

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

SKIPPY, INC.,)
Petitioner)
)
)
vs.)
)
)
CPC INTERNATIONAL, INC.,)
Holder of Record Title in)
Trademark Reg. No. 504,940)
)
)

CANCELLATION
PROCEEDING No. **32070**

Petition to Cancel
Trademark Registration No. 504,940 for Fraudulent
Procurement And Maintenance Under 15U.S.C.§ 1064 (3)

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Skippy, Inc., a corporation of the State of Delaware having a place of business located at 8304 Tobin Road, Apt. #14, Annandale, Virginia 22003, hereby petitions the Honorable Trademark Trial and Appeal Board, pursuant to 15 U.S.C. §1064 (3), to cancel Trademark Registration No. 504,940 on the ground that it was initially obtained and has since been kept in force fraudulently, through deliberate and continuing concealment of material facts from the Trademark Branch of the United States Patent Office and later the United States Patent and Trademark Office ("PTO"), from at least July 23, 1947 to the present time.

Succinctly stated,

1. The specific fraudulent acts which require cancellation of Registration No. 504,940 are:
 - (a). deliberate concealment of the facts that the original applicant for Registration No. 504,940 and its successors in record title thereto have at all relevant times known that the mark was obtained by deliberate misappropriation and conversion of property rights that belonged lawfully in the first instance to Percy L. Crosby, which property rights Mr. Crosby vested in the present Petitioner on or about May 11, 1932 when Petitioner was first incorporated.
 - (b). deliberate concealment of the facts that the original applicant had on June 19, 1933 filed an application, Serial No. 339,002, to register the identical mark with the selfsame claimed date of first use of February 1, 1933 on the same merchandise in

commerce regulatable by the Congress of the United States, which mark was opposed by Petitioner in Opposition 13,134 and as a result thereof was refused registration under Section 5(b), the "Name Clause" of the Trademark Act of 1905, as amended and then in force, on January 9, 1934, based on Petitioner's corporate name and charter. No appeal from this decision adverse to the applicant of Serial No. 339,002 was taken and the refusal of registration therefore became final and conclusive against the applicant on February 9, 1934. These facts, too, have at all relevant times been known to the original applicant and its successors in title but have been concealed from the present United States Patent and Trademark Office and the predecessor Patent Office. Moreover, the file of Opposition No. 13,134 was among a group of trademark opposition files said to have been inadvertently destroyed by the United States Patent Office in 1965 or 1966 and since that time, facts concerning the reasons for refusing the registration of Application Serial No. 339,002 and sustaining Opposition 13,134 were not available in Patent Office and PTO files.

(c). deliberate and knowing false statements made under oath, or subject to penalty of perjury, with clear intent to mislead, made:

- (i) in the application for Registration No. 504,940 to the effect that the applicant believed itself to be the owner of the mark sought to be registered and "that no other person, firm, corporation or association...has the right to use such trade-mark in commerce which may be regulated by Congress", in the same or nearly identical form, both of which are belied by the January 9, 1934 final decision of the U.S. Patent Office referred to

above and

- (ii) in the combined affidavit under Sections 8 and 15 of the Lanham Act (15 U.S.C. §§ 1058 and 1065) relative to Registration No. 504,940 filed June 10, 1954, where it was falsely sworn "that there has been no final decision adverse to registrant's claim of ownership of such mark for such goods, or its right to register the same" with full knowledge of the falsity of these averments.

- (d). entry of the original applicant into a continuing conspiracy with at least The Best Foods Company, into which it merged in 1955, to conceal the fraudulent acts described in subparagraphs (a) to (c) inclusive above from the public and the Patent Office, later the Patent and Trademark Office (PTO), which conspiracy continues to the present and includes as members, at the least, all of the ensuing holders of record title in Registration No. 504,940. From time to time these later holders of record title to Registration No. 504,940 have filed additional trademark applications which either explicitly rely for their validity upon the particular applicant's holding of such record title in Registration No. 504,940 or implicitly do so by their inclusion of the word "Skippy" as at least a part of the mark applied for. Such additional trademark applications are necessarily tainted with and infected by the acts of fraud described in subparagraphs (a) and (b) above; moreover, each of them as filed contained the same knowingly false averments set out in substance in subparagraph (c) (i) above, and each of those on which

registration was granted that was maintained for more than six years after registration contains in haec verba the same knowingly false statements set out in subparagraph (c) (ii) above. These tainted registrations, to the extent still in force, should be cancelled for fraud; and still pending applications so tainted should be refused.

