

ESTTA Tracking number: **ESTTA419470**

Filing date: **07/13/2011**

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

Proceeding	92053030
Party	Plaintiff Jeffrey Kaplan
Correspondence Address	JEFFREY KAPLAN POB 11106 FT LAUDERDALE, FL 33339 UNITED STATES eggcream@earthlink.net
Submission	Other Motions/Papers
Filer's Name	Jeffrey Kaplan
Filer's e-mail	eggcream@earthlink.net
Signature	/Jeffrey Kaplan/
Date	07/13/2011
Attachments	AspergumMotionInLimine.pdf ( 6 pages )(3310438 bytes )

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

In the matter of Trademark Registration No. 792,115  
For the Mark "ASPERGUM"

Jeffrey Kaplan

Cancellation No: 92053030

Petitioner,

v.

Insight Pharmaceuticals LLC

Registrant

**PETITIONER'S MOTION IN LIMINE**

COMES NOW Petitioner, Jeffrey Kaplan ("Petitioner") and moves the Board to exclude certain documents attached as Exhibit A Part III, Exhibit A Part IV, Exhibit B, Exhibit D, Exhibit F, Exhibit G, Exhibit H and Exhibit I attached to Registrant Insight Pharmaceutical LLC's ("Registrant") Notice of Reliance that they submitted in support of its Response in Opposition to Petitioner's Motion for Summary Judgment. Exhibits A Part III and Part IV, Exhibit B, Exhibit D, Exhibit F, Exhibit G, Exhibit H and Exhibit I are inadmissible on their face or for their asserted purposes. Petitioner will address each Exhibit individually:

**(1) Exhibit A Part III:**

Registrant has attached a business plan from Global Beverage Enterprises Inc. who is not a party to this matter. This business plan consists of 35 detailed pages involving the marketing and distribution of various beverages that are completely unrelated to this cancellation proceeding before the Board.

Registrant's requests for production of irrelevant documents unrelated to this proceeding are inadmissible. According to McCarthy on Trademarks and Unfair Competition Statute 20.112 (2007) citing TBC Corp v. Grand Prix Ltd. 16 USPQ 2d 1399 (TTAB 1990)

A party is not required during discovery to provide information relating to its use of marks other than the mark involved in the case and need not provide information relating to use of even the same mark on good or services different from those involved in the case. There is no right to delve into detailed information about the exact nature of those non relevant goods or services.

Registrant's flawed argument that these questions are relevant to Petitioner's standing to assert a claim for cancellation is legally deficient. Petitioner has already established standing for his petition to cancel Registrant's registration by his declaration which is attached to his Motion for Summary Judgment. The undisputed evidence of record evidence shows that Petitioner's application was refused registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d) based on a likelihood of confusion with Registrant's involved registration. See *Continental Grain Co.v. Strongheart Products Inc.*, 9 USPQ2d 1238 (TTAB 1988) The inclusion of a business plan from Global Beverage Enterprises Inc. which is unrelated to this matter is improper and should be excluded accordingly.

**(2) Exhibit A Part IV:**

Registrant has attached an email between Petitioner and an Attorney named John Welch regarding an unrelated TTAB matter between Petitioner and an unrelated third party. In addition Registrant has attached a business plan involving a product invented by Petitioner called BAKE OFF. This business plan consists of 22 detailed pages involving the marketing and distribution of this invention that is completely unrelated to the cancellation proceeding before the Board. Registrant has also attached five pages of downloaded trademark filings by Petitioner both dead and alive dating back over 25 years. In addition Registrant has attached an unrelated Board order between Petitioner and a Mr. Brady regarding an unrelated and irrelevant matter consisting of seventeen pages.

Registrant's requests for production of irrelevant documents unrelated to this proceeding are inadmissible. According to McCarthy on Trademarks and Unfair Competition Statute 20.112 (2007) citing TBC Corp v. Grand Prix Ltd. 16 USPQ 2d 1399 (TTAB 1990)

A party is not required during discovery to provide information relating to its use of marks other than the mark involved in the case and need not provide information relating to use of even the same mark on good or services different from those involved in the case. There is no right to delve into detailed information about the exact nature of those non relevant goods or services.

Registrant's flawed argument that these documents are relevant to Petitioner's standing to assert a claim for cancellation is legally deficient. Petitioner has already established standing for his petition to cancel Registrant's registration by his declaration which is attached to his Motion for Summary Judgment. The undisputed evidence of record evidence shows that Petitioner's application was refused registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d), based on likelihood of confusion with Registrant's involved registration. See *Continental Grain Co. v. Strongheart Products Inc.*, 9 USPQ2d 1238 (TTAB 1988) The inclusion of these documents which are unrelated to this matter is improper and should be excluded accordingly.

