

ESTTA Tracking number: **ESTTA266914**

Filing date: **02/17/2009**

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

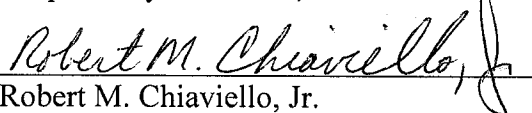
Proceeding	92050333
Party	Plaintiff REMINGTON HEALTH PRODUCTS, LLC
Correspondence Address	Robert M. Chiaviello, Jr. Fulbright & Jaworski L.L.P. 22000 ROSS AVENUE, Suite 2800 DALLAS, TX 75201 UNITED STATES DOIPDocket@Fulbright.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Kathryn Green
Filer's e-mail	kgreen@fulbright.com, DOIPDocket@fulbright.com
Signature	/Kathryn Green/
Date	02/17/2009
Attachments	Motion to Amend & Amended Pet. for Cancellation.pdf (13 pages)(407180 bytes)

amendment to this claim is necessary. In the alternative, Petitioner seeks leave to submit an amended petition for cancellation in order to fully allege its claim that Registrant has abandoned Registrant's Mark and that, as a result, Registrant's Mark should be cancelled pursuant to 15 U.S.C. § 1092.

Rule 15(a) provides that "leave [to amend] shall be freely given when justice so requires." This motion represents Remington's first request to amend the pleadings. Registrant is not prejudiced by this amendment since Registrant was given notice of Remington's abandonment claim at the time Remington filed its Petition for Cancellation on December 3, 2008. Moreover, discovery has not yet begun; therefore, Registrant has ample time to investigate the facts supporting Remington's allegations. In view of the lack of prejudice towards Registrant, and because the interest of justice supports hearing all relevant claims, this motion should be granted.

Dated: February 17, 2009

Respectfully submitted,


Robert M. Chiaviello, Jr.

Kathryn K. Green

FULBRIGHT & JAWORSKI L.L.P.

2200 Ross Avenue, Suite 2800

Dallas, Texas 75201

Telephone: 214.855.8000

Fax: 214.855.8200

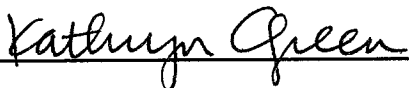
Email: DOIPDocket@Fulbright.com

COUNSEL FOR REMINGTON HEALTH
PRODUCTS, LLC

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing PETITIONER'S MOTION TO AMEND THE PETITION FOR CANCELLATION was served by First Class Mail on February 17, 2009, upon Registrant's counsel at the address below:

Patricia S. Smart
Smart & Bostjancich
30 West Monroe Street Suite 800
Chicago, IL 60603
United States



Kathryn K. Green

underlying application on May 30, 1997. Registration No. 2,552,892 is valid, subsisting and in full force and effect. A true and correct copy of the TARR record and USPTO Assignment Division record for the aforesaid registration are attached hereto as Exhibit A. The filing date for Registration No. 2,552,892 precedes Registrant's claimed date of first use of August 15, 1998.

2. Remington's mark referenced in paragraph 1 will hereafter be referred to as "Remington's Mark."

3. Remington's Mark is inherently distinctive and serves to distinguish Remington and the goods originating with Remington from those of others, and to distinguish the source of Remington's goods.

4. Remington has expended substantial amounts of time, money and effort in advertising and promoting Remington's Mark and the goods offered thereunder. As a result, Remington has developed substantial goodwill in Remington's Mark.

5. Registrant's U.S. Registration No. 2,319,909 is registered on the Supplemental Register for the mark DRINKABLE FRUIT ("Registrant's Mark") as a trademark in connection with the following goods (hereinafter referred to as "Registrant's Goods"):

Processed fruits in class 29.

6. Registrant's Mark so resembles Remington's Mark as to be likely, when used on or in connection with Registrant's Goods, to cause confusion, or to cause mistake, or to deceive. Purchasers and prospective purchasers are likely to falsely believe that Registrant's Goods offered and provided under Registrant's Mark are sponsored, endorsed, or approved by Remington, or are in some way affiliated, connected, or associated with Remington. Cancellation is therefore appropriate under 15 U.S.C. § 1052(d).

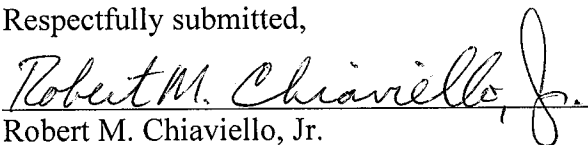
7. Upon information and belief, Registrant has failed to use Registrant's Mark in commerce for at least three consecutive years; therefore, Registrant's Mark should be cancelled pursuant to 15 U.S.C. § 1092. *Otto International, Inc. v. Otto Kern GmbH*, 83 USPQ2d 1861 (TTAB 2007).

