

ESTTA Tracking number: **ESTTA832735**

Filing date: **07/12/2017**

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 has filed a petition to cancel the registration indicated below.

Petitioner Information

Name	Brett-Young Seeds Ltd.		
Entity	Corporation	Citizenship	Canada
Address	P.O. Box 99 St. Norbert Postal Station Winnipeg, MB R3V1L5 CANADA		

Attorney information	Michael T. Hess Seager, Tufte & Wickhem LLP 100 South Fifth Street, Suite 600 Minneapolis, MN 55402 UNITED STATES Email: docketing@stwiplaw.com Phone: 612-677-9050
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Registration Subject to Cancellation

Registration No.	2475996	Registration date	08/07/2001
Registrant	CENTRAL GARDEN & PET COMPANY 1340 TREAT BOULEVARD WALNUT CREEK, CA 94597 UNITED STATES		

Goods/Services Subject to Cancellation

Class 001. First Use: 2000/01/31 First Use In Commerce: 2000/01/31 All goods and services in the class are subject to cancellation, namely: fertilizer for domestic use
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Grounds for Cancellation

Abandonment	Trademark Act Section 14(3)
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Attachments	1358.9001101 Cancellation Petition 7-12-2017.pdf(196859 bytes) Exhibit A - Application for Appl. Ser. No. 85945338.pdf(29695 bytes) Exhibit B - Registration Certificate of Contested Registration.pdf(16002 bytes)
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Signature	/Michael T. Hess/
Name	Michael T. Hess
Date	07/12/2017

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

In the matter of Registration No. 2,475,996
Filed: September 9, 1996
Registered: August 7, 2001
For the mark: RECOVER

<p>BRETT-YOUNG SEEDS LTD. Petitioner, v. CENTRAL GARDEN & PET COMPANY, Registrant.</p>	<p>Cancellation No.: _____</p>
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PETITION TO CANCEL

Commissioner for Trademarks
ATTN: Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Commissioner:

Petitioner Brett-Young Seeds Ltd. ("Petitioner"), believes that it is and will be damaged by the continued registration of the mark RECOVER, Reg. No. 2,475,996 (the "Contested Registration"), and hereby petitions to cancel such registration pursuant to 37 CFR § 2.111 and 15 U.S.C. § 1064(3).

A. The Parties

1. Petitioner Brett-Young Seeds Ltd. is a Canadian corporation with an address at P.O. Box 99, St. Norbert Postal Station, Winnipeg, Manitoba Canada R3V1L5.

2. On information and belief, Central Garden & Pet Company (“Registrant”) is a Delaware corporation with an address at 1340 Treat Boulevard, Walnut Creek, California 94597.

3. On information and belief, the correspondence address for the current owner of the Contested Registration is Legal Department at Central Garden & Pet Company, 301 West Osborn Road, Phoenix, Arizona 85013. The correspondence email address is feickstaedt@central.com.

B. Petitioner and its Pending Application for RECOVER

4. Petitioner intends to provide goods including “biological inoculant for agricultural use” in Class 1 under the mark RECOVER.

5. Petitioner filed Application Serial No. 85/453,338 on May 29, 2013 for the mark RECOVER as applied to “biological inoculant for agricultural use” in Class 1 (the “Pending Application”). An excerpt from the USPTO database showing the filing particulars for the pending application is attached as Exhibit A.

6. On January 12, 2017, the USPTO issued a final Office Action refusing registration of the Pending Application under Section 2(d) of the Trademark Act based on Registration No. 2,475,996.

C. The Contested Registration – RECOVER

7. On September 9, 1996, the Alaska Fish Fertilizer Company (“Original Owner”), filed an application to register the Contested Registration for the RECOVER mark on a Section 1(b) filing basis covering “fertilizers for domestic use” in Class 1.

8. On February 4, 2000, the Original Owner filed a statement of use with a specimen shown use of the mark on the applied-for goods.

9. The Contested Registration achieved registered status on August 7, 2001. A copy of the Registration Certificate for the Contested Registration is attached as Exhibit B.

