

TTAB

Attorney Docket: AD-3 (#90384)

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

In the Matter of Trademark Registration Nos. 1,073,012 and 2,004,313
For the Marks: MILK 'N HONEE and MILK 'N' HONEE
Dates Registered: September 13, 1977 and October 1, 1996



10-21-2002
U.S. Patent & TMO/TM Mail Rcpt Dt. #22
TRADEMARK TRIAL AND APPEAL BOARD
OCT 30 PM 9:30

Botica Comercial Farmacèutica Ltda,)
)
Petitioner,)
)
vs.)
)
Conair Inc.,)
)
Registrant.)

Cancellation No. _____

BOX TTAB FEE
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

10/28/2002 TSMITH 00000192 1073012
01 FC:6401 600.00 DP

PETITION FOR CANCELLATION

Dear Sir:

Petitioner is Botica Comercial Farmacèutica Ltda., a partnership organized and existing under the laws Brazil, whose partners are Miguel Gellert Kringsner, Brazilian citizen, Wilhelm Walter Baumeier, Brazilian citizen, Artur Noemio Grynbaum, Brazilian citizen and Scorpium Assessoramento de Marketing SC Ltda., Brazilian corporate legal entity, having a business address at Av. Rui Barbosa, 3450, 83065-260 S. José dos Pinhais PR, Brazil, (hereinafter referred to as "Petitioner"). To the best of Petitioner's knowledge, the name and address of the current owner of

both of the above-identified registrations are Conair Corporation, One Cummings Point Road, Stamford, Connecticut 06904. The above-identified Petitioner believes that it will be damaged by the registration of U.S. Trademark Registration No. 1,073,012 for the mark "MILK 'N' HONEE" and U.S. Trademark Registration No. 2,004,313 for the mark "MILK 'N' HONEE", and hereby petitions to cancel the same.

The grounds for cancellation are as follows:

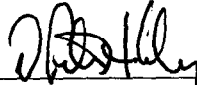
1. Petitioner has applied to register the mark HONEY & MILK (& design) on the Principal Register for use on or in connection with "bath gel, perfumed oil and body deodorant" in International Class 3 under 15 U.S.C. 1051 (b), Section 1(b) of the Trademark Act, on April 20, 2001 and was assigned serial no. 76/244,737 by the United States Trademark Office.
2. Petitioner has a bona fide intention to use the trademark HONEY & MILK (& design) on or in connection with the aforementioned goods.
3. Petitioner received an official office action from the United States Patent and Trademark Office on June 17, 2002 refusing registration of Petitioner's HONEY & MILK (& design) mark on the grounds that it is confusingly similar to Registrant's MILK 'N' HONEE trademark, U.S. Registration No. 1,073,012 and Registrant's MILK 'N' HONEE trademark, U.S. Registration No. 2,004,313.
4. On information and belief, Registrant has abandoned both of said Registrant's marks by non-use of said marks in commerce with no intent to resume use.
5. Petitioner is damaged by the continuance of both of Registrant's marks. The Examiner in Petitioner's application refused registration of Petitioner's HONEY & MILK (& design) mark based on both of Registrant's marks and Petitioner's continued and legal use of its mark is impaired by the continued registration of said abandoned marks.

WHEREFORE, Petitioner requests that both Registration No. 1,073,012 and Registration No. 2,004,313 be canceled and that this Petition be sustained.

This Petition is submitted in duplicate and the required fee is enclosed herewith.

Respectfully submitted,

Date: October 17, 2002

By: 
D. PETER HOCHBERG
Reg. No. 24,603

DPH/KRV

D. PETER HOCHBERG CO., L.P.A.
The Baker Building, 6th Floor
1940 East 6th Street
Cleveland, Ohio 44114
(216) 771-3800

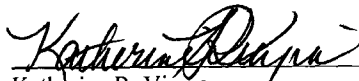
FEE PAYMENT

- Attached is a Credit Card Payment Form authorizing a charge of \$600.00
- Attached is a Check for _____
- Please charge Deposit Account No. 08-2441 for any extension or additional fees required.

CERTIFICATE OF MAILING

I hereby certify that this document is being deposited with the United States Postal Service as First Class mail in an envelope addressed: Box TTAB FEE, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, on the date noted below:

Date: October 17, 2002


Katherine R. Vieyra