8. Remington is being, and will continue to be, damaged by the continued existence of Registrant's registration.

WHEREFORE, Remington prays that this Petitioner's Amended Petition For Cancellation be sustained and that Registration No. 2,319,909 be cancelled in its entirety.

Dated: February 17, 2009

Respectfully submitted,


Robert M. Chiaviello, Jr.

Kathryn K. Green

FULBRIGHT & JAWORSKI L.L.P.

2200 Ross Avenue, Suite 2800

Dallas, Texas 75201

Telephone: 214.855.8000

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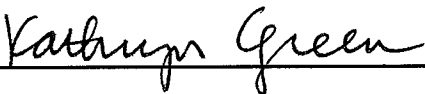
COUNSEL FOR REMINGTON HEALTH

PRODUCTS, LLC

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing PETITIONER'S AMENDED PETITION FOR CANCELLATION was served by First Class Mail on February 17, 2009, upon Registrant's counsel at the address below:

Patricia S. Smart
Smart & Bostjancich
30 West Monroe Street Suite 800
Chicago, IL 60603
United States



Kathryn K. Green

EXHIBIT A

Latest Status Info

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2009-02-17 10:25:57 ET

Serial Number: 75300688 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 2552892

Mark (words only): DRINKABLES

Standard Character claim: No

Current Status: Section 8 and 15 affidavits have been accepted and acknowledged.

Date of Status: 2007-05-07

Filing Date: 1997-05-30

Transformed into a National Application: No

Registration Date: 2002-03-26

Register: Principal

Law Office Assigned: LAW OFFICE 105

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 40S -Scanning On Demand

Date In Location: 2007-05-18

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. REMINGTON HEALTH PRODUCTS, LLC

Address:

REMINGTON HEALTH PRODUCTS, LLC
804 BLUE MOUND ROAD
FORT WORTH, TX 76131
United States

Legal Entity Type: Limited Liability Company

State or Country Where Organized: Texas

GOODS AND/OR SERVICES

International Class: 005

Class Status: Active

vitamins, dietary supplements, and mineral supplements, all in liquid form

Basis: 1(a)

First Use Date: 1998-09-00

First Use in Commerce Date: 1998-09-00

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2007-05-18 - Case File In TICRS

2007-05-07 - Section 8 (6-year) accepted & Section 15 acknowledged

2007-04-24 - Assigned To Paralegal

2007-03-26 - Section 8 (6-year) and Section 15 Filed

2007-03-26 - TEAS Section 8 & 15 Received

2002-11-27 - Section 7 correction issued

2002-08-01 - Request for new certificate filed

2002-08-01 - PAPER RECEIVED

2002-03-26 - Registered - Principal Register

2001-12-03 - Allowed for Registration - Principal Register (SOU accepted)

2001-11-29 - Assigned To Examiner

2001-11-26 - Statement of use processing complete

2001-11-26 - Extension 3 granted

2001-11-07 - Amendment to Use filed

2001-11-07 - Extension 3 filed

2001-05-18 - Extension 2 granted

2001-05-08 - Extension 2 filed

2001-01-17 - Extension 1 granted

2000-11-09 - Extension 1 filed

Latest Status Info

2000-05-09 - Noa Mailed - SOU Required From Applicant

2000-03-10 - Opposition terminated for Proceeding

2000-03-10 - Opposition dismissed for Proceeding

1998-08-18 - Opposition instituted for Proceeding

1998-05-15 - Extension Of Time To Oppose Received

1998-04-28 - Published for opposition

1998-03-27 - Notice of publication

1998-02-03 - Approved for Pub - Principal Register (Initial exam)

1998-01-28 - Examiner's amendment mailed

1998-01-03 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Linda M. Merritt

Correspondent

Linda M. Merritt

Fulbright & Jaworski L.L.P.

22000 ROSS AVENUE, Suite 2800

DALLAS TX 75201



United States Patent and Trademark Office

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Assignments on the Web > Trademark Query

Trademark Assignment Abstract of Title

Total Assignments: 6Serial #: 75300688

Filing Dt: 05/30/1997

Reg #: 2552892

Reg. Dt: 03/26/2002

Registrant: Remington Health Products, Inc.

Mark: DRINKABLES

Assignment: 1Reel/Frame: 1986/0281

Received: 11/08/1999

Recorded: 11/02/1999

Pages: 10

Conveyance: CHANGE OF NAME DOCUMENT. RE-RECORD TO CORRECT NATURE OF CONVEYANCE, PREVIOUSLY RECORDED ON REEL 1809, FRAME 0486.

Assignor: REMINGTON HEALTH PRODUCTS, INC.