**(3) Exhibits B: Registrants First Set of Requests for Production of Documents and Things to Petitioner**

Request No: 26: Registrant requested documents relating to Petitioner's filing of trademark cancellation petitions and business plans unrelated to this matter for the last ten years. Petitioner objected to this request based on irrelevancy to the matter currently before the Board.

Request No: 27: Registrant requested a copy of all agreements during the last ten years regarding unrelated terminated registrations. Petitioner objected to this request based on irrelevancy to the matter currently before the Board.

Request No. 28: Registrant requested a copy of all correspondence received by Petitioner regarding unrelated trademark infringement actions. Petitioner objected to this request based on irrelevancy to the matter currently before the Board.

Request No. 34: Registrant requested all offers to sell the rights to a mark called FUNNY FACE Reg. # 786,098. Petitioner objected to this request based on irrelevancy to the matter currently before the Board. Therefore all documents in Exhibit B should be excluded accordingly.

**Exhibit D:**

Registrant has attached an unrelated TTAB matter regarding a cross motion between Petitioner and a Respondent named John Brady who is not a party to this matter. This motion consists of 18 pages which are irrelevant to this proceeding.

Registrant's requests for production of irrelevant documents unrelated to this proceeding are inadmissible. According to McCarthy on Trademarks and Unfair Competition Statute 20.112 (2007) citing TBC Corp v. Grand Prix Ltd. 16 USPQ 2d 1399 (TTAB 1990)

A party is not required during discovery to provide information relating to its use of marks other than the mark involved in the case and need not provide information relating to use of even the same mark on good or services different from those involved in the case. There is no right to delve into detailed information about the exact nature of those non relevant goods or services.

Registrant's flawed argument that these questions are relevant to Petitioner's standing to assert a claim for cancellation is legally deficient. Petitioner has already established standing for his petition to cancel Registrant's registration by his declaration which is attached to his Motion for Summary Judgment. The undisputed evidence of record evidence shows that Petitioner's application was refused registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d), based on likelihood of confusion with Registrant's involved registration. See *Continental Grain Co.v. Strongheart Products Inc.*, 9 USPQ2d 1238 (TTAB 1988)

The inclusion of a TTAB matter which is unrelated to this proceeding is improper and should be excluded accordingly.

**Exhibit F:**

Registrant has attached an opinion by the Board that is unrelated to this matter regarding the issue of “abandonment”. The Petition of Cancellation referred to in the opinion was filed on the grounds that the mark is “generic” and should not be registered. The matter currently before the Board involves “abandonment”. Therefore this opinion should be excluded accordingly.

**Exhibit G:**

Registrant has attached an opinion by the Board that is unrelated to this matter regarding the issue of “abandonment”. The Petition of Cancellation referred to in the opinion was filed on the ground that the mark will cause a likelihood of confusion under Section 2(d) and should not be registered. The matter currently before the Board involves “abandonment”. Therefore this opinion should be excluded accordingly.

**Exhibit H**

Registrant has attached an opinion by the Board that is unrelated to this matter regarding the issue of “abandonment”. The Petition of Cancellation referred to in the opinion was filed on the grounds that the mark is “generic” and should not be registered. The matter currently before the Board involves “abandonment”. Therefore this opinion should be excluded accordingly.

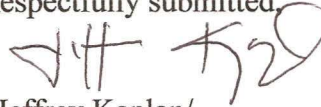
**Exhibit I:**

Registrant has attached an opinion by the Board that is unrelated to this matter regarding the issue of “abandonment”. The Petition of Cancellation referred to in the opinion was filed on the ground that the mark will cause a likelihood of confusion under Section 2(d) and should not be registered. The matter currently before the Board involves “abandonment”. Therefore this opinion should be excluded accordingly.

**CONCLUSION**

The above Exhibits attached to Registrants Notice of Reliance are improper, legally deficient and should be excluded accordingly.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'JH Kaplan', written over the typed name.

/Jeffrey Kaplan/

7-13-11

**CERTIFICATE OF MAILING**

It is hereby certified that this document is being deposited First Class Postage Prepaid with the U.S. Postal Service addressed to Samuel Miller, Esq.- 211 Commerce Street # 800 Nashville, TN 37201.

A handwritten signature in dark ink, appearing to read 'JH Kaplan', written over the typed name.

/Jeffrey Kaplan/

7-13-11