

(Exhibits) TTAB

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

NUTRINOVA, INC.,
Petitioner,

v.

RIT-CHEM CO., INC.,
Respondent

Cancellation No. 29,630



07-27-2001

U.S. Patent & TMO/TM Mail Rcpt Dt. #73

Attorney Reference: C-18055

PETITIONER'S MOTION FOR LEAVE TO AMEND PETITION

Petitioner herein, NUTRINOVA, INC., through its counsel, respectfully moves this Board pursuant to Rule 2.115 of the Trademark Rules of Practice and Rule 15(a) of the Federal Rules of Civil Procedure for leave to amend the current Amended Petition for Cancellation to specifically include a claim of fraud in procurement of the registration at issue in this case by reason of Respondent having submitted an Allegation of Use for Intent- to-Use Application with Declaration based upon a token sale of goods bearing the trademark to qualify it for registration, contrary to the requirements of Lanham Act §45, 15 U. S. C. §1127. This Motion is supported by the accompanying Memorandum.

Dated: Middletown, New York,
July 24, 2001

Respectfully submitted,

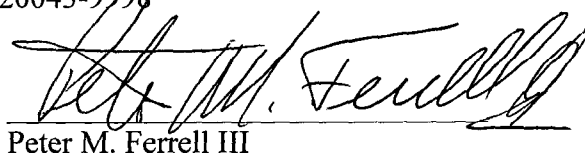
Peter M. Ferrell III
Attorney for Petitioner

Peter M. Ferrell III, Esq.
c/o Eileen T. Brown Associates LLC
90 Crystal Run Road, Suite 401
Middletown, New York 10941
Telephone: (914) 695-1661
Facsimile: (914) 695-1558

CERTIFICATE OF SERVICE

I hereby certify that true copies of the within PETITIONER'S MOTION FOR LEAVE TO AMEND PETITION and accompanying MEMORANDUM IN SUPPORT OF PETITIONER'S MOTION TO AMEND PETITION were served upon counsel for Respondent on this 24th day of July, 2001, by depositing same with the U. S. Postal Service as first-class mail, postage prepaid, in an envelope addressed to:

Theodore W. Atkinson, Esq.
VENABLE
P.O. Box 34385
Washington, D.C. 20043-9998



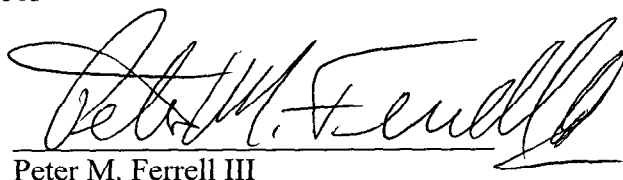
Peter M. Ferrell III

CERTIFICATE OF MAILING

I hereby certify that the foregoing PETITIONER'S MOTION FOR LEAVE TO AMEND PETITION with accompanying MEMORANDUM IN SUPPORT OF PETITIONER'S MOTION TO AMEND PETITION in Cancellation No. 29,630, is being deposited with the United States Postal Service with sufficient postage as First Class mail in an envelope addressed to:

Hon. Commissioner for Trademarks
ATT: Trademark Trial and Appeal Board
South Tower Building, 9th Floor
2900 Crystal Drive
Arlington, VA 22202

on July 24, 2001.



Peter M. Ferrell III

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

NUTRINOVA, INC.,

Petitioner,

v.

RIT-CHEM CO., INC.,

Respondent

Cancellation No. 29,630

SECOND AMENDED PETITION FOR CANCELLATION

Petitioner, NUTRINOVA, INC., a corporation duly organized and existing under the laws of the State of Delaware, having its principal office at 285 Davidson Avenue, Somerset, New Jersey 08873, believes that it is or will be damaged by Registration No. 2,196,690, and hereby petitions to cancel same through this Second Amended Petition for Cancellation amended to add a claim of fraud which has become known from the evidence developed through discovery of records and personnel of Respondent in this proceeding under the first Amended Petition for Cancellation.

Description of Respondent's Registration: Filed on June 6, 1997, for the mark **K ACE-K SWEETENER and Design**, registered on October 13, 1998 on the Principal Register, in class 1 for artificial sweetener; claiming first use on February 9, 1998; no claim is made to the exclusive right to use "SWEETENER" apart from the mark as shown.

As grounds for this Petition, it is alleged that:

1. Petitioner is a leading manufacturer, seller and distributor of acesulfame potassium, known in the trade as **ACE-K** and used as an artificial sweetener as stated in Respondent's description of goods in its trademark application.
2. Petitioner, for many years prior to Respondent's filing date and alleged date of first use, has used **ACE-K** in its generic sense, i.e., a customary and convenient abbreviation for acesulfame potassium. Furthermore, others in the trade have so used this term and Petitioner has successfully alleged in this proceeding that Respondent has no reasonable basis to allege sole, exclusive use of it for trademark purposes.
3. Petitioner is likely to be damaged by registration of the said generic term whether or not the exclusive right to its use is ultimately disclaimed of record, in that the commercial effect of said registration tends to impair Petitioner's right to legal use of **ACE-K** in the manufacture, sale and distribution of acesulfame potassium which is identical or closely related to Respondent's goods and to which Petitioner has a valid and legal right to refer by its common descriptive name.
4. Respondent's registration was obtained fraudulently in that in the formal application papers filed by Respondent under notice of 18 U.S.C. §1001 it was stated that Respondent believed that to the best of its knowledge no other person, firm, corporation or association had the right to use the mark

containing the undisclaimed generic term in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, to cause mistake or to deceive. Said statement was made by an authorized agent of Respondent with the knowledge and belief that said statement was false. Said false statement was made with the intent to induce authorized agents of the U. S. Patent and Trademark Office to grant said registration and, reasonably relying upon the truth of said false statements, the U. S. Patent and Trademark Office did, in fact, grant such registration to Respondent. Petitioner is damaged by said false statements and the registration issued in reliance thereon in that long prior to the filing date of the application for registration of Respondent's trademark containing undisclaimed generic matter and the alleged date of first use, Petitioner has continuously used the term **ACE-K** on or in connection with its acesulfame potassium goods and Petitioner's continued and legal use of the generic term is and will be impaired by the continued registration of said mark of Respondent.

5. Upon information and belief, Respondent's registration was obtained fraudulently in that in its Allegation of Use for Intent-to-Use Application, with Declaration dated May 26, 1998 Respondent states that the date of first use of its trademark in international commerce was February 9, 1998, whereas the sale of goods allegedly bearing the trademark on that date was

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.