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*N.J. AND N.Y. BARS
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August 17, 2010

Hon. Commissioner for Trademarks
Trademark Trial and Appeal Board
P.O. Box 1451
Arlington, Virginia 22313-1451
Box: TTAB -- Fee

RE: Our File: CHEMCO 10.3-011
Cancellation Proceeding
Chemco v. Atac et al.
Registration No.: 3,401,851

20/8/10

Dear Sir:

Enclosed for filing are the following documents on behalf of Chemco Corporation:

- 1) Petition to Cancel Registration No. 3,401,851;
- 2) Our check for \$300; and
- 3) Acknowledgment postcard.

Please return the enclosed postage prepaid postcard to us acknowledging receipt of the above. Please also charge any deficiency or credit any overpayment to our Deposit Account No. 504246.

Respectfully submitted,

Joseph Sutton
JOSEPH SUTTON, Esq.

JS/mdp
Enclosures



08-20-2010

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

In the Matter of Registration No. 3,401,851
Issued on January 10, 2006

Chemco Corporation
Petitioner,

Proceeding No.: 92/_____
(to be assigned)

- against -

Atac Kozmetik ve Kimya Sanayi ve
Ticaret Anonim Sirketi.

(a joint stock Turkish company)

Registrant

August 17, 2010

Hon. Commissioner for Trademarks
Trademark Trial & Appeal Board
P.O. Box 1451
Arlington, VA 22313-1451
Box: TTAB -FEE

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PETITION FOR CANCELLATION

Petitioner Chemco Corporation, a corporation of the State of Florida, located at 4920 NW 165 St., Miami Lakes, Florida, 33014, believes that it is being damaged by Registration No. 3,401,851 and hereby petitions to cancel same on the following grounds:

1. Upon information and belief, Registrant, Atac Kozmetik ve Kimya; Sanayi ve Ticaret; Anonim Sirketi; ("Atac" or "registrants"), a joint stock company organized and existing under the laws of the country of Turkey, and doing business at Eyrup Sultan Bulvari 54/7, Istanbul Turkey, is the owner of United States Trademark Registration No. 3,401,851 for the trademark **MODA** for various items of cosmetics in International Class 003.

2. Registrant did not claim a date of first use in commerce in the United States, since Registrant's filing basis was an extension of protection under Section 66(a) of the Madrid Protocol, and Registrant's March 2, 2004 U.S. application filing date/request for

protection in the U.S. is its effective date of priority. The U.S. application filing date of registrant's MODA mark is March 2, 2004, and the registrant's '851 registration does **NOT** claim priority to an earlier foreign registration. Thus, based on the Section 66(a) filing basis, registrant was not required and the registration does not indicate any particular date of first use in commerce in the United States.(However, as will be explained below, use within a reasonable time is required in the United States to maintain the registration).

3. Petitioner is the owner of United States Trademark Application No. 76/696,264 for the mark MODA (and Design) for various items of cosmetics in International Class 003. Petitioner hereby gives notice that, in accordance with Trademark Rule 2.122(d), it will rely on said Application and its file history as evidence on its behalf in this proceeding, and copies thereof will be introduced into evidence during Petitioner's testimony period. Petitioner's U.S. trademark application is based on continuous use in interstate commerce in the United States since 1996.

4. Petitioner possesses the following supporting evidence: a) numerous representative invoices proving use in interstate commerce of the mark MODA by Chemco Corporation and its authorized affiliated company Moda, Inc. from as early as the year 2000, several years prior to any use by Registrant in the United States(use began in 1996, however, the invoices go back in this case up to 10 years due to the extended age of the documents); b) catalogs that predate 2004 showing use of the MODA mark ; c) a document from the Florida Department of State from July 2000 showing that Petitioner Chemco Corporation set up a division in the form of a related corporation under the corporate name Moda Inc. to sell products Chemco manufactured with the brand **MODA**. The relevant invoices referenced above show that the corporate address of Chemco (the parent manufacturer) and Moda Inc. was the same at that time, namely, 1130 NW 159th Drive, and that all operations were from the same location; and d) as corroboration of use in commerce of the mark **MODA**, Chemco's officers will corroborate the above evidence by testifying that its mark **MODA** has been continuously affixed to its class 3 products from 1996 until the present time.

