

This Opinion is Not a
Precedent of the TTAB

Hearing: November 29, 2016

Mailed: January 20, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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Unilever PLC

v.

Technopharma Limited

—
Cancellation No. 92056654
—

Jonathan D. Reichman and William M. Merone of Kenyon & Kenyon LLP for Unilever PLC.

David M. Rogero of David M. Rogero, P.A. for Technopharma Limited.

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Before Wellington, Wolfson, and Masiello, Administrative Trademark Judges.

Opinion by Masiello, Administrative Trademark Judge:

Technopharma Limited (“Respondent”) owns U.S. Reg. No. 3071686 (the “Registration”) on the Principal Register.¹ The mark in the Registration is NEW YORK FAIR AND LOVELY in typed form, and it is registered for the following goods:

¹ Issued March 21, 2006, based on an application filed November 22, 2002 under Trademark Act Section 1(b), 15 U.S.C. § 1051(b). Section 8 affidavit accepted; Section 15 affidavit acknowledged; renewed.

Skin soaps, skin cleansers, cosmetics, in International Class 3;

Medicated skin creams and medicated skin lotions, in International Class 5.²

Unilever PLC (“Petitioner”) filed a petition to cancel the Registration on the ground of abandonment, as evidenced by nonuse of the registered mark for at least three consecutive years, and fraud.³ In the alternative, Petitioner seeks a restriction of the Registration to delete the goods in connection with which the mark is no longer in use.⁴ Respondent denied the salient allegations of the amended petition for cancellation. Respondent asserted the affirmative defenses of unclean hands and lack of standing; and other assertions that amplify its denials.⁵

An oral hearing was held on November 29, 2016 at which both parties were represented. The case is fully briefed.

I. The nature of Petitioner’s claims; waiver of claims.

Petitioner does not address its claim of fraud in its brief on the case. Respondent contends that Petitioner has waived its fraud claim.⁶ Petitioner, in its rebuttal brief, does not dispute that the fraud claim has been waived, and lists fraud in a reference to grounds that it is not pursuing:

² When Respondent filed its Section 8 affidavit in 2011, it deleted “perfume and cologne, hair lotions and dentifrices” from the identification of goods in Class 3; and “medicated shampoos” from the identification of goods in Class 5.

³ Amended Petition for Cancellation, 7 TTABVUE 123-129.

⁴ *Id.* ¶ 20, 7 TTABVUE 128. *See also* Board order of June 5, 2014, 21 TTABVUE, in which the Board construed the nature of the pleading set forth in ¶ 20.

⁵ Amended Answer to Amended Petition for Cancellation, 23 TTABVUE.

⁶ Respondent’s brief at 17-19, 66 TTABVUE 18-20.

... Registrant, rather than respond to Petitioner's asserted grounds head on, devotes most of its efforts to ... addressing grounds that Petitioner is not pursuing at trial – namely, abandonment, fraud, and the impropriety of Registrant's December 2005 Statement of Use.⁷

We find that Petitioner has waived its claim of fraud.

Respondent also contends that Petitioner has waived its claim of abandonment.⁸ Petitioner has not prosecuted this case as a traditional abandonment case. However, as we will discuss, the issue of abandonment is implicated in the theory of relief on which Petitioner primarily relies, which is the alleged inadequacy of the affidavit of continued use filed by Respondent for the purpose of complying with the registration maintenance requirements of Trademark Act Section 8, 15 U.S.C. § 1058 (the "Section 8 Affidavit"). Petitioner contends that this is cause for cancellation of the registration, in part or in its entirety. The underlying claim is set forth in Paragraph 20 of Petitioner's amended petition for cancellation.⁹ When Respondent moved to strike Paragraph 20, the Board allowed the claim, stating:

In the event Petitioner does not succeed in proving fraud, paragraph 20 of the amended petition for cancellation places Respondent on notice that Petitioner seeks a restriction of the involved registration to delete the goods in connection with which the mark is no longer in use ...¹⁰

⁷ Rebuttal brief at 1, 68 TTABVUE 6.

⁸ Respondent's brief at 17-19, 66 TTABVUE 18-20.

⁹ 8 TTABVUE 94.

¹⁰ Order of June 5, 2014, 21 TTABVUE 2-3.

