motors Corp.*, 94 F.3d 1553, 1556 (Fed. Cir. 1996). But as pointed out in Registrant’s opening brief, the Board has recently rejected this “procedural” argument where the dismissed party had “offered no reasons why he was not diligent in prosecuting his case.” *The Urock Network, LLC v. Umberto Sulpasso*, 115 U.S.P.Q.2d 1409, at *3-4 (TTAB 2015) (“Notwithstanding [Petitioner’s] contention that claim preclusion is inapplicable here because the prior proceeding was ended by a ‘technical

procedure,’ whether the judgment in the prior proceeding was the result of a dismissal with prejudice or even default, for claim preclusion purposes, it is a final judgment on the merits.”).

In any event, the facts of the present case materially differ from the procedural victim in *Kearns*, since the final adjudication here came after multiple opportunities for the Petitioner’s predecessor to assert its current fraud cause of action. In *Kearns*, the court concluded that an involuntary dismissal rendered against a pro se litigant who was denied leave to amend his complaint to include the patents at issue in the second action was not res judicata, because it would have denied his “day in court.” *See Kearns v. Gen. Motors Corp.*, 94 F.3d 1553, 1554, 1557 (Fed. Cir. 1996). Here, much like the dismissed party in *The Urock Network*, Petitioner has presented no reasons why its predecessor was not diligent in prosecuting its case against Registrant. Even though Petitioner’s predecessor had constructive or inquiry notice of a potential fraud claim against Registrant as of March 26, 2010, and even though the Board issued orders on September 7 and October 26, 2010, instructing Petitioner’s predecessor to amend its petition to cancel, Petitioner’s predecessor demonstrated a “apparent loss of interest,” which empowered the Board to dismiss the Prior Cancellation Proceeding with prejudice on December 14, 2010. *See Taylor Decl.*, ¶¶ 7, 10, 12-14. Thus, Petitioner’s predecessor had more than its “day in court”; it had multiple months of opportunities to amend its petition before the Board entered a final judgment on the merits.

Furthermore, Petitioner’s argument that the prior tribunal must “consider the substantive issues of the case” appears to conflate the doctrines of “issue preclusion” and “claim preclusion.” Issue preclusion “refers to “the effect of foreclosing relitigation of matters that have once been litigated and decided.” *Nasalok Coating Corp. v. Nylok Corp.*, 522 F.3d 1320, 1323 (Fed. Cir. 2008). There is no dispute that the specific issue of fraud alleged in the Petition to Cancel was not litigated or decided in the Prior Cancellation Proceeding. Consequently, issue preclusion does not apply in this case. Claim preclusion, on the other hand, refers to “the effect of foreclosing any litigation of matters that *never have been litigated*, because of a determination that they *should have been advanced* in an earlier suit.” *Id.* (emphasis added); *see also Nevada*

v. United States, 463 U.S. 110, 129–30 (1983) (a final judgment is “a finality as to the claim or demand in controversy ... not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter ***which might have been offered*** for that purpose.”) (emphasis added). “A critical difference between these concepts is that issue preclusion operates only as to issues actually litigated, whereas claim preclusion may operate between the parties simply by virtue of the final judgment.” *Young Engineers, Inc. v. U.S. Int'l Trade Comm'n*, 721 F.2d 1305, 1314 (Fed. Cir. 1983). Claim preclusion clearly applies here, because although the matter of Registrant’s alleged fraud was never litigated in the Prior Cancellation Proceeding, it “should have been advanced” or offered for the purpose of Petitioner’s original demand to cancel the Registration. Consequently, notwithstanding Petitioner’s attempts to conflate the two concepts of preclusion, the second element of “a final adjudication on the merits” has been met, as Petitioner conceded.

C. **The Differences between the Specific Causes of Action Do Not Change the Fact that Petitioner’s Prior Cancellation Action Was the Same Claim Based on the Same Transactional Facts as the Current Cancellation Action.**

Petitioner continues to misconstrue the “same set of transactional facts” element as requiring that the two actions must have raised the same causes of action. But “[c]laim preclusion, where found, operates to bar subsequent assertion of the same transactional facts ***in the form of a different cause of action or theory of relief.***” *Young Engineers, Inc. v. U.S. Int'l Trade Comm'n*, 721 F.2d 1305, 1314 (Fed. Cir. 1983) (emphasis added). “Generally, this principle rests on the assumption that all forms of relief could have been requested in the first action.” *Id.* Because Petitioner “could have” requested relief based on the alleged fraud cause of action in the first action, the two proceedings are based on the same set of transactional facts.

