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Filing date: **09/28/2016**

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	New Haven Packaging, LLC		
Entity	limited liability company	Citizenship	Delaware
Address	1318 12th Street Wilmington, DE 19802 UNITED STATES		

Attorney information	Steve Mendelsohn Mendelsohn, Dunleavy P.C. 1500 JFK Blvd., Ste. 312 Philadelphia, PA 19102 UNITED STATES docketing@mendelip.com
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Registrations Subject to Cancellation

Registration No	4858838	Registration date	11/24/2015
Registrant	Blum, Richard 72 Timothy Dr. Ivyland, PA 18974 UNITED STATES		

Goods/Services Subject to Cancellation

Class 001. First Use: 2009/12/01 First Use In Commerce: 2009/12/01 All goods and services in the class are cancelled, namely: Anti-freezing and de-icing preparations for snow and ice removal on residential and commercial walkways, driveways and streets

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)		
Abandonment	Trademark Act Section 14(3)		
Registrant not rightful owner of mark for identified goods or services	Trademark Act Sections 14(1) and 1		
Fraud on the USPTO	Trademark Act Section 14(3); In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)		
Registration No	4866009	Registration date	12/08/2015
Registrant	Blum, Richard 72 Timothy Drive Ivyland, PA 18974 UNITED STATES		

Goods/Services Subject to Cancellation

Class 001. First Use: 2009/12/01 First Use In Commerce: 2009/12/01
 All goods and services in the class are cancelled, namely: Anti-freezing and de-icing preparations for snow and ice removal on residential and commercial walkways, driveways and streets

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)		
Abandonment	Trademark Act Section 14(3)		
Registrant not rightful owner of mark for identified goods or services	Trademark Act Sections 14(1) and 1		
Fraud on the USPTO	Trademark Act Section 14(3); In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)		
Registration No	4862848	Registration date	12/01/2015
Registrant	Blum, Richard 72 Timothy Drive Ivyland, PA 18974 UNITED STATES		

Goods/Services Subject to Cancellation

Class 001. First Use: 2007/04/08 First Use In Commerce: 2008/08/01
 All goods and services in the class are cancelled, namely: Anti-freezing and de-icing preparations for snow and ice removal on residential and commercial walkways, driveways and streets

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)		
Abandonment	Trademark Act Section 14(3)		
Registrant not rightful owner of mark for identified goods or services	Trademark Act Sections 14(1) and 1		
Fraud on the USPTO	Trademark Act Section 14(3); In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)		

Marks Cited by Petitioner as Basis for Cancellation

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	FROST BITE		
Goods/Services	Chemical preparations for melting snow and ice		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	ICE IGNITOR		
Goods/Services	Chemical preparations for melting snow and ice		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		

Word Mark	MAJESTIC ICE MELT
Goods/Services	Chemical preparations for melting snow and ice

Attachments	Petition to Cancel 20160928 signed.pdf(51901 bytes)
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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	/Edward J. Meisarosh/
Name	Edward Meisarosh
Date	09/28/2016

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

In re the registrations of:

Registrant: Blum, Richard
Mark: FROST BITE
Reg. No.: 4,858,838
Registered: November 24, 2015

Registrant: Blum, Richard
Mark: ICE IGNITOR
Reg. No.: 4,866,009
Registered: December 8, 2015

Registrant: Blum, Richard
Mark: MAJESTIC ICE MELT
Reg. No.: 4,862,848
Registered: December 1, 2015

NEW HAVEN PACKAGING, LLC,	:	
	:	
Petitioner,	:	Cancellation No. _____
v.	:	
	:	
RICHARD BLUM,	:	
	:	
Respondent.	:	

PETITION TO CANCEL

Petitioner, New Haven Packaging, LLC (“NHP” or “Petitioner”) believes that it is, and will continue to be, damaged by United States Trademark Registration Numbers 4,858,838, for the mark FROST BITE, 4,866,009, for the mark ICE IGNITOR, and 4,862,848 for the mark MAJESTIC ICE MELT. These marks were registered on November 24, 2015, December 8, 2015, and December 1, 2015, respectively. Pursuant to 15 U.S.C. §1064 and 37 C.F.R. §§2.111-

2.212, NHP petitions to cancel these three registrations.