Petitioner contends that when Respondent filed its Section 8 Affidavit, Respondent was – at best – using its mark on only a single product identified in the Registration;¹¹ but Petitioner ultimately argues that the Registration should be “restricted in its entirety” by the deletion of all identified goods.¹²

The Registration issued more than five years prior to the institution of this proceeding. Therefore, any petition to cancel it, whether in whole or in part, must be based upon the limited grounds set forth in Trademark Act Section 14(3), 15 U.S.C. § 1064(3). Among these available grounds, the only ones that have plausibly been pleaded are that the mark has been abandoned, and that the Registration was obtained (or maintained) by fraud. Petitioner has waived the ground of fraud. If Petitioner is to succeed in restricting the Registration by the deletion of some or all of the identified goods, Petitioner must demonstrate that Respondent has abandoned its mark with respect to those goods. A mark has been “abandoned” “[w]hen its use has been discontinued with intent not to resume such use.” Trademark Act Section 45, 15 U.S.C. § 1127.

In seeking to demonstrate that Respondent “failed to establish continued ‘use’ pursuant to [Section 8],”¹³ Petitioner has argued strenuously that the Board should examine the Section 8 Affidavit for compliance with the requirements of the statute, 15 U.S.C. § 1058(b). Petitioner argues that if the Section 8 Affidavit was substantively

¹¹ Rebuttal brief at 16, 68 TTABVUE 21.

¹² *Id.* at 17, 68 TTABVUE 22.

¹³ Amended Petition for Cancellation ¶ 20, 7 TTABVUE 128.

inadequate, we should find that Respondent “failed to submit a proper declaration of continued use ..., with the result being that the registration automatically expired” on the relevant deadline.¹⁴ This proposed analysis is incorrect for a number of reasons. Most importantly, any petition to cancel the Registration now before us must be based on a ground set forth in Section 14(3); and inadequate filings in the file history of a registration are not among those enumerated grounds. Other grounds for cancellation are time-barred. (This is not to say that cancellation, in whole or in part, would not be warranted if a substantive analysis of the facts underlying the Section 8 Affidavit were to establish that use of the mark has been abandoned for some or all of the goods.)

Even if Petitioner’s proposed theory of relief were not time-barred, it is based upon a misreading of the statute. Section 8 does not contemplate an automatic expiration of a registration, as Petitioner suggests. Rather, it contemplates an action taken by the Director of the USPTO: “Each registration shall remain in force for 10 years, except that the registration of any mark shall be canceled by the Director unless the owner of the registration files ... affidavits that meet the requirements of subsection (b) ...” 15 U.S.C. § 1058(a). In this case, the record shows that the Director did not cancel the Registration; rather, the USPTO issued a notice stating that Respondent’s filing “meets the requirements of Sections 8 and 15 ... The registration remains in force.”¹⁵ Clearly, Petitioner’s contention that the Board need only “acknowledge

¹⁴ Petitioner’s brief at 20, 60 TTABVUE 25.

¹⁵ Notice of Acceptance and Acknowledgement of §§ 8 & 15 Declaration, mailed May 28, 2011.

administratively that the registration has already expired as a matter of law”¹⁶ is untenable. Neither would any purported error on the part of the Director’s office in the examination of the Section 8 Affidavit constitute a suitable ground for cancelling the Registration; no such a ground is available under Section 14(3).

In sum, the claim that remains for determination is whether the Registration should be cancelled in whole or in part on the ground that Respondent has abandoned use of the mark for some or all of the goods identified therein.

II. The record.

The record includes the pleadings and, by operation of Trademark Rule 2.122, 37 C.F.R. § 2.122, the file history of the Registration and underlying application. In addition, the parties have made of record the following testimony, with exhibits:

A. Filed by Petitioner:

- Testimony deposition of Stephen Francis Beale, in-house trademark counsel for Petitioner, 61 TTABVUE 8-56.
- Testimony deposition of Bernard Pound, litigation paralegal manager for Kenyon & Kenyon, 61 TTABVUE 60-315.
- Rebuttal testimony deposition of Bernard Pound, 61 TTABVUE 316-348.

B. Filed by Respondent:

- Testimony deposition of Michel Maurice Farah, president of Mitchell Group. 67 TTABVUE.

