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

Proceeding	92051832
Party	Defendant Montani Cosmetics Inc.
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Submission	Motion to Strike
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Merz Pharmaceuticals, LLC and	)	
Merz, Incorporated	)	
	)	
Petitioners,	)	
v.	)	Cancellation No. 92051832
	)	
Montani Cosmetics Inc.,	)	Reg. No. 3,608,042
	)	
Registrant.	)	
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UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

**MOTION TO STRIKE PETITIONERS’  
SECOND 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 Petitioners’ Second 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)) maintained paragraph 9 and the allegations of fraud made therein.

4. In view of the same, Registrant filed on May 21, 2010 a Motion to Strike Paragraph 9 of Petitioners’ Amended Petition for Cancellation (TTAB paper #11). On June 25, 2010, the Board granted Registrant’s Motion to Strike, stating “... *allegations of fraud in [the] context [of paragraph 9] do not appear relevant or appropriate*” (TTAB paper #16). Nonetheless, the Board granted Petitioners leave to amend, stating, “...*petitioners are allowed until TWENTY DAYS from the mailing date of this order to amend the allegations in paragraph 9 of the amended petition to cancel to clarify their claims as set forth in its response to the motion to strike.*” (TTAB paper #16).

5. On July 19, 2010, Petitioners’ filed their amendment to paragraph 9, incorporated into their Second Amended Petition for Cancellation (TTAB paper #18). However, Petitioners have failed to comply with the Board’s Order of June 25, 2010 allowing Petitioners TWENTY DAYS from June 25, 2010 to amend their First Amended Petition. As such, Petitioners’ Second Amended Petition should be stricken.

6. Specifically, Petitioners were allowed TWENTY DAYS from June 25, 2010 to file their Second Amended Petition. The 20<sup>th</sup> DAY from June 25, 2010 falls on July 15, 2010. However, Petitioners did not file their Second Amended Petition until July 19, 2010, four days after the July 15, 2010 deadline to do so. TBMP 113.05 makes clear that the additional time to take action under 37 CFR §2.119(c) is inapplicable to an action that must be taken by a party within a

time set in a communication from the Board. Therefore, Petitioners' Second Amended Petition should be stricken as being untimely, and failing to comply with the deadline set by the Board.

7. Additionally, paragraph 9 of the Second Amended Petition fails again to correct the deficiencies noted by the Board in its June 25, 2010 Order. Paragraph 9 of the Second Amended Petition still states that "*As a consequence, Registrant obtained its registration in bad faith.*" As noted by the Board in its June 25, 2010 Order, "*it is not at all clear from the pleading whether petitioners are alleging fraud in procuring the registration, or that respondent is somehow bound by its previous representations.*" It is respectfully submitted that these issues are still not clear at all in paragraph 9 of the Second Amended Petition. Nonetheless, the Board need not address these issues any further since Petitioners' Second Amended Petition is untimely and should be stricken for failing to comply with the TWENTY DAY deadline set by the Board in its June 25, 2010 Order.

8. Accordingly, for the above reasons, Registrant hereby moves the Board to strike Petitioners' Second Amended Petition for Cancellation.

WHEREFORE, Registrant respectfully requests that Petitioners' Second Amended Petition for Cancellation be stricken pursuant to TBMP 506 and all other applicable rules. 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: July 22, 2010

By: /Charles T. Riggs Jr./  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of Registrant's MOTION TO STRIKE PETITIONERS' SECOND 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 22<sup>nd</sup> day of July, 2010.

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