2. More specifically, the continuing frauds alleged in ¶ 1 hereof arose and were perpetrated as alleged in the ensuing chronology:

(a). The trademark "Skippy" originated as the name of the central character in a comic strip of the same name, which character and comic strip were created by Percy L. Crosby, who on September 8, 1925 was granted Trademark Registration No. 202,913 covering "Skippy" as a title for cartoons depicting a humorous juvenile character, based on a claimed first use date in interstate commerce of March 15, 1923. The "Skippy" comic strip was syndicated in a large number of newspapers, worldwide, on a daily basis from about 1925 to 1945. During the period prior to the alleged February 1, 1933 first use by Rosefield Packing Co., Ltd. (Rosefield") of "Skippy" on containers of peanut butter sold in commerce regulatable by Congress Mr. Crosby accumulated a large number of copyrights and several additional trademarks relating to the "Skippy" character and the "Skippy" comic strip. He also established as distinctive earmarks of the character and comic strip a white slat fence on which "Skippy" painted messages from time to time, a paint pail containing paint and a paint brush, and a brushstroke-like script in which the various painted messages and the name "Skippy" itself, as a title for the strip and also at times as a word on the fence, appeared.

(b). By at least as early as December 1, 1927 Mr. Crosby's character and comic strip were so popular and so widely recognized that he published an offer to license the name and/or character "Skippy" for use in advertising and promoting merchandise, particularly what he called " child-appealing" items such as toys, games, novelties, foods and wearing apparel. This offer, copy of which is Exhibit A, appeared in the December 1, 1927 issue of the advertising trade periodical "Printer's Ink". Prior to February 1, 1933, "Skippy", as a name and/or a character had been licensed to promote and was promoting, inter alia, ice cream, candy, pencils, pencil boxes, various toys including dolls and various items of clothing. "Skippy" was also the featured character in a Paramount Pictures Co. movie of the same name which in 1931 was nominated for three Academy awards (i.e., "Oscars") and won that year's award for best direction. Further, a popular radio program originating in Chicago but broadcast by CBS Radio in numerous locations across the United States and in Canada was the "Skippy" program sponsored by the General Mills, Inc. cereal, "Wheaties". Coordinated print advertisements and child-attracting premiums for "Wheaties" cereal, both featuring the "Skippy" character, were widely seen in newspapers and other periodicals, in grocery stores and in other prominent locations throughout the country.

(c). Petitioner was incorporated in Delaware on May 11, 1932, inter alia, to act as the repository for Mr. Crosby's accumulated copyrights, trademarks and licenses relating to the "Skippy" name and character, to own Mr. Crosby's real estate and to function, in part, to grant new licenses. Petitioner's corporate charter, copy of which is Exhibit B, describes the "nature of the business or objects or purpose to be transacted,

promoted or carried on" by Petitioner in eight numbered paragraphs spread over five pages. Of particular note in this regard are the following objects and purpose to be effected by Petitioner:

"...to enter into and conduct any business in connection with any or all of the foregoing making use of the character and the name "Skippy"...(Excerpt from Exhibit B, numbered ¶1 wherein in the "foregoing" include general powers to make and otherwise deal with "contracts of any kind for any lawful purpose" with anyone)

"to purchase or otherwise acquire, hold, own, sell, transfer or otherwise dispose of any commodity, merchandise or produce through an agent or exchange or otherwise;...to manufacture, produce, acquire, deal in and with, whether as principal or agent, goods, wares, merchandise and materials of any kind, whether now known or hereafter invented, and license any individual, firm, corporation or association to do so; to promote, conduct, assist and enter into any kind of commercial, industrial, mercantile or mining enterprise wherever situated;...(Exhibit B, ¶2)

