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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 W. Schneider
Filer's e-mail	cschneider@oaklandlawgroup.com
Signature	/cwschneider/
Date	02/10/2016
Attachments	REAL ENERGY in 29 - Amended Pet. to Cancel. - 10 Feb 16.pdf(117376 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

FIRST 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 is, and for many years has been, engaged in offering goods related to those identified in Registration ‘664.

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

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

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

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

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

10. 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.

11. 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.

12. Alternatively, Registration '664 is misdescriptive under Section 2(e)(1) in that it does not provide "real energy" as consumers understand the phrase because its goods are artificial or not genuine.

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: February 10, 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 10th day of February, 2016, a true copy of the foregoing **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*