

This Opinion is Not a  
Precedent of the TTAB

Mailed: February 25, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*Chutter, Inc.*  
*v.*  
*Great Concepts, LLC*

—  
Cancellation No. 92061951

**On Remand**

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Before Kuhlke, Adlin and Coggins, Administrative Trademark Judges.

Opinion by Adlin, Administrative Trademark Judge:

This case is on remand from the U.S. Court of Appeals for the Federal Circuit. It involves Respondent Great Concepts, LLC's registration of the mark DANTANNA'S, in typed form, for "steak and seafood restaurant" services (the "Registration").<sup>1</sup>

On September 30, 2021, we granted Petitioner Chutter, Inc.'s petition to cancel the Registration on the ground of fraud, finding that: (1) Respondent's attorney filed a false declaration of incontestability under Section 15 of the Trademark Act, 15 U.S.C. § 1065, with reckless disregard for its truth; and (2) reckless disregard "is the legal equivalent of finding that [Respondent] had the specific intent to deceive the

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<sup>1</sup> Registration No. 2929764, issued March 1, 2005; renewed.

USPTO.” 19 TTABVUE 26.<sup>2</sup> The Federal Circuit reversed on other grounds, finding cancellation of the Registration impermissible because “fraud in connection with acquiring incontestable status [by way of a Section 15 declaration] is not a basis for a Section 14 cancellation proceeding.” *Great Concepts, LLC v. Chutter, Inc.*, 90 F.4th 1333, 1340 (Fed. Cir. 2024).<sup>3</sup> Rather,

the remedy Congress provided for litigants in Section 33(b) [of the Trademark Act, 15 U.S.C. § 1115(b)] – for the specific circumstances presented here, i.e., fraud in connection with obtaining incontestable status – was loss of incontestable status, and *not* also loss of registration. *See Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 199 n.6 (1985) (stating that “defenses enumerated in § 33(b) are not substantive rules of law which go to the validity or enforceability of an incontestable mark” but rather impact only “the evidentiary status of registration where the owner claims the benefit of a mark’s incontestable status”).

*Chutter*, 90 F.4th at 1340.

The Federal Circuit remanded the case for us to “consider whether to declare that Great Concepts’ mark does not enjoy incontestable status and to evaluate whether to impose other sanctions on Great Concepts or its attorney.” *Id.* at 1344. The Court specifically held that “the Board can remove the mark’s incontestability status.” *Id.* at 1343.

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<sup>2</sup> Citations to the Board record are to TTABVUE, the Board’s online docketing system. Specifically, the number preceding “TTABVUE” corresponds to the docket entry number(s), and any number(s) following “TTABVUE” refer to the page number(s) of the docket entry where the cited materials appear.

<sup>3</sup> This case was consolidated with Opposition No. 91223018, brought by Petitioner Chutter, Inc. against Respondent’s affiliated company Great Management Group, LLC. We sustained that opposition, which was not at issue in Respondent’s appeal to the Federal Circuit.

We find that removal of the registered mark's incontestability status is necessary and appropriate. We decline, however, to refer the practitioner's conduct to the Director of the Office of Enrollment and Discipline pursuant to 37 C.F.R. § 11.18(c)(2) and 37 C.F.R. § 2.193(f) for action under 37 C.F.R. §11.19 *et seq.* given the passage of time and the specific circumstances of this case. *See generally*, 35 U.S.C. § 32 (proceeding shall be commenced not later than the earlier of either the date that is 10 years after the date on which the misconduct forming the basis for the proceeding occurred, or 1 year after the date on which the misconduct forming the basis for the proceeding is made known to an officer or employee of the Office).

Accordingly, the Registration is referred to the USPTO's Post Registration Division for withdrawal of the March 26, 2010 Notice of Acknowledgement of Respondent's Section 15 declaration. In addition, the Registration file should include an indication that the Notice of Acknowledgement has been withdrawn pursuant to this order.