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

Proceeding no.	92063858
Party	Plaintiff Archer-Daniels-Midland Company
Correspondence address	MARY E INNIS INNIS LAW GROUP LLC 321 N CLARK STREET, SUITE 2465 CHICAGO, IL 60654 UNITED STATES Primary email: docket@innislaw.com Secondary email(s): minnis@innislaw.com, lmackey@innislaw.com 312-321-9021
Submission	Other Motions/Submissions
Filer's name	Mary E. Innis
Filer's email	docket@innislaw.com, minnis@innislaw.com, pmiller@innislaw.com
Signature	/Mary E. Innis/
Date	10/12/2022
Attachments	Motion for Judgment on the Pleadings - Cancellation No. 92063858.pdf(881412 bytes)

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

In the Matter of Registration No. 4856810
Mark: STAY STRONG
Registration Date: November 17, 2015

ARCHER-DANIELS-MIDLAND COMPANY, Petitioner, v. RALCO NUTRITION, INC. Registrant.	)	Cancellation No. 92063858

PETITIONER'S MOTION FOR JUDGMENT ON THE PLEADINGS

COMES NOW the Petitioner, ARCHER-DANIELS-MIDLAND COMPANY, by and through its attorneys, INNIS LAW GROUP LLC, and moves, pursuant to Fed. R. Civ. P. 12(c), for Judgment on the Pleadings against RALCO NUTRITION, INC. In support thereof, movant states:

1. On June 3, 2016, Petitioner filed its petition to cancel Registration. No. 4856810 for Registrant's trademark STAY STRONG ("Registrant's Mark") on the Principal Register on the basis that Petitioner has established rights in and to the trademark StaySTRONG (U.S. Trademark Application Serial No. 86824961) through its continuous and extensive use in connection with non-medicated equine nutritional supplements since at least as early as July 19, 2006, over eight years prior to Registrant's application filing date of November 25, 2014 and Registrant's Mark is likely to result in confusion, mistake, or deception with Petitioner or its products

marketed in connection with its prior rights in its StaySTRONG mark. (Petition for Cancellation, attached as Exhibit 1, at ¶¶ 3, 12).

2. In its response, Registrant responded with a general denial of the allegations. (Answer to Petition to Cancel, attached as Exhibit 2, at ¶¶ 11-18).

3. Although no documents were produced during the discovery period, Petitioner and Registrant were heavily involved in settlement negotiations, with the exchange of written settlement agreements sent on February 23, 2022, May 17, 2022, and May 20, 2022.

4. On May 27, 2022, before a settlement agreement could be executed between the parties, Registrant unilaterally allowed its mark to become cancelled because Registrant did not file an acceptable Section 8 Declaration.

5. Petitioner did not consent to Registrant's unilateral abandonment and subsequent cancellation of its STAY STRONG trademark.

6. On September 9, 2022, still under the impression that a written settlement agreement was to be executed between the parties, Petitioner provided Registrant with a final revised written settlement agreement.

7. On September 27, 2022, Petitioner was informed that Registrant is now unwilling to enter into a settlement agreement.

WHEREFORE, it is respectfully prayed for that judgment on the pleadings be rendered in favor of Petitioner and against Registrant.

Dated: October 12, 2022

Respectfully Submitted,

INNIS LAW GROUP LLC

By: /s/ Mary E. Innis
Mary E. Innis
Attorney for Petitioner
Innis Law Group LLC
321 N. Clark Street
Suite 2465
Chicago, IL 60654
Telephone: (312) 321-9021

EXHIBIT 1

Trademark Trial and Appeal Board Electronic Filing System. http://estta.uspto.gov

ESTTA Tracking number: **ESTTA750116**

Filing date: **06/03/2016**

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	Archer-Daniels-Midland Company		
Entity	Corporation	Citizenship	Delaware
Address	4666 Faries Parkway Decatur, IL 62526 UNITED STATES		

Attorney information	Mary Innis Innis Law Group 321 N. Clark Street, Suite 2465 Chicago, IL 60654 UNITED STATES docket@innislaw.com, losier@innislaw.com, minnis@innislaw.com Phone:3123219020