¹⁶ Petitioner’s brief at 3, 60 TTABVUE 8.

III. Evidentiary objection.

During cross-examination of Respondent's witness Michel Farah, Petitioner introduced two declarations of Mr. Farah that had been executed in connection with a summary judgment motion in this proceeding. The witness authenticated the declarations and answered affirmatively when asked, "were the statements you made there intended to be truthful and accurate?"¹⁷ Petitioner's counsel then sought to point out inconsistencies between statements in the declarations and the witness's testimony. Respondent, in its brief, has cited the declarations for the truth of the matter asserted in them. Petitioner objects to such use of the content of the declarations.

Mr. Farah's statement that the declarations were "intended to be truthful and accurate" falls short of a re-verification under oath that the statements in the declarations were true when made and remained true at the time of trial. Although the declarations are of record for what they show on their face, they remain hearsay. We agree with Petitioner that the declarations may not be cited for the truth of the matter asserted in them.

IV. Standing.

Standing is a threshold issue that must be proven by a plaintiff in every *inter partes* case. See *Empresa Cubana Del Tabaco v. Gen. Cigar Co.*, 753 F.3d 1270, 111 USPQ2d 1058, 1062 (Fed. Cir. 2014), *cert. denied*, 135 S. Ct. 1401 (2015). The plaintiff must show that it has a real interest in the proceeding beyond that of a mere intermeddler,

¹⁷ Farah 102:15-18; 103:5-7, 67 TTABVUE 103-4.

and that it has a reasonable basis for its belief of damage resulting from registration of the subject mark. *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023, 1025 (Fed. Cir. 1999).

Petitioner's witness testified that Petitioner has, since the mid-1970s, offered skin creams outside the United States under the mark FAIR & LOVELY, with worldwide annual sales in the hundreds of millions of dollars.¹⁸ He testified that some such products have been available for sale in the United States.¹⁹ Petitioner submitted records of the USPTO showing that it owns two pending trademark applications for registration of marks for various cosmetics and cleaning preparations,²⁰ Serial No. 85818836 for the mark FAIR & LOVELY in standard characters; and Serial No. 85818821 for the mark shown below:

Fair & Lovely

The record also shows that Respondent has instituted an opposition against the registration of both marks, Opposition No. 91216999.²¹ The parties have been adversaries in other trademark proceedings outside the United States since 2004.²² We find the foregoing facts sufficient to show that Petitioner has a real interest in the

¹⁸ Beale 9:7-12:23, 61 TTABVUE 16.

¹⁹ *Id.* 21:3-8, 61 TTABVUE 25.

²⁰ Pound Exs. 19 and 18, 61 TTABVUE 288-299.

²¹ Pound Exs. 20 and 21, 61 TTABVUE 300-312; Amended Answer to Amended Petition for Cancellation ¶ 6, 23 TTABVUE 2-3. The opposition has been suspended pending final disposition of the subject proceeding.

²² Beale 15:24 and Ex. 1 (2008 witness statement in U.K. trademark proceeding), 61 TTABVUE 20, 52, 56.

outcome of this proceeding and has established its standing to seek cancellation of the Registration.

V. Petitioner's claim for restriction of the Registration.

We turn now to the merits of Petitioner's claim that the Registration should be limited by the deletion of some or all of the identified goods because Respondent "failed to establish continued 'use' pursuant to [Section 8]." As we have noted above, the purported inadequacy of Respondent's Section 8 affidavit is not a ground for cancellation and thus not before us. Rather, the only plausible construction of this assertion in the context of a viable pleaded ground for cancellation is that Respondent ceased continuously using its mark and thus "abandoned" it, with respect to some or all of the identified goods. We therefore entertain Petitioner's arguments regarding Respondent's alleged cessation of use of its mark under the standard applicable to an abandonment claim.

The party seeking cancellation based on abandonment bears the burden of proving its case by a preponderance of the evidence. *See Imperial Tobacco Ltd. v. Philip Morris Inc.*, 899 F.2d 1575, 14 USPQ2d 1390, 1393 (Fed. Cir. 1990); *On-Line Careline Inc. v. America Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471, 1476 (Fed. Cir. 2000); *Cerveceria Centroamericana, S.A. v. Cerveceria India, Inc.*, 892 F.2d 1021, 13 USPQ2d 1307, 1310 (Fed. Cir. 1989). Petitioner must meet this burden by showing that, with respect to any particular identified good, the mark's "use has been discontinued with intent not to resume such use." 15 U.S.C. § 1127.