10. On July 3, 2002, the Original Owner assigned the Contested Registration to Central Garden & Pet Company.

D. Basis for Cancellation – Non-Use (Abandonment)

11. On information and belief, Registrant is not currently using the RECOVER mark in commerce in connection with fertilizers for domestic use and does not presently possess a bona fide intention to use the RECOVER mark in commerce in connection with fertilizers.

12. On information and belief, Registrant has made no use of the RECOVER mark in connection with fertilizers for domestic use for at least the last three years next preceding the filing of this Petition, thereby constituting prima facie evidence of abandonment of the RECOVER mark as shown in the Contested Registration and any rights to the RECOVER mark.

13. On information and belief, Registrant has abandoned the RECOVER mark pursuant to Section 14(3) of the Trademark Act, 15 U.S.C. § 1064 for failure to use the mark in commerce.

E. Damage Caused to Petitioner

14. Petitioner is damaged by the continued subsistence and registered status of the Contested Registration because the USPTO has cited the Contested Registration as a bar to registration of the Pending Application pursuant to 15 U.S.C. § 1052(d).

15. As an interested party who would like to make use of and federally register the mark RECOVER, Petitioner is damaged by registration of the RECOVER mark by Registrant when Registrant has previously abandoned its right to use the mark and has abandoned the mark.

16. Petitioner reserves the right to amend this Petition for Cancellation to allege other claims in the event discovery of other information indicates that such amendments are appropriate.

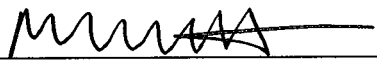
WHEREFORE, Petitioner asks that its Petition for Cancellation be sustained and that registration of the term RECOVER for the goods set forth in the Contested Registration be canceled.

Respectfully submitted,

Brett-Young Seeds Ltd.

By its Attorney,

Dated: 7.12.17



Michael T. Hess
SEAGER, TUFTE & WICKHEM LLP
100 South Fifth Street, Suite 600
Minneapolis, Minnesota 55402

Trademark/Service Mark Application, Principal Register

Serial Number: 85945338
 Filing Date: 05/29/2013

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85945338
MARK INFORMATION	
*MARK	RECOVER
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	RECOVER
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Brett-Young Seeds Ltd.
INTERNAL ADDRESS	P.O. Box 99
*STREET	St. Norbert Postal Station
*CITY	Winnipeg, Manitoba
*COUNTRY	Canada
*ZIP/POSTAL CODE (Required for U.S. applicants only)	R3V1L5
PHONE	612-677-9050
FAX	612-359-9349
EMAIL ADDRESS	bssitmdocketing@stwiplaw.com
LEGAL ENTITY INFORMATION	
TYPE	corporation
STATE/COUNTRY OF INCORPORATION	Canada
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	001
*IDENTIFICATION	Biological inoculant for agricultural use
FILING BASIS	SECTION 1(b)
FILING BASIS	SECTION 44(d)
FOREIGN APPLICATION NUMBER	1628422
FOREIGN APPLICATION COUNTRY	Canada
FOREIGN FILING DATE	

FOREIGN FILING DATE	05/28/2013
INTENT TO PERFECT 44(d)	At this time, the applicant intends to rely on Section 44(e) as a basis for registration. If ultimately the applicant does not rely on Section 44(e) as a basis for registration, a valid claim of priority may be retained.
ATTORNEY INFORMATION	
NAME	Michael T. Hess
ATTORNEY DOCKET NUMBER	1358.4021101
FIRM NAME	Seager, Tufte & Wickhem LLC.
INTERNAL ADDRESS	Suite 800
STREET	1221 Nicollet Ave.
CITY	Minneapolis
STATE	Minnesota
COUNTRY	United States
ZIP/POSTAL CODE	55403
PHONE	612-677-9050
FAX	612-359-9349
EMAIL ADDRESS	bssitmdocketing@stwiplaw.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
OTHER APPOINTED ATTORNEY	Glenn M. Seager, Brian N. Tufte, J. Scot Wickhem, Kristina M. Foudray
CORRESPONDENCE INFORMATION	
NAME	Michael T. Hess
FIRM NAME	Seager, Tufte & Wickhem LLC.
INTERNAL ADDRESS	Suite 800
STREET	1221 Nicollet Ave.
CITY	Minneapolis
STATE	Minnesota
COUNTRY	United States
ZIP/POSTAL CODE	55403
PHONE	612-677-9050
FAX	612-359-9349
EMAIL ADDRESS	bssitmdocketing@stwiplaw.com;tracy.natysin@stwiplaw.com;michelle.anderson@stwiplaw.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325

