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

Proceeding	92076315
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

CANPACK S.A.,

Petitioner,

v.

CHAMPION CONTAINER CORPORATION,

Registrant.

Cancellation No. 92076315

Registration No. 5,034,312

Mark: **CANPAK**

**REGISTRANT'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO
DISMISS PETITION SEEKING CANCELLATION FOR FAILURE TO STATE A
CLAIM PURSUANT TO FRCP 12(b)(6)**

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Registrant Champion Container Corporation (“Registrant”) moves to dismiss the Petition filed by Petitioner Canpak, S.A. (“Petitioner”) pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and TBMP § 503.

PRELIMINARY STATEMENT

For more than a quarter-century, Canpak has been a recognized name in the packaging container industry. When Registrant acquired J.H. Acquisition, Inc. d/b/a Canpak, a Pennsylvania corporation (the “Acquired Business”) in April 2015, it immediately sought to protect the valuable “CANPAK” mark and successfully sought federal trademark registration of the mark in connection with the packaging solutions distributed under the mark. Petitioner, a foreign company that directly, or indirectly through its affiliates, offers products and services that compete with those offered by Registrant, markets its goods and services under an essentially identical name—CANPACK. Despite the same name, in the six years since Registrant’s purchase of the Acquired Business, Petitioner has never once raised an objection to Registrant’s use of the CANPAK trademark nor is there any allegation in the Petition that Petitioner objected to the use of the CANPAK name by the Acquired Business. What has changed since then is that Petitioner now seeks to offer its products and services in the U.S. Indeed, from the allegations in the Petition, it appears that Petitioner has already started conducting business in the U.S. using its CANPACK name—allegations which, if true, are a direct admission that Petitioner is infringing upon Registrant’s trademarks.

Given the nearly identical name for what would be nearly identical products and services, the Office correctly refused Petitioner’s application to register Petitioner’s proposed “CANPACK” marks (the “Proposed Marks”) for such products and services. Now, armed with nothing more than unsupported, barebones allegations and conclusory statements, Petitioner

seeks to cancel Registrant's trademarks which have been in use for almost a quarter-century. Indeed, Petitioner goes so far as to accuse Registrant of perpetrating a fraud upon the Office without adhering to the heightened pleading requirements that mandate the inclusion of specific facts to support the claim. What is clear, however, is that Petitioner has no actual knowledge of any facts that would support such a claim. Fortunately, neither the Board nor the Federal courts countenance such a "shoot first, ask questions later" approach to pleading fraud.

The other grounds upon which Petitioner seeks to cancel Registrant's trademarks fare no better. To credit Petitioner's claims of priority based on its foreign registrations would require the Board to ignore that the long-standing, unambiguous statutory provisions requiring a U.S. application to be filed within 6 months of the foreign filing if the applicant seeks to take advantage of the earlier, foreign filing date. Here, Petitioner waited years to file its U.S. applications. Thus, Petitioner's priority claim fails as a matter of law.

Petitioners' claims of non-use and abandonment are similarly unsupported. Accordingly, Registrant respectfully submits that the Petitioner has failed to state a claim and its petition should be dismissed in its entirety and with prejudice pursuant to Fed. R. Civ. P. Rule 12(b)(6).

BACKGROUND

A. The CANPAK Marks

Registrant offers a variety of packaging container solutions, including metal, plastic and glass cans, pails, drums, bottles and jars and related distribution services and packaging advisory services and support to its diverse customer base in the chemical, fragrance, paint, cosmetic, food, agricultural and pharmaceutical industries, among others. To protect its CANPAK brand, Registrant registered two trademarks: (i) Registration No. 5,034,312 (the "Canpak '312 Mark"), which is the subject of this proceeding; and (ii) Registration No. 6,129,543 (the "Canpak '543

Mark”, and collectively with the Canpak ‘312 Mark, the “Canpak Marks”), which is the subject of another cancellation petition concurrently filed by Petitioner (Cancellation No. 92076336).

As reflected in the USPTO’s records, the Canpak ‘312 Mark application was filed on **May 11, 2015, based on a first use date at least as early as November 1, 1996**, and the Canpak ‘312 Mark registered on September 6, 2016. The ‘312 Mark registration is for the word mark “CANPAK” for a number of metal, plastic and glass packaging containers in International Classes 6 and 21.