"To acquire, hold, use, sell, assign, lease, mortgage, grant or otherwise dispose of, or acquire licenses in respect of, patent, patent rights, licenses and privileges, inventions, improvements and processes, copyrights, trademarks, and trade names and/or pending applications therefor, whether granted, registered or established by or under the laws of the United States or of any state thereof, or of any other country or place:...(Exhibit B, ¶5)

(d). In 1933 Rosefield was a small family company whose officers included Joseph L. Rosefield, President, and his two sons, Jerome M. Rosefield and Marvin Rosefield. At depositions of each of the sons given in 1980, each acknowledged under oath that he was aware of the Skippy comic strip character in late 1932 or early 1933 when a decision was made, of which each of them was aware and in which each may have participated, for the Rosefield company to adopt "Skippy" as its trademark for peanut butter.

(e). February 1, 1933 is the alleged date of first use by the Rosefield company of "Skippy" as a trademark for peanut butter sold or circulated in congressionally regulatable commerce. Within less than three weeks thereafter, on February 17, 1933, Rosefield obtained a California state trademark registration for "Skippy" in brushstroke script on a white slat fence with a paint pail containing paint and a paintbrush in front of the fence. See Exhibit C. This is startling graphic evidence of the Rosefield intention to appropriate Petitioner's property, but under the conditions of travel, transportation and communication existing in the United States in 1933, and given the fact that state trademark registrations have never until very recently, with the availability of specialized databases on the Internet, been readily and conveniently publicly available, it did not become known to Petitioner until many years later. It is telling, however, that in 1980, in a trademark infringement proceeding, Skippy, Inc. v. CPC International, Inc., 210 U.S.P.Q. 589,593 (E.D. Va 1980) the court found as a fact that Percy Crosby, in addition to the character "Skippy" and his quaint costume, "used other symbols [in his comic strip]--most often, the ever-present white slat fence as a background for messages written by 'Skippy' who would be shown in the comic strip carrying a [paint] bucket and brush."

(f). On June 19, 1933 Rosefield filed in the U.S. Patent Office application Serial No.339,002 to register "Skippy" in brushstroke script as a trademark for use on peanut butter containers. The application alleged February 1, 1933 as a date of first use in commerce regulatable by Congress and asserted in substance that Rosefield believed itself to be the owner of the mark and believed that no one else had the right to use it either identically or in any near resemblance. The application was published for

opposition on August 8, 1933 and opposed by Petitioner on September 6, 1933.

Petitioner's counsel at the same time filed a certified copy of Exhibit B with the Patent Office in accordance with the then extant practice whereby certified copies of corporate charters were recorded under assigned numbers and maintained in a search file for trademark examiners to aid in enabling them to carry out their statutory duty to reject applications to register the entirety, or the distinctive portion, of a personal or corporate name, in compliance with the "name clause" of Section 5(b) of the Trademark Act of 1905, as amended. The corporate charter was assigned No. 3006; the opposition was given No. 13,134. A comprehensive factual description of the contents of the opposition file appears in a memorandum dated July 14, 1954 written by E.F. Wenderoth, a patent lawyer engaged by New York counsel for The Best Foods Company to research all Patent Office records relating to Rosefield's trademarks preparatory to preparing documents for effecting the sale of the Rosefield company to Best Foods. This memo, copy of which is appended as Exhibit D, states in pertinent portion: Only this morning was I able to inspect the opposition No. 13,134 reported to you in the original report of June 29th as having been filed by Skippy Inc. against the old Rosefield application Serial No. 339,002 filed July [sic June] 19, 1933 in which Rosefield Packing Company, Ltd. tried to register SKIPPY on peanut butter.

