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Filing date: **10/11/2016**

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	In a Bottle Skin Care LLC		
Entity	Limited Liability Company	Citizenship	California
Address	126 Garner Drive Sunnyvale, CA 94089 UNITED STATES		

Correspondence information	Amanda Dwight Dwight Law Group 2020 Main Street, Suite 600 Irvine, CA 92614 UNITED STATES adwight@dwightlawgroup.com Phone:9495150003
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Registration Subject to Cancellation

Registration No	4102805	Registration date	02/21/2012
Registrant	ROCASUBA INC. 766 FALMOUTH RD STE C17 MASHPEE, MA 02649 UNITED STATES		

Goods/Services Subject to Cancellation

Class 003. First Use: 2011/12/20 First Use In Commerce: 2011/12/00 All goods and services in the class are cancelled, namely: Cosmetics; Skin lighteners; Skin lightening creams

Grounds for Cancellation

No use of mark in commerce before application, amendment to allege use, or statement of use was filed	Trademark Act Sections 14(1) and 1(a), (c), and (d)
Abandonment	Trademark Act Section 14(3)
Fraud on the USPTO	Trademark Act Section 14(3); In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)

Attachments	Petition for Cancellation.pdf(71139 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	/ad/
Name	Amanda V. Dwight
Date	10/11/2016

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

IN A BOTTLE SKIN CARE LLC

Petitioner,

v.

ROCASUBA INC.

Registrant.

Cancellation No. _____

Registration No. 4102805

Mark: LIGHTENING IN A BOTTLE

FIRST AMENDED PETITION FOR CANCELLATION

IN A BOTTLE SKIN CARE LLC, (“Petitioner”) believing that it has been damaged, or will sustain damages by the continued existence of ROCASUBA INC.’s (“Registrant”) trademark registration for LIGHTENING IN A BOTTLE in connection with “Cosmetics; Skin lighteners; Skin lightening creams,” hereby petitions the cancellation thereof based on the following allegations:

FACTS

1. Petitioner is a limited liability corporation organized under the laws of the state of California having a business address at 126 Garner Drive, Sunnyvale, California 94089.
2. Upon information and belief, Registrant is a corporation organized under the laws of the state of Massachusetts, having a business address at 766 Falmouth Rd., Ste. C17, Mashpee, Massachusetts 02649.
3. On November 5, 2009, Registrant filed an application with the U.S. Patent and Trademark Office (“USPTO”) to register the mark LIGHTENING IN A BOTTLE in connection with

“Cosmetics; Skin lighteners; Skin lightening creams” (“Registrant’s Mark”). This application was filed pursuant to Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

4. On December 21, 2011, Registrant filed a statement of use with the USPTO attesting to the following under oath: “The mark was first used by the applicant, or the applicant's related company, licensee, or predecessor in interest at least as early as 12/20/2011, and first used in commerce at least as early as 12/20/2011, and is now in use in such commerce.”

5. On February 21, 2012, the USPTO issued U.S. Registration No. 4102805 for Registrant’s Mark (“Challenged Registration”).

6. On information and belief, and based on extensive research and investigation and Registrant’s failure to provide evidence of use, Registrant did not actually begin selling the goods identified in its Registration on or after December 20, 2011.

7. Petitioner is in the business of manufacturing and selling cosmetics including skin lighteners and skin lightening creams. Petitioner has a bona fide intent to use the mark LIGHTENING IN A BOTTLE in connection with cosmetics including skin lighteners and skin lightening creams, and is in the process of filing an intent-to-use application to register its mark. However, based on a trademark search performed by an independent third party, Petitioner believes registration of its mark will be refused because of Registrant’s registration. Consequently, Petitioner has a legitimate commercial interest in the outcome of this proceeding.

8. Petitioner believes that it has been damaged, or will sustain damages by the continued existence of the registration for Registrant’s Mark.

9. Petitioner alleges that Registrant’s Mark is invalid and as alleged below, Petitioner respectfully requests that that it be cancelled.

COUNT I

NON USE (15 U.S.C. § 1051(a)(1))

10. Petitioner repeats and re-alleges each and every allegation set forth in Paragraphs 1 to 9 as if fully set forth herein

11. Under Section 1(d) of the Trademark Act, 15 U.S.C. (d) to obtain a registration, after a Notice of Allowance is issued on an application filed based on Section 1(b), the applicant must file, together with a specimen of the mark “as used in commerce,” “a verified statement that the mark is in use in commerce and specifying the applicant’s date of first use of the mark in commerce...”