B. Petitioner’s Applications

Petitioner filed two applications pertaining to its proposed “CANPACK” marks: Application Serial Nos. 90/054,021 (the “‘021 Application”) and 79/297,613 (the “‘613 Application”).

As reflected in the Office’s records, Petitioner filed the ‘021 Application on July 15, 2020, utilizing Sections 1(b) and 44(e) of the Lanham Trademark Act of 1946, as amended, (the “Lanham Act”), 15 U.S.C. § 1051, *et seq.*, as the bases for this application.¹ Like the Canpak Marks, Petitioner sought registration of its proposed mark under International Class 6, in addition to also seeking registration in International Classes 21 and 42.² The Office refused registration of this application in International Class 6 pursuant to Lanham Act §2(d) due to the likelihood of confusion with the Canpak Marks (but did not refuse registration in Classes 21 and 42³). (*See* Petition, ¶¶27.)⁴

¹ <http://tmsearch.uspto.gov/bin/showfield?f=doc&state=4801:0q79j3.3.1>

² *Id.*

³ Registrant reserves all rights in this regard.

⁴ *See also*

<https://tsdr.uspto.gov/documentviewer?caseId=sn79297613&docId=MOC20210315175049#docIndex=0&page=1>

As reflected in the Office's records, Petitioner filed the '613 Application on October 2, 2020, utilizing Lanham Act §66(a) as the basis for its application.⁵ Like the Canpak Marks, Petitioner sought registration of its proposed mark under International Class 6. It also identified an additional class, International Class of 42. In its Petition, Petitioner surmised that the Office was likely to refuse registration for the same reason it refused registration respecting the '021 Application. (*See* Petition, ¶27.) Subsequent to the filing of the Petition, on or about March 10, 2021, the Office issued an Office Action regarding the '613 Application and refused registration with respect to International Class 6 pursuant to Lanham Act §2(d) due to a likelihood of confusion with the Canpak Marks (but did not refuse registration in International Class 42⁶).⁷

Critically for this motion, Petitioner did not claim that it had made actual use of its CANPACK marks prior to the filing of its applications. Neither application claimed actual use / Section 1(a) as a filing basis. Rather, the applications were based on an intent to use the mark in U.S. commerce and/or international rights deriving from Section 44(E) or 66(A).

LEGAL STANDARD

The Federal Rules of Civil Procedure are generally applicable in proceedings before the Board. TBMP § 101.02. This includes Fed. R. Civ. P. Rule 12(b)(6), which permits a party to assert the defense of failure to state a claim upon which relief can be granted by way of motion to dismiss as the initial response to a pleading. *See* TBMP § 503. In assessing a motion to dismiss, the Board must accept as true all well-pleaded allegations, and must construe the complaint in the light most favorable to the Petitioner. *See Advanced Cardiovascular Sys. Inc. v.*

⁵ <http://tmsearch.uspto.gov/bin/showfield?f=doc&state=4801:0q79j3.3.2>

⁶ Registrant reserves all rights in this regard.

⁷ *See* <https://tsdr.uspto.gov/documentviewer?caseId=sn79297613&docId=MOC20210315175049#docIndex=0&page=1>

SciMed Life Sys. Inc., 988 F.2d 1157, 26 USPQ2d 1038, 1041 (Fed. Cir. 1993). A motion to dismiss under Rule 12(b)(6) is a test of the sufficiency of a complaint. *Id.*; *see also NSM Research Corp. v. Microsoft Corp.*, 113 USPQ2d 1029, 1032 (TTAB 2014). The allegations in petition seeking cancellation must “include enough detail to give the defendant fair notice of the basis for each claim.” *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 554, 570 (2007). A party must allege sufficient facts beyond “naked assertion[s]” devoid of “further factual enhancement” to support its claims. *Id.* at 557. A plaintiff must allege well-pleaded factual matter and more than “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,” to state a claim plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007); Fed. R. Civ. P. 8(a)(2).

In addition to the four corners of a petition, the Board may consider certain objective, verifiable facts available from Office records under a motion to dismiss, such as the filing date, filing basis, priority date, publication date and applicant’s name in an application that is the subject of a TTAB proceeding. *See Compagnie Gervais Danone v. Precision Formulations LLC*, 89 USPQ2d 1251, 1256 & n.8 (TTAB 2009) (“These are facts not subject to proof, and the Board may look to Office records for such facts to determine if a party's allegations are well pleaded”).

