

ESTTA Tracking number: **ESTTA1254429**

Filing date: **12/15/2022**

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	Peaks & Poles, LLC		
Entity	Limited Liability Company	Citizenship	Oregon
Address	PO BOX 3394 JACKSON, NY 83001 UNITED STATES		
Attorney information	MATTHEW HINTZ LOWENSTEIN SANDLER LLP ONE LOWENSTEIN DRIVE ROSELAND, NJ 07068 UNITED STATES Primary email: lstrademark@lowenstein.com 9735972500		
Docket no.	42587.2		

Registration subject to cancellation

Registration no.	6695433	Registration date	04/05/2022
Register	Principal		
Registrant	Standard Process Inc. 1200 WEST ROYAL LEE DRIVE PALMYRA, WI 53156 UNITED STATES		

Goods/services subject to cancellation

Class 005. First Use: Dec 4, 2020 First Use In Commerce: Dec 4, 2020 All goods and services in the class are subject to cancellation, namely: Dietary supplements; Nutritional supplements; Nutritional supplement energy bars

Grounds for cancellation

Registrant not rightful owner of mark for identified goods or services	Trademark Act Sections 14(1) and 1
False suggestion of a connection with persons, living or dead, institutions, beliefs, or national symbols	Trademark Act Sections 14(3) and 2(a)

Attachments	Petition to Cancel Reg No 6695433 POSSIBLE.PDF(300404 bytes)
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Signature	/Matthew Hintz/
Name	Matthew P. Hintz, Esq.
Date	12/15/2022

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

PEAKS & POLES, LLC,
Petitioner,

v.

STANDARD PROCESS, INC.,
Respondent.

Cancellation No. _____

Mark: POSSIBLE

Reg. No. 6695433

Issued: April 5, 2022

PETITION FOR CANCELLATION

Peaks & Poles, LLC (“Petitioner”), an Oregon limited liability company, with a place of business at PO Box 3394, Jackson, NY 83001, believes it will be damaged by Standard Process, Inc.’s (“Respondent”) continued registration of Registration No. 6695433 to the mark POSSIBLE in connection with “Dietary supplements; Nutritional supplements; Nutritional supplement energy bars” in Class 5 (the “Respondent Registration”), and hereby petitions for cancellation on grounds of false association and non-ownership to 15 U.S.C. § 1064, Trademark Act of 1946, § 14.

The grounds for the cancellation are:

1. Colin O’Brady is a world-famous endurance athlete. O’Brady is a ten-time world record holder and New York Times best-selling author famous for, among many other accomplishments, making the world’s first solo, unsupported and human-powered trek across Antarctica.

2. O’Brady and Jenna Besaw worked together to secure sponsorships to support O’Brady’s professional athletic career. They developed a brand around O’Brady’s ability to overcome obstacles to achieve success through hard work and healthy living and utilized

innovative social media and other marketing strategies to promote the sponsors they worked with. For example, O’Brady and Besaw photographed O’Brady with sponsors’ products at various international locations he competed in as an endurance athlete, such as the summit of the seven tallest mountains in the world, which he climbed in world record time during the so-called “Explorer’s Grand Slam,” and at the North and South Poles. O’Brady and Besaw posted O’Brady’s explanations of how he used the products to improve performance and recover from them. O’Brady and Besaw’s vision led to collaborations with major brands such as Nike and Columbia Sportswear, and appearances in major national and international publications, including the Washington Post, Forbes, New York Times, BBC, USA Today and many more.

3. O’Brady and Besaw founded Petitioner in 2015 to, among other business activities, leverage O’Brady’s singular accomplishments to promote and monetize goods, services, events, publishing, brand marketing, speaking, media production under the POSSIBLE mark.

4. As O’Brady and Besaw’s marketing strategies became more and more sophisticated, their work crystallized in or about 2016 into their POSSIBLE mark and associated lifestyle brand, where what was “POSSIBLE” was at the core of Claimants’ marketing. For instance, O’Brady signed every Instagram post to his over 250,000 followers with the hashtag “BePossible.” He focused on the power of the “POSSIBLE” in his brand stories. He also delivered a TEDx talk (with more than three million views) focusing on the “POSSIBLE Mindset,” a concept of his bestselling book, as well as his paid keynote speeches of which he regularly delivers to Fortune 500 companies and universities.

5. In late 2017, O’Brady was determined to become the first person to walk solo, unsupported and human-powered across Antarctica, which O’Brady and Besaw marketed to

sponsors under their POSSIBLE brand, referring to the adventure as “The Impossible First” expedition.

6. At about that same time, an acquaintance suggested that O’Brady, who was frequently sought after for paid speaking engagements, would be a good fit to address Respondent’s national sales conference in February 2018. Respondent agreed and hired him.

