

ESTTA Tracking number: **ESTTA548140**

Filing date: **07/12/2013**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Orbis Distribution, Inc.		
Entity	Corporation	Citizenship	Wisconsin
Address	5106 N Ardmore Avenue Milwaukee, WI 53217 UNITED STATES		

Attorney information	John M. Bolger Bolger Legal Group, LLC 6011 N. Berkeley Blvd. Whitefish Bay, WI 53217 UNITED STATES John@BolgerLegalGroup.com Phone:(414)270-9900		
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Registration Subject to Cancellation

Registration No	3197276	Registration date	01/09/2007
Registrant	Bee Naturals, Inc. P.O. Box 99 Clarksville, MO 63336 UNITED STATES		

Goods/Services Subject to Cancellation

Class 003. First Use: 1997/08/01 First Use In Commerce: 1997/08/01 All goods and services in the class are cancelled, namely: Non-medicated skin care preparations; nail care preparations

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Abandonment	Trademark Act section 14

Attachments	Petition to Cancel. 7.12.13.pdf(416164 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/John M. Bolger/
Name	John M. Bolger

Date	07/12/2013
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Application Serial Number: 78/368710
Registration Number: 3197276
For the Mark: Bee Naturals

<p>Orbis Distribution, Inc, Petitioner,</p> <p style="text-align: center;">v.</p> <p>Bee Naturals, Inc., Registrant.</p>
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Cancellation Number:

PETITION TO CANCEL

The Petitioner, Orbis Distribution, Inc., (“petitioner”), a business corporation organized and existing under the laws of the State of Wisconsin, by and through its undersigned counsel, files this Petition to Cancel of the mark shown in registration serial number 78/368710. The petitioner believes that it will be damaged by the renewal of the registration of this mark, which is “Bee Naturals” (standard characters) and is registered for use in connection with certain goods in International Class 003. The petitioner hereby seeks cancellation of said mark, pursuant to the Trademark Act, 15 U.S.C. § 1064, and associated sections of the United States Code.

As grounds for this Petition to Cancel, it is alleged:

1. To the best of the petitioner’s knowledge, the registrant, Bee Naturals, Inc., has never existed as a legal entity and is named in this Petition merely for the sake of convenience.
2. To the best of the petitioner’s knowledge, BeeNaturals, Inc. no longer exists as a legal entity, was a Missouri corporation (once having a business or mailing address of 103 N. First Street, P.O. Box 99, Clarksville, Missouri 63336), has no standing, and is listed for convenience.

3. The petitioner is a Wisconsin corporation with a United States business address of 5106 N Ardmore Avenue in Milwaukee, Wisconsin 53217.



4. The petitioner has filed a trademark application for its mark , the literal element of which is “Bee Natural,” the design of which includes a honeycomb-like shape and a bee-like creature, and the Serial Number of which is 85/729451.

5. The petitioner has received an Office Action from the Examiner stating as grounds for an initial refusal that there is a likelihood of confusion due to similarities with the registered mark Bee Naturals, Registration Number 3197276, attached hereto as Exhibit A.

6. The petitioner believes (A) that the registrant has abandoned its trademark, fraudulently used or applied for its mark, and/or submitted false statements for its Combined Declaration, (B) that failure to register the petitioner’s mark will significantly harm its business and the consumers of its goods, and (C) that the registrant’s continued registration of its mark will significantly harm the petitioner’s business and the consumers of its goods.

7. The proposed counsel for the registrant filed a Combined Declaration of Use and Incontestability on July 3, 2013, relevant portion of which is attached hereto as Exhibit C, in which proposed counsel for the registrant acknowledged that “false statements and the like may jeopardize the validity of this document” and are punishable by fine or imprisonment of up to five years in a federal penitentiary, or both, pursuant to 18 U.S.C. §1001.

8. As shown in the registration of the Bee Naturals mark (attached hereto as Exhibit A), the original filing date was January 9, 2007; thus, the six-year window and the six-month grace period have elapsed, pursuant to Trademark Act, 15 U.S.C. § 1058 (due by January 9, 2013 and July 9, 2013, respectively).

First Claim for Relief: Abandonment of the Mark Due to Non-Existent Owner

9. The petitioner realleges grounds 1-8 and incorporates them by reference herein.

10. As shown on the Registration Certificate for Bee Naturals, Registration Number 3197276, attached hereto as Exhibit A, the owner of the registered mark is listed as Bee Naturals, Inc., allegedly a Missouri corporation.

11. As shown on the Missouri Secretary of State Business Name History webpage, the relevant part of which is attached hereto as Exhibit B, a “BeeNaturals, Inc.” once existed, but counsel for the petitioner is unaware of any “Bee Naturals, Inc.” corporation.

12. Pursuant to the Trademark Act, 15 U.S.C. § 1051(a)(1), only the owner of a trademark or service mark may register its mark.