Further, Fed. R. Civ. P. Rule 9(b) applies to allegations of fraud, mandating “that the pleadings contain explicit rather than implied expression of the circumstances constituting fraud.” *Societe Coop. Vigneronne Des Grandes Caves Richon-Le-Zion & Zicron-Jacob Ltd.*, No. 91190040, 2009 WL 10194584, at *2 (Sept. 20, 2009) (citation omitted) (rejecting counterclaim for cancellation on the basis of fraud for failure to make specific allegations as required by Rule 9(b)). “Pleadings of fraud made ‘on information and belief’ where there is no separate indication

that the pleader has actual knowledge of the facts supporting a claim of fraud also are insufficient.” *Id. Societe Coop. Vigneronne Des Grandes Caves Richon-Le-Zion & Zicron-Jacob Ltd.*, No. 91190040, 2009 WL 10194584, at *2 (Sept. 20, 2009) (quoting *in re Bose Corp.*, 580 F.3d 1240, 1244 (Fed. Cir. 2009).

In addition, the Board has held that, despite language in the rule that appears to permit scienter to be plead generally, the particularity requirement extends to pleading the element of scienter. *See Bose*, 580 F.3d at 1245 (reversing Board’s decision cancelling trademark in its entirety).

LEGAL ARGUMENT

POINT I

PETITIONER CANNOT ESTABLISH PRIORITY AS A MATTER OF LAW

Count IV of the Petition seeks to cancel the Canpak ‘312 Mark based on alleged claims of priority. Petitioner, however, makes no allegations that actually establish priority sufficient to prevail. In this regard, Petitioner’s pleadings are either poorly drafted or intentionally misleading. At Paragraph 19 of the Petition, Petitioner pleads that it is using its mark “in commerce **in the United States**” without alleging a date of first use in the United States. (emphasis added). Absent an alleged date of first use earlier than Registrant’s date of first use, this allegation does not establish priority. At Paragraph 21 of the Petition, Petitioner pleads that its “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...” Conspicuously absent from this paragraph, however, is an allegation that any of the purported “long prior use” occurred in the United States. Even assuming Petitioner made use of its mark outside of the United States prior to the time Registrant first used its mark in the United States,

Petitioner has not alleged the type of “priority” sufficient to cancel the Canpak ‘312 Mark. However artful, or misleading, this pleading may be, it is insufficient to make out a claim of priority because it does not claim prior use in U.S. commerce.

To succeed on a claim of priority based on actual use, Petitioner would need to plead (and eventually prove) that it made use of its asserted mark in United States commerce prior to the time Registrant made use of its mark in United States commerce. Petitioner has not so pled. Based on the facts as can be known at this time from information the Board may properly consider on a Rule 12(b)(6) motion, it is not surprising that Petitioner has not alleged prior actual use in U.S. commerce. As noted above, Petitioner is a foreign (Polish) entity. It owns no U.S. registrations for the CANPACK mark. And Petitioner did not claim actual use in U.S. commerce as a filing basis for either of its marks. Thus, to the extent Petitioner’s claim of priority is based on alleged prior actual use in U.S. commerce, the claim fails as a matter of law because Petitioner has not pled any such priority.

Though not explicitly pled, Petitioner may be alleging priority based on a priority date that may be afforded to it by its Sections 44(E) and 66(A) filing bases. But an analysis of the details of Petitioner’s applications reveals that it is either not entitled to any claim of priority or that the priority date is not earlier enough to pre-date Registrant’s rights. Indeed, as discussed further below, Petitioner failed to file U.S. applications for its proposed marks within the required six months following its foreign applications—instead waiting years—and as a direct result its U.S. applications do not get backdated. Moreover, even if Petitioner could take advantage of the earlier, foreign filing dates, those dates would not be early enough to precede Registrant’s application and registrations. Finally, we note that the nature of Petitioner’s applications—both based on an “intent to use”—demonstrate that, at the time it filed its U.S.

applications, it was not using the proposed marks in the United States.⁸ Thus, Petitioner cannot demonstrate any prior use that actually preceded the use by Registrant.

Thus, as a matter of law, Petitioner cannot establish priority and Count IV must be dismissed.