5. The foregoing evidence extensively predates Registrant's date of priority of March 10, 2004. The Evidence is preliminary in nature, and Petitioner will conduct discovery for further evidence.

6. It should also be noted for the record, that Petitioner previously filed an earlier U.S. trademark application for its mark MODA in the U.S. Patent & Trademark Office on March 10, 2004 (U.S. Application number 76/580,422). Thus, aside from Petitioner's extensive invoices, catalogs, photos of products bearing the mark, testimony etc. which show use of the mark MODA on its products since 1996, Petitioner's earlier March, 2004 U.S. trademark application is also probative evidence.

7. Petitioner's Composite Trademark MODA (and design), is inherently distinctive as used on and in connection with the sale and advertising of its cosmetic products.

8. In addition, Petitioner's Trademark MODA (and design) has been continuously used on and in connection with the sale of its various cosmetic products for at least over 13 years, i.e., since at least as early as 1996—long before Registrant first “filed” its mark in 2004 in the United States(which apparently registrant does not even use in the United States). As a result of Petitioner's widespread and longstanding use of its MODA (and design) trademark in connection with its cosmetic products, Petitioner's Trademark has acquired greater distinctiveness and extensive goodwill, and is well-known and recognized by consumers and the professional salon trade as identifying Petitioner's unique cosmetic products, that emanate from, are affiliated with, or have been authorized by Petitioner.

9. Petitioner's use of the MODA (and design) mark **predates** any use by Registrant which **may** have occurred in the United States. Thus, Petitioner is the senior user of its mark and has priority and **earlier use** of its mark as compared to registrant's MODA mark.

10. Moreover, the continued existence of Registrant's '851 registration casts a cloud upon Petitioner's right to continue to use and to expand the use of its MODA (and design) Trademark. In particular, Petitioner's '264 U.S. trademark application has wrongfully been refused registration based on Registrant's '851 registration, which merely has an earlier application filing date. As the Board recognizes, under U.S. trademark law, in a cancellation proceeding, it is the earlier user of a mark in interstate commerce that has priority and is entitled to obtain its registration.

11. Upon information and belief, Registrant has either **abandoned** the registered mark MODA, in that it has **discontinued** use of said mark in commerce in the U.S., with **no intent to resume such use**; or, registrant has never actually used the mark MODA in interstate commerce in the U.S., as required **subsequent** to its registration, and merely obtained the U.S. registration based on its international trademark registration for the same mark, pursuant to Section 66(a).

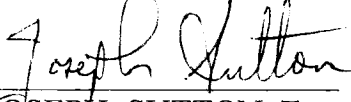
12. As a further ground for cancellation, on information and belief, registrant did not begin using its MODA mark on the extensive list of products within a reasonable time subsequent to the granting of its registration in January 2006; and registrant is not currently using its mark on the extensive list of products in its registration. Thus, the registration is subject to cancellation for non-use on the claimed products and/or for fraud ab initio on the U.S. Patent & Trademark Office.

WHEREFORE, Petitioner believes that it will be damaged by Registration No. 3,041,851 and prays that this Petition for Cancellation be sustained in favor of Petitioner, that judgment be entered against Registrant and that U.S. Trademark Registration No. 3,041,851 be canceled.

Respectfully Submitted,

Law Offices of,

EZRA SUTTON P.A.

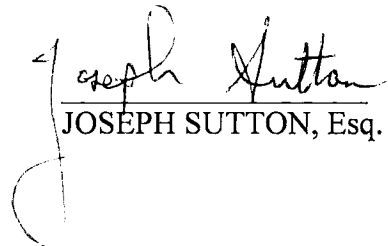
By: 
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Jsutton@ezrasutton.com
Attorneys for Petitioner
Chemco Corporation

Dated: Woodbridge, NJ
August 17, 2010

Certificate of Service

Pursuant to Rule 2.119(a) of the Rules of Practice of the Trademark Office, I, JOSEPH SUTTON, being over the age of 18 and not a party to this proceeding, do hereby certify that a true and correct copy of this Petition for Cancellation was served on August 17, 2010, by federal express courier, as well as electronic mail, on Registrant's domestic representative, namely:

Sherri De Luca, Esq.
James T. Hosmer, Esq.
Nixon & Vanderhye, P.C.
901 N. Glebe Road, 11th Floor
Arlington, VA 22203


JOSEPH SUTTON, Esq.