

ESTTA Tracking number: **ESTTA72372**

Filing date: **03/23/2006**

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

|             |   |
|-------------|---|
| Proceeding. | 91166941  |
| Applicant   | Plaintiff<br>IntraCell Nutrition Inc.<br>IntraCell Nutrition Inc.<br>P.O. Box 3070<br>Fort Lee, NJ 07024    |
| Other Party | Defendant<br>CUMMINGS, Joseph James<br>CUMMINGS, Joseph James<br>345 Atwells Avenue<br>Providence, RI 02903 |

### **Motion for Suspension in View of Civil Proceeding With Consent**

The parties are engaged in a civil action which may have a bearing on this proceeding. Accordingly, IntraCell Nutrition Inc. hereby requests suspension of this proceeding pending a final determination of the civil action. Trademark Rule 2.117.

IntraCell Nutrition Inc. has secured the express consent of all other parties to this proceeding for the suspension requested herein.

IntraCell Nutrition Inc. has provided an e-mail address herewith for itself and for the opposing party so that any order on this motion may be issued electronically by the Board.

### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Facsimile or email (by agreement only) on this date.

Respectfully submitted,  
/Lawrence R. Robins/  
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larry.robins@finnegan.com, docketing@finnegan.com  
rsalter@saltermichaelson.com  
03/23/2006

# TTAB

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January 23, 2006

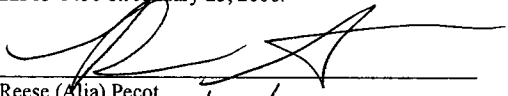
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CLIENT/MATTER NUMBER  
045062-0104

Commissioner for Trademarks  
U.S. Patent and Trademark Office  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to Trademark Trial and Appeal Board, U.S. Patent and Trademark Office, P.O. Box 1451, Alexandria, VA 22313-1451 on January 23, 2006.

  
\_\_\_\_\_  
Reese (Alia) Pecot

\_\_\_\_\_  
Date

1/23/06

Dear Sirs:

Enclosed in triplicate please find a Petition for Cancellation and a confirmation postcard for the following:

|            |   |                           |
|------------|---|---------------------------|
| Registrant | : | IntraCell Nutrition, Inc. |
| Mark       | : | MANNA                     |
| Reg. No.   | : | 2,422,411/75028423        |
| Issued     | : | January 23, 2001          |

Please charge the \$300 fee required in this matter to our Deposit Account No. 50-0872. A duplicate of this form is enclosed.

Very truly yours,



Reese (Alia) A. Pecot

AAP/lk

cc: Miriam Claire Beezy, Esq.  
Foley & Lardner LLP



01-25-2006

U.S. Patent & TMO/TM Mail Rcpt Dt. #26

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

In the Matter of Trademark Serial No.: 78/480,804  
Mark: MANNA-MIN  
Filing Date: September 9, 2004

DOUGLAS COOPER COMPANY )  
 )  
Petitioner, )  
 )  
v. )  
 )  
INTRACELL NUTRITION, INC. )  
 )  
Respondent. )  
\_\_\_\_\_ )

Cancellation No. \_\_\_\_\_

Commissioner for Trademarks  
U. S. Patent & Trademark Office  
Trademark Trial and Appeal Board  
P. O. Box 1451  
Alexandria, VA 22313-1451

**PETITION TO CANCEL REGISTRATION**

To the Commissioner for Trademarks:

Douglas Cooper Company, a Delaware Corporation residing at 4420 Rocky Point Drive, Antioch, California 94531 (hereinafter "Petitioner"), believes it is damaged by the maintained registration of the mark, MANNA, shown in Registration No. 2,422,411. Petitioner hereby petitions to cancel the same pursuant to the provisions of 15 U.S.C. § 1064. The grounds for cancellation are as follows:

1. On information and belief, IntraCell Nutrition, Inc. is a Hawaii corporation, residing at 10 Industrial Avenue, Fairview, NJ 07022 ("Respondent") and is the record owner of

U.S. Registration No. 2,422,411 directed to the mark MANNA (hereinafter "Respondent's Mark") for use in connection with "dietary food supplements for human consumption" in International Class 5 ("Respondent's Goods").

2. On information and belief, Respondent initially filed the application that matured into U.S. Reg. No. 2,422,411 on a Use-In-Commerce basis. The application filing date reflected in the U.S. Patent and Trademark Office records is December 6, 1995.

3. Respondent, as set forth in its U.S. Registration No. 2,422,411, alleges that it first used Respondent's Mark in U.S. commerce in June 1984.

4. On information and belief, Petitioner has substantially exclusively and continuously used, and continues to use, the mark MANNA-MIN alone, and/or in combination with the house mark COOPER'S ("Petitioner's Mark") in connection with "dietary and nutritional supplements" ("Petitioner's Goods").

5. On information and belief, Petitioner's substantially exclusive and continuous use of Petitioner's Mark precedes Respondent's earliest alleged first use of Respondent's Mark or any other MANNA-type mark.

6. Petitioner's application for MANNA-MIN, shown in U.S. Application No. 78/480,804, filed on September 9, 2004, for use in connection with Petitioner's Goods has been denied registration based on Respondent's prior U.S. Registration No. 2,422,411.

7. Petitioner has expended, and continues to expend, considerable time, effort and expense in promoting, advertising, marketing and enforcing Petitioner's Mark in connection with Petitioner's Goods. Petitioner has established valuable goodwill in Petitioner's mark.

8. On information and belief, Respondent's Mark so resembles Petitioner's Mark as to be likely, when used in connection with the goods listed in Respondent's U.S. Reg. No. 2,422,411, to cause confusion, or to cause mistake, or to deceive.

9. On information and belief, the continued existence of U.S. Registration No. 2,422,411 damages Petitioner, as the registration confers upon Respondent various statutory presumptions to which it is not entitled in view of Petitioner's prior use of, and prior rights in, Petitioner's Mark.

10. On information and belief, if Respondent's registration is maintained, it would maintain at least a prima facie exclusive right to use of Respondent's Mark. Such registration would be a source of damage and injury to Petitioner, including, but not limited to, clouding the right of Petitioner to use, enforce or register Petitioner's Mark as a trademark with the U.S. Patent and Trademark Office. Such an assertion is evidenced by the current refusal of registration to Petitioner's Application Serial No. 78/480,804.

11. Registration of Respondent's mark should therefore be cancelled under 15 U.S.C. §§ 1052(d) and 1064.

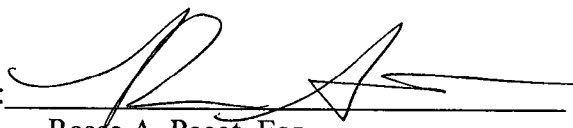
*Petition for Cancellation*  
U.S. Reg. No. 2422411  
Mark: MANNA  
Ref. 045062-0104

A triplicate copy of this Petition for Cancellation, and a return receipt postcard are enclosed herewith. Please charge the required fees for a cancellation petition in one (1) International Class to Deposit Account No. 50-0872. Authorization to charge any additional fees to the deposit account is hereby provided.

Respectfully submitted,

FOLEY & LARDNER LLP

Dated: Jan 23, 2006

By: 

Reese A. Pecot, Esq.  
Miriam Claire Beezy, Esq.  
Foley & Lardner LLP  
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