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

Proceeding	92071109
Party	Plaintiff CBDMD, LLC
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Date	01/22/2020
Attachments	Corrected Amended Petition for Cancellation.pdf(2473423 bytes)

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

In the Matter of Registration No. 5,173,264
Date of Issue: March 28, 2017

CBDMD, LLC,)	
)	
Petitioner,)	Cancellation No. 92071109
)	
v.)	
)	
MAJIK MEDICINE, LLC,)	
)	
Registrant.)	
)	

[CORRECTED] AMENDED PETITION FOR CANCELLATION

CBDMD, LLC (“Petitioner”), a North Carolina limited liability company having a principal place of business at 8845 Red Oak Blvd., Charlotte, NC 28217, repleads its April 16, 2019 Petition for Cancellation based on the invitation set forth in the December 30, 2019 Order of the Trademark Trial and Appeal Board (TTAB) (hereinafter, “Order”). Petitioner has been and will continue to be damaged by U. S. Trademark Reg. No. 5,173,264 (the “CBD MD Registration”) for the mark CBD MD in Classes 003 for skin and body topical lotions, creams and oils for cosmetic use; all of the aforementioned containing Cannabidiol (“CBD”), and 005 for medicinal creams for skin care; medicinal herbal preparations; medicinal oils; herbs for medicinal purposes; all of the aforementioned containing CBD. In the Order, the TTAB indicated that in the absence of Petitioner repleading the cancellation would proceed solely on the grounds of failure to function as a mark and lack of a bone fide intention to lawfully use the mark. Order at 14. Petitioner hereby amends its petition to cancel the CBD MD Registration.

As grounds of cancellation, it is alleged that:

A, Registrant

1. Daniel Sinclair (“Sinclair”) is an individual who, on information and belief, resides at 629 Village Lane South, Mandeville, Louisiana, 70471.

2. Brenda N. Kraft (“Kraft”) is an individual who, on information and belief, resides at 3873 HWY 17, Delhi, Louisiana, 71232.

3. Christy Peachey (“Peachey”) is an individual who, on information and belief, resides at 312 Independence Dr., Mandeville, Louisiana, 70471.

4. MAJIK MEDICINE, LLC (“MM, LLC” or “Registrant”) is a limited liability company which, on information and belief, is domiciled at 629 Village Lane South, Mandeville, Louisiana, 70471.

5. The CBD MD Registration issued to MM, LLC on March 28, 2017. A printout of the current status and title of the CBD MD Registration from the USPTO’s Trademark Status & Document Retrieval (“TSDR”) database is attached as Exhibit A. The mark is not incontestable.

6. On December 21, 2011, Sinclair, Kraft and Peachey formed a limited liability company under the laws of Louisiana named Majik Medicine, LLC. Sinclair is the manager of MM, LLC, Kraft is a member of MM, LLC, and Peachey is a member of MM, LLC. Attached as Exhibit B is a true and correct copy of the Business Summary page for MM, LLC taken from the Louisiana Secretary of State website. As of April 5, 2019, MM, LLC was not in good standing for failing to file an annual report with the Louisiana Secretary of State. *See* Exhibit B.

7. On February 21, 2016, MM, LLC applied for the CBD MD registration under 15 U.S.C. § 1051(b) as an intent-to-use application and it was labeled as U.S. Trademark Application No 86914580.

8. On June 14, 2016, an Office Action was issued for the CBD MD application. On December 14, 2016, a Response to Office Action was filed for the CBD MD application. Attached as Exhibit C is a true and correct copy of the Response to Office Action taken from the TSDR database.

9. On December 14, 2016, an Amendment was made to the registration application cancelling Class 35 and amending the description of Class 003 and 005 to specify that “all of the aforementioned [materials] containing CBD.” Accordingly, all of the products described for the mark contain CBD, but the descriptions do not indicate the level of tetrahydrocannabinol (“THC”). Exhibit D.

10. On December 14, 2016 an Amendment to Allege Use was filed under 15 U.S.C. § 1051(c) along with a specimen. MM, LLC amended its date of first use to February 21, 2016. Attached as Exhibit D is a true and correct copy of the Amendment to Allege Use taken from the TSDR database.

11. MM, LLC submitted a false declaration to the USPTO on December 14, 2016, when they filed a Combined Response to Office Action and an Amendment to Allege Use by declaring that CBD MD was in use in commerce as of February 21, 2016.

12. On information and belief, MM, LLC abandoned or never legally used the CBD MD mark in commerce.

B. Petitioner

13. Petitioner is likely to be damaged by the registration and it has standing to bring this Petition. As set forth below, the subject mark is descriptive and that Petitioner and Registrant are competitors. Order at 3. In addition, Petitioner has applied for several registered trademarks

that the CBD MD mark could block. The mark is also likely to cause confusion as to the source, quality and legal status of CBD products sold by MM, LLC and CBDMD.

14. Petitioner started selling products including topical lotions, topical creams, topical oils, medicinal lotions, medicinal creams and medicinal oils under the CBDMD mark at least as early as May 16, 2017. The CBDMD line of products has been enthusiastically received by the consuming public, generating sales in excess of \$30 million. The CBDMD line of products is available in interstate commerce at retail outlets and on its website located at www.cbdmd.com. Petitioner has been the highest-level sponsor at numerous large events attended by thousands of participants interested in viewing, purchasing and using its products. Petitioner's CBDMD mark is well known and recognized. *See* Exhibit H.

15. Unless MM, LLC can show first lawful use, which they have not yet done, registration of the CBD MD mark is barred by Sections 14(1) and 2(d) of the Trademark Act of 1946 because the CBD MD Registration so resembles a mark previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods or services of MM, LLC, to cause confusion, or to cause mistake, or to deceive.

16. On December 20, 2018, Petitioner applied to register its CBDMD SYNERGY mark, U.S. Serial No. 87613823. The USPTO issued a non-final office action on December 19, 2019.

17. On December 20, 2018, Petitioner applied to register its SYNERGY CBDMD mark, U.S. Serial No. 87613850. The USPTO issued a non-final office action on December 19, 2019.

18. On May 29, 2019, Petitioner applied to register its CBDMD mark, U.S. Serial No. 88451429. On June 30, 2019, the application was assigned to an Examiner.

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