From the opposition file it is noted that the opposition was filed Sept 6, 1933 with B.F. [sic G.] Foster of Washington, D.C. as attorney. The basis of the opposition was the "Name Clause" Section 5 of the 1905 Trade-Mark Act, and to the opposition papers there was attached a copy of the certificate of incorporation of Skippy, Inc. Attorneys Mida, Richards and Valentine, on behalf of the applicant Rosefield, in the later part of Nov. 1933 filed a Motion to dismiss the opposition. When briefs were called for,

Rosefield filed a brief in support of the Motion to Dismiss alleging that the opposer Skippy, Inc. had failed to allege any damage, didn't deal in food stuffs, etc. At the same time the opposer filed a brief in support of its motion.

On the same day that opposer filed its brief, it also filed a "Motion to Transmit" the application back to the trade-mark examiner, pointing out that on Sept. 6, 1933 (the date when the opposition was filed), Skippy Inc. had recorded its Articles of Incorporation in the Patent Office.

The Examiner of Interferences the following day, Dec. 9, directed the applicant to either answer the opposition or to waive its answer and go to hearing on the Motion to Dismiss.

The Examiner of Interferences, also 3 days later, refused to act on the Motion to Transmit, pointing out that there was no provision for such an action in opposition proceedings, and furthermore that the Examiner of Interferences has jurisdiction to determine the right of registration.

Thereupon the applicant waived its right to answer and agreed to have the matter set down on the Motion to dismiss. Hearings were set for Dec. 28, 1933. The same date that the day of hearing was set, the opposer filed a Motion for Judgment on the Record. The examiner postponed consideration of the Motion for Judgment to Final Hearing.

Briefs were filed by both parties, and while applicant was not represented at the hearing, the opposer's counsel was present and argued against the Motion to Dismiss.

By a decision dated Jan.9, 1934 the opposition was sustained, the examiner holding that the opposer was qualified under Section 5 (the Name Clause) of the 1905 Act. Limit of Appeal was set to expire Feb. 9, 1934 and as no appeal was filed, the decision became final.

This account, given in Exhibit D, of the opposition proceedings was not shown to the district court in Skippy, Inc. v. CPC International, Inc., supra, in 1980 nor were copies of letters exchanged between the Rosefield company and its attorneys Mida, Richards and Valentine which are contemporaneous with Opposition 13,134 and the decision sustaining it, which letters are fully consistent with Mr. Wenderoth's account of what

happened. Furthermore, CPC International, which is believed to have had a complete copy of the opposition file in 1980, failed to produce it to Skippy, Inc. in the litigation referred to above, despite its being within the scope of a duly filed document request under Federal Rule of Civil Procedure 34. Since the Eastern District of Virginia court was not apprised of what transpired in Opposition No. 13,134 and of the grounds upon which it was sustained, it hence failed to recognize that the refusal to register Application Serial No. 339,002 was and is an insuperable bar to a valid registration by Rosefield of the identical mark with the identical alleged first use date. That court accordingly granted CPC International, Rosefield's successor to its record title, a declaratory judgment of incontestability of Registration 504,940. 210 U.S.P.Q. at 594-5. The United States Court of Appeals for the Fourth Circuit, likewise not apprised of the grounds on which Opposition 13,134 was sustained, nevertheless vacated the District Court's declaratory judgment of incontestability of Registration 504,940 on the purely legal ground that 15 U.S.C. § 1065 was misconstrued by the district court and that since this statute contains no time limit, the affidavit averment that there had been no decision adverse to either ownership of the 504,940 registration or the right to register the mark to which it pertains, must be regarded as false. See Skippy, Inc. v. CPC International Inc. 674 F.2d 209, 216 U.S.P.Q. 1061, 1066 (4th Cir. 1982).