In *Jet, Inc. v. Sewage Aeration Sys.*, the salient considerations for what constituted the “set of transactional facts” had less to do with the specific legal theory raised (likelihood of confusion in both actions), and more to do with the vehicle for bringing the claim (an infringement action in district court in the first, versus a petition to cancel action before the Board in the second). *Jet, Inc. v. Sewage Aeration Sys.*, 223 F.3d 1360, 1364. (Fed. Cir. 2000).

The Federal Circuit cited the “significant differences” between an infringement claim and a petition to cancel with respect to which party (plaintiff/petitioner versus defendant/respondent) is required to have or use a trademark as being the determining factors for whether the transactional facts were the same between two actions. *Id.* These distinctions help explain why the Federal Circuit in *Nasalok Coating Corp. v. Nylok Corp.*, a case heavily relied upon by Petitioner, also refused to preclude an administrative cancellation action following a prior district court infringement claim. *Nasalok Coating Corp. v. Nylok Corp.*, 522 F.3d 1320, 1324, 1326 (Fed. Cir. 2008) (analyzing *Jet, Inc. v. Sewage Aeration Sys.*, 223 F.3d 1360, 1364 (Fed. Cir. 2000)).

Unlike in either *Jet* or *Nasalok*, however, the transactional facts between the Prior Cancellation Proceeding and the present petition to cancel are the same for claim preclusion purposes. Both the Prior Cancellation Proceeding and the present Petition to Cancel are: (i) petitions to cancel (ii) Registrant’s Registration No. 2,929,764 for the mark DANTANNA’S for restaurant services, (iii) in which Petitioner claimed damages (iv) to Petitioner’s own DAN TANA’S mark, (v) which resulted from the USPTO’s issuing Office Actions refusing Petitioner’s applications to register its DAN TANA’S mark (vi) because of a likelihood of confusion with Registrant’s mark under section 2(d) of the Lanham Act. *See Taylor Decl., Ex. B* at 1-2; Petition to Cancel, p. 1-3. Consequently, although Petitioner is able to show that the two proceedings feature different causes of actions, the salient transactional facts regarding the relief sought remain the same.

Finally, Petitioner also continues to erroneously focus only on the state of the Prior Cancellation Proceeding at the time it was originally filed, as opposed to the time at which the Prior Cancellation Proceeding could have been amended. But Petitioner provides no authority to suggest that the Board must only consider whether Petitioner’s predecessor could have raised the fraud claim at the time the Prior Cancellation Proceeding was initially filed. Petitioner’s approach disregards the fact that the Board issued an order on September 7, 2010 – over four years after the Prior Cancellation Proceeding was filed – that instructed Petitioner to amend its petition to cancel in light of the federal court decision in rejecting Petitioner’s infringement claim

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing GREAT CONCEPTS, LLC'S REPLY BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT UNDER FED.R.CIV.P. 56 REGARDING CHUTTER, INC.'S PETITION TO CANCEL is being mailed via United States mail, postage prepaid and sent electronically, on March 16, 2016 to the counsel for Registrant as follows:

Bruce W. Baber
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Dated: March 16, 2016

By: /Lisel M. Ferguson/
Lisel M. Ferguson

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

CHUTTER, INC.,)	
)	
Petitioner,)	CANCELLATION NO. 92061951
)	
v.)	
)	
GREAT CONCEPTS, LLC,)	
)	
<u>Registrant.</u>)	

DECLARATION OF FREDERICK K. TAYLOR IN SUPPORT OF
GREAT CONCEPTS, LLC’S REPLY BRIEF IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT UNDER FED.R.CIV.P. 56 REGARDING
CHUTTER, INC.’S PETITION TO CANCEL

I, Frederick K. Taylor, declare as follows:

1. I am an attorney duly licensed to practice before all courts in the State of California and this Court. I am a partner with the law firm of Procopio Cory Hargreaves & Savitch LLP, attorneys of record herein for Registrant Great Concepts, LLC (“Registrant”).