Registration Subject to Cancellation

Registration No	4856810	Registration date	11/17/2015
Registrant	Ralco Nutrition, Inc. 1600 Hahn Road Marshall, MN 56258 UNITED STATES		

Goods/Services Subject to Cancellation

Class 005. First Use: 2014/12/31 First Use In Commerce: 2015/07/31 All goods and services in the class are cancelled, namely: Animal feed supplements

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	86824961	Application Date	11/18/2015
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	STAYSTRONG		

Design Mark	StaySTRONG
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2006/07/19 First Use In Commerce: 2006/07/19 Non-medicated equine nutritional supplements

Attachments	86824961#TMSN.png(bytes) StaySTRONG Petition for Cancellation.pdf(212081 bytes)

Certificate of Service

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

Signature	/Mary E. Innis/
Name	Mary E. Innis
Date	06/03/2016

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

In the Matter of Registration No. 4856810
Mark: STAY STRONG
Registration Date: November 17, 2015

ARCHER-DANIELS-MIDLAND COMPANY, Petitioner, v. RALCO NUTRITION, INC. Registrant.	)	Cancellation No. _____

PETITION FOR CANCELLATION

Petitioner, Archer-Daniels-Midland Company ("Petitioner"), a Delaware corporation located and doing business at 4666 Faries Parkway, Decatur, IL 62526, believes that it is and will continue to be damaged by the maintenance of Ralco Nutrition, Inc.'s ("Registrant"), Reg. No. 4856810 on the Principal Register (the "Registration"). Petitioner hereby petitions to cancel said registration under the provisions of Section 14 of the Lanham Act, 15 U.S.C. §1064.

As grounds for cancellation, Petitioner alleges:

1. Petitioner is one of the largest agricultural processors in the world, engaging in the business of manufacturing, transporting, storing, processing, marketing, and promoting a wide variety of agricultural, consumer, and industrial products and services.

2. Since long prior to the filing date of the application for the Registration and Registrant's first alleged use, Petitioner adopted and began to use the distinctive StaySTRONG mark in commerce in connection with non-medicated equine nutritional supplements and has continuously and extensively used the StaySTRONG mark since that time.

3. Petitioner is the owner of U.S. Trademark Application Serial No. 86824961 for the mark StaySTRONG in International Class 05 for "Non-medicated equine nutritional supplements." Petitioner filed its application on November 18, 2015 and cited a first use date of July 19, 2006.

4. Petitioner established rights in and to the mark StaySTRONG through its continuous and extensive use in connection with non-medicated equine nutritional supplements since at least as early as July 19, 2006, over eight years prior to Registrant's application filing date of November 25, 2014.

5. Since long to the filing date of the application for the Registration and Registrant's first alleged use, Petitioner has marketed supplements throughout interstate commerce on or in connection with StaySTRONG.

6. Petitioner has made substantial sales of its products under or in connection with StaySTRONG and spent a substantial amount of time, effort, and money advertising and promoting the StaySTRONG mark and products throughout the United States.

7. Petitioner's StaySTRONG mark is inherently distinctive. In addition to its inherent distinctiveness and since long prior to the filing date of the application for the Registration and Registrant's first alleged use, STAY STRONG has acquired secondary meaning identifying Petitioner and its products. This is due to the immense popularity and success of StaySTRONG and the sales, advertising, and promotion of Petitioner's StaySTRONG MARK. Petitioner has built up and now owns valuable goodwill in its StaySTRONG mark.

8. Upon information and belief, Registrant is a Minnesota corporation located and doing business at 1600 Hahn Road, Marshall, Minnesota 56258.

9. Registrant filed an intent to use application for STAY STRONG in International Class 05 for "animal feed supplements" on November 25, 2014. Registrant alleged the date of first use on July 31, 2015. This date is over nine years after Petitioner began use of its StaySTRONG mark.

10. Registrant received the registration for its STAY STRONG mark on November 17, 2015.

11. Upon information and belief, neither Registrant nor any predecessor or related company of Registrant, made commercial use of the trademark STAY STRONG for the goods identified in Registration No. 86464952 prior to November 25, 2014, the date Registrant filed its intent to use application.