As grounds for cancellation, NHP alleges as follows:

1. Petitioner, NHP, is a Limited Liability Company organized under the laws of Delaware, having a principal place of business at 1318 12th Street, Wilmington, DE, 19802.
2. NHP is in the business of selling preparations used to prevent icing, and to melt ice and snow from surfaces, such as walkways, driveways, and streets.
3. NHP has sold and desires to continue to sell deicing products bearing the FROST BITE, ICE IGNITOR and MAJESTIC ICE MELT marks.
4. NHP is the rightful owner of the FROST BITE, ICE IGNITOR and MAJESTIC ICE MELT trademarks.
5. Richard Blum (“Blum” or “Respondent”) is the listed owner of U.S. Trademark Reg. Nos. 4,858,838, 4,866,009, and 4,862,848 for, respectively, the FROST BITE, ICE IGNITOR, and MAJESTIC ICE MELT marks.
6. On information and belief, Blum is a United States Individual having an address at 72 Timothy Dr., Ivyland, PA 18974.
7. NHP received a cease and desist letter dated January 26, 2016 from Blum asserting that he owned the U.S. Federal trademark registrations for the FROST BITE ICE MELT, ICE IGNITOR, and MAJESTIC ICE MELT marks, and demanding that NHP cease selling products under the FROST BITE, ICE IGNITOR, and MAJESTIC ICE MELT marks.
8. In an abundance of caution, and in response to Blum’s demands, NHP halted sales of products bearing the FROST BITE, ICE IGNITOR, and MAJESTIC ICE MELT marks in order to investigate the facts and take appropriate legal action, if applicable.

9. Prior to receipt of the cease and desist letter from Blum, NHP had had a large number of product packaging bags printed at significant expense to NHP, bearing the FROST BITE, ICE IGNITOR, and MAJESTIC ICE MELT marks, a large proportion of which bags are currently being stored, also at significant expense to NHP.

10. NHP has been and continues to be damaged by not being able to use its trademarks to identify its products without the interference from Blum based on the U.S. Federal Trademark registrations at issue in this Petition to Cancel.

COUNT 1- Blum was Not and is Not the Rightful Owner of the FROST BITE, ICE IGNITOR, or MAJESTIC ICE MELT Marks.

11. Paragraphs 1-10 are incorporated by reference, as if fully set forth herein

12. Upon information and belief, the applications for registration of the FROST BITE and ICE IGNITOR marks were filed by Blum on April 14, 2015, and the application for registration of the MAJESTIC ICE MELT mark was filed by Blum on April 16, 2015.

13. The date of first use alleged in the registration for the FROST BITE mark is December 1, 2009.

14. The date of first use alleged in the registration for the ICE IGNITOR mark is December 1, 2009.

15. The date of first use alleged in the registration for the MAJESTIC ICE MELT mark is August 1, 2008.

16. Upon information and belief, Blum was not selling any products bearing the FROST BITE mark on December 1, 2009, or at any time from December 1, 2009 at least up to and

including April 14, 2015.

17. Upon information and belief, Blum was not selling any products bearing the ICE IGNITOR mark on December 1, 2009, or at any time from December 1, 2009 at least up to and including April 14, 2015.

18. Upon information and belief, Blum was not selling any products bearing the MAJESTIC ICE MELT mark on August 1, 2008, or at any time from August 1, 2008 at least up to and including April 16, 2015.

19. On or about May 2014, Blum became President of NHP.

20. On April 14, 2015 and April 16, 2015, the dates that the applications for registration for the FROST BITE, ICE IGNITOR and MAJESTIC ICE MELT marks were filed, Blum was President of NHP, and was an employee of NHP.

21. The applications for U.S. Federal registration of the FROST BITE, ICE IGNITOR and MAJESTIC ICE MELT marks were made by Blum under the direction of NHP, as President and as an employee of NHP, and these applications should have been made for the benefit of NHP.

22. NHP believed that the applications for Federal registration of the FROST BITE, ICE IGNITOR, and MAJESTIC ICE MELT marks filed on April 14, 2015 and April 16, 2015 were filed on its behalf.

23. In reliance on its belief, NHP commissioned artists to design new packaging artwork bearing the FROST BITE, ICE IGNITOR and MAJESTIC ICE MELT marks, and ordered and paid for a significant number of bags to be produced bearing this artwork.

24. Products sold after April 14, 2015 using the FROST BITE, ICE IGNITOR, or

MAJESTIC ICE MELT marks were manufactured by NHP and the bags containing the products and bearing these three marks were labeled with NHP's name, address, and web site address.