The issue of abandonment can be a difficult one, particularly because of the element of “intent not to resume ... use.” The record of the case before us is not extensive. The witnesses were few and the documentary evidence scant. Moreover, most of the testimony and documentation were apparently directed toward issues such as fraud on the USPTO and the sufficiency of the specimens of use submitted by Respondent with its statement of use and its Section 8 Affidavit, issues that have now been waived or which we have found to be unavailable as grounds for cancellation. For the reasons we discuss below, we find that Petitioner has failed to demonstrate abandonment of Respondent’s mark by a preponderance of the evidence.

Petitioner bases its case primarily on the paucity of documentation relating to sales of Respondent’s products. Petitioner has strongly suggested that Respondent is not engaged in good faith commercial operations under the mark. In this regard we bear in mind that when we consider whether there has been a cessation of “use” or whether there is an intent not to resume “use,” the word “use” means “bona fide use of a mark in the ordinary course of trade, and *not made merely to reserve a right in a mark.*” See definition of “use in commerce,” 15 U.S.C. § 1127 (emphasis added).

The goods identified in the Registration are skin soaps, skin cleansers, cosmetics, medicated skin creams and medicated skin lotions. The documentary evidence of use of the mark on Respondent’s goods is as follows with respect to the years indicated:²³

²³ Farah Exs. B-C, F-I, 67 TTABVUE 159-167, 183-241.

<u>Year</u>	<u>Evidence</u>
2005	A package of gel stamped with manufacture date of 05/2005. A December invoice for sale of peeling soap, lightening cream, and body clearing milk.
2006	A distribution agreement with Afra Inc. dated January 2006, relating to lightening gel, lightening cream, body clearing milk, lightening serum, and peeling soap. A package of lightening cream stamped with manufacture date of 05/2006.
2009	Three invoices for sale of soap (March, May, and August).
2010	Two invoices for sale of soap (January, March). Ten invoices for sale of cream (April, May, June, August, November, December). Packages of gel, lightening cream in jar, and lightening cream in tube stamped with manufacture dates of March, August, and September 2010 (respectively).
2011	Eleven invoices for sale of cream (January-April, September, November, December).
2012	Seven invoices for sale of cream (February, April, June, August).

In addition to the foregoing materials, the record includes several examples of packages for soap, but none of them bears a date of manufacture. The record also shows 2010 correspondence between Respondent and a graphic artist regarding design of new packaging for gel and soap; and examples of redesigned packaging for body brightening lotion, active lightening cream, exfoliating soap, lightening gel, and

strong bleaching gel which, according to Respondent's witness, were first used at the end of 2012 or the beginning of 2013.²⁴

The documentary evidence detailed above presumably represents all of the documentation that Respondent was able to produce either in response to discovery requests or for the purpose of presenting its defense. However, Respondent's witness maintained (albeit not with great clarity) that Respondent's sales were continuous between 2005 and the time of trial;²⁵ and that there were sales and distributions of its products not reflected in the documents of record.²⁶ Nevertheless, Petitioner urges us to treat the sales referred to in the documents as the only sales that could have occurred between 2005 and 2012:

A party ... can only argue a case based on the record ... Mr. Farah testified that the documents on which Registrant has relied relating to the issue of use were the result of an extensive search he conducted (of the files of multiple companies), and he explained that he even went so far as to travel to Lebanon to look for supporting material. [Citation omitted.] It is thus disingenuous for Registrant to intimate that other documents might exist.

...Registrant's convenient excuse that Registrant's records were haphazard, incomplete, and/or destroyed (and on which excuse Registrant bases its speculation that perhaps some additional sales occurred [citation omitted] is belied by the dozens of invoices that *do* exist ...²⁷

²⁴ Farah 42:16-19 and Exhibit J, 67 TTABVUE 43, 240-1.

²⁵ Farah 17:6-12; 33:24-25; 40:5-8; 46:4-15, 67 TTABVUE 18, 34, 41, 47.