7. O’Brady traveled to Respondent’s Wisconsin headquarters in March 2018 to present a collaboration plan. The meeting resulted in a sponsorship agreement. Among other things, O’Brady offered Respondent the opportunity to participate as a sponsor of “The Impossible First” expedition with Respondent’s logos featured on O’Brady’s equipment.

8. Additionally, O’Brady proposed that Respondent develop a custom whole food nutrition bar for him to be based on O’Brady’s biometrics, blood work, and nutritional needs. This would be O’Brady’s primary source of nutrition in Antarctica. This bar was dubbed the “Colin Bar.”

9. O’Brady used the Colin Bar in Antarctica to promote Respondent. During his trek, O’Brady repeatedly posted about Respondent’s involvement, signing his posts with his personal brand’s catchphrase “BePossible” hashtag.

10. On December 26, 2018, O’Brady completed his historic solo Antarctic crossing, creating a massive response and global acclaim. He garnered over two billion earned media impressions worldwide, earning coverage in all major media outlets including The New York Times, BBC, NBC, TODAY Show, CBS, FOX, CNN, and many others.

11. O’Brady and Besaw saw an opportunity. Their POSSIBLE brand had grown considerably after “The Impossible First” expedition. Given their vast media reach, O’Brady and Besaw knew they could market and sell a food product like the Colin Bar under their

POSSIBLE brand directly to consumers. Their followers were asking for it. O’Brady and Besaw had a vision for a healthy food product line beyond just a single meal bar: a new nutrition brand that would include nutrition bars, protein powders, and more. Given the positive working dynamic with Respondent, O’Brady and Besaw presented this idea to Respondent in the fall of 2019 to gauge their interest in future collaboration.

12. On October 10, 2019, after reviewing the proposal of O’Brady and Besaw’s vision, Respondent responded in a voicemail with effusive enthusiasm. On November 26, 2019, O’Brady and Respondent entered into a Personal Services Agreement. This agreement expressly did not convey any intellectual rights between the parties, including any rights related to Petitioner’s POSSIBLE mark.

13. Nine months later, without any consultation with O’Brady or Besaw, Respondent presented O’Brady and Besaw with a prototype bar and some potential marketing strategies. Based on their experience with their target consumers and their knowledge of performance nutrition products, O’Brady and Besaw knew this approach would fail with the target demographic. In addition, the prototype bar did not taste good, was too caloric for consumer use, and was unlikely to sell successfully to the target demographic.

14. In November 2020, O’Brady and Besaw shared with Respondent their vision for their POSSIBLE nutrition line – a new food brand, distinctly different from anything Respondent had created before, utilizing O’Brady’s market-proven POSSIBLE mark, with a modern look and feel. This would be marketed primarily direct to consumers, outside the scope of Respondent’s traditional sales and marketing channels. Additionally, during this meeting, O’Brady and Besaw proposed financial terms for their vision and long term “joint venture.”

15. On November 24, 2020, Respondent filed application Ser. No. 90339106 to the mark POSSIBLE in collection with “Dietary supplements; Nutritional supplements; Nutritional supplement energy bars” in Class 5 (the “POSSIBLE Mark”) on Section 1(b) of the Trademark Act, based on Respondent’s bona fide intent to use the mark in commerce under with the United States Patent and Trademark Office (“USPTO”). Respondent filed the application to the POSSIBLE mark without O’Brady, Besaw, or Petitioner’s knowledge, permission, or consent.