13. The registration certificate in question (attached hereto as Exhibit A) was not filed by a legal entity, and therefore the registration is invalid.

14. Because Bee Naturals, Inc. does not exist as a legal entity, the registration is and has been invalid, and furthermore because of false statements made regarding ownership in the Combined Declaration, pursuant to 18 U.S.C. §1001, both of these documents must now be rejected.

15. Because Bee Naturals, Inc. never existed as a legal entity, the application and registration of the trademark Bee Naturals was invalid *ab initio*.

16. As a result for the foregoing, the mark in question was abandoned by the registrant, the Combined Declaration must be denied, and the registration for serial number 78/368710 must be cancelled.

**Second Claim for Relief: Abandonment of the Mark Due to the
Dissolution and Non-Existence of the Corporation.**

17. The petitioner realleges grounds 1-16 and incorporates them by reference herein.

18. As shown on the registration certificate, attached hereto as Exhibit A, the owner of the registered Bee Naturals mark was Bee Naturals, Inc. as of January 9, 2007.
19. Pursuant to the Trademark Act, Section 8, 15 U.S.C. § 1058, the date for filing the Declaration of Continuous Use was January 9, 2013.
20. Pursuant to the Trademark Act, Section 8, 15 U.S.C. § 1058, the date of the end of the “sixth-month grace period” of filing the Declaration of Continuous Use was July 9, 2013.
21. As shown on the Combined Declaration document, the relevant part of which is attached hereto as Exhibit C, the owner (current and proposed) is “Bee Naturals, Inc.”.
22. During the relevant time period from its registration on January 9, 2007 until the lapse of the grace period on July 9, 2013, the mark was allegedly owned by “Bee Naturals, Inc.”, which does not exist.
23. Bee Naturals, Inc. remains the alleged owner and registrant of the mark, even after the lapsing of the grace period on July 9, 2013.
24. As shown on the Missouri Secretary of State Business Name History webpage, the relevant part of which is attached hereto as Exhibit B, the business BeeNaturals, Inc. had been previously administratively dissolved and did not exist as a legal entity as of July 10, 2013.
25. As shown on the Administrative Dissolution or Revocation for a For-Profit Corporation dated December 29, 2006, attached hereto as Exhibit D, BeeNaturals, Inc. was administratively dissolved or revoked under relevant Missouri law “as of December 29, 2006.”
26. As shown on the Administrative Dissolution or Revocation for a For-Profit Corporation dated December 29, 2006, attached hereto as Exhibit D, BeeNaturals, Inc., due to its administrative dissolution, cannot (as of 2006) carry on any business except that necessary to wind up and liquidate its business and affairs.

27. Pursuant to the Trademark Act, an owner must be a legal entity or person in order to maintain a trademark registration.
28. Pursuant to the Trademark Act, an owner must be a legal entity or person in order to file a Combined Declaration under Section 8 and Section 15.
29. During the relevant time period of the trademark's registration from January 9, 2007 until July 9, 2013, the corporation BeeNaturals, Inc. did not exist under Missouri law.
30. From December 29, 2006 until the present filing of this Petition (July 12, 2013), the BeeNaturals, Inc. corporation was not a legal entity.
31. The mark Bee Naturals has been abandoned due to the fact that prior to and during the entirety of its six year registration as well as during the grace period and after its expiration, the corporation Bee Natural, Inc. and BeeNaturals, Inc. were not valid legal entities and do not exist.
32. As a result for the foregoing, the mark was abandoned by the registrant, the Combined Declaration must be denied, and the registration for serial number 78/368710 must be cancelled.

Third Claim of Relief: Fraud During Application and Registration

33. The petitioner realleges grounds 1-32 and incorporates them by reference herein.
34. Because the BeeNatural, Inc. corporation did not exist during the relevant time period of the trademark's registration, it could not have conducted lawful business in the State of Missouri or anywhere in the United States.
35. Because the registrant Bee Naturals, Inc. has never existed, it could not have conducted lawful business in the State of Missouri or anywhere in the United States.
36. Such unlawful business described above does not meet the definition of commerce under the Trademark Act.

37. The registrant has therefore committed fraud, and the Bee Naturals mark's registration must be cancelled.

38. As a result for the foregoing, the use and/or registration of the Bee Naturals mark by the registrant was fraudulent, the Combined Declaration must be denied, and the registration for serial number 78/368710 must be cancelled.

Fourth Claim of Relief: Fraud in Making the Combined Declaration

39. The petitioner realleges grounds 1-38 and incorporates them by reference herein.

40. Upon information and belief, neither of the corporations BeeNaturals, Inc. or Bee Naturals, Inc. existed during the registration period of the trademark, nor do they exist now.

41. Therefore, neither non-existing corporation could use the mark to designate goods and service in interstate commerce, pay sales tax, pay income tax on said sales, or conduct other necessary legal business in compliance with Missouri law, United States law, and interstate commerce as defined under the Trademark Act.