²⁶ Farah 64:7-9; 70:11-15; 114:5-6; 116:6-8; 118:6-8, 118:12-15, 67 TTABVUE 65, 71, 115, 117, 119.

²⁷ Rebuttal brief at 10-11, 68 TTABVUE 15-16.

Petitioner has pointed out certain inconsistencies in Respondent's evidence of use, presumably to cast doubt on the authenticity of the evidence or its probative value. Petitioner presented testimony and evidence to show that the packaging submitted as specimens of use in connection with Respondent's statement of use and Section 8 Affidavit was inconsistent with other packaging used by Respondent. This evidence indicated that certain panels of the boxes submitted as specimens were apparently inverted from the form in which they appeared in the other packaging.²⁸ However, assuming all of this to be true, it is not inconsistent with use of the mark by Respondent. The inversion could have resulted from a printing error, and we cannot conclude, without more evidence, that Respondent would not have made use of such packaging because of this defect. Petitioner's contention that the packaging submitted as specimens of use with the statement of use were mere "packaging *mock-ups*, not boxes for goods as sold" is not supported by the testimony cited.²⁹

Petitioner further points out that Respondent's 2005 specimen for skin soap was a box for an 80 gram bar, while the agreement with Respondent's distributor at the time mentions soap only in the form of a 200 gram bar.³⁰ These two differing pieces of evidence do not compel a conclusion that Respondent was not selling its soap in 2005. Petitioner also points out that some packages for Respondent's gel product

²⁸ Pound rebuttal, 61 TTABVUE 361-348.

²⁹ Petitioner's brief at 7, 60 TTABVUE 12. Petitioner cites Farah 79:20-80:6, 67 TTABVUE 80-81.

³⁰ Farah Ex. B, 67 TTABVUE 159-166.

carried the word GEL on the front of the box, while others did not.³¹ This fact proves very little and is not inconsistent with a finding of use of the mark by Respondent.

Petitioner argues that the absence of invoices for gel indicates that no such gel was ever sold. However, this contention is inconsistent with the existence of packaging for gel with 2005 and 2010 manufacture dates; a 2006 distributorship agreement that mentions “lightening gel”; correspondence in 2010 with a graphic artist regarding designs for packages for gel; and revised 2012 packaging for “lightening gel” and “strong bleaching gel.”

Petitioner points out that there is no documentation of a sale of soap later than March of 2010. It is true that there is little dated evidence relating to soap. However, the 2010 correspondence relating to the design of new packaging for soap and the existence of revised packaging for soap in 2012 is inconsistent with an intention not to resume use of the mark on soap. We note that, although trial took place in 2015 and 2016, neither party focused on Respondent’s commercial activities later than 2012, leaving unexplored the continuity of use of the mark after 2012. In any event, Petitioner has not demonstrated abandonment of the mark subsequent to 2012.

Overall, the issue of the actual cessation of use of Respondent’s mark was insufficiently developed at trial to persuade us that an abandonment occurred. The amount of documentation of Respondent’s sales is indeed scant, and Mr. Farah’s testimony is not compelling. However, the burden of demonstrating abandonment is on Petitioner. The evidence of record is consistent with modest ongoing commercial

³¹ Petitioner’s brief at 8, 60 TTABVUE 13.

activity under the mark. Even if use of the mark on some or all of the goods was not continuous, there is evidence of record that helps refute any notion of an intention not to resume use, such as Respondent's 2010 communications regarding the redesign of its packaging and the existence of new packaging in 2012. In seeking to demonstrate that Respondent ceased use of its mark, Petitioner did not offer probative evidence from any source other than Respondent, such as, for example, third parties having knowledge of the market for the relevant goods; retailers or distributors in the field; or commercial investigators. Petitioner's witness Mr. Beale, although knowledgeable about Petitioner's operations, did not prove to be knowledgeable about the U.S. marketplace and did not testify at any length regarding Respondent's activities in the United States. We find that Petitioner has not carried its burden of demonstrating that Respondent ceased use of its mark with the intent not to resume use thereof. Our determination that an intention not to resume use has not been shown applies to all categories of goods listed in the Registration; accordingly, there is no reason to delete any of the identified goods from the Registration. There is no need to delete "skin cleansers" from the Registration, because Respondent's "skin soaps" are a type of "skin cleanser." There is no need to delete "cosmetics," because Respondent's lightening creams are a type of cosmetic.³²

³² A "cosmetic" is "a preparation (except soap) to be applied to the human body for beautifying, preserving, or altering the appearance of a person (as for theatricals) or for cleansing, coloring, conditioning, or protecting the skin, hair, nails, lips, eyes, or teeth." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1993) p. 514. The Board may take judicial notice of dictionary definitions. *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

There is no need to delete “medicated skin lotions,” because there is little distinction between a “cream” and a “lotion.”

