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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 requests to cancel indicated registration.

Petitioner Information

Name	Plaza Izalco, Inc.		
Entity	Corporation	Citizenship	Virginia
Address	417 Clifford Avenue Alexandria, VA 22305 UNITED STATES		

Attorney information	Oliver A. Ruiz Malloy & Malloy, P.L. 2800 SW 3rd Ave Miami, FL 33129 UNITED STATES jcmalloy@malloylaw.com, oruiz@malloylaw.com, jnmcdonald@malloylaw.com, litigation@malloylaw.com Phone:3058588000		
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Registration Subject to Cancellation

Registration No	4581604	Registration date	08/05/2014
Registrant	Pharmadel Llc 178 Venture Dr. Seaford, DE 19973 UNITED STATES		

Goods/Services Subject to Cancellation

<p>Class 005. First Use: 2013/06/21 First Use In Commerce: 2013/06/21 All goods and services in the class are cancelled, namely: Adhesive bandages; Adhesive bands for medical purposes; Analgesic and muscle relaxant pharmaceutical preparations; Analgesic balm; Anti-inflammatory gels; Anti-inflammatory salves; Anti-inflammatory sprays; Balms for medical purposes; Balms for pharmaceutical purposes; Curare for use as a muscle relaxant; Herbal topical creams, gels, salves, sprays, powder, balms, liniment and ointments for the relief of aches and pain; Medicaments for promoting recovery from tendon and muscle injuries and disorders and sports related injuries; Multipurpose medicated antibiotic cream, analgesic balm and mentholated salve; Muscle relaxants; Sports cream for relief of pain; Therapeutic spray to sooth and relax the muscles</p>
<p>Class 010. First Use: 2013/06/21 First Use In Commerce: 2013/06/21 All goods and services in the class are cancelled, namely: Drug delivery patches sold without medication; Elastic bandages</p>

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
The mark is primarily merely a surname	Trademark Act Sections 14(1) and 2(e)(4)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	86029611	Application Date	08/06/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	COFAL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2006/02/00 First Use In Commerce: 2006/02/00 Analgesic and muscle relaxant pharmaceutical preparations; Analgesic balm; Analgesic preparations; Curare for use as a muscle relaxant; Medicaments for promoting recovery from tendon and muscle injuries and disorders and sports related injuries; Multipurpose medicated antibioticcream, analgesic balm and mentholated salve; Muscle relaxants		

Attachments	86029611#TMSN.png(bytes) 2017 02 09 Petition to Cancel FINAL.pdf(121518 bytes)
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Signature	/Oliver A. Ruiz/
Name	Oliver A. Ruiz
Date	02/09/2017

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

In the matter of Registration No. 4,581,604
For the mark “KOFAL”

PLAZA IZALCO, INC.,)
)
Petitioner,)
)
vs.) Cancellation No.
)
PHARMADEL, LLC)
)
Registrant.)

PETITION TO CANCEL

COMES NOW the Petitioner, Plaza Izalco, Inc. (“Petitioner”), a Virginia corporation having its principal place of business at 417 Clifford Avenue, Alexandria, Virginia 22315, and hereby petitions to cancel U.S. Registration No. 4,581,604 for “KOFAL” owned by Pharmadel LLC (“Registrant”), a Delaware company having an address of 178 Venture Drive, Seaford, Delaware 19973. As set forth below, Petitioner is damaged by Registration No. 4,581,604 and alleges the following for cancellation of same:

CLAIM UNDER SECTION 2(d)

1. The trademark registration sought to be cancelled is Registration No. 4,581,604 for the alleged mark “KOFAL” for use on “*Adhesive bandages; Adhesive bands for medical purposes; Analgesic and muscle relaxant pharmaceutical preparations; Analgesic balm; Anti-inflammatory gels; Anti-inflammatory salves; Anti-inflammatory sprays; Balms for medical purposes; Balms for pharmaceutical purposes; Curare for use as a muscle relaxant; Herbal*

topical creams, gels, salves, sprays, powder, balms, liniment and ointments for the relief of aches and pain; Medicaments for promoting recovery from tendon and muscle injuries and disorders and sports related injuries; Multipurpose medicated antibiotic cream, analgesic balm and mentholated salve; Muscle relaxants; Sports cream for relief of pain; Therapeutic spray to soothe and relax the muscles”, in International Class 5 and “*Drug delivery patches sold without medication; Elastic bandages*”, in International Class 10. Registrant’s application was filed on July 10, 2013, registered on August 5, 2014, and claims June 21, 2013 as the date of first use in commerce.

2. Long prior to Registrant’s filing date and claimed date of first use in commerce, Petitioner and/or Petitioner’s predecessor(s), adopted the trademark “COFAL” for use in connection with “*Analgesic and muscle relaxant pharmaceutical preparations; Analgesic balm; Analgesic preparations; Curare for use as a muscle relaxant; Medicaments for promoting recovery from tendon and muscle injuries and disorders and sports related injuries; Multipurpose medicated antibiotic cream, analgesic balm and mentholated salve; Muscle relaxants*”. Petitioner has since continuously used the “COFAL” Mark in interstate commerce for and in connection with its products and has not abandoned this mark.

3. On August 6, 2013, Petitioner filed an application with the United States Patent and Trademark Office (“PTO”), namely, application Serial No. 86/029,611 for “COFAL” for use on “*Analgesic and muscle relaxant pharmaceutical preparations; Analgesic balm; Analgesic preparations; Curare for use as a muscle relaxant; Medicaments for promoting recovery from tendon and muscle injuries and disorders and sports related injuries; Multipurpose medicated antibiotic cream, analgesic balm and mentholated salve; Muscle relaxants*”, in International Class 005 (hereinafter “Petitioner’s Application”).

4. On June 29, 2015, the Examining Attorney assigned to Petitioner's Application issued an Office Action setting forth a Section 2(d) refusal prefaced in part on Registration No. 4,581,604.

5. Petitioner has expended considerable time, money, and effort in promoting its goods under the "COFAL" Mark. The strength of Petitioner's Mark has grown such that Petitioner has established exceedingly valuable goodwill in the "COFAL" Mark.

6. The Petitioner has priority of use over Registrant with respect to the "COFAL" Mark.

7. Based on the position taken by the Examining Attorney, if Registrant is permitted to keep Registration No. 4,581,604, there will be a continued likelihood of confusion, mistake, and deception among the consuming public and the trade, all in violation of § 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

CLAIM UNDER SECTION 2(e)(4)

8. Petitioner re-alleges the allegations contained in Paragraphs 1 through 7 as if fully set forth herein.

9. Upon information and belief, Registrant's alleged mark "KOFAL" is primarily merely a surname, and is not registrable under 15 U.S.C. §1052(e)(4) because its primary significance to the purchasing public is that of a surname.

10. Upon information and belief, the alleged mark "KOFAL" does not have any recognized meaning other than as a surname, and has not acquired distinctiveness.

WHEREFORE, Petitioner prays that this Petition to Cancel be granted and that the aforesaid Registration No. 4,581,604 for the mark "KOFAL" be cancelled.

The fee required in 37 C.F.R. § 2.6(a)(16) is enclosed herewith.

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