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

Proceeding	92050616
Party	Plaintiff Riowell, LLC
Correspondence Address	Rakesh M. Amin Amin Talati, LLC 444 N. Orleans St. Suite 400 Chicago, IL 60654 UNITED STATES ryan@amintalati.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Ryan M. Kaiser
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Signature	/Ryan M. Kaiser/
Date	04/29/2010
Attachments	04.29.10 - Motion for Leave to Amend.pdf (3 pages)(83750 bytes)

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

In the Matter of Trademark Registration No.: 3,228,958
For the Mark: LEAN FOR LIFE
Date Registered: April 17, 2007

Riowell, LLC)	
Petitioner,)	
v.)	
Lindora, Inc.)	
Registrant.)	
)) Cancellation No. 92050616

**PETITIONER’S MOTION FOR LEAVE
TO FILE AMENDED PETITION TO CANCEL**

Pursuant to Fed. R. Civ. P. 15 the Trademark Rules of Practice, Petitioner hereby moves to amend its Petition to Cancel and assert a second Count for cancellation of Registrant’s Registration on the basis of descriptiveness. The grounds for this motion are as follows:

Petitioner seeks leave to amend its Petition to add one claim for relief. When justice so requires, the Board liberally grants leave to amend pleadings, provided the adverse party would not be unduly prejudiced. Fed. R. Civ. P. 15(a); TBMP § 507.02; *see generally, Caron Corp. v. Helena Rubenstein, Inc.* 193 USPQ 113 (TTAB 1976); *Anheuser-Bush, Inc. v. Martinez*, 185 USPQ 434 (TTAB 1975).

The discovery period in this proceeding is still open, having been extended on stipulation to May 7, 2010. The parties have exchanged discovery requests and responses. There remain issues as to the completeness of the parties’ discovery

responses. Petitioner nonetheless believes it has learned enough at this time about Registrant's business, industry and products to file its proposed Count II, which requests cancellation of Registrant's registration due to the fact that it is merely descriptive. The facts giving rise to proposed Count II were not known at the time Petitioner originally filed its Petition to Cancel. Those facts have only been revealed through discovery in this case (specifically responses to interrogatories provided by Registrant) as well as independent investigation of the marketplace for Registrant's goods.

Moreover (and most importantly) Registrant cannot, in good faith, claim that it will be prejudiced by Petitioner's proposed amendment. Discovery has yet to close in this matter. Moreover, the any evidence bearing on Petitioner's proposed Count II is in Registrant's possession, or is available to Registrant publically.

WHEREFORE, Petitioner respectfully requests that the Board grant its motion to file the accompanying Amended Petition to Cancel.

Dated: April 29, 2010

AMIN TALATI, LLC

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PROOF OF SERVICE

I am over the age of 18 and not a party to the within action; my business address is Amin Talati, LLC, 444 North Orleans Street, Suite 400, Chicago, IL 60654. On **April 29, 2010**, a copy of the attached **MOTION** was served on all interested parties in this action via email, at the addresses as follows:

To: ahunter@adorno.com

Executed on **April 29, 2010**, at Chicago, Illinois. I declare under penalty of perjury that the above is true and correct. I declare that I am employed in the office of Amin Talati, LLC at whose direction service was made.

/s/ Ryan M. Kaiser

Ryan M. Kaiser

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being transmitted to the United States Patent and Trademark Office using the ESTTA system on **April 29, 2010**.

/s/ Ryan M. Kaiser

Ryan M. Kaiser