12. On or about December 21, 2011 Applicant filed a statement of use under Section 1(d) of the Trademark Act , 15 U.S. C. § 1051 (d), alleging the mark LIGHTENING IN A BOTTLE was in use, in interstate commerce, in connection with all the goods identified in the Challenged Registration as of that date.

13. However, as of December 21, 2011, the mark LIGHTENING IN A BOTTLE was not in use in the U.S. in connection with any of the goods identified in the Challenged Registration. As a result, Registrant did not meet the statutory requirements for use in commerce and the Challenged Registration should be canceled.

COUNT II

FRAUD ON THE PTO

14. Petitioner repeats and re-alleges each and every allegation set forth in Paragraphs 1 to 13 as if fully set forth herein.

15. On information and belief, Registrant has committed fraud on the USPTO with regard to Registrant's Mark, and on such basis, the registration should be cancelled. Despite being under oath, Registrant made false statements of a material nature in connection with the registration of Registrant's Mark. Registrant and its representative knew these statements were material and false at the time such representations were made. Despite their material nature, their falsity, and the knowledge thereof by Registrant these false representations were made to the USPTO under oath. Registrant intended to deceive, by causing the USPTO to rely on the false nature of these statements and representations, inducing the USPTO to register the Registrant's Mark.

16. On approximately December 21, 2011, Registrant submitted a Statement of Use pursuant to 15 U.S.C. 1051(d), signed by its attorney. The Statement of Use was submitted in conjunction with a specimen purporting to avow at the time of the declaration that mark LIGHTENING IN A BOTTLE was in use in commerce on all of the following goods: "Cosmetics; Skin lighteners; Skin lightening creams." Despite the foregoing declaration made under oath, on information and belief, and based on extensive research and investigation and Registrant's failure to provide evidence of use, the mark LIGHTENING IN A BOTTLE was not being used and has never been in use, in commerce, by Registrant for cosmetics, skin lighteners, or skin lightening creams. On information and belief, Registrant knew of the foregoing falsity, but nevertheless submitted the declaration with the intent to deceive the USPTO.

17. On information and belief, and based on extensive research and investigation and Registrant's failure to provide evidence of use, Registrant's declaration under oath was material to the Registration and induced the USPTO to register its mark. The foregoing unlawful acts, as

committed by Registrant, constitute fraud on the USPTO and provide sufficient basis to cancel Registration's registration. Petitioner respectfully requests that the TTAB cancel Registration No. 4102805 based on the foregoing fraudulent acts.

COUNT III

ABANDONMENT (15 U.S.C. 1064(3))

18. Petitioner repeats and re-alleges each and every allegation set forth in Paragraphs 1 to 17 as if fully set forth herein.

19. On information and belief, Registrant has abandoned Registrant's Mark by discontinuing use of LIGHTENING IN A BOTTLE for a period of three (3) years or more.

20. Petitioner has been, or will be damaged by the continued maintenance of Registrant's Mark, in that Petitioner intends use of the identical mark which will be impaired by the continued maintenance of the Challenged Registration.

21. On information and belief, and based on extensive research and investigation and Registrant's failure to provide evidence of use, Registrant is not using and has not used in commerce, for at least three years prior to the date of this Petition, Registrant's mark in connection with the goods identified in the Challenged Registration, causing the mark to lose its significance as an indicator of source. Specifically, on information and belief, Registrant has not used the mark LIGHTENING IN A BOTTLE in commerce in the United States in connection with cosmetics, skin lighteners, or skin lightening creams for at least the three (3) years prior to the filing of this Petition, and it ceased use with an intention not to resume use. Accordingly, Registrant has abandoned the mark LIGHTENING IN A BOTTLE with respect to the foregoing goods within the meaning of 15 U.S.C. § 1127.

22. The foregoing facts provide sufficient basis for the USPTO to cancel the Challenged Registration and on this basis, Petitioner respectfully requests the same.

WHEREFORE, Petitioner believes that it has been and will continue to be damaged by registration of the Challenged Registration and prays that the Board sustain the Petition in favor of Petitioner and cancel the Challenged Registration for all the identified goods.

Date: October 11, 2016

Respectfully Submitted,

Dwight Law Group

By: /s/ Amanda V. Dwight

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Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this paper has been served upon Registrant and its Attorney of Record by First Class Mail to the address below on the date indicated below.

XAVIER MORALES
LAW OFFICE OF XAVIER MORALES
PO BOX 6510
SAN ANTONIO, TEXAS 78209

ROCASUBA INC.
766 FALMOUTH RD STE C17
MASHPEE, MASSACHUSETTS 02649

Dated: October 11, 2016

By: /avd/
Amanda V. Dwight