(g). Percy L. Crosby was the President of Petitioner from the time of its incorporation in 1932 until 1949 and during that period he and/or counsel assisting him made several efforts to prevent the use in commerce by Rosefield and its distributors of the "Skippy" name on peanut butter when reports of such

use came to his attention. There is no evidence available to Petitioner, however that he ever became aware of Rosefield's application for Registration 504,940 or its fraudulently induced issuance. Moreover, Petitioner's files and records, which were originally maintained by the now defunct New York law firm of Lord, Day and Lord, were in part dispersed to one or more other law firms, commencing in 1942. One of these, Kissam and Hayden, became dormant during World War II. Admittedly, those of its files that remained intact when one of its partners returned from military service and found the former firm to be unrevivable were destroyed. Furthermore, the firm of Lord, Day and Lord which had organized and incorporated Petitioner in 1932 and continued to maintain many of Petitioner's files until at least 1978, long after being discharged by Percy Crosby in or about 1942, had also represented Corn Products Company, Inc., from and after sometime in 1906. This latter representation, which continued, came into sharp conflict with Petitioner's interests at least by 1958 when The Best Foods, Inc. merged with Corn Products Co. and the latter became the holder of record title to Trademark Registration 504,940. Petitioner presumes that among one or more of (1) files the Rosefield company conveyed to The Best Foods, Inc., (2) files Lord, Day & Lord provided, or (3) by copying the file of the U.S. Patent Office prior to its 1965 or 1966 destruction, CPC at some unknown and no longer ascertainable date after January 9, 1934, obtained at least one copy of the file of Opposition 13,134 and of the January 9, 1934 decision sustaining that opposition which became final on February 9, 1934. Petitioner however, has not had in its possession either a copy of the opposition file or a copy of the final decision

sustaining the opposition at any time since the mid-1940's. In 1965 when Petitioner's current President, Joan Crosby Tibbetts, a daughter of Percy L. Crosby, was appointed administratrix of his estate by the New York County Surrogate Court, she commenced an intensive and laborious effort to find, obtain and review all of Petitioner's files but she has never been able to obtain an actual copy of the file of Opposition No. 13,134 or the final decision therein. Moreover, Percy L. Crosby was unable to manage his business affairs after 1949 and was replaced as Petitioner's President by his third wife, Carolyn Crosby, who relied on others to manage the business; she died in 1959 and was replaced by her attorney, Rose L. Stein. The latter was replaced several years after Mr. Crosby's December 1964 death by his daughter and the administratrix of his estate, Joan Crosby Tibbetts, Petitioner's present president. Petitioner does not know when or under what circumstances its copy of Opposition 13,134 or of the decision in that proceeding, vanished.

(h). Prior to The Best Foods Company's acquisition of the Rosefield company, it-- apparently as a part of the "due diligence" normally undertaken by any corporation before it acquires another corporation--commissioned the New York law firm of Rogers, Hoge and Hills to investigate and advise upon the strength of the Rosefield trademark portfolio. As one part of that task, the Rogers, Hoge and Hills firm engaged Mr. E.F. Wenderoth to make several trademark searches, one of which revealed the publication for opposition on August 8, 1933 of the first Rosefield trademark application, Serial No. 339,002 seeking registration of "Skippy" for peanut butter, the existence of Opposition 13,134 and the certified copy of Petitioner's Articles of Incorporation filed in the Patent Office on

September 6, 1933. See Exhibit E, Mr. Wenderoth's memorandum of June 29, 1954 which is clearly what precipitated his meticulous inspection of the Opposition 13,134 file described in Exhibit D. As a result of Mr. Wenderoth's accumulation of detailed information, The Best Foods, Inc. through its counsel, Rogers Hoge and Hills, was fully informed of all the facts which show that the acquisition of Registration 504,940 was effected through fraud on the Patent Office as alleged in Paragraph 1 hereof.

(i). Of particular interest in this regard is Exhibit F, a letter dated October 7, 1954 from one Lenore Stoughton of Rogers, Hoge and Hills to Martin Field, then general counsel of The Best Foods, Inc. in which she advised that Best Foods should not set forth or otherwise disclose its then present knowledge of the past history of the "Skippy" trademark in the various Best Foods, Inc. documents that would convey the Rosefield company in its entirety, including Registration 504,940, to Best Foods. In pertinent portion, she stated:

Paragraph (b) of the enclosed draft will furnish your assurance that there is no pending attack on the seller's rights in the marks. We talked of the possibility of making some specific reference to the old protest, but I decided not to include here any reference to it. That certainly need not be regarded as a pending controversy after this long lapse of time, and the risk of any renewal of it seems to be very small, but the seller is not in a position to give you any effective assurance that it will not be renewed, and if the question should come up I would rather see you defending yourselves on it without having your title papers show a reference to your present knowledge of the past history.