Exec Dt: 09/30/1997

Entity Type: CORPORATION

Citizenship: TEXAS

Entity Type: CORPORATION

Citizenship: TEXAS

Assignee: STEELE INVESTMENTS, INC.932 BLUE MOUND ROAD
FORT WORTH, TEXAS 76131

Correspondent: BAKER & BOTTS, L.L.P.

ROBERT M. CHIAVIELLO, JR., ESQ.
2001 ROSS AVENUE
DALLAS, TEXAS 75201**Assignment: 2**Reel/Frame: 2314/0094

Received: 06/15/2001

Recorded: 05/30/2001

Pages: 6

Conveyance: CHANGE OF NAME

Assignor: REMINGTON HEALTH PRODUCTS, INC.

Exec Dt: 09/30/1997

Entity Type: CORPORATION

Citizenship: TEXAS

Entity Type: CORPORATION

Citizenship: TEXAS

Assignee: STEELE INVESTMENT, INC.932 BLUE MOUND ROAD
FORT WORTH, TEXAS 76131

Correspondent: BAKER BOTT L.L.P.

ROBERT M. CHIAVIELLO, JR., ESQ.
2001 ROSS AVENUE
DALLAS, TX 75201**Assignment: 3**Reel/Frame: 2314/0144

Received: 06/15/2001

Recorded: 05/30/2001

Pages: 5

Conveyance: CHANGE OF NAME (CORRECTION TO DOCUMENT RECORDED AT REEL 001809, FRAME 0486 EFFECTIVE ON OCTOBER 29, 1998)

Assignor: REMINGTON HEALTH PRODUCTS, INC.

Exec Dt: 09/30/1997

Entity Type: CORPORATION

Citizenship: TEXAS

Entity Type: CORPORATION

Citizenship: TEXAS

Assignee: STEELE INVESTMENTS, INC.932 BLUE MOUND ROAD
FORT WORTH, TEXAS 76131

Correspondent: BAKER BOTTS L.L.P.

ROBERT M. CHIAVIELLO, JR. ESQ.
2001 ROSS AVENUE
DALLAS, TX 75201**Assignment: 4**Reel/Frame: 2314/0076

Received: 06/15/2001

Recorded: 05/30/2001

Pages: 5

Conveyance: CORRECTION TO DOCUMENT RECORDED AT REEL 001809, FRAME 0486

Assignor: STEELE INVESTMENTS, INC.

Exec Dt: 10/01/1997

Entity Type: CORPORATION

Citizenship: TEXAS**Entity Type:** TEXAS LIMITED LIABILITY COMPANY**Citizenship:** NONE**Assignee:** REMINGTON HEALTH PRODUCTS, LLC932 BLUE MOUND ROAD
FORT WORTH, TEXAS 76131**Correspondent:** BAKER BOTTS LLPROBERT M. CHIAVIELLO, JR., ESQ.
2001 ROSS AVENUE
SUITE 600
DALLAS, TEXAS 75201-2980**Assignment: 5****Reel/Frame:** 2346/0725**Received:** 08/14/2001**Recorded:** 07/27/2001**Pages:** 5**Conveyance:** ASSIGNS THE ENTIRE INTEREST**Assignor:** STEELE INVESTMENTS, INC.**Exec Dt:** 10/01/1997**Entity Type:** CORPORATION**Citizenship:** TEXAS**Entity Type:** LIMITED LIABILITY COMPANY**Citizenship:** TEXAS**Assignee:** REMINGTON HEALTH PRODUCTS, LLC932 BLUE MOUND ROAD
FORT WORTH, TEXAS 76131**Correspondent:** BAKER BOTTS L.L.P.DANA C. JEWELL, ESQ.
2001 ROSS AVENUE
SUITE 600
DALLAS, TEXAS 75201-2980**Assignment: 6****Reel/Frame:** 1809/0486**Received:** 11/06/1998**Recorded:** 10/29/1998**Pages:** 9**Conveyance:** BILL OF SALE**Assignors:** REMINGTON HEALTH PRODUCTS, INC.**Exec Dt:** 07/01/1998**Entity Type:** CORPORATION**Citizenship:** TEXAS**Exec Dt:** 07/01/1998**Entity Type:** CORPORATION**Citizenship:** TEXAS**Entity Type:** CORPORATION**Citizenship:** TEXAS**Assignees:** STEELE INVESTMENTS, INC.932 BLUE MOUND ROAD
FORT WORTH, TEXAS 76131REMINGTON HEALTH PRODUCTS, LLC932 BLUE MOUND ROAD
FORT WORTH, TEXAS 76131**Correspondent:** FELSMAN, BRADLEY, GUNTER & DILLONMELVIN A. HUNN
201 MAIN STREET, SUITE 1600
FORT WORTH, TEXAS 76102-3105

Search Results as of: 02/17/2009 10:26 AM

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