



BULKY DOCUMENTS

(Exceeds 100 pages)

Filed: 2/08/2012

Title: PETITIONER'S NOTICE OF RELIANCE AND EXHIBITS A THROUGH P.

Part 1 of 1

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

TTAB

In the matter of Trademark Registration No. 792,115
For the Mark "ASPERGUM"

Jeffrey Kaplan

Cancellation No: 92053030

Petitioner,

v.

72205129

Insight Pharmaceuticals L.L.C.

Registrant

United States Patent and Trademark Office
Trademark Trial and Appeal Board
POB 1451
Alexandria, VA 22313

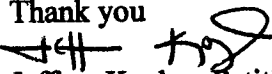
Feb. 6th 2012

Dear Commissioner:

We are submitting herewith for the record the enclosed documents:

- (a) Petitioner's Notice of Reliance with attached Exhibits A through P.
- (b) Declaration of Jeffrey Kaplan In Support of Petitioner's Trial Brief with attached Exhibits A through P.

Thank you


Jeffrey Kaplan, Petitioner
POB 11106
Ft Lauderdale, Fl. 33339

CERTIFICATE OF MAILING

It is hereby certified that this document is being deposited First Class Postage Prepaid with the U.S. Postal Service addressed to Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C. Att:Mr. Samuel Miller, Esq.- 211 Commerce Street # 800 Nashville, TN 37201.


Jeffrey Kaplan



02-08-2012

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_____ /

PETITIONER'S NOTICE OF RELIANCE

1. Pursuant to 37 CFR 2.120(j)(5), Petitioner Jeffrey Kaplan ("Kaplan") hereby introduces into evidence Registrant's Insight Pharmaceutical LLC ("Insight") First Set of Written Interrogatories to Registrant and Responses Thereto, dated March 24th 2011. The document is relevant on the issues of abandonment with no intent to resume use and specifically shows Prima Facie evidence that Insight has abandoned the ASPERGUM® trademark with no plans to resume use. A copy is hereby attached as Exhibit B.

2. Pursuant to 37 CFR 2.120(j)(3)(i), Petitioner Jeffrey Kaplan ("Kaplan") hereby introduces into evidence Registrant's Insight Pharmaceutical LLC ("Insight") First Set of Requests For Production of Documents and Things to Registrant and Responses Thereto, dated March 24th 2011. The document is relevant on the issues of abandonment with no intent to resume use and specifically shows Prima Facie evidence that Insight has abandoned the ASPERGUM® trademark with no plans to resume use. A copy is hereby attached as Exhibit C.

3. Pursuant to 37 CFR 2.120(j)(5), Petitioner Jeffrey Kaplan (“Kaplan”) hereby introduces into evidence Registrant’s Insight Pharmaceutical LLC (“Insight”) First Set of of Requests For Admissions to Registrant and Responses Thereto, dated March 22nd 2011. The document is relevant on the issues of abandonment with no intent to resume use and specifically shows Prima Facie evidence that Insight has abandoned the ASPERGUM® trademark with no plans to resume use. A copy is hereby attached as Exhibit D.

4. Pursuant to 37 CFR 2.122(d)(2) Kaplan hereby introduces into evidence Federal Trademark Registration his title copies for the marks Puss’ N Boots® Reg. No.4,089,070 for cat Food, Tegrin® Reg. No. 4,081,335 for medicated shampoo, Hai Karate® Reg. No. 4,010,208 for aftershave cologne, Hai Karate After Shave ® Reg. No. 4044298 for T-Shirts, Chipwich® Serial No. 85421384 for T-Shirts; Di-Gel® Reg. No. 4,029,805 for antacids, Chipwich® Reg. No. 4,062,133 for Ice Cream, Datriil® Reg. No.4010296 for analgesics, Mavi Power® Reg. No. 3,871,053 for energy drinks containing mavi extract, Tepache Power® Reg. No. 3,854,453 for energy drinks containing tepache extract, Mr. Q. Sparkling Gin® Reg. No. 3,891,044 for spirits, Mr. Q. Cumber® Reg. No. 3,849,496 for non-alcoholic beverage and Sparkling Cow® Reg. No. 3,800,225 for non- alcoholic beverages namely carbonated beverage. The documents are relevant on the issues regarding Kaplan’s Standing and Bona Fide Intent to Use the mark ASPERGUM when he filed his ITU Trademark Application. A copy is hereby attached as Exhibit A.

5. Pursuant to 37 CFR 2.122(b) and 37 CFR 2.122(e) Kaplan hereby introduces into evidence Kaplan’s partial file history for the application to register ASPERGUM for medicated chewing gum, Serial No. 85126700 which was refused registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d) based on likelihood of confusion with Insight’s involved registration.

The documents are relevant on the issues regarding Kaplan's Standing to Use the mark ASPERGUM when he filed his ITU Trademark Application. A copy is hereby attached as Exhibit O

6. Pursuant to TBMP 704.08(b) and 37 CFR § 2.122(e). regarding downloaded and printed internet materials Kaplan hereby introduces into evidence Insight's official web page at www.insightpharma.com dated December 14th 2010. The document is relevant on the issues of abandonment with no intent to resume use and specifically shows Prima Facie evidence that Insight has abandoned the ASPERGUM® trademark with no plans to resume use. No mention of the product ASPERGUM® is present on the Insight web page nor any mention of a future re-launch of ASPERGUM® is present on the web page. A copy is hereby attached as Exhibit E.

7. Pursuant to TBMP 704.08(b) and 37 CFR § 2.122(e). regarding downloaded and printed internet materials Kaplan hereby introduces into evidence an email between Kaplan and Insight dated September 9th 2010. The document is relevant on the issues of abandonment with no intent to resume use and specifically shows Prima Facie evidence that Insight has abandoned the ASPERGUM® trademark with no plans to resume use. A copy is hereby attached as Exhibit F.

8. Pursuant to TBMP 704.08(b) and 37 CFR § 2.122(e). regarding downloaded and printed internet materials Kaplan hereby introduces into evidence a web blog entitled Aspergum, Where to Buy dated December 14th 2010. The document is relevant on the issues of abandonment with no intent to resume use and specifically shows Prima Facie evidence that Insight has abandoned the ASPERGUM® trademark with no plans to resume use. A copy is hereby attached as Exhibit G.

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