

ESTTA Tracking number: **ESTTA958449**

Filing date: **03/06/2019**

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	Earthy Browns Natural Products, LLC		
Entity	Limited Liability Company	Citizenship	Kentucky
Address	8513 Watterson Trail Louisville, KY 40299 UNITED STATES		

Attorney information	Jack A. Wheat McBRAYER PLLC 9300 Shelbyville Rd, Suite 110 Suite 110 Louisville, KY 40222 UNITED STATES jwheat@mcbayerfirm.com, prosene@mcbayerfirm.com, arivers@mcbayerfirm.com, jwheat@mmlk.com 5023275400
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Registration Subject to Cancellation

Registration No.	4664428	Registration date	12/30/2014
Registrant	Earthy LLC 44 Green Bay Road Winnetka, IL 60093 UNITED STATES		

Goods/Services Subject to Cancellation


Class 003. First Use: 2013/07/26 First Use In Commerce: 2013/07/26 All goods and services in the class are subject to cancellation, namely: laundry detergent; soaps for personal use; soaps for household use; all-purpose cleaners; glass cleaner; fruit and vegetable wash; automatic dishwashing detergents; facial cleansers; skin lotions
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Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	87449537	Application Date	05/15/2017
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	EARTHYBROWNS
Design Mark	
Description of Mark	NONE
Goods/Services	Class 003. First use: First Use: 2010/06/03 First Use In Commerce: 2010/06/03 Cosmetics; soaps, lip balms, moisturizers, shaving soaps

Attachments	87449537#TMSN.png(bytes) Earthybrowns Petition to Cancel 4811-2250-3817 v.1.pdf(147853 bytes)
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Signature	/jackawheat/
Name	Jack A. Wheat
Date	03/06/2019

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

In the matter of Registration No. 4,664,428

Issued: December 30, 2014

Mark:



EARTHY BROWNS NATURAL PRODUCTS, LLC

Petitioner,

v.

EARTHY LLC,

Registrant.

CANCELLATION NO.

PETITION TO CANCEL

Comes the Petitioner, Earthy Browns Natural Products, LLC, (hereinafter “Earthy Browns” or “Petitioner”), and for its Petition to Cancel the Registration of the mark E EARTHY owned by Earthy LLC (hereinafter “Registrant”), Petitioner submits the following:

1. Petitioner, Earthy Browns Natural Products, LLC, is a Kentucky Limited Liability Corporation, with its principal place of business at 8513 Watterson Trail, Louisville, Kentucky 40299.

2. Registrant, Earthy LLC is an Illinois Limited Liability Company. Its correspondence ADDRESS OF RECORD with the PTO in relation to the registration in issue is its attorney of record, Hadi S. Al-Shathir at Thompson Coburn LLP, 505 N. 7th St, Ste 3500, St. Louis, Missouri 63101-1693, and his E-mail address of record is ipdocket@thompsoncoburn.com.

3. Based on information and belief, Registrant CURRENT COUNSEL is Bernard A. Henry at Rieck and Crotty, P. C., 55 West Monroe Street, Suite 3625, Chicago, Illinois 60603 and his E-mail address is bhenry@rieckcrotty.com.

4. The Registration sought to be cancelled in this proceeding relates to the mark, E EARTHY (plus design) registered for “laundry detergent; soaps for personal use; soaps for household use; all-purpose cleaners; glass cleaner; fruit and vegetable wash; automatic dishwashing detergents; facial cleansers; skin lotions,” namely Registration Number 4,664,428 (the “428 Registration”) issued on December 30, 2014.

5. In the application that matured into the Registration which is the subject of this cancellation proceeding was an “intent to use” application filed on May 24, 2013. Registrant later represented to the PTO that the E EARTHY mark sought to be registered had been in use in commerce since July 26, 2013.

6. Petitioner is a consumer goods company engaged in the production and marketing of assorted natural products, including the business and marketing of beekeeping commodities, such as assorted honey and beeswax products including cosmetics, soaps, lip balms, moisturizers and shaving soaps and has marketed these products under the mark, EARTHYBROWNS, continually since at least as early as June 3, 2010

7. On or about May 15, 2017, Petitioner filed with the PTO an application to register the mark EARTHYBROWNS for “Cosmetics” which application has been assigned Serial

Number 87/449,537. Following amendment, the current recitation of goods associated with said application is “Cosmetics; soaps, lip balms, moisturizers, shaving soaps”

8. In the course of the prosecution of Petitioner’s application to register the mark, EARTHYBROWNS, the Trademark Examining Attorney cited the ‘428 Registration, the registration which is the subject of this cancellation proceeding, as a reference which under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), according to the Examining Attorney, precludes the registration sought by Petitioner on the ground that the EARTHYBROWNS mark Petitioner seeks to be register, according to the Examining Attorney, so resembles the ‘428 registered mark as to be likely, when used on or in connection with Petitioner’s goods, to cause confusion, or to cause mistake, or to deceive.

9. By reason of Petitioner’s continuous use of the mark sought to be registered dating well prior to both Registrant’s first use date and filing date, Petitioner enjoys priority of use.

10. Accordingly, and to the extent there is any likelihood of confusion resulting from use of the registered mark and the Petitioner’s mark, Petitioner will be damaged by continued registration of the mark which is the subject of this cancellation proceeding because (a) consumers are likely to purchase Registrant’s goods believing them to be the Petitioner’s goods, or goods sponsored by or associated with Opposer; (b) any defects in Registrant’s goods may be attributed to the Opposer; (c) continued registration of the mark will provide Registrant the presumptive right to use the mark with its goods; and (d) would preclude Petitioner’s registration of its mark. All of these effects of registration will cause injury to Opposer.

WHEREFORE, Petitioner prays that Registration Number 4,664,428 be CANCELLED.

/jackawheat/
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Attorneys for Petitioner

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