

ESTTA Tracking number: **ESTTA275638**

Filing date: **04/01/2009**

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

Proceeding	92050333
Party	Defendant TROPICANA PRODUCTS, INC.
Correspondence Address	Patricia S. Smart Smart & Bostjancich 30 West Monroe Street, Suite 800 Chicago, IL 60603 UNITED STATES pattismart@hotmail.com
Submission	Answer and Counterclaim
Filer's Name	Patricia S. Smart
Filer's e-mail	pattismart@hotmail.com
Signature	/P S Smart/
Date	04/01/2009
Attachments	AnswerCounterclaim.FINAL.pdf (7 pages)(345749 bytes)

Registration Subject to the filing

Registration No	2552892	Registration date	03/26/2002
Registrant	REMINGTON HEALTH PRODUCTS, LLC 804 BLUE MOUND ROAD FORT WORTH, TX 76131 UNITED STATES		
Grounds for filing	The registered mark has become the generic name for the goods.		

Goods/Services Subject to the filing

Class 005. First Use: 1998/09/00 First Use In Commerce: 1998/09/00 All goods and services in the class are requested, namely: vitamins, dietary supplements, and mineral supplements, all in liquid form

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

REMINGTON HEALTH PRODUCTS, L.L.C.,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92050333
)	
TROPICANA PRODUCTS, INC.,)	
)	
Registrant.)	

ANSWER AND COUNTERCLAIM FOR CANCELLATION

Registrant, Tropicana Products, Inc., responds to the allegations of the Amended Petition For Cancellation as follows:

1. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 and therefore denies same, except registrant admits that petitioner has attached printouts from the TARR and assignment databases for Registration No. 2,552,892 and that the filing date for said registration is earlier than the date of first use claimed in Registration No. 2,319,909.
2. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2 and therefore denies same, but admits that certain paragraphs of the Petition To Cancellation refer to “Remington’s Mark,” and affirmatively states that registrant has interpreted references to “Remington’s Mark” to refer to the mark referenced in paragraph 1.
3. Registrant denies the allegations of Paragraph 3.
4. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4 and therefore denies same.

5. Registrant admits the allegations of Paragraph 5.
6. Registrant denies the allegations of Paragraph 6.
7. Registrant denies the allegations of Paragraph 7.
8. Registrant denies the allegations of Paragraph 8.

AFFIRMATIVE DEFENSES

1. Petitioner's alleged mark "Drinkables" is a generic term for the goods listed in petitioner's registration and not entitled to registration. Petitioner can have no cognizable claim of damage.

2. Petitioner's allegations of abandonment are unsupported.

WHEREFORE, registrant requests that the Petition For Cancellation be dismissed with prejudice.

COUNTERCLAIM FOR CANCELLATION

Tropicana Products, Inc. believes it will be damaged by Registration No. 2,552,892 and hereby petitions to cancel same.

1. Registrant-counterclaimant Tropicana Products, Inc. is engaged in the marketing and sale of a variety of beverage products.

2. Petitioner-counterclaim defendant Remington Health Products, L.L.C. seeks to cancel registrant-counterclaimant's registration based on its claim that there is a likelihood of confusion between registrant-counterclaimant's mark and "Drinkables," which is the subject of petitioner-counterclaim defendant's Registration No. 2,552,892. Registrant-counterclaimant will be damaged by the existence of Registration No. 2,552,892 through the loss of its own registration if the Board finds there is a likelihood of confusion..

3. The product identified by petitioner-counterclaim defendant in Registration No. 2,552,892 is a liquid.

4. The product identified in Registration No. 2,552,892 is suitable for drinking.

5. “Drinkables” is the plural of the term “drinkable” which is defined in the dictionary as a beverage or liquid suitable for drinking, as shown by the examples in Exhibit A.

6. “Drinkables” is a generic term for liquids suitable for drinking.

7. “Drinkables” is a generic term for liquids suitable for drinking, including liquid vitamins and supplements covered by Registration No. 2,552,892.

WHEREFORE, Registration No. 2,552,892 should be cancelled.

Registrant-counterclaimant submits the requisite filing fee in the amount of \$300.00.

Please charge any additional fees to Account No. 19-2552.

SMART & BOSTJANCICH

By: / P S Smart / _____

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John Bostjancich

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(312) 857-2424

Attorneys for Registrant-Counterclaimant

CERTIFICATE OF SERVICE

I, Patricia S. Smart, an attorney for registrant, hereby certify that a copy of the foregoing

ANSWER AND COUNTERCLAIM FOR CANCELLATION is being served upon:

Robert M. Chiaviello, Jr.
Fulbright & Jaworski, L.L.P.
2200 Ross Avenue, Suite 2800
Dallas, TX 75201

this 1st day of April, 2009, by first class mail, postage prepaid.

/ P S Smart /

EXHIBIT A



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drinkables

One entry found.

On Off

[Drinkables](#)

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Main Entry: **2**drinkable

Function: *noun*

Date: 1708

: a liquid suitable for [drinking](#) : [BEVERAGE](#)

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"drinkable." [Merriam-Webster Online Dictionary](#). 2009. Merriam-Webster Online. 30 March 2009
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drinkable. (2009). In *Merriam-Webster Online Dictionary*. Retrieved March 30, 2009, from <http://www.merriam-webster.com/dictionary/drinkable>

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drink-a-ble (drɪŋ'kə-bəl) [Pronunciation Key](#)
adj. Suitable or fit for drinking; potable: *drinkable water*.

n. A beverage.
drink'a-bil'i-ty n.

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