(j). The Best Foods, Inc., and its successors in title to Registration 504,940 have at all relevant times been fully aware of the fraudulent nature of Trademark Registration 504,940. Executives of one or another of these successors in title have from

time to time spontaneously acknowledged that this trademark registration was based upon the "Skippy" comic strip character--i.e., *the source* of Petitioner's company name, which company name in turn, was the basis for the 1934 decision adverse to Rosefield's (and its successors') ownership of Registration No. 504,940. Two salient examples of such acknowledgements are:

(i) Testimony given by John Volkhardt, then National Marketing Director for the Best Foods Division of Corn Products Company, before the U.S. Food and Drug Administration (Docket No. FDC-76, p. 5729), in January 1966. Asked about changes in the labelling of Skippy peanut butter, he acknowledged a "slight modification ... about two years ago".

The next question and Mr. Volkhardt's answer are:

Q: Do you recall what that modification was, sir?

A: "Yes. Skippy was originally named for the cartoon character, and he was painting a fence. We feel that now most people have forgotten about that cartoon and the past history of it. So we are slowly taking away the fence and trying to make a clearer label from the shelf viewpoint. That has been the change that we have [sic] been making". (Exhibit G, p. 5729):

(ii) Richard W. Siebrasse testified at a deposition on June 12, 1986 in a suit entitled C.P.C. International, Inc. v. Skippy, Inc. et al (E.D.Va., Docket No. 86-0109-A). Mr. Siebrasse was then President of the Best Foods Division of CPC International (Exhibit H, p. 7), having succeeded Mr. Volkhardt who had occupied that same position from 1972 until mid-1978 (Id. p. 25). Mr. Siebrasse acknowledged that the name "Skippy" "came from the cartoon character", and said he so understood and had so

concluded as a matter of "common sense" (Id. pp. 27-29). Mr. Siebrasse also testified that he knew Jerome M. Rosefield, "a retired former businessman" (Id.p. 48) who was then still living. Mr. Siebrasse was confident that CPC International would have been informed if Mr. Rosefield had died because "The whole 'Skippy' Peanut Butter business and so on goes back to Jerome Rosefield and it would just be natural for this company to be made aware of it if he passed away" (Id. p. 49).

(k). A specific instance of false and fraudulent misleading of the Trademark Trial and Appeal Board is the statement made by counsel for CPC International, Inc. in a September 10, 1985 "Request for Correction of Decision" filed in Consolidated Oppositions Nos. 65,712 and 65,713. The facts are that the Board had placed in a decision dated August 28, 1985 in the same consolidated oppositions the following footnote with respect to Registration No. 504,940 upon which CPC was basing its oppositions to Petitioner's efforts to register two "Skippy" marks. Opposer alleged in the Notice of Opposition that its Reg. No 504,940 had become incontestable due to the Section 15 Affidavit filed in 1954. However, the parties were involved in a civil action wherein the Court of Appeals for the Fourth Circuit (Skippy, Inc. v. CPC International Inc., 216 U.S.P.Q. 1061) vacated the District Court's declaratory judgement that CPC International Inc.'s right to the mark had become incontestable. In view of the judgement and order of the Court of Appeals, Opposer's right to use the registered mark is not incontestable under Section 15 of the Statute. (Exhibit I, p. 2)

On page 2 of the "Request for Correction" document, CPC Counsel asserted falsely that:

"The Circuit Court concluded that the statement in the Section 15 affidavit to the effect that there had been no final decision adverse to registrant's claim of ownership of such mark, or to registrant's right to register the same or the keep the same on the register..." as required by the Act [i.e., 15 U.S.C. § 1065, Section 15 of the Lanham Act] was false because there was, apparently, an adverse decision to registration of the mark in 1934, based on a default judgment in an opposition filed under § 5 of the 1905 Act..."(Exhibit I, p. 2)

