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

Proceeding no.	92082435
Party	Plaintiff Retrobrands America LLC
Correspondence address	JEFFREY KAPLAN RETROBRANDS AMERICA LLC POB 11106 FORT LAUDERDALE, FL 33339 UNITED STATES Primary email: Jeff@Retrobrands.net 954-203-3097
Submission	Motion to Amend Pleading/Amended Pleading
Filer's name	Jeffrey Kaplan
Filer's email	Jeff@Retrobrands.net
Signature	/Jeffrey Kaplan/
Date	06/16/2023
Attachments	Bain De Soleil Amended Petition to Cancel.pdf(233398 bytes)

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

In the matter of Trademark Registration No. 2233039
BAIN DE SOLEIL

Retrobrands America LLC.
POB 11106
Fort Lauderdale, Florida 33339

Cancellation No: 92082435

Petitioner,

v.

Bayer Healthcare LLC
100 Bayer Boulevard
Whippany, N. J. 07981

Respondent

AMENDED PETITION FOR CANCELLATION

The respondent in the Petition for Cancellation is incorrectly identified as Coppertone LLC. When Petitioner filed his Petition for Cancellation, the TSDR and TESS records incorrectly showed that entity as the owner. The assignment to Bayer was recorded with the Assignment Division on January 29, 2016 at Reel/Frame [5720/0657](#). The TSDR and TESS records did not update to reflect that Bayer is the current owner of record.

Pursuant to Fed. R. Civ. P. 15(a) and TBMP 507.02, a party may amend its pleading as a matter of course until the answer is filed. The amendment as a matter of course need not be accompanied by a motion for leave to amend; in any case, if necessary, the Respondent has consented to the amendment.

1. Retrobrands America LLC. (hereinafter the “Petitioner”) is a Florida Limited Liability Company with a business address at POB 11106 Fort Lauderdale, Florida 33339. To the best of Petitioner’s knowledge, Bayer Healthcare LLC, a company with a business

address of 100 Bayer Boulevard Whippany, N.J. 07981 (hereinafter the “Respondent”)

The Petitioner believes it is or will be damaged by Respondent’s U.S. Trademark Registration No. 2233039 for the mark **BAIN DE SOLEIL** for International Class 003 G & S: skin care preparations, namely, skin moisturizing lotions and gels.

2. The above-identified Petitioner believes that it is, or will be, damaged by the above identified registration, and hereby Petitions to Cancel the same. The grounds for this cancellation are as follows:

COUNT 1: FRAUD IN RESPONDENT’S COMBINED DECLARATION OF USE

A. Fraudulent Allegation of Use in Commerce

1. In regards to the mark **BAIN DE SOLEIL**, Respondent’s Combined Declaration of Use and/or Excusable Nonuse/Application for Renewal of Registration of a Mark under Sections 8 & 9, which was filed on March 8th 2019 contains the following statement: “Unless the owner has specifically claimed excusable nonuse, the mark is in use in commerce on or in connection with the goods/services or to indicate membership in the collective membership organization identified above, as evidenced by the attached specimen(s). Unless the owner has specifically claimed excusable nonuse, the specimen(s) shows the mark as currently used in commerce on or in connection with the goods/services/collective membership organization. The registrant requests that the registration be renewed for the goods/services/collective organization identified above. To the best of the signatory's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the allegations and other factual contentions made above have evidentiary support. The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and

that such willful false statements and the like may jeopardize the validity of this submission and the registration, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true”.

2. Respondent did not use the **BAIN DE SOLEIL** mark in connection with Respondent’s goods or services in commerce on or any time since March 8th 2019 the date specified by the Respondent in his Combined Declaration of Use filing.

3. Respondent made false statements as to the use of its mark in commerce with the intent to procure a renewal of its registration to which Respondent was not entitled, and Respondent was successful in procuring a favorable examination and a renewal of its registration to which Respondent was not entitled.

5. Respondent’s false statements were made willfully and knowingly. Respondent made knowing false statements as to the use of its mark in commerce with the intent to procure renewal of its registration to which Respondent was not entitled and Respondent was successful in procuring favorable examination and a renewal of its registration to which Respondent was not entitled.

B. Fraudulent Specimen of Use

1. Respondent attached as their specimen, a website image of an “expired” **BAIN DE SOLEIL** product which was being sold by a third party gray market seller on the internet and not being sold by the Respondent.

2. The alleged specimen of use filed on March 8th 2019 by the Respondent, was not being sold by the Respondent or by a Respondent related company, subsidiary, licensee, or predecessor in interest.

3. Respondent made the false statement as to the use of the specimen with the intent to procure a renewal of its registration which Respondent was not entitled and Respondent was successful in procuring a favorable examination, allowance, and a renewal of its registration which Respondent was not entitled.

4. Respondent's false statements were made knowingly. Respondent made knowing false statements as to the use of the specimen with the intent to procure a renewal of its registration to which Respondent was not entitled, and Respondent was successful in procuring favorable examination, allowance, and renewal of its registration which Respondent was not entitled.

ABANDONMENT UNDER SECTION 14(C) OF THE LANHAM ACT

1. On information and belief, Registrant has abandoned the mark **BAIN DE SOLEIL** Registration No. 2233039 by discontinuing use of the mark for a period of three (3) years or more with no intent to resume use.

2. Petitioner has been damaged by continuance of said registration because Petitioner intends use of the same or similar mark and will be impaired by the continued registration of said abandoned mark of Registrant.

3. Petitioner intends to use and register the mark **BAIN DE SOLEIL** for International Class 003 G&S: sunscreen preparations by virtue of U.S. Serial No. 97538605 filed on August 7th 2022.

4. On March 17th 2023 Petitioner's application for the mark **BAIN DE SOLEIL** U.S. Serial No. 97538605 was refused by the USPTO's examiner based on a likelihood of confusion with the Respondent's **BAIN DE SOLEIL** mark, U.S. Registration No. 2233039 under Trademark Act Section 2(d), 15 U.S.C. §1052(d)

5. Concurrent use and registration of the marks by the Respondent and Petitioner is likely to result in irreparable damage to Petitioner's reputation and good will if Petitioner claims ownership of the Petitioner's mark **BAIN DE SOLEIL** in U.S. Serial No. 97528605
6. Petitioner's application and Respondent's registrations are for identical marks and identify the same goods and classes, that the marks are used in connection with.
7. If the Respondent is permitted to retain the registration sought to be cancelled, a cloud would be placed on Petitioner's title in and to its trademark **BAIN DE SOLEIL**, and on its right to enjoy the free and exclusive use thereof in connection with the sale of its goods and services, all to the great injury of Petitioner.

WHEREFORE, Petitioner respectfully requests that its Amended Petition to Cancel be granted in its entirety and that the U.S. Trademark Registration No. 2233039 for the mark **BAIN DE SOLEIL** be cancelled accordingly.

Respectfully Submitted,

/Jeffrey Kaplan/
Retrobrands America LLC
Jeffrey Kaplan, President
POB 11106
Fort Lauderdale Florida 33339
(954) 203-3097
June 16th 2023

CERTIFICATE OF MAILING

It is hereby certified that the attached Amended Petition for Cancellation is being emailed to:

Lowenstein Sandler LLP
Attorneys For Respondent
Att: Mr. Matthew Hintz
MHintz@Lowenstein.com

Signed: /Jeffrey Kaplan/, Pres
June 16th 2023