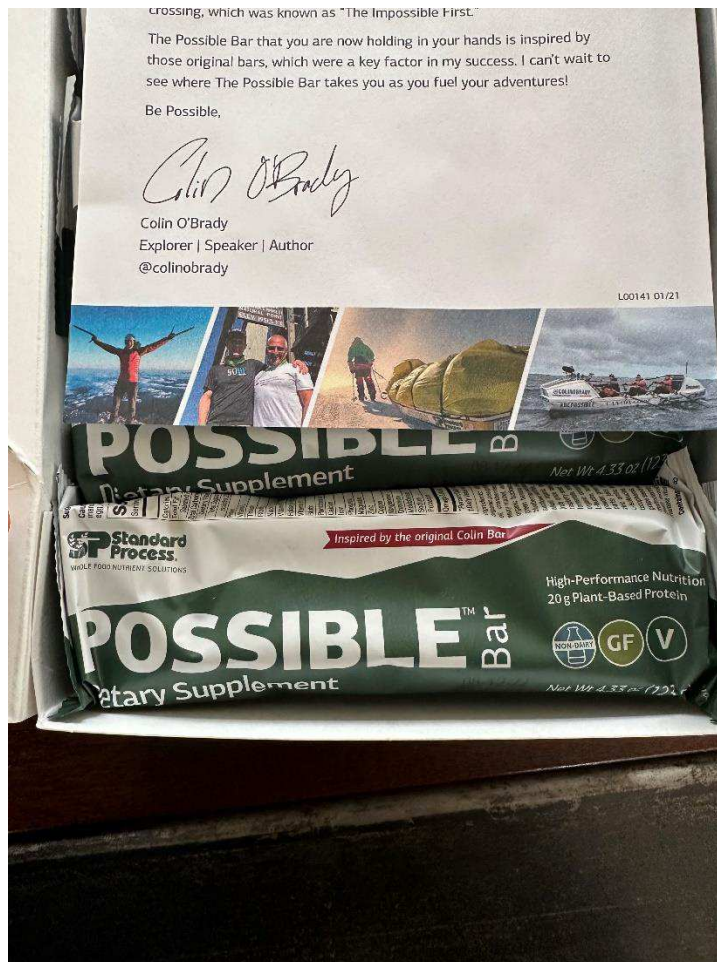
16. By early December 2020, on their own initiative, O’Brady and Besaw had developed the creative design and specific look and feel for the food and nutrition products under the POSSIBLE mark through, among other things, developing a logo and brand story for the POSSIBLE nutrition brand, purchasing domain names like possiblebar.com and possibleprotein.com, developing marketing tactics, such as hype marketing and limited releases, and created marketing strategies, and conducting market research to figure out a marketing and media budget for the POSSIBLE product launch. Some of Petitioner’s work on the POSSIBLE products was included in their November 2020 and December 2020 presentations to Respondent.

17. On December 3, 2020, Respondent and O’Brady discussed potential terms for a written agreement to develop POSSIBLE nutritional products. Among other things, Respondent proposed owning all of the intellectual property associated with the POSSIBLE mark. O’Brady and Besaw expressly rejected this. As they saw it, Respondent’s primary role would be providing manufacturing and distribution, while O’Brady and Besaw would bring their POSSIBLE brand, their expertise in endurance sports and adventure nutrition products, their marketing plan, and their access to top national media platforms to drive sales via earned media and O’Brady’s likeness.

18. Following Petitioner’s December 2020 presentations to Respondent, and in light of additional discussions, Petitioner and Respondent executed the term sheet on December 18, 2020. The term sheet did not convey any intellectual property, demonstrating the mutual understanding that Petitioner would retain ownership in and to the POSSIBLE mark.

19. In December 2020, Standard Process announced the limited release of the “Possible Bar,” stating that the bar was the product of collaboration with O’Brady and known as the “Colin Bar” during his Antarctica crossing.

20. The packaging of the limited release of the “Possible Bar” included the statement “Inspired by the original Colin Bar” and a signed letter from O’Brady:



21. Starting in the fall of 2019 to the fall of 2020, O’Brady and Besaw sought to expand their POSSIBLE goods into an organic, plant-based suite of food and nutrition products, inclusive of energy bars, protein powders, supergreens drinks, and more, marketed initially direct-to-consumer before expanding to traditional retail channels.

22. On January 1, 2021, Petitioner, on behalf of O’Brady and Besaw, entered into a Product Marketing Agreement (“Agreement”) with Respondent related to the development of Petitioner’s the food and nutrition products under the POSSIBLE mark.

23. Prior to entering into the Agreement, based on years of successfully monetizing their POSSIBLE mark based upon O’Brady’s accomplishments, Petitioner had already created a business plan for the POSSIBLE goods, including detailed marketing and branding strategies at the most granular level, such as the logo, packaging, and product design for use of the POSSIBLE mark on food and nutrition products.

24. Petitioner (nor O’Brady or Besaw) conveyed no rights in the POSSIBLE mark to Respondent. As of the date of the Agreement, Petitioner had owned and used the POSSIBLE mark for years and the public associated the POSSIBLE mark with O’Brady and Petitioner.

25. Petitioner performed all of its obligations under the Agreement, working collaboratively with Respondent. Respondent’s President and CEO was consistently effusive in his praise of Petitioner’s work; indeed, Mr. DuBois told O’Brady and Besaw, in sum and substance, that Respondent entered into the Agreement because of Petitioner’s proven success with their POSSIBLE mark.

26. In or about September 2021, Respondent staffed a junior employee with broad responsibility and oversight over the entire POSSIBLE product line, despite having little to no formal work experience in direct-to-consumer marketing, brand development, go-to market

launch strategy for new products, supply chain management, research and development for food products, or oversight for a business unit of this scale. Nevertheless, Petitioner continued to work diligently to develop the food and nutrition products under the POSSIBLE mark.

27. On January 10, 2022, Respondent’s counsel filed and submitted a Statement of Use asserting December 4, 2020, that the POSSIBLE Mark was in use in commerce at least as early as December 4, 2020. That date is before the parties even entered into the Agreement.