CPC International and its counsel who prepared and signed the foregoing statement knew very well that the 1934 opposition decision was actually and not "apparently", adverse to Rosefield's claim of ownership to and right to register the mark "Skippy" and further, that it was not in any sense "based on a default judgment" at all. They also knew that as Exhibit D, (a memorandum prepared in 1954 by Mr. Wenderoth for counsel to Best Foods, Inc. an earlier holder of record title to Registration No. 504,940) makes clear, the decision was arrived at in an opposition proceeding in which both the opposer, Petitioner here, and the applicant Rosefield participated. Both filed briefs and had a full opportunity to be heard, and there was a decision from which Rosefield took no appeal, thereby allowing the resultant adverse judgment to become final and conclusive.

3. The January 9, 1934 refusal of the same mark that is the subject of Registration No. 504,940 with the same alleged date of first use became final and conclusive against Rosefield and its successors in title on February 9, 1934, when the Rosefield company allowed it to do so by waiving the right to appeal. The decision, based as it was upon Section 5(b) of the 1905 Trademark Act, as amended and then in force, is a final adjudication that Rosefield had no ownership right in and, hence, no right

to register or use Petitioner's corporate name as the Rosefield company's trademark. The subsequent deliberate concealment of the existence of this final adjudication in connection with both the initial filing of the application for the trademark Registration 504,940, and the subsequent Affidavit of Jerome Rosefield under Sections 8 and 15 of the Lanham Act, affirmatively representing that there had been no prior adverse decision relative to Rosefield's claim of ownership or right to register "Skippy" as its trademark are egregious acts of inequitable conduct against the U.S. Patent Office. The continuing concealment by the Rosefield company's successors in record title to Registration 504,940 of the facts relative to the disposition in Opposition 13,134 of Rosefield's initial application to register "Skippy" as a trademark for peanut butter, Serial No. 339,002, is likewise an egregious act of inequitable conduct against the U.S. Patent Office and its successor U.S. Patent and Trademark Office. The egregiousness of these acts of continuing and deliberate concealment of material fact is exacerbated by other facts well known to everyone who practices trademark procurement and maintenance law--namely, that the established practices of the Patent Office, which continue to the present in the PTO, (i) with respect to new registration applications is not to search records of previously abandoned, refused registration applications and (ii) with respect to Section 8 and 15 affidavits is to accept them at face value without attempting to delve into their background facts. The net result of these well-known established practices insofar as Trademark Registration No. 504,940 is concerned, was to impart a high level of confidence to the Rosefield company and its successors in record title that their perfidious conduct would never be uncovered--a confidence enhanced even more by the

uncharacteristic and highly anomalous circumstance that the file of Opposition No. 13,134 was among a group of files inadvertently destroyed, the contents of which the Office has never taken steps to reconstitute. Petitioner is informed and believes that the original registrant of Registration No. 504,940 and its successors in record title thereto have reaped monetary rewards, in the aggregate substantially exceeding four billion dollars, worldwide, as a direct result of their deliberate conversion and misappropriation of Petitioner's corporate name, identity and good will and their continuing coverup of the facts showing that the Patent Office in 1934 held conclusively as a matter of law under the Trademark Act of 1905, as then in force, that the Rosefield company had no right to use that name as a trademark under any circumstances. The realization by the various holders of record title in Registration No. 504,940 of such a vast material gain flowing from their fraudulent misleading of this Office and their fraudulent concealment of material facts from it, as well as their fraudulent manipulation and exploitation of its known established practices to the detriment of the public interest in the administration of our legal system deserves the most drastic punishment this Office has the power to administer.

Petitioner accordingly requests and prays that Registration No. 504,940 be cancelled as void and invalid ab initio and that all other registered marks or pending registrations including Petitioner's corporate name in which any record title holder of Registration No. 504,940 holds full or partial title be dealt with commensurately.

Petitioner submits herewith a check for \$300.00 to cover the cancellation petition fee for

cancellation of Registration No. 504,940 which is presently registered in one international class.

Respectfully submitted,

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