SIGNATURE INFORMATION	
SIGNATURE	/michael t. hess/
SIGNATORY'S NAME	Michael T. Hess
SIGNATORY'S POSITION	Attorney of Record, MN State Bar Member
DATE SIGNED	05/29/2013

Trademark/Service Mark Application, Principal Register

Serial Number: 85945338

Filing Date: 05/29/2013

To the Commissioner for Trademarks:

MARK: RECOVER (Standard Characters, see [mark](#))

The literal element of the mark consists of RECOVER.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Brett-Young Seeds Ltd., a corporation of Canada, having an address of
P.O. Box 99,
St. Norbert Postal Station
Winnipeg, Manitoba R3V1L5
Canada

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 001: Biological inoculant for agricultural use

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

Priority based on foreign filing: Applicant has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services and asserts a claim of priority based on Canada application number 1628422, filed 05/28/2013. 15 U.S.C. Section 1126(d), as amended.

INTENT TO PERFECT 44(d) : At this time, the applicant intends to rely on Section 44(e) as a basis for registration. If ultimately the applicant does not rely on Section 44(e) as a basis for registration, a valid claim of priority may be retained.

The applicant's current Attorney Information:

Michael T. Hess and Glenn M. Seager, Brian N. Tufte, J. Scot Wickhem, Kristina M. Foudray of Seager, Tufte & Wickhem LLC.

Suite 800
1221 Nicollet Ave.
Minneapolis, Minnesota 55403
United States

The attorney docket/reference number is 1358.4021101.

The applicant's current Correspondence Information:

Michael T. Hess
Seager, Tufte & Wickhem LLC.
Suite 800
1221 Nicollet Ave.
Minneapolis, Minnesota 55403
612-677-9050(phone)
612-359-9349(fax)
bssitmdocketing@stwiplaw.com;tracy.natysin@stwiplaw.com; michelle.anderson@stwiplaw.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under

18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Declaration Signature

Signature: /michael t. hess/ Date: 05/29/2013
Signatory's Name: Michael T. Hess
Signatory's Position: Attorney of Record, MN State Bar Member
RAM Sale Number: 85945338
RAM Accounting Date: 05/30/2013

Serial Number: 85945338
Internet Transmission Date: Wed May 29 16:41:49 EDT 2013
TEAS Stamp: USPTO/BAS-XX.XXX.XX.XX-20130529164149174
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-3781-20130529163300149755

RECOVER

Int. Cl.: 1

Prior U.S. Cls.: 1, 5, 6, 10, 26, and 46

United States Patent and Trademark Office

Reg. No. 2,475,996

Registered Aug. 7, 2001

**TRADEMARK
PRINCIPAL REGISTER**

RECOVER

ALASKA FISH FERTILIZER COMPANY (WA-
SHINGTON CORPORATION)
P.O. BOX 737
RENTON, WA 98057

OWNER OF U.S. REG. NO. 1,614,512.

SN 75-162,969, FILED 9-9-1996.

FOR: FERTILIZER FOR DOMESTIC USE, IN
CLASS 1 (U.S. CLS. 1, 5, 6, 10, 26 AND 46).

FIRST USE 1-31-2000; IN COMMERCE 1-31-2000.

CHARLES L. JENKINS, EXAMINING ATTORNEY