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

Proceeding	92053338
Party	Plaintiff KPO Marketing Company Limited
Correspondence Address	ROBYN S LEDERMAN CANTOR & COLBURN LLP 201 WEST BIG BEAVER ROAD, SUITE 1101 TROY, MI 48084 UNITED STATES tm-mi@cantorcolburn.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	P. Jay Hines
Filer's e-mail	tm-dc@cantorcolburn.com, tm-mi@cantorcolburn.com, rlederman@cantorcolburn.com
Signature	/pjh/
Date	03/09/2011
Attachments	KPO Motion for Leave to Amend - Amended Petition.pdf (10 pages)(180623 bytes)

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

In the Matter of Trademark Registration No.	3586780
Filed:	August 3, 2008
Mark:	HUSKY
Issued:	March 10, 2009

KPO Marketing Company Limited

Petitioner,

v.

The D.O.R. Ltd

Registrant.

Cancellation No: 92053338

**PETITIONER'S MOTION FOR LEAVE TO AMEND
PETITION FOR CANCELLATION**

In accordance with Trademark Rule 2.107 and Fed. R. Civ. P. 15(a),
Petitioner seeks leave to amend its Petition for Cancellation to support the fraud claim
with more specific factual statements based on informal discovery and to add
abandonment as an alternate ground for cancellation. A proposed Amended Petition for
Cancellation is attached as Exhibit 1.

As a result of informal document exchange during the month of January 2011,
additional facts came to light regarding Registrant's claim of use in connection with duty-
free sales. It became apparent that Petitioner could more specifically plead with respect
to Registrant's material misrepresentations when it claimed use of the HUSKY mark in

connection with vodka in its application filed on August 3, 2008. It also became apparent that the facts support an alternate claim for abandonment for non-use.

Pleadings in a cancellation proceeding may be amended in the same manner and to the same extent as in a civil action. 37 C.F.R. § 2.107. Rule 15(a) of the Federal Rules of Civil Procedure provides that a party may amend its pleading by leave of court, which should be freely given when justice so requires. Fed. R. Civ. P. 15(a). The Trademark Trial and Appeal Board “liberally grants leave to amend pleadings at any stage of a proceeding when justice so requires, unless entry of the proposed amendment would violate settled law or be prejudicial to the rights of the adverse party or parties.” TBMP § 507.02; *Commodore Elecs. Ltd. v. CBM Kabushiki Kaisha*, 26 USPQ2d 1505 (TTAB 1993) (granting leave to include a claim that applicant lacks a bona fide intent to use the mark in commerce).

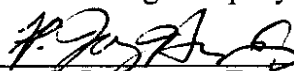
Petitioner merely seeks to enhance its claim of fraud based on new information. A registration is subject to cancellation for abandonment at any time. 15 U.S.C. § 1064(3). A mark is deemed abandoned “[w]hen its use has been discontinued with intent not to resume use.” *Id.* § 1127. In addition, “[n]one use for 3 consecutive years shall be prima facie evidence of abandonment.” *Id.* Based on the noted informal exchange of information, Registrant has not used the mark in commerce for more than three consecutive years, thereby establishing a prima facie case of abandonment. Thus, justice requires that Petitioner be permitted to allege abandonment in the alternative.

An important factor in determining whether leave to amend would prejudice the adverse party is the timing of the motion. TBMP § 507.02; *Focus 21 Int’l Inc. v. Pola Kasei Kogyo Kabushiki Kaisha*, 22 USPQ2d 1316 (TTAB 1992) (finding no prejudice to

registrant where petitioner filed motion to amend prior to opening of registrant's testimony period). In this instance, discovery only opened on February 9, 2011. Petitioner's motion for leave is being filed during the discovery period and soon after learning of the facts giving rise to the claims. Thus, Registrant will not be prejudiced by the requested amendments to the pleading.

In light of the foregoing, Petitioner requests that the Board grant Petitioner leave to amend its Petition for Cancellation.

RESPECTFULLY SUBMITTED,
KPO Marketing Company Limited

BY: 
Robyn S. Lederman, Esq.
P. Jay Hines, Esq.
Cantor Colburn LLP
201 W. Big Beaver Rd.
Suite 1101
Troy, MI 48084
Phone: 248-524-2300
Fax: 248-524-2700

Attorneys for Petitioner
KPO Marketing Company Limited

EXHIBIT 1

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KPO Marketing Company Limited

Petitioner,

v.

The D.O.R. Ltd

Registrant.

Cancellation No: 92053338

AMENDED PETITION FOR CANCELLATION

In the matter of United States Trademark Registration No. 3586780, filed August 3, 2008 and issued March 10, 2009, for registration of the mark "HUSKY" (the "Registration"), by The D.O.R. Ltd ("Registrant"), covering "vodka" in International Class 33 (the "Goods"), Petitioner KPO Marketing Company Limited ("KPO" or "Petitioner") alleges that it has been and will continue to be damaged by the Registration, and hereby petitions for its cancellation.