2. I have personal knowledge of the facts set forth herein and if called as a witness, I would and could competently testify to the truth thereof.

3. Attached hereto as “Exhibit A” is a true and correct copy of Registration No. 3,420,716, issued by the United States Patent and Trademark Office April 29, 2008 to Petitioner’s predecessor-in-interest, Dan Tana, in connection with clothings in International Class 25.

4. Attached hereto as “Exhibit B” is a true and correct copy of Registration No. 3,420,717, issued by the United States Patent and Trademark Office April 29, 2008 to Petitioner’s predecessor-in-interest, Dan Tana, in connection with table linen in International Class 24.

5. Attached hereto as “Exhibit C” is a true and correct copy of Petitioner’s Voluntary Amendment, dated February 18, 2015, to Application Serial No. 86/452,328 for the mark DAN TANA’S for marinara sauce in International Class 30.

6. Attached hereto as “Exhibit D” is a true and correct copy of the USPTO’s Trademark Status & Document Retrieval database record for Application Serial No. 86/452,328 for the mark DAN TANA’S for marinara sauce in International Class 30.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 16th day of March, 2016 in San Diego, California.

/Frederick K. Taylor/
Frederick K. Taylor

EXHIBIT “A”

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

United States Patent and Trademark Office

Reg. No. 3,420,716

Registered Apr. 29, 2008

TRADEMARK
PRINCIPAL REGISTER

DAN TANA'S

TANA, DAN (UNITED STATES INDIVIDUAL)
9071 SANTA MONICA BOULEVARD
LOS ANGELES, CA 90069

FOR: CLOTHINGS, NAMELY, TEE SHIRTS,
SWEAT SHIRTS, HATS AND APRONS, IN CLASS
25 (U.S. CLS. 22 AND 39).

FIRST USE 9-1-2006; IN COMMERCE 9-1-2006.

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

SN 78-961,481, FILED 8-28-2006.

GEORGE LORENZO, EXAMINING ATTORNEY

EXHIBIT “B”

Int. Cl.: 24

Prior U.S. Cls.: 42 and 50

United States Patent and Trademark Office

Reg. No. 3,420,717

Registered Apr. 29, 2008

TRADEMARK
PRINCIPAL REGISTER

DAN TANA'S

TANA, DAN (UNITED STATES INDIVIDUAL)
9071 SANTA MONICA BOULEVARD
LOS ANGELES, CA 90069

FOR: TABLE LINEN, NAMELY, TABLE CLOTH,
NAPKINS, PLACE MATS AND COASTERS, IN
CLASS 24 (U.S. CLS. 42 AND 50).

FIRST USE 9-1-2006; IN COMMERCE 9-1-2006.

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

SN 78-961,486, FILED 8-28-2006.

GEORGE LORENZO, EXAMINING ATTORNEY

EXHIBIT “C”

Voluntary Amendment

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86452328
MARK SECTION	
MARK	http://tsdr.uspto.gov/img/86452328/large
LITERAL ELEMENT	DAN TANA'S
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size or color.
ADDITIONAL STATEMENTS SECTION	
ACTIVE PRIOR REGISTRATION(S)	The applicant claims ownership of U.S. Registration Number(s) 3420716.
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Maurice B. Pilosof/
SIGNATORY'S NAME	Maurice B. Pilosof
SIGNATORY'S POSITION	Attorney of record, California bar member
SIGNATORY'S PHONE NUMBER	310 985 4283
DATE SIGNED	02/18/2015
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Wed Feb 18 15:07:26 EST 2015
TEAS STAMP	USPTO/PRA-XXX.XX.XXX.XXX- 20150218150726202605-8645 2328-5306338f67fec945fd51 9c8ed1a0df9d5a3aef044f731 90ef8b3157bcef651ce6-N/A- N/A-20150218150621182779

Voluntary Amendment

To the Commissioner for Trademarks:

Application serial no. **86452328** DAN TANA'S(Standard Characters, see <http://tsdr.uspto.gov/img/86452328/large>) has been amended as follows:

ADDITIONAL STATEMENTS

Claim of Active Prior Registration(s)

The applicant claims ownership of U.S. Registration Number(s) 3420716.

