

ESTTA Tracking number: **ESTTA931212**

Filing date: **10/26/2018**

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

Proceeding	92068467
Party	Plaintiff U.G.A. Nutraceuticals SRL
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Submission	Motion to Amend Pleading/Amended Pleading
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Date	10/26/2018
Attachments	2018.10.26 Amended Petition for Cancellation.pdf(44410 bytes)

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

U.G.A. NUTRACEUTICALS SRL,

Petitioner,

v.

NEWAYS, INC.,

Registrant.

Petition No.: 92068467

PETITION FOR CANCELLATION

Mark: CARDIOL

Registration No.: 2,693,218

Filing Date: March 4, 2003

AMENDED PETITION FOR CANCELLATION

U.G.A Nutraceuticals SRL (“Petitioner”) hereby petitions for cancellation of the CARDIOL mark (“Registrant’s Mark”) for use in connection with the goods identified in Registration No. 2,693,218 (the “Registration”). The grounds for this Petition are as follows:

Parties

1. Petitioner is an Italian limited liability company having a place of business at 129 C, Via Leonardo Da Vinci, I-06024, Gubbio (PG), Italy.

2. According to the Registration, Neways, Inc. (“Registrant”) is a Utah corporation having a place of business at 588 South 2000 West, Springville, UT 84663.

3. Petitioner owns U.S. Trademark Application Serial No. 79/218,713 for the trademark CARDIOL for use on “Pharmaceuticals, medical and veterinary preparations; sanitary preparations for medical purposes; dietetic food and substances adapted for medical or veterinary

use, food for babies; dietary supplements for humans and animals; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides, nutritional supplements; albumin dietary supplements; alginate dietary supplements; casein dietary supplements; dietary supplements for animals; enzyme dietary supplements; flaxseed dietary supplements; flaxseed oil dietary supplements; glucose dietary supplements; lecithin dietary supplements; linseed dietary supplements; linseed oil dietary supplements; mineral food supplements; pollen dietary supplements; propolis dietary supplements; protein dietary supplements; protein supplements for animals; royal jelly dietary supplements; wheat germ dietary supplements; yeast dietary supplements; dietary fiber; dietary fibre; food for babies; dietetic foods adapted for medical purposes; dietetic beverages adapted for medical purposes; starch for dietetic or pharmaceutical purposes; by-products of the processing of cereals for dietetic or medical purposes; dietetic substances adapted for medical use; infant formula; powdered milk for babies; candy, medicated; dressings, medical; amino acids for medical purposes; chewing gum for medical purposes; drugs for medical purposes; gum for medical purposes; pearl powder for medical purposes; pomades for medical purposes; malted milk beverages for medical purposes; pharmaceutical preparations; veterinary preparations; vitamin preparations; preparations of trace elements for human and animal use” (“Petitioner’s Application”).

4. Petitioner filed Petitioner’s Application on March 8, 2017, and has used the CARDIOL mark in the United States for many years without interruption.

5. On October 30, 2017, Petitioner’s Application received an Office Action from the Examiner at the USPTO denying registration and citing the Registration, alleging that Applicant’s

CARDIOL mark was likely to cause confusion with Registrant's CARDIOL mark. Therefore, Petitioner has standing to bring this proceeding.

6. Upon information and belief, Registrant has ceased use of the CARDIOL mark in connection with the goods identified in the Registration.

7. Petitioner and its counsel conducted extensive internet research to find evidence of current or recent U.S. sales of Registrant's CARDIOL product. No such sales could be found.

8. Petitioner contacted a supplier of Registrant's products and was informed that the CARDIOL product had been discontinued.

9. Upon information and belief, Registrant has been selling the product formally known as CARDIOL under a different name.

10. Upon information and belief, Registrant has no intent to resume use of the CARDIOL mark in connection with the goods identified in the Registration.

11. Upon information and belief, Registrant has abandoned the mark which is the subject of the Registration.

12. Therefore, Petitioner will be prejudiced by the continued registration of Registration No. 2,693,218 and hereby petitions to cancel the Registration.

13. The Registration has been abandoned under Section 45 of the Lanham Act and should be canceled under Section 14(3) of the Act.

WHEREFORE, Petitioner prays that the Registration be canceled and that this Petition be sustained in favor of Petitioner.

October 26, 2018

Respectfully submitted,

AMIN TALATI UPADHYE, LLP

/s/ Daniel S. Tyler

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ATTORNEY FOR Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of October, 2018, the forgoing **Amended Petition for Cancellation** was served, by electronic mail, on the following:

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/s/ Daniel S. Tyler

Daniel S. Tyler