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Filing date: **01/29/2021**

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	Canpack S.A.		
Entity	societate anonyma	Citizenship	Poland
Address	JASNOGORSKA 1 KRAKOW, 31-358 POLAND		

Attorney information	BASSAM N. IBRAHIM BUCHANAN INGERSOLL & ROONEY PC 1737 KING STREET, SUITE 500 ALEXANDRIA, VA 22314 UNITED STATES Primary Email: bassam.ibrahim@bipc.com 703-836-6620		
Docket Number	1030807-1021		

Registration Subject to Cancellation

Registration No.	5034312	Registration date	09/06/2016
Registrant	Champion Container Corporation 180 ESSEX AVENUE EAST, PO BOX 90 AVENEL, NJ 07001 UNITED STATES		

Goods/Services Subject to Cancellation

<p>Class 006. First Use: 1996/11/01 First Use In Commerce: 1996/11/01 All goods and services in the class are subject to cancellation, namely: Steel tinplate; steel drums; metal liners for use in containers intended for filling, shipping and storing liquids and solids; metal paint-style cans, namely, a triple-tight can with metal coating for use in the retail sale of paint; metal-style oblong cans; metal utility cans; two-part composite containers primarily comprised of a steel drum with plastic inserts; all sold empty for industrial and commercial use; packaging materials for industrial and commercial use all sold empty, namely, bulk containers primarily composed of steel</p>
<p>Class 021. First Use: 1996/11/01 First Use In Commerce: 1996/11/01 All goods and services in the class are subject to cancellation, namely: Plastic pails; plastic and glass bottles and jars for intended for filling, shipping and storing solids and liquids; food packaging materials sold empty, namely, glass and plastic bottles and jars for filling, shipping and storing solid and liquid food products; steel pails</p>

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
No use of mark in commerce before application,	Trademark Act Sections 14(1) and 1(a), (c), and

amendment to allege use, or statement of use was filed	(d)
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)

Marks Cited by Petitioner as Basis for Cancellation

U.S. Application No.	90054021	Application Date	07/15/2020
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	CANPACK		
Design Mark			
Description of Mark	The mark consists of the stylized word "CANPACK".		
Goods/Services	<p>Class 006. First use: First Use: 0 First Use In Commerce: 0 metal cans; bottle closures of metal; bottle caps of metal; packaging; containers of metal; metal lids for cans; metal beverages cans; tin cans, sold empty; metal aerosol cans sold empty</p> <p>Class 021. First use: First Use: 0 First Use In Commerce: 0 Soap dispensers</p> <p>Class 042. First use: First Use: 0 First Use In Commerce: 0 Engineering, design, and maintenance services for the production and manufacture of cans and closures, packaging, glassmoulds, and related products</p>		

U.S. Application No.	79297613	Application Date	10/02/2020
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	CANPACK		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 006. First use: First Use: 0 First Use In Commerce: 0 Tins of metal; preserving boxes of metal; beverage cans of metal; metal cans, sold empty; closures of metal; cap closures of metal; closures of metal for containers; tin cans [empty]; containers made of metal for use in the storage of gases; metallic containers; metal aerosol containers [empty]; metal aerosol containers sold empty; screw caps of metal; sealing caps of metal; bottle closures of metal; tinfoil; foils of metal for covering; foils of metal for cooking; aluminium; sheet metal; aluminium foil; alloys of metal</p> <p>Class 042. First use: First Use: 0 First Use In Commerce: 0 Advisory services relating to industrial engineering; advisory services relating to design engineering; engineering design and consultancy; engineering design; engineering services relating to computer programming; engineering services relating to metal forming systems; engineering services relating to metal handling systems; engineering services relating to information technology; engineering services relating to data processing; engineering services for others; computer-aided engineering design services; computer-aided engineering</p>		