42. Upon such information described above, the plaintiff believes it is impossible for the registrant to have used the mark in continuous legal commerce during the six-year, six-month period of the trademark's registration.

43. Conclusive evidence exists that the owner knew that her corporation was defunct as early as January, 2007.

44. As a result, the plaintiff believes the registrant has committed fraud in registering its mark, in using its mark, and/or in submitting its Section 8 and 15 Combined Declaration.

45. As a result for the foregoing, the use and/or registration of the Bee Naturals mark was fraudulent, the Combined Declaration must be denied, and the registration for serial number 78/368710 must be cancelled.

WHEREFORE, the Petitioner respectfully requests that the registrant's requests made under Section 8 and 15 be denied and that registration for the Bee Naturals mark, serial number 78/368710, be cancelled.

Dated: July 12, 2013

Respectfully Submitted,
/John M. Bolger/
John M. Bolger, Esq., Wisconsin bar member
Bolger Legal Group, LLC
P.O. Box 170616
Whitefish Bay, WI 53217
(414)270-9900
John@BolgerLegalGroup.com

Attorney for the Petitioner

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the PETITION TO CANCEL was sent via first class mail, postage paid, to the proposed counsel of record and the counsel of record listed below, on this 12th Day of July, 2013:

Scott T. Gray and/or Carol J. Hamilton
Polster, Lieder, Woodruff & Lucchesi, L.
12412 Powerscourt Drive, Suite 200
St. Louis, MO 63131

/John M. Bolger/
John M. Bolger, Esq.
Wisconsin bar member
Bolger Legal Group, LLC
P.O. Box 170616
Whitefish Bay, WI 53217

Exhibit A

Int. Cl.: 3

Prior U.S. Cls.: 1, 4, 6, 50, 51, and 52

Reg. No. 3,197,276

United States Patent and Trademark Office

Registered Jan. 9, 2007

**TRADEMARK
PRINCIPAL REGISTER**

BEE NATURALS

BEE NATURALS, INC. (MISSOURI CORPORATION)

P.O. BOX 99

CLARKSVILLE, MO 63336

FOR: NON-MEDICATED SKIN CARE PREPARATIONS, NAIL CARE PREPARATIONS, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52)

FIRST USE 8-1-1997; IN COMMERCE 8-1-1997.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "NATURALS", APART FROM THE MARK AS SHOWN.

SN 78-368,710, FILED 2-16-2004.

YONG KIM, EXAMINING ATTORNEY

Exhibit B



MISSOURI SECRETARY OF STATE JASON KANDER



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Filed Documents

Date: 7/10/2013 (Click above to view filed documents that are available.)

Business Name History

Name	Name Type
BEENATURALS INC.	Legal

General Business - Domestic - Information

Charter Number:	00520903
Status:	Admin Dissolved Profit
Entity Creation Date:	5/6/2003
State of Business.:	MO
Expiration Date:	Perpetual
Last Registration Report Filed Date:	10/19/2005
Last Registration Report Filed:	2005
Registration Report Month:	May

Registered Agent

Agent Name:	BARBARA T. CHAPPUIS
Office Address:	103 North First Street P.O. Box 99 Clarksville MO 63336
Mailing Address:	

Exhibit C

USPTO TSDR Case Viewer 		
Case Id	Document Description	Mail/Create Date
78368710	1. Section 8 and 15	Jul. 03, 2013
OWNER SECTION (current)		
NAME	Bee Naturals, Inc.	
STREET	P.O. Box 99	
CITY	Clarksville	
STATE	Missouri	
ZIP/POSTAL CODE	63336	
COUNTRY	United States	
OWNER SECTION (proposed)		
NAME	Bee Naturals, Inc.	
STREET	P.O. Box 99, 108 Howard Street	
CITY	Clarksville	
STATE	Missouri	
ZIP/POSTAL CODE	63336	
COUNTRY	United States	
LEGAL ENTITY SECTION (current)		
TYPE	corporation	
STATE/COUNTRY OF INCORPORATION	Missouri	

Exhibit D

**ADMINISTRATIVE DISSOLUTION
OR REVOCATION FOR A
FOR-PROFIT CORPORATION**

**00520903
BEENATURALS INC.
BARBARA T. CHAPPUIS
103 North First Street P.O. Box 99
Clarksville, MO 63336**

December 29, 2006

BEENATURALS INC.
00520903

The above corporation has failed to comply with Section 351.484, 351.525, or 351.598 RSMo, by:

Failure to file a correct and current annual report

Therefore, the above corporation stands **administratively dissolved or revoked** under the provisions of Section 351.486 or Section 351.602, RSMo, as of December 29, 2006, subject to rescission as in these acts provided. **A corporation administratively dissolved may not carry on any business except that necessary to wind up and liquidate its business and affairs under Section 351.476.**

For further information, please contact the Corporations Division at (866) 223-6535 toll free.



Mark R. Reading

Mark R. Reading
Executive Deputy Secretary of State