

ESTTA Tracking number: **ESTTA1081365**

Filing date: **09/11/2020**

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	Acava Limited		
Entity	Limited company	Citizenship	Malta
Address	167 MERCHANTS STREET VALLETA, VLT 1174 MALTA		
Attorney information	JUSTIN R. YOUNG DTL LTD. 160 NORTH WACKER DRIVE CHICAGO, IL 60606 UNITED STATES Primary Email: jyoung@dineff.com Secondary Email(s): tmlaw@dineff.com 3123381000		
Docket Number	CD2577US00		

Registration Subject to Cancellation

Registration No.	3230068	Registration date	04/17/2007
Registrant	RYAN, OWEN 920 CHEROKEE ROAD CHARLOTTE, NC 28207 UNITED STATES		

Goods/Services Subject to Cancellation

Class 032. First Use: 2006/10/26 First Use In Commerce: 2006/10/26 All goods and services in the class are subject to cancellation, namely: Electrolyte replacement soft drinks
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Grounds for Cancellation

Abandonment	Trademark Act Section 14(3)
Fraud on the USPTO	Trademark Act Section 14(3); In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)

Attachments	1 Cancellation against 3230068.pdf(51829 bytes)
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Signature	/justinryoung/
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Name	Justin R. Young
Date	09/11/2020

“VOLT ATHENA,” “VOLT POSEIDON,” “VOLT ZEUS” and “VOLT ARES” respectively, all covering *energy drinks*” in International Class 32 (“Petitioner’s Applications”).

2. Registration No. 3,230,0686 for the mark “VOLT” (“Registrant’s Mark”), issued on the Principal Register in connection with “*electrolyte replacement soft drinks*” in International Class 32 (“Registrant’s Goods”) and owned by Owen Ryan (“Registrant”), a United States citizen.

3. Registration No. 3,230,0686 has been cited under Section 2(d) of the Trademark Act as a basis for refusing registration of Petitioner’s marks under Applications Nos. 88/913978, 88/913969, 88/913957, 88,913931, 88/913903 and 88/905330.

4. Petitioner is being and will be damaged by the continued registration of the Registered Mark within the meaning of 15 U.S.C. §1064 and, therefore, petitions to cancel Registration No. 3,230,0686.

COUNT I – ABANDONMENT

5. Petitioner re-alleges and incorporates by reference paragraph 1 through 4.

6. Petitioner has investigated Registrant’s use of Registrant’s Mark in commerce on Registrant’s Goods and, upon information and belief, Registrant is not using the Registered Mark in connection with the goods currently covered by Registration No. 3,230,0686. Registrant has abandoned Registrant’s Mark.

7. On April 16, 2013, in the Declaration of Use and/or Excusable Nonuse of Mark in Commerce under Section 8 submitted by Registrant in connection with Registration No. 3,230,0686, Registrant entered a sworn statement that “*the mark is in use in commerce on or in connection with all goods/services*”; however, upon information and belief, at the time of said

filing Registrant was not using Registrant's Mark for any of the goods covered by the sworn statement.

8. On August 26, 2017, in the Combined Declaration of Use and/or Excusable Nonuse and Application for Renewal of Registration of a Mark under Sections 8 & 9 submitted by Registrant in connection with Registration No. 3,230,0686, Registrant entered a sworn statement that "*the mark is in use in commerce on or in connection with all goods/services*"; however, upon information and belief, at the time of said filing Registrant was not using Registrant's Mark for any of the goods covered by the sworn statement.

9. Upon information and belief, Registrant has not used Registrant's Mark in commerce in the United States in connection with Registrant's Goods for at least the last three (3) consecutive years, thereby constituting *prima facie* evidence of abandonment of Registrant's Mark.

10. Upon information and belief, Registrant is not currently using Registrant's Mark in commerce in the United States in connection with Registrant's Goods.

11. Upon information and belief, Registrant has no intent to resume use of Registrant's Mark in commerce in the United States in connection with Registrant's Goods.

12. Upon information and belief, Registrant has abandoned Registrant's Mark by discontinuing use of Registrant's Mark with no intent to resume.

13. Upon information and belief, Registrant's Mark has been abandoned due to nonuse.

14. Petitioner has been and will continue to be damaged by continuance of the Registrations, in that Petitioner will be unable to obtain registration of its Mark on the Principal Register and obtain the procedural and evidentiary advantages and presumptions that result therefrom so long as the Registrations are maintained on the register, despite the abandonment of the Marks by Registrant.

COUNT II – FRAUD

15. Petitioner re-alleges and incorporates by reference paragraph 1 through 14.

16. Upon information and belief, Registration No. 3,230,0686 was maintained through fraud and is subject to cancellation.

17. On April 16, 2013, in the Declaration of Use and/or Excusable Nonuse of Mark in Commerce under Section 8 submitted by Registrant in connection with Registration No. 3,230,0686, Registrant entered a sworn statement that “*the mark is in use in commerce on or in connection with all goods/services*” [Emphasis added].

18. On August 26, 2017, in the Combined Declaration of Use and/or Excusable Nonuse/Application for Renewal of Registration of a Mark under Sections 8 & 9 submitted by Registrant in connection with Registration No. 3,230,0686, Registrant entered a sworn statement that “*the mark is in use in commerce on or in connection with all goods/services*” [Emphasis added].

19. Registrant knew or should have known that the statements that the mark under Registration No. 3,230,0686 was in use at the time of filing of the Declaration of Use and/or Excusable Nonuse of Mark in Commerce under Section 8 (April 16, 2013) and of the Combined Declarations of Use and/or Excusable Nonuse/Applications for Renewal of Registration of a Mark under Sections 8 & 9 (August 26, 2017) were clearly false or misleading as Registrant was not using Registrant’s Mark at those time in connection with Registrant’s Goods.

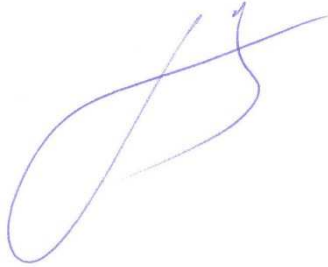
20. But for the false statements of use in interstate commerce and accompanying false declarations, the United States Patent and Trademark Office (USPTO) would have not maintained in force Registration No. 3,230,0686.

21. Registrant knew that his representations about use of Registrant's Mark in commerce were false, and knew that they were material to Registrant's ability to register Registrant's Mark. Registrant misrepresented the use of Registrant's Mark with the intent of deceiving the USPTO into registering Registrant's Mark on the Principal Register.

WHEREFORE, Petitioner respectfully requests that Registration No. 3,230,0686 be cancelled and for such other and further relief as the Commissioner Trademarks shall deem proper and required by the Principles of Equity and Good Conscience.

Acava Limited

By and through their attorney

A handwritten signature in blue ink, appearing to be 'Justin R. Young', written over a horizontal line.

Dated: September 11, 2020

By and through their attorney

Justin R. Young

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