	<p>design and drawing services; technical design; engineering consultancy services; computer assisted engineering design services; consultancy services relating to product engineering; engineering consultancy relating to design; consultancy relating to the design of packaging; technical assessments relating to design; product development for others; product development; professional consultancy relating to industrial design; product research and development; design and testing of new products; design and development of new products; design and testing for new product development; packaging design for others; designing of packaging and wrapping materials; new product design; design of specialist machinery; design of industrial products; consumer product design; design of ornamental layouts; provision of information relating to industrial design; styling [industrial design]; design sketching of packaging, containers, dinnerware and table utensils; engineering services for the design of machinery; engineering and computer-aided engineering services; advisory services relating to industrial design; design services relating to metal-working presses; design services relating to metal-working tools; industrial and graphic art design; industrial art design; product design and development; computer-aided industrial design</p>
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Attachments	20210129 - Petition for Cancellation CANPAK 5034312.pdf(14718 bytes)
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Signature	/Bassam N. Ibrahim/
Name	Bassam N. Ibrahim
Date	01/29/2021

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

Canpack S.A.	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	Cancellation No. _____
Champion Container Corporation	:	
	:	
Registrant	:	

PETITION FOR CANCELLATION

Canpack S.A. ("Petitioner"), a société anonyme organized under the laws of Poland, located and doing business at Jasnogórska 1, Kraków, Poland, 31-358, believes that it has been and will continue to be damaged by the continued registration of U.S. Registration No. 5,034,312, owned by Champion Container Corporation ("Registrant") for the mark CANPAK ("Registrant's CANPAK Mark"), and hereby petitions to cancel said registration.

The grounds for the cancellation are as follows:

1. Registrant is a New Jersey corporation located and doing business at 180 Essex Avenue East, P.O. Box 90, Avenel, New Jersey, 07001.
2. Registrant is the record owner of U.S. Reg. No. 5,034,312 for Registrant's CANPAK Mark in connection with "steel tinplate; steel drums; metal liners for use in containers intended for filling, shipping and storing liquids and solids; metal paint-style cans, namely, a triple-tight can with metal coating for use in the retail sale of paint; metal f-style oblong cans; metal utility cans; two-part composite containers primarily comprised of a steel drum with plastic inserts; all sold empty for industrial and commercial use; packaging materials for industrial and commercial use all sold empty, namely, bulk containers primarily composed of steel" in International Class 6 and "Plastic pails; plastic and glass bottles and jars for intended

for filling, shipping and storing solids and liquids; food packaging materials sold empty, namely, glass and plastic bottles and jars for filling, shipping and storing solid and liquid food products; steel pails” in International Class 21 (“Registrant’s Goods”).

COUNT I: FRAUD

3. Registrant filed Application Serial No. 86/625,790 for Registrant’s CANPAK Mark in connection with Registrant’s Goods on May 11, 2015, alleging use in commerce under Section 1(a) of the Trademark Act.

4. Registrant was not using Registrant’s CANPAK Mark in connection with Registrant’s Goods at the time Registrant filed Application Serial No. 86/625,790 for Registrant’s CANPAK Mark on May 11, 2015.

5. Registrant stated in the sworn Declaration submitted with Application Serial No. 86/625,790 for Registrant’s CANPAK Mark that “the applicant or the applicant’s related company or licensee is using the mark in commerce on or in connection with the goods/services in the application.”

6. Registrant’s statement in the sworn Declaration submitted with Application Serial No. 86/625,790 that Registrant “is using the mark in commerce on or in connection with the goods/services in the application” was false.

7. Registrant knew that the statement in the sworn Declaration submitted with Application Serial No. 86/625,790 that Registrant “is using the mark in commerce on or in connection with the goods/services in the application” was false at the time the declaration was signed on May 11, 2015.

8. Registrant made the false statement in the sworn Declaration with the intent to deceive the USPTO into granting Registrant a trademark registration for Registrant's CANPAK Mark to which Registrant was not entitled.

9. The false statement in the sworn Declaration that Registrant was using the mark in commerce on or in connection with the goods in the application was material because the USPTO would not have granted a registration for CANPAK to Registrant without this false statement.

