



INTELLECTUAL PROPERTY LAW



Donald L. Dennison
Attorney at Law
Partner
ddennison@ladas.com

1727 King Street, Suite 105
Alexandria, VA 22314
T 703.837.9600 X15
F 703.837.0980

December 18, 2015

VIA HAND DELIVERY

COMMISSIONER FOR TRADEMARKS

P.O. Box 1451

Alexandria, VA 22313-1451

Re: PETITION FOR CANCELLATION
Topicalar, Inc. v. K & N Distributors

Dear Commissioner:

On behalf of the above-referenced Owner, please acknowledge receipt of the following:

1. PETITION FOR CANCELLATION
2. Authorization to charge the LADAS & PARRY LLP Deposit account #120423 the amount of \$300.00 for the government filing fee
3. Copy of cover letter to be date stamped by the U.S. Patent and Trademark Office and returned as a receipt of filing

If there are any questions, please contact the undersigned.

Respectfully submitted,

By: 
Donald L. Dennison
Attorney for Owner

DLD/py
Enclosures: As stated

TTAB

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

TOPICLEAR, INC.,]
]
 Petitioner,]
] Cancellation No. _____
 v.]
]
 K & N DISTRIBUTORS,]
]
]
 Registrant.]

#86150936

PETITION FOR CANCELLATION

Petitioner, Topiclear, Inc., a corporation of Florida, by and through its attorneys noted herein, hereby petitions this Honorable Board to order the cancellation of United States Trademark Registration, No. 4,818,656, registered on September 22, 2015 to K & N Distributors, a Limited Liability Company of Florida. This registration covers the mark **TROPIC CLAIR PLUS** as applied to cosmetics in Class 3.

Petitioner believes that it is being and will continued to be damaged by the continued existence on the register of

12/22/2015 SGNIM1 00000001 120423 4818656
01 FC:0401 300.00 DA

1



12-18-2015

U.S. Patent and Trademark Office #72

this mark in Class 3 for the reasons as set forth below and therefore seeks relief by cancellation.

1. Petitioner, Topiclear, Inc. is a corporation organized and existing under the laws of the State of Florida and maintains its principal office at 5810 NW 163rd Street, Miami Lakes, Florida 33014.

2. The Registration here sought to be canceled covers the mark **TROPIC CLAIR PLUS** as applied to cosmetics in Class 3. The Registration issued September 22, 2015 and is not incontestible.

3. Petitioner since long prior to the filing date of the application which matured as the registration here sought to be canceled, or the alleged date of first use in commerce (June 1, 2015), has been engaged in the business of developing, manufacturing and marketing, a full line of cosmetic products, and other goods covered by the registration here sought to be cancelled.

4. The trademark **TOPICLEAR** was adopted by Petitioner as a trademark for its high quality line of cosmetics at least as early as January 7, 1992, nearly twenty-four years ago and has been used in commerce on such goods uninterrupted to date.

5. Petitioner is the owner of a family of "**TOPICLEAR**" trademarks covering cosmetic products as set forth below:

a) Reg. 4,260,606 **TOPICLEAR**, registered December 18, 2012 for cosmetics, face, hand and body creams and beauty gels, skin lightening creams, soaps for personal use, lotions for the body and face, skin moisturizing gels, non-medicated serums for the face, hands, and body, personal deodorants, perfumes, shampoos, and conditioners in Class 3. This registration is in full force and effect and a copy of the same is attached as Exhibit "A".

b) Reg. 4,162,009 **TOPICLEAR COLLECTION** registered June 19, 2012 for non-medicated cosmetics and skin care products, namely, soaps, creams, lotions, serums and gels for the face, hands, hair and body, personal deodorants and perfume in Class 3. This registration is in full force and effect and a copy of the same is attached as Exhibit "B".

c) Reg. 4,158,690 **TOPICLEAR GOLD** registered June 12, 2012 for non-medicated cosmetics and skin care products, namely, soaps, creams, lotions, serums and gels for the face, hands, hair and body, personal deodorants and perfume in Class 3. This registration is in full force and effect and a copy of the same is attached as Exhibit "C".

d) Reg. 4,256,759 **TOPICLEAR PARIS** registered December 11, 2012 for cosmetics, face, hand and body creams and beauty gels, skin lightening creams, soaps for personal use, lotions for the body and face, skin moisturizing gels, non-medicated serums for the face, hands, and body, personal deodorants, perfumes, shampoos, and conditioners in Class 3. This registration is in full force and effect and a copy of the same is attached as Exhibit "D".

6. Petitioner's marks as noted supra are prominently displayed on Petitioner's goods by printing the same on labels attached to containers for the goods and is prominently displayed in printed catalogs and on Petitioner's website materials and catalogs and by using the mark on many types of advertising materials and otherwise in manners customary in the trade.

7. The marks of the Registrant and the mark **TROPIC CLAIR PLUS** of Petitioner are of course nearly identical in appearance, pronunciation, and have the same meaning, so as to cause possible confusion in the minds of the purchasers as to the source of the goods. Registrant has indicated in the prosecution of its application for registration that the word "CLAIR" is translated as "CLEAR".

8. The goods of the Registrant as set forth in its registration are the same as the goods sold and manufactured by Petitioner under its mark. Petitioner's goods are sold through the same channels of trade and to the same consumers as Registrant's goods and accordingly constitute merchandise of the same descriptive properties and therefore confusion as to source or origin is likely to result.

