

ESTTA Tracking number: **ESTTA349058**

Filing date: **05/21/2010**

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

Proceeding	92051832
Party	Defendant MONTANI COSMETICS INC
Correspondence Address	Charles T. Riggs Jr. PATULA & ASSOCIATES, P.C. 116 S. Michigan Avenue, 14th Floor CHICAGO, IL 60603 UNITED STATES riggs@patula.com
Submission	Motion to Strike
Filer's Name	Charles T. Riggs Jr.
Filer's e-mail	riggs@patula.com
Signature	/Charles T. Riggs Jr./
Date	05/21/2010
Attachments	Montani Motion to Strike.pdf (3 pages)(893092 bytes)

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

Merz Pharmaceuticals, LLC and)	
Merz, Incorporated)	
)	
Petitioner,)	
)	Cancellation No. 92051832
v.)	
)	Reg. No. 3,608,042
Montani Cosmetics Inc.,)	
)	
Registrant.)	
_____)	

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

**MOTION TO STRIKE PARAGRAPH 9 OF
PETITIONERS’ AMENDED PETITION FOR CANCELLATION**

Pursuant to TBMP 506 and all other applicable rules, Registrant, Montani Cosmetics Inc., hereby moves the Board for an order striking paragraph 9 of Petitioners’ Amended Petition for Cancellation. In support of this Motion, Registrant states the following:

1. On December 9, 2009, Petitioners filed a Petition for Cancellation (TTAB paper #1) pleading a likelihood of confusion between their various MEDERMA registrations and Registrant’s MEDERMIS mark. Paragraph 9 of the Petition for Cancellation made allegations, *inter alia*, that “Registrant obtained its registration in bad faith by employing fraudulent pretenses.”

2. On January 19, 2010, Registrant filed a Motion (TTAB paper #4) seeking a more definite statement as to whether Petitioners were alleging “fraud” as a basis for cancellation by way of its paragraph 9, and if so, seeking to dismiss the same for failing to plead fraud with the requisite specificity.

3. In their Response filed February 8, 2010 (TTAB paper #7), Petitioners affirmatively stated, "Petitioner does not allege fraud as a ground for cancellation in this proceeding." (Response, p. 5). As such, Petitioners' sole basis for cancellation in this proceeding is an alleged likelihood of confusion. Nonetheless, Petitioners' Amended Petition for Cancellation (TTAB paper #7 (attached to Response)) maintains paragraph 9 and the allegations of fraud made therein.

4. Accordingly, Registrant hereby moves the Board to strike paragraph 9, as Petitioners' allegations therein are clearly unrelated and immaterial to the issue of likelihood of confusion, and clearly have no bearing on the same. Instead, the allegations of paragraph 9 are extremely inflammatory and prejudicial to Registrant. As such, paragraph 9 should be stricken pursuant to TBMP 506.01.

WHEREFORE, Registrant respectfully requests that paragraph 9 of Petitioners' Amended Petition for Cancellation be stricken pursuant to TBMP 506. Additionally, it is respectfully requested that the schedule of dates for this case be stayed pending a decision on this Motion, and reset if necessary after a decision on this Motion.

Respectfully submitted,

PATULA & ASSOCIATES, P.C.

Dated: May 21, 2010

By: /Charles T. Riggs Jr./
Charles T. Riggs Jr.
Attorney for Registrant

Charles T. Riggs Jr.
Patula & Associates, P.C.
116 S. Michigan Ave., 14th Floor
Chicago, IL 60603
(312) 201-8220

riggs@patula.com

43C51

CERTIFICATE OF SERVICE

I hereby certify that a copy of Registrant's MOTION TO STRIKE PARAGRAPH 9 OF PETITIONERS' AMENDED PETITION FOR CANCELLATION was served upon Petitioners by depositing a copy with the United States Postal Service as first class mail, postage paid, in an envelope addressed to Lile H. Deinard, Esq., DORSEY & WHITNEY LLP, 250 Park Avenue, New York, New York 10177, this 21st day of May, 2010.

/Charles T. Riggs Jr./

Charles T. Riggs Jr.

Patula & Associates, P.C.

116 S. Michigan Ave., 14th Floor

Chicago, IL 60603

(312) 201-8220

riggs@patula.com