

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

ORBIS DISTRIBUTION, INC. )

Plaintiff, )

v. )

BEE NATURALS, INC. )

Defendant. )

Cancellation No. 92057500 - 78368710

Reg. No. 3197276

**DEFENDANT'S COMBINED OPPOSITION TO PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT AND DEFENDANTS  
MOTION FOR SUMMARY JUDGMENT**

COMES NOW, Defendant, BeeNaturals, Inc., and opposing Plaintiff's Motion for Summary Judgment of Count I of the Petition and, further, pursuant to Rule 56 of the Federal Rules of Civil Procedure, hereby moves the Trademark Trial and Appeal Board for an order granting it summary judgment on Counts I and II of the petition and dismissing those counts on the ground that there are no genuine issues of material fact as to those Counts.

## INTRODUCTION

The facts are simple and straightforward: On December 29, 2006, unbeknownst to BeeNaturals, its corporate status was changed to “administratively dissolved” by the Missouri Secretary of State for failure to file an annual report. On July 12, 2013, Plaintiff filed the present cancellation proceeding claiming, *inter alia*, that the subject registration should be cancelled due to the administrative dissolution.

On April 29, 2014, the Missouri Secretary of State reinstated BeeNaturals’ corporate status, relating the reinstatement back to, and taking effect from, the date of the administrative dissolution. Under Missouri law, this change to corporate status has the effect of rescinding the dissolution and treating BeeNaturals as if the administrative dissolution had never occurred. Therefore, summary judgment on Count I is appropriate.

As a second basis for cancellation, in its petition Plaintiff noted that BeeNaturals’ corporate certificate recites “BeeNaturals, Inc.”, while the subject registration recites “Bee Naturals, Inc.” Defendant has sought, and been granted by the Board, correction of the registration to correct the typographical error contained on the registration certificate. Therefore, summary judgment on Count II of Plaintiff’s petition is appropriate

## UNDISPUTED FACTS

1. On December 29, 2006, Defendant BeeNaturals, Inc. was administratively dissolved for failure to file an annual report with the Missouri Secretary of State under the provisions for domestic corporations of Section 351.486, RSMo. See Exhibit A (dissolution notice).

2. On January 9, 2007, the U.S. Trademark Registration No. 3,197,276 for BEE NATURALS for “non-medicated skin care preparations; nail care preparations” was issued in the name of BeeNaturals, Inc. See Exhibit B (U.S. Trademark Registration No. 3,197,276).

3. On April 29, 2014, Missouri Secretary of State rescinded its order of dissolution and reinstated Defendant’s corporate status as the date of dissolution-- December 29, 2006. See Exhibit C (Certification of Rescission).

4. The Missouri Secretary of State rescinded the dissolution based upon its mandate under Missouri state law that recites: “When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business *as if the administrative dissolution had never occurred.*” See Exhibit D (Section 351.488.3, RSMo.)(emphasis supplied).

5. Correct of the typographical error on Defendant’s registration certificate was granted changed the certificate to recite “BeeNaturals, Inc.” rather than “Bee Naturals, Inc.” See Order of June 18, 2014.

## ARGUMENT

### I. The Law of Summary Judgment

Summary judgment is appropriate where "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "Where a movant has supported its motion with affidavits or other evidence, which, unopposed, would establish its right to judgment, the non-movant may not rest upon general denials in its pleadings or otherwise, but must proffer countering evidence sufficient to create a genuine factual dispute. A dispute is genuine only if, on the entirety of the record, a reasonable jury could resolve a factual matter in favor of the non-movant." *Sweats Fashions, Inc. v. Pannill Knitting Co.*, 833 F.2d 1560, 4 USPQ2d 1793, 1795 (Fed. Cir. 1987).

The party seeking cancellation of a registration of a mark must prove two elements: (1) that it has standing and (2) that there is a valid ground to cancel the registration of the mark. *Young v. AGB Corp.*, 152 F.3d 1377, 47 USPQ2d 1752, 1755 (Fed. Cir. 1998).

### II. PLAINTIFF IS NOT ENTITLED TO SUMMARY JUDGMENT AND DEFENDANT IS ENTITLED TO SUMMARY JUDGMENT ON COUNT I

#### A. Summary Of The Argument

While not explicitly stated, Plaintiff's motion for summary judgment appears to seek summary judgment on Count I of the Petition because it only argues alleged abandonment of the subject registration.

The argument that the registration was allegedly abandoned is based upon the fact that Defendant's corporate status was administratively dissolved by the Missouri Secretary of State during the pendency of the registration. However, Defendant's corporate status was reinstated by the Missouri Secretary of State and Missouri law requires that administrative dissolution "relates back to and takes effect as of the effective date of the administrative dissolution and the



corporation resumes carrying on its business *as if the administrative dissolution had never occurred.*” See 351.486 RSMo. (emphasis supplied). Plaintiff’s argument rests on the proposition that, because Defendant was in a state of administrative dissolution, the corporate entity ceased to exist and could not have used the registered mark and therefore it was abandoned. Plaintiff cites no case law that supports this legal proposition and misstates Missouri case law pertaining to corporations administratively dissolved.

**B. Because Defendant’s Corporate Status Was Reinstated “as if the dissolution had never occurred,” There Is No Valid Ground to Cancel the Subject Registration**

On February 16, 2004, Defendant BeeNaturals, Inc. filed the application for registration of the subject mark BEE NATURALS for “non-medicated skin care preparations; nail care preparations”. On December 29, 2006, Defendant BeeNaturals, Inc. was administratively dissolved for failure to file an annual report with the Missouri Secretary of State under the provisions for domestic corporations of Section 351.486, RSMo.<sup>1</sup> See Undisputed Fact #1 and Exhibit A (dissolution notice). On January 9, 2007, the subject registration was issued. See Undisputed Fact #2 and Exhibit B (U.S. Trademark Registration No. 3,197,276).

After filing of this cancellation and upon Defendant’s learning of the dissolution of BeeNaturals, Inc. by the Missouri Secretary of State, Defendant undertook to have its corporate status reinstated. On April 29, 2014, the Missouri Secretary of State rescinded its order of dissolution and reinstated Defendant’s corporate status as the date of original dissolution notice-- December 29, 2006. See Undisputed Fact #3 and Exhibit C (Certification of Rescission).

---

<sup>1</sup> Note that the dissolution notice refers to 351.486, RSMo. *or* 351.602 RSMo. 351.602 RSMo. refers to dissolution of foreign corporations and is not applicable to this notice. 351.486 RSMo. refers to domestic (Missouri) corporations and does apply to the notice.

# 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.