9. Petitioner has over the past 24 years built up valuable good will in the trademark **TOPICLEAR** and as a result the trade and consumers have come to know, recognize and identify cosmetics bearing the trademark **TOPICLEAR** as the goods of the Petitioner. If Registrant were permitted to retain its registration for its mark **TROPIC CLAIR PLUS** for its

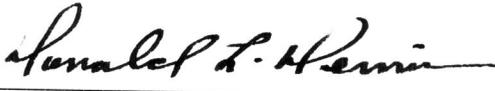
cosmetic products as set forth in its certificate of registration, confusion in the trade would result by reason of the marks being nearly identical and the goods being the same. Purchasers familiar with Petitioner's **TOPICLEAR** brand of cosmetics and the like would believe that Registrant's **TROPIC CLAIR PLUS** products were the goods of the Petitioner. Any defects or faults in the quality of Registrant's **TROPIC CLAIR PLUS** cosmetic products would reflect upon and seriously injure the reputation which Petitioner has established for its goods over a twenty-four year time period. This confusion would result in loss of sales to Petitioner and damage to its reputation.

WHEREFORE, Petitioner respectfully moves the Trademark Trial and Appeal Board to cancel the registration of the Registrant, No. 4,260,606.

The government fee for cancellation in the amount of \$300 may be charged to the deposit account of Ladas & Parry, No. 120423.

Respectfully submitted,

TOPICLEAR, INC.

By 

Donald L. Dennison,
LADAS & PARRY LLP
Suite 105
1727 King Street
Alexandria, VA 22314
(703)837-9600 Ext. 15
Attorneys for Petitioner
ddennison@ladas.com

December 18, 2015

CERTIFICATE OF SERVICE

This is to certify that a copy of the aforesaid Petition for Cancellation was served this 18th day of December, 2015, by first class mail with proper postage affixed on the office of the Registrant, K & N Distributors, 1531 Wyndcliff Drive, Wellington, Florida 33414.



Donald L. Dennison

United States of America
United States Patent and Trademark Office

TOPICLEAR

Reg. No. 4,260,606

Registered Dec. 18, 2012

Int. Cl.: 3

TRADEMARK

PRINCIPAL REGISTER

TOPICLEAR, INC. (DELAWARE CORPORATION)
5445 NW 161ST STREET
HIALEAH, FL 33014

FOR: COSMETICS, FACE, HAND, AND BODY CREAMS AND BEAUTY GELS, SKIN LIGHTENING CREAMS, SOAPS FOR PERSONAL USE, LOTIONS FOR THE BODY AND FACE, SKIN MOISTURIZING GELS, NON-MEDICATED SERUMS FOR THE FACE, HANDS AND BODY, PERSONAL DEODORANTS, PERFUMES, SHAMPOOS, AND CONDITIONERS, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

FIRST USE 1-7-1992; IN COMMERCE 1-7-1992.

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

SER. NO. 85-576,475, FILED 3-22-2012.

JANICE KIM, EXAMINING ATTORNEY



David J. Kybas

Director of the United States Patent and Trademark Office

EXHIBIT "A"

United States of America

United States Patent and Trademark Office

TOPICLEAR COLLECTION

Reg. No. 4,162,009

Registered June 19, 2012

Int. Cl.: 3

TRADEMARK

PRINCIPAL REGISTER

TOPICLEAR, INC. (DELAWARE CORPORATION)
5445 NW 161ST STREET
HIALEAH, FL 33014

FOR: NON-MEDICATED COSMETICS AND SKIN CARE PRODUCTS, NAMELY, SOAPS, CREAMS, LOTIONS, SERUMS AND GELS FOR THE FACE, HANDS, HAIR AND BODY, PERSONAL DEODORANTS AND PERFUME, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

FIRST USE 1-31-2012; IN COMMERCE 1-31-2012.

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

OWNER OF U.S. REG. NO. 2,901,314.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "COLLECTION", APART FROM THE MARK AS SHOWN.

SN 85-260,490, FILED 3-8-2011.

ELLEN BURNS, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

EXHIBIT "B"

United States of America

United States Patent and Trademark Office

TOPICLEAR GOLD

Reg. No. 4,158,690

Registered June 12, 2012

Int. Cl.: 3

TRADEMARK

PRINCIPAL REGISTER

TOPICLEAR, INC. (DELAWARE CORPORATION)
5445 NW 161 STREET
HIALEAH, FL 33014

FOR: NON-MEDICATED COSMETICS AND SKIN CARE PRODUCTS, NAMELY, SOAPS, CREAMS, LOTIONS, SERUMS AND GELS FOR THE FACE, HANDS, HAIR AND BODY, PERSONAL DEODORANTS AND PERFUME, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

FIRST USE 1-31-2012; IN COMMERCE 1-31-2012.

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

OWNER OF U.S. REG. NO. 2,901,314.

SN 85-251,402, FILED 2-25-2011.

ELLEN BURNS, EXAMINING ATTORNEY



David J. Kybas

Director of the United States Patent and Trademark Office

EXHIBIT "C"

United States of America

United States Patent and Trademark Office

TOPICLEAR PARIS

Reg. No. 4,256,759

Registered Dec. 11, 2012

Int. Cl.: 3

TRADEMARK

PRINCIPAL REGISTER

TOPICLEAR, INC. (DELAWARE CORPORATION)
5445 NW 161ST STREET
HIALEAH, FL 33014

FOR: COSMETICS, FACE, HAND, AND BODY CREAMS AND BEAUTY GELS, SKIN LIGHTENING CREAMS, SOAPS FOR PERSONAL USE, LOTIONS FOR BODY AND FACE AND SKIN MOISTURIZING GELS, NON-MEDICATED SERUMS FOR THE FACE, HANDS AND BODY, PERSONAL DEODORANTS AND PERFUMES, SHAMPOOS AND CONDITIONERS, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

FIRST USE 12-2-2002; IN COMMERCE 12-2-2002.

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

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "PARIS", APART FROM THE MARK AS SHOWN.

SER. NO. 85-576,477, FILED 3-22-2012.

JANICE KIM, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

EXHIBIT "D"