12. Registrant's STAY STRONG, Registration No. 86464952, is likely to result in confusion, mistake, or deception with Petitioner or its products marketed in connection with its prior rights in its StaySTRONG mark, or in the belief that Registrant is in some way legitimately connected with, or licensed or approved by Petitioner.

13. The STAY STRONG mark registered by Registrant is identical or confusingly similar in appearance, sound, and commercial impression to Petitioner's prior rights in its StaySTRONG mark and goods.

14. The adoption, continued use, and registration by Registrant of STAY STRONG is without Petitioner's consent or permission.

15. The adoption, continued use, and registration by Registrant of STAY STRONG is and will be damaging to Petitioner.

16. Due to the confusing similarity between Registrant's use of STAY STRONG and Petitioner's prior use of and rights in its StaySTRONG mark, as well as the similar nature of the goods to which the parties' marks apply, there is a likelihood of confusion in the marketplace

and damage to Petitioner as a result of Registrant's adoption and continuing use of Petitioner's StaySTRONG mark.

17. Registrant's adoption, continued use, and registration of STAY STRONG is likely to cause confusion, mistake, and deception in that consumers are likely to believe Registrant's goods are Petitioner's goods, or that Registrant or its goods are sponsored, authorized, licensed by, or in some way legitimately connected with Petitioner.

18. Petitioner is and will continue to be damaged by Respondent's adoption, use, and continued registration of the mark STAY STRONG.

WHEREFORE, continued registration of the aforesaid mark is and continues to be damaging to Petitioner. Petitioner respectfully requests that Registration No. 86464952 be cancelled.

The $300.00 filing fee is being paid via credit card.

Please address all correspondence to Mary E. Innis of Innis Law Group LLC, 321 N. Clark Street, Suite 2465, Chicago, IL 60654.

Dated: June 3, 2016

Respectfully Submitted,

INNIS LAW GROUP

By: /s/ Mary E. Innis

Mary E. Innis
Attorney for Petitioner
Innis Law Group
321 N. Clark Street
Suite 2465
Chicago, IL 60654
(312)-321-9021

EXHIBIT 2

ESTTA Tracking number: **ESTTA760353**

Filing date: **07/25/2016**

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

Proceeding	92063858
Party	Defendant Ralco Nutrition, Inc.
Correspondence Address	RALCO NUTRITION INC 1600 HAHN ROAD, MARSHALL, MN 56258 UNITED STATES
Submission	Answer
Filer's Name	Gregory S. Schwartz
Filer's e-mail	docketing@billionarmitage.com, GSchwartz@billionarmitage.com
Signature	/Gregory S. Schwartz/
Date	07/25/2016
Attachments	Answer to Petition_FINAL.pdf(171918 bytes)

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

In the Matter of Trademark Registration No.:	4856810
For the Mark:	STAY STRONG
Registration Date:	17 November 2015

ARCHER-DANIELS-MIDLAND CO.,	)	
	)	
Petitioner,	)	
	)	CANCELLATION NO. 92063858
v.	)	
	)	
RALCO NUTRITION INC.,	)	
	)	
Respondent.	)	

ANSWER TO PETITION TO CANCEL

Respondent, Ralco Nutrition Inc. ("Ralco" or "Respondent"), by and through its attorneys, hereby answers the Petition for Cancellation filed by Petitioner, Archer-Daniels-Midland Company ("ADM" or "Petitioner"), as follows:

1. Respondent lacks sufficient information or belief to admit or deny the allegations of paragraph 1 and therefore denies the same.

2. Respondent lacks sufficient information or belief to admit or deny the allegations of paragraph 2 and therefore denies the same.

3. Respondent lacks sufficient information or belief to admit or deny the allegations of paragraph 3 and therefore denies the same.

4. Respondent lacks sufficient information or belief to admit or deny the allegations of paragraph 4 and therefore denies the same.

5. Respondent lacks sufficient information or belief to admit or deny the allegations of paragraph 5 and therefore denies the same.

6. Respondent lacks sufficient information or belief to admit or deny the allegations of paragraph 6 and therefore denies the same.

7. Respondent lacks sufficient information or belief to admit or deny the allegations of paragraph 7 and therefore denies the same.