A. Petitioner Failed to Timely file its U.S. Applications

Petitioner filed its '021 Application on July 15, 2020 pursuant to Lanham Act §1(b) and §44(e) (15 U.S.C. § 1051(b) and 15 U.S.C. 1126(e), respectively).⁹ An applicant who files pursuant to Section 44(e) and satisfies certain criteria set forth in Section 44(d) may claim priority from a registration in a foreign country by “backdating” the U.S. application to the earlier date of the foreign trademark application. However, to take advantage of the earlier date, the applicant must file its U.S. application within six months from the date on which the application was first filed in the foreign country. 15 U.S.C. § 1126(d)(1).

Here, the Office’s records reflect that Petitioner is relying on a foreign registration granted in the foreign jurisdiction on December 18, 2017¹⁰, which means that the foreign application was filed before then. Using the later, foreign registration date, Petitioner needed to file its application by June 18, 2018. Its U.S. application, filed on July 15, 2020, came too late. Having failed to timely file its U.S. application, Petitioner is stuck with July 15, 2020 as the operative application date. Both of Registrant’s Canpak Marks were filed pursuant to §1(a) well in advance of that date, claiming dates of first use prior to filing. As such, they take priority.

⁸ We note that, notwithstanding Petitioner’s tacit admission that it was not using its proposed marks at the time it filed its U.S. applications, Petitioner alleges that it is currently using its proposed mark in commerce in the United States (*see* Petition at ¶19). If true, Petitioner is admittedly infringing upon Registrant’s Canpak Marks, and Registrant reserves all rights and remedies in that regard.

⁹ *See*

<https://tsdr.uspto.gov/documentviewer?caseId=sn90054021&docId=APP20200718084705#docIndex=5&page=1>

¹⁰ *Id.*

Petitioner's claim of priority regarding its '613 Application fares no better. That application was filed on October 2, 2020 pursuant to Lanham Act §66(a) (15 U.S.C. §1141f(a)).¹¹ As succinctly explained in the Trademark Manual of Examination Procedure (TMEP) § 1904(B): "If a request for extension of protection of an international registration to the United States is made in an international application, the filing date of the §66(a) application is the international registration date. If a request for extension of protection to the United States is made in a subsequent designation, the filing date of the §66(a) application is the date on which the subsequent designation was recorded by the IB. 15 U.S.C. §1141f(b); 37 C.F.R. §7.26."

With respect to priority, the TMEP § 1904.01 explains:

To be eligible for a claim of priority in a §66(a) application, the holder must file the request for extension of protection to the United States within 6 months of the date of the filing that forms the basis of the priority claim. If the United States is designated for an extension of protection in an international application, the international registration date cannot be later than 6 months after the date of the filing that formed the basis of the priority claim. If a request for extension of protection to the United States is made in a subsequent designation, the date of recordal of the subsequent designation cannot be later than 6 months after the date of the filing that formed the basis of the priority claim. The USPTO's electronic systems use the dates provided in the international registration to automatically calculate whether an application receives the benefit of a priority claim. If the "Priority Claimed" field indicates "YES," the "Priority Claimed Date" is to be treated as the effective filing date. See TMEP §206.02 for information on claiming priority under §67, 15 U.S.C. §1141g. If the "Priority Claimed" field indicates "NO," this means the priority claim is outside the 6-month filing date that forms the basis of the priority claim, even if priority information is included in the §66(a) application. If otherwise issuing an Office action, an advisory may be included to notify the applicant that their priority claim will not be honored. However, the advisory is not necessary if the application is in condition for publication upon initial examination.

Here, the Office's records reflect that Petitioner is relying on a base registration applied for on August 28, 2017 and registered on December 14, 2017, and a subsequent international

¹¹ See

<https://tsdr.uspto.gov/documentviewer?caseId=sn79297613&docId=APP20201105170837#docIndex=7&page=1>

registration dated January 10, 2020 and recorded on October 19, 2020.¹² Registrant's Canpak '312 Mark registered on September 6, 2016, based on an application filed May 11, 2015 and claiming a date of first use of November 1, 1996. Accordingly, even if Petitioner could claim priority all the way back to the August 28, 2017 filing date of its base application, it does not have priority.

In order to have priority, Canpack would need to claim a date prior to November 1, 1996. *See Lucent Info. Mgmt., Inc. v. Lucent Techs., Inc.*, 186 F.3d 311, 315 (3d Cir. 1999) (“[applicant] has priority over anyone using the mark after [the application] date unless the person earlier used the mark”); *Person's Co., Ltd. v. Christman*, 900 F.2d 1565, 1572 (Fed. Cir. 1990) (affirming Board's decision to, among other things, deny cancellation of Christman's registration of the trademark for the “Person's” clothing brand name because Christman was the first to use the mark in U.S. commerce).