10. Registrant's false statement that Registrant was using the mark in commerce in connection with the goods in the application constitutes fraud upon the USPTO.

11. Registrant's U.S. Reg. No. 5,034,312 for Registrant's CANPAK Mark should be cancelled pursuant to 15 U.S.C. 1064(3) on the grounds of fraud.

COUNT II: NON-USE

12. Registrant's Application Serial No. 86/625,790 for Registrant's CANPAK Mark was filed under Section 1(a) of the Trademark Act, based upon alleged use in commerce.

13. Registrant was not using Registrant's CANPAK Mark in connection with Registrant's Goods at the time Application Serial No. 86/625,790 was filed on May 11, 2015.

14. Registrant's U.S. Reg. No. 5,034,312 for Registrant's CANPAK Mark should be cancelled as *void ab initio* pursuant to 15 U.S.C. 1064(3).

COUNT III: ABANDONMENT

15. Upon information and belief, Registrant has not used Registrant's CANPAK Mark in connection with Registrant's Goods in interstate commerce in the United States for at least the past three consecutive years.

16. Upon information and belief, Registrant's non-use and/or discontinuance of use in commerce of Registrant's CANPAK Mark was with the intent not to resume use.

17 Registrant has abandoned Registrant's CANPAK Mark in U.S. Reg. No. 5,034,312.

18. Registrant's U.S. Reg. No. 5,034,312 for Registrant's CANPAK Mark should be cancelled pursuant to 15 U.S.C. 1064(3) on the grounds of abandonment.

COUNT IV: PRIORITY AND LIKELIHOOD OF CONFUSION

19. Petitioner is using the mark CANPACK ("Petitioner's CANPACK Mark") in connection with metal cans, metal containers, and engineering and design services in the field of production and manufacture of cans and closures ("Petitioner's Goods and Services") in commerce in the United States.

20. Petitioner's CANPACK Mark is inherently distinctive.

21. Petitioner's use of Petitioner's CANPACK Mark in connection with Petitioner's Goods and Services commenced long prior to any use by Registrant of Registrant's CANPAK Mark in connection with Registrant's Goods.

22. Registrant's CANPAK Mark is virtually identical to Petitioner's previously used CANPACK Mark.

23. Registrant's Goods are identical or closely related to Petitioner's Goods and Services.

24. Registrant's CANPAK Mark so resembles Petitioner's previously used CANPACK Mark as to be likely to cause confusion or mistake or to deceive, by creating the erroneous impression that Registrant's Goods originate with, or are associated with Petitioner, or that Registrant's Goods are authorized, sponsored, or licensed by Petitioner.

25. The continued registration of U.S. Reg. No. 5,034,312 for Registrant's CANPAK Mark is contrary to 15 U.S.C. 1052(d) and violates and diminishes the superior rights of Petitioner in Petitioner's CANPACK Mark.

26. Petitioner is the owner of U.S. Application Serial Nos. 79/297,613 and 90/054,021 for Petitioner's CANPACK Mark in stylized form in connection with Petitioner's Goods and Services and related goods and services.

27. The U.S. Patent and Trademark Office has refused registration of Petitioner's U.S. Application Serial No. 90/054,021 and is likely to refuse registration of Application Serial No. 79/297,613 for Petitioner's CANPACK Marks under Section 2(d) of the Trademark Act based upon a purported likelihood of confusion with Registrant's CANPAK Mark in U.S. Reg. No. 5,034,312.

28. The continued registration of Registrant's CANPAK Mark, to which Registrant is not entitled, has impaired and is likely to continue to unfairly impair the ability of Petitioner to register Petitioner's CANPACK Mark. Therefore, Petitioner has standing to bring this proceeding.

WHEREFORE, Petitioner prays that this Petition for Cancellation be granted, that U.S. Registration No. 5,034,312 be cancelled, and for any and all other relief that the Trademark Trial and Appeal Board may deem just and proper.

Respectfully submitted,

CANPACK S.A.

/Bassam N. Ibrahim/
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Date: January 29, 2021