

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

MARY'S GONE CRACKERS, INC.,

Opposer.

v.

JASMIN BECKETT,

Applicant.

Application Serial No.: 86/588,571

Opposition No. _____

Filing Date: April 6, 2015

Publication Date: August 25, 2015

Trademark: CONSCIOUS
COOK EAT BETTER FEEL
BETTER LIVE BETTER &
Design

International Class: 29

NOTICE OF OPPOSITION

Opposer Mary's Gone Crackers, Inc. ("Opposer" or "Mary's Gone Crackers"), a Delaware corporation, having an address of P.O. Box 965, Gridley, California 95948, believes that it will be damaged by registration of the proposed mark CONSCIOUS COOK EAT BETTER FEEL BETTER LIVE BETTER & Design as set forth in Application Serial No. 86/588, 571 (the "CONSCIOUS COOK" Mark), and therefore opposes registration of the same.

The grounds for opposition are as follows:

1. Mary's Gone Crackers manufactures, promotes, markets, advertises, distributes, and sells organic, gluten free, vegan baked goods, including cookies and crackers. In connection therewith, and since at least as early as 2007, Mary's Gone Crackers has used its mark "CONSCIOUS EATING" (the "CONSCIOUS EATING Mark") in commerce in the United States, including on its website, marketing materials, and packaging of its food products.
2. Mary's Gone Crackers has prominently and extensively promoted and advertised its award-winning products bearing the CONSCIOUS EATING Mark, expending significant resources in connection with such advertising and promotional efforts and building a valuable

<p>The PTO did not receive the following listed item(s) <u>No Fee</u> <u>Enclosed</u></p>

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business based on the high demand for its healthy, organic, gluten free, vegan baked goods sold under the CONSCIOUS EATING Mark.

3. As a result of Opposer's continuous and extensive use, advertising, and promotion of the CONSCIOUS EATING Mark, as well as the distinctiveness of the mark, the CONSCIOUS EATING Mark has become well-known, and consumers have come to recognize the CONSCIOUS EATING Mark as uniquely associated with Mary's Gone Crackers and an indication of origin.

4. Mary's Gone Crackers has a valid and incontestable U.S. trademark registration, Reg. No. 3525460, for its CONSCIOUS EATING Mark in Class 30, for "baked goods, namely, cookies, crackers, cracker crumbs," as well as an application for the mark, Serial No. 86/560,845, in Class 30 for "pretzels."

5. Trademark Application Serial No. 86/588,571 (the "Application") filed by Jasmin Beckett ("Applicant"), an individual with an address of 20 Wendell Street, Hempstead, NY 11550, seeks registration of the CONSCIOUS COOK Mark.

6. The Application was filed on April 6, 2015, based on Lanham Act Section 1(a), alleging first use of the mark in U.S. commerce on October 14, 2014, for "combined fruit and vegetable purees" in International Class 29.

7. The Application was published for opposition in the *Trademark Official Gazette* on August 25, 2015. Mary's Gone Crackers timely filed an extension of the opposition period to December 23, 2015.

8. Mary's Gone Crackers has used its CONSCIOUS EATING Mark on goods in International Class 30 well before the October 14, 2014 first use date alleged in the Application.

9. Applicant is not affiliated with or sponsored by Opposer, and Applicant has never been authorized by Opposer to use the CONSCIOUS EATING Mark.

10. Applicant's alleged CONSCIOUS COOK Mark is very similar in appearance, sound, and commercial impression to Opposer's CONSCIOUS EATING Mark. As such, consumers are likely to be confused, mistaken or deceived into the belief, contrary to fact, that the International Class 29 goods offered under the proposed CONSCIOUS COOK Mark emanate from and/or are in some way sponsored or approved by Opposer, and/or that Applicant is somehow affiliated with Opposer, thereby damaging Opposer.

11. In addition, the goods identified in the Application are related to the goods sold by Opposer under its CONSCIOUS EATING Mark and covered by Opposer's trademark registration for the CONSCIOUS EATING Mark.

12. The goods identified in the Application are also likely to be sold to the same or overlapping classes of purchasers and trade channels as goods bearing the CONSCIOUS EATING Mark.

13. Because of the high degree of similarity between the parties' respective marks, goods, and trade channels, as well as the fame of the CONSCIOUS EATING Mark in the natural products industry, Applicant's use of the proposed CONSCIOUS COOK Mark is likely to cause consumer confusion, mistake or deception, violating Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

14. In addition, Applicant alleged in the Application that the proposed CONSCIOUS COOK Mark was first used in interstate commerce by Applicant as least as early as October 14, 2014, and that the mark was currently in use for all of the goods set forth in the Application.

However, upon information and belief, no valid use in interstate commerce was made for the goods set forth in the Application as of the Application filing date.

15. Applicant's failure to use the proposed CONSCIOUS COOK Mark in commerce for the goods identified in the Application as of the Application filing date renders the Application *void ab initio*.

In view of the above, Applicant is not entitled to federal registration of its CONSCIOUS COOK Mark for goods in International Class 29 because Applicant's proposed use is likely to cause confusion, or to cause mistake, or to deceive, and because Applicant failed to make a valid use in commerce of the CONSCIOUS COOK Mark for all the goods identified in the Application as of the Application filing date.

WHEREFORE, for the foregoing reasons, Opposer respectfully requests that the present Opposition be sustained in favor of Opposer, and that Application Serial No. 86/588,571 be refused registration.

The appropriate fee is also submitted herewith. Please direct all future correspondence to the undersigned.

Dated: December 23, 2015

Respectfully submitted,

By: Anna Raimer

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MARY'S GONE CRACKERS, INC.

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing document entitled Notice of Opposition has been served upon Applicant by mailing said copy on December 23, 2015, via First Class Mail, postage prepaid at the correspondence address of record in the Patent and Trademark Office:

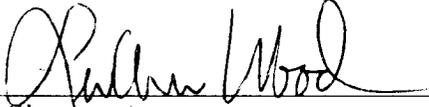
JASMIN BECKETT
20 WENDELL ST
HEMPSTEAD, NY 11550

/s/ Lauren Refinetti
Lauren Refinetti

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451 on the date shown below:

LuAnn Wood
(Typed or Printed Name of Person Signing Certificate)

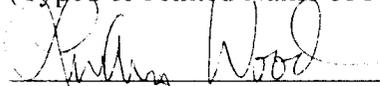

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December 24, 2015
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CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office on the date shown below.

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(Signature)

December 23, 2015
(Date)