In short, Petitioner's 2017 foreign applications come more than a decade too late.

B. Petitioner Concedes that Registrant's Use of the Canpak Marks Precedes its Use of its Proposed Marks

The Lanham Act sections upon which Petitioner relies—§1(b) for its '021 Application and §66(a) for its '613 Application—are both based on a bona fide intent to use. By filing its applications under those sections, Petitioner tacitly admits that it was not using the proposed marks at the time it filed the applications. Those admission run contrary to Petitioner's allegation, set forth in Paragraph 19 of the Petition, that it is presently using the proposed marks in commerce in the United States. In other words, assuming the allegations to be true for purposes of a motion to dismiss, Petitioner only started using its proposed marks in the United

¹² *Id.*

States at some point during the three months after it filed the ‘613 Application on October 2, 2020 and before it filed the Petition on January 29, 2021.

As discussed above, Registrant’s application for the ‘312 Mark was based on actual use in commerce since at least as early as November 1, 1996—*i.e.*, 24 years before Petitioner’s apparent use of its infringing mark—and such use continues. Thus, Petitioner can in no way claim priority. *See Lucent Info. Mgmt., supra* at 315; *Person’s*, 900 F.2d at 1572.

POINT II

THE PETITION FAILS TO STATE A CLAIM FOR FRAUD

A third party may petition to cancel a registered trademark on the ground that the “registration was obtained fraudulently.” 15 U.S.C. § 1064(3). “[A] trademark is obtained fraudulently under the Lanham Act only if the applicant or registrant knowingly makes a false, material representation with the intent to deceive the PTO.” *In re Bose Corp.*, 580 F.3d 1240, 1245 (Fed. Cir. 2009) (emphasis added). A party seeking cancellation of a trademark registration for fraudulent procurement bears a heavy burden of proof. *W.D. Byron & Sons, Inc. v. Stein Bros. Mfg. Co.*, 54 C.C.P.A. 1442, 377 F.2d 1001, 1004 (1967). Indeed, “the very nature of the charge of fraud requires that it be proven ‘to the hilt’ with clear and convincing evidence. There is no room for speculation, inference or surmise and, obviously, any doubt must be resolved against the charging party.” *Smith Int’l, Inc. v. Olin Corp.*, 209 USPQ 1033, 1044 (T.T.A.B.1981).

Pursuant to Fed. R. Civ. P. Rule 9(b), to adequately state a claim for fraud, “a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person’s mind may be alleged generally.” Although the second sentence of that rule appears to state that there is no need to make particularized

allegations as to state of mind when making a claim of fraud, the Federal Circuit has held otherwise vis-à-vis proceedings before the Board. In *In Re Bose Corp.*, 580 F.3d 1240 (Fed. Cir. 2009), the Federal Circuit rejected the “should have known” standard, which the Board had previously adopted in *Medinol Limited v. Neuro Vasx, Inc.*, 67 USPQ2d 1205 (TTAB 2003). That standard, according to the Federal Circuit, constituted mere negligence and did not rise to the level of fraud. Rather, fraud requires a showing of “subjective intent to deceive.” *Bose*, 580 F.3d at 1245 (reversing Board’s decision cancelling trademark in its entirety).

Relying on *Bose*, the Board has made clear that Rule 9(b) “requires that the pleadings contain explicit rather than implied expression of the circumstances constituting fraud.” *Societe Coop. Vigneronne Des Grandes Caves Richon-Le-Zion & Zicron-Jacob Ltd.*, No. 91190040, 2009 WL 10194584, at *2 (Sept. 20, 2009) (citation omitted) (rejecting counterclaim for cancellation on the basis of fraud for failure to make specific allegations as required by Rule 9(b)). Further, the Board has stated that it “will not approve pleadings of fraud which rest solely on allegations that the trademark applicant made material representations of fact in its declaration which it ‘knew or should have known’ to be false or misleading.” *Id.* (quoting *Bose*, 580 F.3d at 1244). Finally, the Board stated that “[p]leadings of fraud made ‘on information and belief’ where there is no separate indication that the pleader has actual knowledge of the facts supporting a claim of fraud also are insufficient.” *Id.*