As the basis therefore, Petitioner alleges as follows:

1. KPO is a corporation organized and existing under the laws of the country of Cyprus, with an address at Egypt Street, 12 CY-1097 Nicosia CYPRUS.
2. KPO owns rights in and to the HUSKY trademark (the "Mark"), in connection with vodka in International Class 33.

3. KPO is the owner, seller, manufacturer, distributor and/or licensor of HUSKY branded vodka in Russia and soon in the United States, the benefits of which inure to KPO.
4. As a result of Petitioner's substantially exclusive and continuous use of the HUSKY Mark in connection with the Goods, the Mark has developed substantial goodwill and a positive reputation among the industry, the trade, and consumers, and has become one of Petitioner's most valuable assets.
5. In preparation for its North American launch, Petitioner filed Application Serial No. 79087732, on July 8, 2010, based on its International Registration. Petitioner learned of the Registration when its application was refused on grounds of likely confusion with Registrant's mark.
6. On information and belief, Registrant is a corporation organized under the laws of the State of Delaware and with an address at 848 N. Rainbow Blvd. Ste 1052, Las Vegas NEVADA 89107.
7. Registrant has no relationship with Petitioner.
8. On or about, August 3, 2008, Registrant filed the application (Serial No. 77537840) that matured into the Registration, covering "vodka" in International Class 33.
9. The application that matured into the Registration was filed without Petitioner's authorization, consent, or prior knowledge.
10. The application was filed based on claimed Use under Section 1(a) of the Lanham Act, 15 U.S.C. §1051(a).

11. On August 3, 2008, the date that Registrant filed the application that matured to registration, Leon Fingerhut as the Managing Director of Registrant, submitted a Declaration stating that the Mark was first used anywhere in connection with the goods since at least as early as January 20, 2006, and first used in commerce in connection with the goods since at least as early as July 20, 2008.
12. On August 3, 2008, the date that Registrant filed the application that matured to registration, Registrant submitted a purported specimen of use. A copy of which is attached hereto as Exhibit A.
13. The alleged specimen depicts an illustration of a bottle which does not establish use of the HUSKY Mark in any type of commerce in the United States, affecting the United States or regulated by Congress. The illustration is not a proper specimen of goods in actual use and, as such, Registrant willfully intended to deceive the USPTO into issuing a registration. The Registration is invalid on the basis of fraud and should be cancelled.
14. Registrant committed fraud on the United States Patent and Trademark Office in connection with the Registration. In particular, Applicant falsely represented to the USPTO that it was using the Mark in commerce for the Goods identified in the application at the time that it filed the application. The only alleged use at the time was minimal sample product testing on an Alaskan cruise ship which was not in the ordinary course of trade and amounts to token use merely to reserve a right in a mark. Registrant willfully intended to deceive the USPTO to induce it to issue a registration. Registrant's false representations were material to the

Examining Attorney's decision to issue the Registration. As such, the Registration is invalid for fraud and should be cancelled.

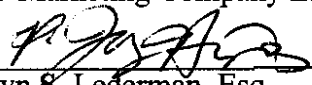
15. Upon information and belief, Registrant failed to use the Registration at any time prior to and following registration of the HUSKY Mark. Registrant lacked a bona fide intent to use the mark and has no bona fide intention to begin and/or resume use. As such, the Registration is invalid on the basis of fraud and should be cancelled
16. In the alternative, upon information and belief, Registrant has abandoned use of the mark represented by trademark Registration No. 3586780 as a result of discontinuing sue for a period of at least three consecutive years with no intent to resume such use.
17. Upon information and belief, Registrant filed the application that matured to registration in bad faith. More specifically, Registrant's filing is an attempt to usurp KPO's mark for the purpose of demanding payment from KPO, knowing that the Mark has value to Petitioner and is of no use to Registrant.
18. Based on the foregoing, Petitioner has been and will continue to be damaged by the Registration.

WHEREFORE, Petitioner KPO Marketing Company Limited respectfully requests that the Registration No. 3586780, be cancelled.

Dated this 9th day of March 2011.

RESPECTFULLY SUBMITTED,
KPO Marketing Company Limited

BY:

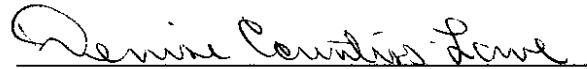

Robyn S. Lederman, Esq.
P. Jay Hines, Esq.
Cantor Colburn LLP
201 W. Big Beaver Rd.
Suite 1101
Troy, MI 48084
Phone: 248-524-2300
Fax: 248-524-2700

Attorneys for Petitioner
KPO Marketing Company Limited

CERTIFICATE OF SERVICE

I, Denise Countiss-Lowe, on behalf of counsel to Petitioner KPO Marketing Company Limited in the above-captioned action, hereby certify that, on the 9th day of March 2011, I served a copy of the foregoing Petitioner's motion for Leave to Amend Petition for Cancellation and Amended Petition for Cancellation, via first class mail, postage prepaid, upon the following entity, identified in the Registration as the correspondence address:

The D.O.R.Ltd
Ste 1052 848 N. Rainbow Blvd.,
Las Vegas, NV 89107
United States


Denise Countiss-Lowe