25. The quality of the products being sold bearing the FROST BITE, ICE IGNITOR, and MAJESTIC ICE MELT marks after April 14, 2015 was under the control of NHP, and consumers understood that NHP was the source of the FROST BITE, ICE IGNITOR, and MAJESTIC ICE MELT products as evidenced by the appearance of NHP's name, address and web site on the bags bearing the marks and containing the products.

COUNT 2- Blum's Registration and Use of the FROST BITE, ICE IGNITOR and MAJESTIC ICE MELT Marks is Likely to Cause Confusion with Petitioner's FROST BITE, ICE IGNITOR, and MAJESTIC ICE MELT Marks.

26. Paragraphs 1-25 are incorporated by reference, as if fully set forth herein

27. The registered FROST BITE, ICE IGNITOR, and MAJESTIC ICE MELT trademarks are identical to NHP's FROST BITE, ICE IGNITOR, and MAJESTIC ICE MELT trademarks, and they are each used to identify similar, if not identical, deicing preparations.

28. All rights to and in the trademarks FROST BITE, ICE IGNITOR, and MAJESTIC ICE MELT were acquired by NHP by virtue of its use of the marks for the sale of goods and these three marks continue to be the property of NHP.

29. Use of the FROST BITE, ICE IGNITOR, or MAJESTIC ICE MELT marks by Blum will be likely to cause confusion and mistake, and will deceive consumers as to the source and origin of the goods within the meaning of Section 1052(d) of the Trademark Act.

**COUNT 3- Any Common Law Trademark Rights in the FROST BITE, ICE
IGNITOR, or MAJESTIC ICE MELT Marks Blum May Have Previously Obtained Were
Abandoned Through Non-Use.**

30. Paragraphs 1-29 are incorporated by reference, as if fully set forth herein.

31. The registration certificate lists a date of first use for the FROST BITE and ICE IGNITOR trademarks of December 1, 2009.

32. On information and belief, Blum was not using the FROST BITE or ICE IGNITOR marks on December 1, 2009.

33. The registration certificate lists a date of first use for the MAJESTIC ICE MELT trademark of August 1, 2008.

34. On information and belief, Blum was not using the MAJESTIC ICE MELT mark on August 1, 2008.

35. On information and belief, National Sales & Supply, Inc., (“NSS”), and/or Majestic Products LLC (“MP”), previously alleged trademark rights in a FROSTBITE mark, an ICE IGNITOR mark, and a MAJESTIC MELT mark.

36. The FROSTBITE mark is materially different than the FROST BITE mark.

37. The MAJESTIC MELT mark is materially different than the MAJESTIC ICE MELT mark, and was allegedly used to identify mulch products.

38. On information and belief, NSS and/or MP never manufactured or sold deicing products using the FROST BITE, FROSTBITE, ICE IGNITOR, MAJESTIC ICE MELT, or MAJESTIC MELT marks or on information and belief NSS and/or MP did sell products under the FROSTBITE, ICE IGNITOR, MAJESTIC ICE MELT, or MAJESTIC MELT marks, sales of

such products stopped on or about November 2011.

39. On information and belief, no entity sold deicing products bearing the FROST BITE, FROSTBITE, ICE IGNITOR, MAJESTIC ICE MELT, or MAJESTIC MELT marks between November 2011 and November 2015 when NHP began sales of products bearing these marks.

40. On information and belief, NSS and/or MP had no intention of ever manufacturing deicing products, and on information and belief no entity had any intention of resuming sales of a product bearing the FROST BITE, FROSTBITE, ICE IGNITOR, MAJESTIC ICE MELT, or MAJESTIC MELT marks after November 2011.

41. On information and belief, FROSTBITE, ICE IGNITOR, and MAJESTIC ICE MELT marks, if ever used by Blum, NSS, or MP, were not in use for at least three years following November 2011.

42. On information and belief, Blum, or an entity controlled by Blum never resumed selling products bearing the FROSTBITE, ICE IGNITOR, or MAJESTIC ICE MELT marks.

43. Common law trademark rights in the FROSTBITE, ICE IGNITOR, or MAJESTIC ICE MELT marks, if any, that may have been owned by Blum, or an entity related to Blum, were abandoned in November 2011.

COUNT 4 – Blum Fraudulently Obtained the Registration for the FROST BITE, ICE IGNITOR, and MAJESTIC ICE MELT Marks.