Petitioner has also argued that any use of Respondent’s mark does not qualify as “lawful use” of a type that would support the maintenance of trademark rights. Applicant points out that Respondent’s goods, other than soap, are “cosmetics” under 21 U.S.C. § 321(i) and argues:

[U]nder U.S. law, a cosmetic is considered “misbranded” if its packaging lacks certain information. *See* 21 USC §§ 331(a), 362(b). In particular, the packaging must (among other things) specify conspicuously the “name and the place of business of the manufacturer, packer, or distributor,” including by providing the company’s street address, city, and ZIP Code (or other postal code). *See* 21 USC § 362(b); *see also, e.g.*, 21 CFR § 701.12(d) (April 2011).

As discussed, the only product that Registrant was arguably selling in May 2011 was a 100 ml jar of “litening” cream. [Citation to brief omitted.] The packaging that Registrant claims to have used for that product, however, did not even identify the manufacturer (or packer or distributor), let alone provide details about the company’s place of business.... Consequently, all of the products were “misbranded,” meaning it would have been **illegal** for Registrant to sell or distribute goods in any of those packages. *See* 21 USC §§ 331(a), 362(a) ...

Petitioner’s brief at 21-22, 60 TTABVUE 26-27.

Respondent argues that this contention of Petitioner is an unpleaded claim that the Board should not entertain.³³ The issue of compliance with labelling laws was not mentioned in the amended petition for cancellation, and the topic was only lightly

³³ Respondent’s brief at 26-27, 66 TTABVUE 27-28.

touched upon at trial. We agree that Respondent did not have fair notice of this claim and that it was not tried by implied consent.

Even if we were to assume that the issue of unlawful use was suitably tried, Petitioner has not proved its case. The practice of the Board is to hold a use unlawful only where the issue of compliance has previously been determined (with a finding of noncompliance) by a court or government agency having competent jurisdiction under the statute involved, or where there has been a *per se* violation of a statute regulating the sale of a party's goods. *See Satinine Societa v. P.A.B. Produits*, 209 USPQ 958 (TTAB 1981). In this case, there has been no final determination of noncompliance by any competent court or agency regarding sale of Respondent's goods. To show that use of a mark is a *per se* violation of a statute, a party must demonstrate by clear and convincing evidence more than that the use in question was not in compliance with applicable law. Such party must prove also that the non-compliance was material, *i.e.*, that it was of such gravity and significance that the usage must be considered unlawful -- so tainted that, as a matter of law, it could create no trademark rights. *General Mills Inc. v. Health Valley Foods*, 24 USPQ2d 1270, 1274 (TTAB 1992). In *Satinine v. P.A.B. Produits, supra*, the Board stated:

Manifestly, the proofs submitted by the party charging noncompliance must leave no room for doubt, speculation, surmise, or interpretation. Additionally, said party should submit an up-to-date copy of the statute in question, together with any pertinent rules, regulations, and decisions issued thereunder.

209 USPQ at 965.

On this record Petitioner, the party who bears the burden of proof, has failed to adduce clear and convincing evidence sufficient to show a *per se* violation. The record leaves doubt as to many of the purported facts upon which Petitioner bases its arguments (quoted above). Moreover, Petitioner's explication of the relevant statutes and of any applicable regulations is lacking in detail and falls short of the standard of completeness contemplated by *Satinine* and *General Mills*.

We have considered all of the arguments and evidence of record, including those not specifically discussed herein. We find that Petitioner has failed to demonstrate, by a preponderance of the evidence, that the Registration should be cancelled in whole or in part on the ground that Respondent has abandoned use of the mark for some or all of the goods identified therein.

Decision: The petition for cancellation is dismissed.