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

Proceeding	92062860
Party	Plaintiff International IP Holdings, LLC
Correspondence Address	CHRISTOPHER WILLIAM SCHNEIDER OAKLAND LAW GROUP PLLC 38955 HILLS TECH DRIVE FARMINGTON HILLS, MI 48331 UNITED STATES cschneider@oaklandlawgroup.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Christopher Schneider
Filer's e-mail	cschneider@oaklandlawgroup.com
Signature	/cwschneider/
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Attachments	Second REAL ENERGY in 29 - Pet. to Cancel. - 5 Aug 16.pdf(130327 bytes)

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

International IP Holdings, LLC,

Petitioner,

v.

Dr. Tom Miles,

Registrant.

Mark: REAL ENERGY

Registration No.: 4,534,664

Cancellation No.: 92062860

SECOND AMENDED PETITION TO CANCEL

Petitioner, International IP Holdings, LLC, by and through its attorneys, Oakland Law Group, PLLC, believes it will be damaged by the continued registration of the REAL ENERGY mark, U.S. Registration Number 4,534,664, owned by Tom Miles, and hereby petitions to cancel the registration in accordance with the Trademark Act of 1946, 15 USC §1064. In support of its petition, petitioner alleges as follows:

1. Petitioner, International IP Holdings, LLC (“IIPH”), is a Michigan Limited Liability Company with an address of 39533 Woodward Ave Ste. 318, Bloomfield Hills, Michigan 48304.

2. On information and belief, Tom Miles, (“Registrant”), is a United States citizen.

3. Registrant owns a registration for the word mark REAL ENERGY (“Registrant’s Mark”), Registration No. 4,534,664, in Class 29, for *Dried fruit*

mixes; dried fruits; dried fruits in powder form; dried vegetables; dried vegetables in powder form; nut-based snack foods (“Registration ‘664”).

4. IIPH has a real interest in the proceedings and will be harmed by the continued registration of Registration ‘664 by nature of IIPH’s business in the same industry of consumer packaged goods, its sale of related impulse goods, and its prior use or contemplation of use of the identical phrase “real energy” in its marketing.

5. IIPH is, and for many years has been, engaged in selling dietary supplements and goods commonly referred to as energy shots (“IIPH’s Goods”).

6. IIPH’s Goods and those identified in Registration ‘664 often emanate from the same source, are sold in the same channels of trade, and contend for the same customers.

7. IIPH has used, contemplated use, and/or plans to use the phrase “real energy” descriptively as part of its marketing efforts for its dietary supplements under the 5-HOUR ENERGY and 5-HOUR ENERGY Protein brands.

8. The REAL ENERGY mark immediately informs consumers about its goods; namely, that Registrant’s goods provide genuine, non-artificial energy.

9. Registration ‘664 disclaims rights to the unregistrable ENERGY element.

10. The term “real” is defined to mean genuine and non-artificial.

11. On information and belief, Registrant’s Mark has not acquired distinctiveness.

12. Upon information and belief, numerous third parties use the phrase “real energy” in the parties’ industry to describe an ingredient, quality, characteristic, function, feature, purpose or use of goods identical and similar to those identified in Registration ‘664.

13. Registrant’s Mark is the mere combination of the merely descriptive term REAL and the disclaimed, generic term ENERGY.

14. The continued registration of Registration ‘664 would damage IIPH and other third parties in the industry by granting Registrant exclusive rights to use the phrase “real energy” or similar phrases. Such registration will prevent IIPH and other third parties from using that phrase, or similar informational or laudatory phrases, in a generic or descriptive sense without apprehension of Registrant claiming trademark infringement.

15. Registration ‘664 is not registrable per Section 2(e)(1) of the Trademark Act as it is a merely informational and descriptive phrase that would ordinarily be used in business or in the particular industry.

16. Alternatively, Registration ‘664 is misdescriptive under Section 2(e)(1) if Registrant’s Mark is used on goods comprised of artificial or not genuine ingredients or that it does not provide “real energy” because consumers are likely to believe the misrepresentation that the goods are comprised of genuine and non-artificial ingredients or provides genuine and non-artificial energy.

WHEREFORE, for the reasons stated above, Petitioner, International IP Holdings, LLC, respectfully requests that the Trademark Trial and Appeal Board

sustain this cancelation, Registration 4,534,664 be canceled, and for such further relief as this Honorable Board deems appropriate.

Respectfully submitted,

OAKLAND LAW GROUP, PLLC
*Attorneys for Petitioner, International IP
Holdings, LLC*



Date: August 5, 2016

Christopher W. Schneider
Robert A. Bondra
Paul Hoffer
38955 Hills Tech Drive
Farmington Hills, Michigan 48331
Tel. (248) 536-0795
Fax (248) 536-1848

CERTIFICATE OF SERVICE

The Undersigned hereby certifies that on this 5th day of August, 2016, a true copy of the foregoing **Second Petition for Cancellation** is being served on Registrant via First Class Mail:

Thomas I. Miles
20 Liberty Blvd. Malvern
Pennsylvania 19355

OAKLAND LAW GROUP, PLLC



Christopher W. Schneider
38955 Hills Tech Drive
Farmington Hills, Michigan 48331
Tel. (248) 536-0795
Fax (248) 536-1848

*Attorneys for Petitioner, International IP
Holdings, LLC*