8. Respondent admits that it is a corporation organized under the laws of the State of Minnesota with an office at 1600 Hahn Road, Marshall, Minnesota 56258.

9. Respondent admits that it filed U.S. Trademark Application No. 86464952 (U.S. Registration No. 4856810) on November 25, 2014 pursuant to Section 1(b), seeking registration of its now registered STAY STRONG mark in international class 005 for goods identified as "animal feed supplements." Respondent further admits that its first use in commerce date is July 31, 2015. Respondent lacks sufficient information or belief to admit or deny the remaining allegations of paragraph 9 and therefore denies the same.

10. Respondent admits that its STAY STRONG mark registered on November 17, 2015.

11. Respondent admits that it filed U.S. Trademark Application No. 86464952 (U.S. Registration No. 4856810) on November 25, 2014, but denies the remaining allegations of paragraph 11.

12. Respondent denies the allegations of paragraph 12.

13. Respondent admits that U.S. Registration No. 4856810 recites the words "STAY" and "STRONG," but denies the remaining allegations of paragraph 13.

14. Respondent admits that U.S. Registration No. 4856810 speaks for itself and therefore denies the allegations in paragraph 14.

15. Respondent denies the allegations of paragraph 15.

16. Respondent denies the allegations of paragraph 16.

17. Respondent denies the allegations of paragraph 17.

18. Respondent denies the allegations of paragraph 18.

AFFIRMATIVE DEFENSES

19. Petitioner has failed to state a claim upon which relief can be granted.

20. Petitioner's claims are barred because Petitioner lacks standing.

21. Petitioner's claims are barred by the doctrines of res judicata and/or collateral estoppel.

22. Petitioner's alleged mark fails to function as a trademark.

23. Petitioner's claims are barred by the doctrines of waiver and estoppel.

24. Petitioner's claims are barred by laches.

25. Petitioner's claims are barred by acquiescence.

26. Petitioner is not damaged by U.S. Registration No. 4856810 and therefore lacks standing to petition for cancellation of the same.

27. Petitioner's claims are barred because Petitioner cannot establish priority of use and/or use analogous to trademark use and thus cannot establish that its rights in the alleged mark are superior to the Respondent's rights in U.S. Registration No. 4856810.

28. Petitioner's claims are barred because Petitioner's alleged StaySTRONG mark is not inherently distinctive.

29. Petitioner's claims are barred because Petitioner's alleged StaySTRONG mark has not acquired secondary meaning.

30. Petitioner's claims are barred because there is no likelihood of confusion, mistake, or deception between the respective marks.

31. In the alternative, a restriction via an amendment to Respondent's identification of goods or services to, for example, "animal feed supplements excluding non-medicated equine nutritional supplements" would avoid a likelihood of confusion between Respondent's U.S. Registration No. 4856810 and Petitioner's U.S. Trademark Application Serial No. 86824961. Respondent hereby reserves the right to present alternative restrictions and/or amendments to the identification of goods or services of U.S. Registration No. 4856810.

32. Respondent hereby reserves the right to assert any and all other appropriate defenses presented through the course of this proceeding.

PRAYER FOR RELIEF

WHEREFORE, Respondent requests that the Petition for Cancellation be denied, ADM's U.S. Trademark Application Serial No. 86824961 be refused registration on the basis of likelihood of confusion with Respondent's existing registration for STAY STRONG, Registration No. 4856810, and judgment be entered in its favor against ADM.

Respectfully submitted,

Dated: July 25, 2016

By: /Benjamin C. Armitage/

Benjamin C. Armitage, Esq.
BILLION & ARMITAGE
7401 Metro Blvd., Suite 425
Minneapolis, MN 55439
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barmitage@billionarmitage.com

Attorney for Respondent Ralco Nutrition Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Answer to Petition to Cancel has been served on Mary E. Innis, attorney of record for Petitioner, by mailing said copy on July 25, 2016 via Priority Mail Express Post Office to Addressee service of the U.S. Post Office to:

Mary E. Innis, Esq.
Innis Law Group
321 N. Clark Street
Suite 2465
Chicago, IL 60654

/Benjamin C. Armitage/
Benjamin C. Armitage