44. Paragraphs 1-43 are incorporated by reference, as if fully set forth herein

45. At the time Blum filed the application for the FROST BITE, ICE IGNITOR, and MAJESTIC ICE MELT marks he was the President of NHP, and an employee of NHP.

46. On information and belief, Blum had not used the FROST BITE mark in commerce, or in connection with the goods listed in U.S. Trademark Application No. 86/597,499 as of the December 1, 2009 claimed date of first use, and was not using the mark as of the April 14, 2015 filing date of this application for Federal registration.

47. On information and belief, Blum had not used the ICE IGNITOR mark in commerce, or in connection with the goods listed in U.S. Trademark Application No. 86/597,501 as of the December 1, 2009 claimed date of first use, and was not using the mark as of the April 14, 2015 filing date of this application for Federal registration.

48. On information and belief, Blum had not used the MAJESTIC ICE MELT mark in commerce, or in connection with the goods listed in U.S. Trademark Application No. 86/599,618 as of the August 1, 2008 claimed date of first use, and was not using the mark as of the April 16, 2015 filing date of this application for Federal registration.

49. Blum filed the three applications for Federal registration naming himself as the owner and on information and belief improperly claimed a filing basis under Section 1(a) as “in use” applications.

50. NHP began selling products bearing the FROST BITE mark after the date of the application for Federal registration of the FROST BITE mark, and at least as early as December 2014.

51. NHP began selling products bearing the ICE IGNITOR mark after the date of the application for Federal registration of the ICE IGNITOR mark, and at least as early as November 2014.

52. NHP began selling products bearing the MAJESTIC ICE MELT mark after the date

of the application for Federal registration of the MAJESTIC ICE MELT mark, and at least as early as January 2015.

53. At a time when Blum was President of, and an employee of NHP, and knowing that NHP intended to use the FROST BITE, ICE IGNITOR, and MAJESTIC ICE MELT marks, on information and belief, Blum filed the application improperly listing himself as the owner of the trademarks based on use of the trademarks in interstate commerce.

54. Blum provided a sworn declaration with the application stating, in part, that, “no other person, firm, corporation, or association has the right to use the mark in commerce.” On information and belief, at the time it was made, Blum knew this statement was false.

55. The applications for the FROST BITE, ICE IGNITOR, and MAJESTIC ICE MELT marks also included the signed statement by Blum stating that he is believed “to be the owner of the trademark/service mark sought to be registered.” On information and belief, Blum also signed this statement knowing it to be false at the time the applications were filed.

56. On information and belief, Blum intended to, and succeeded in deceiving the U.S. Patent and Trademark Office to issue registration certificates for the FROST BITE, ICE IGNITOR, and MAJESTIC ICE MELT marks in his name.

57. On information and belief, the false statements made by Blum were provided to the USPTO with the intent to deceive.

58. On information and belief, USPTO relied upon the truth of these false statements made by Blum in registering the FROST BITE, ICE IGNITOR, and MAJESTIC ICE MELT marks.

59. On information and belief, Blum committed fraud in obtaining the FROST BITE, ICE IGNITOR, and MAJESTIC ICE MELT registrations.

60. Petitioner is damaged and continues to be damaged by the FROST BITE, ICE IGNITOR, and MAJESTIC ICE MELT registrations.

WHEREFORE, for the foregoing reasons, Petitioner, NEW HAVEN PACKAGING, LLC requests that this Petition to Cancel be granted, that Registration Nos. 4,858,838, 4,866,009, and 4,862,848 be cancelled in their entirety and removed from the Principal Register, and for such further relief as the Board deems just and proper.

Dated: September 28, 2016

Respectfully submitted,

MENDELSON DUNLEAVY, P.C.
Attorneys for Petitioner
1500 John F. Kennedy Blvd,
Suite 312
Philadelphia, PA 19102

/Edward J. Meisarosh/
Edward Meisarosh

CERTIFICATE OF SERVICE

I hereby certify that the foregoing PETITION TO CANCEL was filed via the Board's ESTTA system and served upon the registered owner of Registration Nos. 4,858,838, 4,866,009, and 4,862,848 by delivering a true and correct copy of the same to Registrant via U.S. First Class Mail on 09/28/2016, at the following address:

Richard Blum
72 Timothy Drive
Ivyland, PA 18974

/Edward J. Meisarosh/
Edward Meisarosh