That is exactly what Petitioner has presented to the Board here—a Petition containing barebones allegations that are, in effect, all made upon information and belief without any actual knowledge of the facts to support a claim of fraud. First, Petitioner alleges, without any support, that Registrant was not using the Canpak Marks when it filed its application on May 11, 2015. (See Petition, ¶4). There are no further allegations that would indicate that Petitioner had any

actual knowledge as to whether or not Registrant was using the Canpak Marks at the time it filed its application. Noticeably, Petitioner does not attack the legitimacy of any of the specimens presented to the Office in connection with its application (in any event, such specimens were in fact legitimate). *See Marshall Field & Co. v. Mrs. Fields Cookies*, 11 USPQ2d 1355, 1358–59 (TTAB 1989)

Second, Petitioner fails to offer any specifics regarding Registrant’s knowledge of the alleged falsity and an intent to deceive. Instead, Petitioner just writes the words “intent to deceive” (Petition, ¶8). Such parroting of the element of fraud is not sufficient to state a claim for fraud pursuant to Fed. R. Civ. P. Rule 9(b) and *Bose*. Nor is it sufficient to satisfy the Board’s pronouncement in *Societe Coop Vigneronne* that pleadings contain explicit expressions of the circumstances constituting fraud.

Accordingly, due to Petitioner’s failure to meet the pleading requirements set forth in Fed. R. Civ. P. Rule 9(b), Count I of the Petition must be dismissed.

POINT III

THE PETITION FAILS TO STATE A CLAIM FOR NON-USE AND ABANDONMENT

A. Petitioner’s Threadbare Notice Pleading is Insufficient to State a Claim for Non-Use and Abandonment

The Supreme Court has made clear that a complaint must allege more than “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,” to state a claim plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). Yet, that is exactly what Petitioner submits to the Board as its purported claims of Non-Use (Count II) and Abandonment (Count III).

For its claim of non-use, Petitioner relies on one allegation that Registrant was not using the '312 Mark at the time it filed its application therefor in 2015. (*See* Petition ¶¶13.) Similarly, Petitioner's claim of abandonment is comprised of two threadbare allegations parroting the elements of such a claim: that Registrant has not used the '312 Mark and that of its "non-use and/or discontinuance of use...was with the intent not to resume use." (*Id.* at ¶¶15-¶16.) Accordingly, such claims are inadequately pleaded and fail to state a claim.

B. If the Board Dismisses Petitioner's Priority and Likelihood of Confusion Claim (Count IV), Petitioner Would Lack Standing to Assert Counts I, II and III, as Pled

In order to have standing to seek the cancellation of another party's trademark, a petitioner must "allege facts sufficient to show a 'real interest' in the proceeding, and a 'reasonable basis' for its belief that it would suffer some kind of damage if the mark is registered." TBMP §309.03(b). Moreover, "[t]o plead a 'real interest,' plaintiff must allege a 'direct and personal stake' in the outcome of the proceeding." *Id.* Here, if the Board dismisses Petitioner's claim for priority and likelihood of confusion (Count III), the Petition will not be able to meet that standard.

As discussed above, Counts I, II and III contain nothing more than mere recitals of the elements of the respective claims. There is no separate fact section applicable to the entirety of the Petition nor any statement and/or allegation that repeats, realleges, incorporates by reference, reference, and/or similar, the preceding allegations. The only allegations that would establish standing are encapsulated within Petitioner's Count IV, comprised of Paragraphs 19-28. Accordingly, if the Board dismisses Count IV of the Petition, the Petition would lack any allegations supporting Petitioner's standing to assert Counts I, II and III. Accordingly, if the Board dismisses Count IV, Counts I, II, III must also be dismissed.

CONCLUSION

For the reasons set forth herein, Registrant Champion Container Corporation respectfully submits that the Board should dismiss the Petition with prejudice.

Respectfully submitted,

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*Attorneys for Registrant Champion Container
Corporation*

By: /s/Jordan D. Weinreich
JORDAN D. WEINREICH

Dated: March 29, 2021

CERTIFICATION OF SERVICE

I hereby certify that a true and complete copy of the foregoing Memorandum Of Law in support of Registrant's Motion to Dismiss the Petition pursuant to Fed. R. Civ. P. 12(b)(6) has been served on Bassam N. Ibrahim, Esq., counsel for Petitioner Canpack, S.A. by forwarding said copy on March 29, 2021 via email to bassam.ibrahim@bipc.com.

Dated: March 29, 2021

/s/Jordan D. Weinreich
JORDAN D. WEINREICH