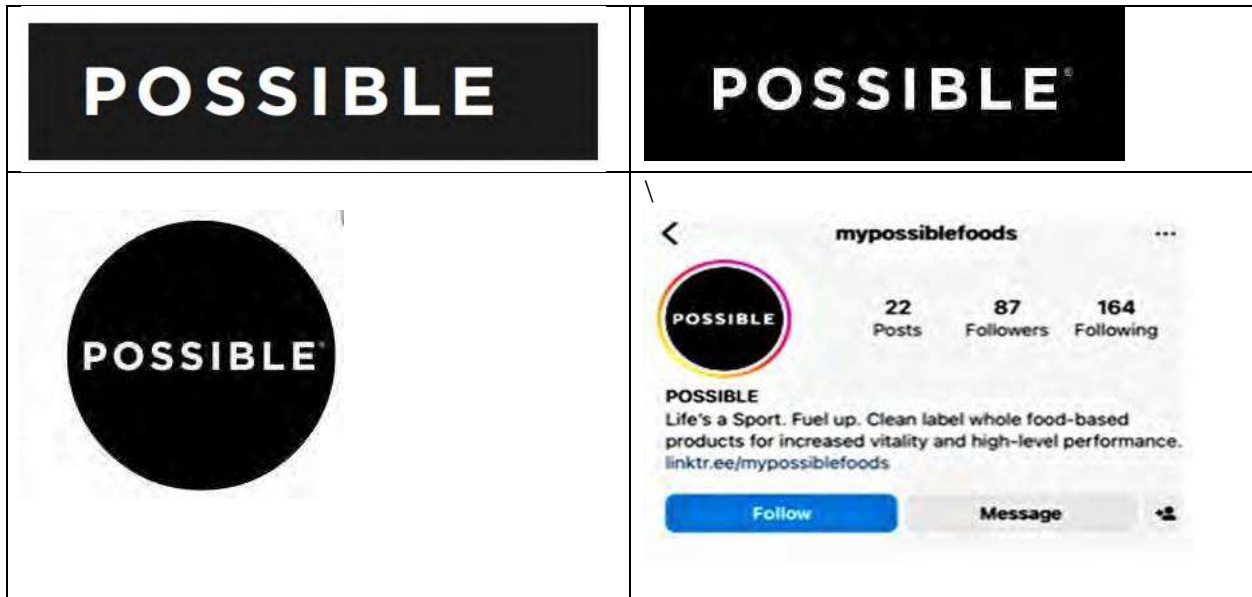
28. In light of Respondent’s personnel decision and delays in manufacturing, Petitioner wanted to ensure its core role for the food and nutrition products under the POSSIBLE mark was clear. On March 1, 2022, Respondent, Petitioner, O’Brady, and Besaw entered into a Designation of Title agreement, wherein Respondent acknowledged that O’Brady and Besaw were “co-founders” of the POSSIBLE brand. Nothing in this Designation of Title agreement changed the terms of the original Agreement.

29. On April 5, 2022, the USPTO, having accepted the Statement of Use, registered the POSSIBLE mark as Reg. No. 6695433.

30. On May 4, 2022, Respondent, without prior notice and absent any good cause, terminated the Agreement, purporting to cut Petitioner out of the development and profits from the food and nutrition products under the POSSIBLE mark.

31. Since terminating the Agreement, Respondent has continued to use the POSSIBLE Mark without Petitioner’s consent or permission. Respondent is using the mark in virtually identical stylization on its website and on its social media that Respondent presented to Respondent. By way of example, below are the logos created by Petitioner prior to the Agreement, as well as the logos in use by Respondent.

Presented by Petitioner to Respondent	Used by Respondent
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COUNT I: NON-OWNERSHIP

32. On information and belief, Respondent knew that Petitioner had rights in and to the POSSIBLE mark when Respondent filed its Statement of Use on January 10, 2022.

33. Accordingly, Respondent's Registration is void ab initio in connection as Registrant is not the rightful owner of the POSSIBLE Mark, and Respondent's Registration is subject to cancellation pursuant to 15 U.S.C. § 1064.

COUNT II: FALSE ASSOCIATION

34. Respondent's POSSIBLE Mark falsely suggests a connection with Colin O'Brady.

35. Registration of the POSSIBLE Mark in connect with the goods set forth in the registration violates Section 2(a) of the Lanham Act and Respondent's Registration is subject to cancellation pursuant to 15 U.S.C. § 1064.

WHEREFORE, Petitioner believes that it will be damaged by the continued registration of the POSSIBLE Mark, and requests that its cancellation be sustained and Respondent's Reg. No. 6695433 to be cancelled.

Dated: December 15, 2022

Respectfully submitted,
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