SIGNATURE(S)

Voluntary Amendment Signature

Signature: /Maurice B. Pilosof/ Date: 02/18/2015

Signatory's Name: Maurice B. Pilosof

Signatory's Position: Attorney of record, California bar member

Signatory's Phone Number: 310 985 4283

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

Serial Number: 86452328

Internet Transmission Date: Wed Feb 18 15:07:26 EST 2015

TEAS Stamp: USPTO/PRA-XXX.XX.XXX.XXX-201502181507262

02605-86452328-5306338f67fec945fd519c8ed

1a0df9d5a3aef044f73190ef8b3157bcef651ce6

-N/A-N/A-20150218150621182779

EXHIBIT “D”

Generated on: This page was generated by TSDR on 2016-03-16 01:56:27 EDT

Mark: DAN TANA'S

DAN TANA'S

US Serial Number: 86452328

Application Filing Date: Nov. 12, 2014

Register: Principal

Mark Type: Trademark

Status: Suspension check completed. Application remains suspended.

Status Date: Feb. 28, 2016

Mark Information

Mark Literal Elements: DAN TANA'S

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Related Properties Information

Claimed Ownership of US Registrations: 3420716

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (..) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Marinara sauce

International Class(es): 030 - Primary Class

U.S Class(es): 046

Class Status: ACTIVE

Basis: 1(a)

First Use: Jan. 05, 2012

Use in Commerce: Aug. 12, 2013

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Amended Use: No

Filed ITU: No

Currently ITU: No

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

Current Owner(s) Information

Owner Name: CHUTTER, INC.

Owner Address: 9071 Santa Monica Boulevard
West Hollywood, CALIFORNIA 90069
UNITED STATES

Legal Entity Type: CORPORATION

State or Country CALIFORNIA
Where Organized:

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Maurice B. Pilosof

**Attorney Primary
Email Address:** mpilosof@ipbymbp.com

**Attorney Email
Authorized:** Yes

Correspondent

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UNITED STATES

Phone: 310 985-4283

**Correspondent e-
mail:** mpilosof@ipbymbp.com

**Correspondent e-
mail Authorized:** Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Feb. 28, 2016	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	59554
Feb. 28, 2016	ASSIGNED TO LIE	59554
Aug. 10, 2015	NOTIFICATION OF LETTER OF SUSPENSION E-MAILED	6332
Aug. 10, 2015	LETTER OF SUSPENSION E-MAILED	6332
Aug. 10, 2015	SUSPENSION LETTER WRITTEN	76419
Aug. 03, 2015	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Aug. 03, 2015	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Aug. 03, 2015	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Mar. 04, 2015	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Mar. 04, 2015	NON-FINAL ACTION E-MAILED	6325
Mar. 04, 2015	NON-FINAL ACTION WRITTEN	76419
Mar. 03, 2015	ASSIGNED TO EXAMINER	76419
Feb. 18, 2015	TEAS AMENDMENT ENTERED BEFORE ATTORNEY ASSIGNED	88889
Feb. 18, 2015	TEAS AMENDMENT ENTERED BEFORE ATTORNEY ASSIGNED	88889
Feb. 18, 2015	TEAS VOLUNTARY AMENDMENT RECEIVED	
Feb. 18, 2015	TEAS VOLUNTARY AMENDMENT RECEIVED	
Nov. 19, 2014	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Nov. 15, 2014	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: FRENCH, CURTIS W

**Law Office
Assigned:** LAW OFFICE 115

File Location

Current Location: TMO LAW OFFICE 115

Date in Location: Feb. 28, 2016

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing DECLARATION OF FREDERICK K. TAYLOR IN SUPPORT OF GREAT CONCEPTS, LLC'S REPLY BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT UNDER FED.R.CIV.P. 56 REGARDING CHUTTER, INC.'S PETITION TO CANCEL is being mailed via United States mail, postage prepaid and sent electronically, on March 16, 2016 to the counsel for Registrant as follows:

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Dated: March 16, 2016

By: /Lisel M. Ferguson/
Lisel M. Ferguson