



10-07-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #80

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

In The Matter of Registration No. 2,526,171

Date of Issue: January 1, 2002

Blarney Castle Oil Co.,)	
)	
Petitioner,)	Cancellation No. _____
)	
vs.)	PETITION TO CANCEL
)	
Cadillac Coffee Company)	
)	
Registrant.)	
)	

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Blarney Castle Oil Co., a Michigan corporation, whose principal place of business is 12218 U.S. 31, Bear Lake, Michigan 49614 (“Petitioner”), believes that it will be damaged by the continuing registration of the mark covered by Registration No. 2,526,171 (“Registration”) and hereby petitions to cancel the Registration.

As grounds for cancellation, it is alleged as follows:

1. Cadillac Coffee Company (“Registrant”) is the owner of record of the Registration for the mark JAVA MOUNTAIN for “coffee, coffee beans, coffee-based beverage containing milk” issued January 1, 2002 with an application filing date of July 20, 2000, a stated first use date of April 24, 2000 and a stated first use in commerce date of February 16, 2001.
2. As part of its business, Petitioner operates convenience stores and gas stations. Among other things, at these stores, Petitioner sells coffee.
3. Since August 1999, Petitioner has continuously used the mark JAVA MOUNTAIN for coffee sold in its stores.

4. The Registration is for the same goods, namely coffee, on which Petitioner uses its mark and Petitioner's mark and Registrant's mark are identical, namely JAVA MOUNTAIN. As a result, Registrant's mark is likely to cause confusion with Petitioner's mark.

5. There is no issue as to priority. Registrant's application date and date of first use of its mark are both subsequent to Petitioner's first use of its mark.

6. Registrant's mark is an identical copy of Petitioner's mark. The use and/or registration by Registrant of its JAVA MOUNTAIN mark for the coffee products listed in the Registration is likely to cause confusion, mistake and deception with respect to the origin of Registrant's goods and to confuse, mislead, and deceive members of the public into believing that Registrant's goods originate from, are sponsored, approved or licensed by Petitioner, or are in some way connected to Petitioner. Any such confusion will have a direct impact on Petitioner's mark and Petitioner's ability to market its products under the mark. Furthermore, any defect, objection or fault found with Registrant's goods marketed under the JAVA MOUNTAIN mark will negatively impact and seriously injure the reputation of Petitioner and the goods sold under Petitioner's mark.

7. If Registration No. 2,526,171 is not cancelled, Registrant will continue to have at least a *prima facie* exclusive right to use the JAVA MOUNTAIN mark for coffee. Thus, the Registration interferes with Petitioner's right and ability to use and register the trademark JAVA MOUNTAIN for its coffee products. As a result, the Registration is a source of damage and injury to Petitioner.

WHEREFORE, Petitioner prays that Registration No. 2,526,171 be cancelled.

Respectfully submitted,

WARNER NORCROSS & JUDD LLP

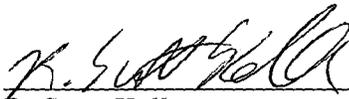
Attorneys for Blarney Castle Oil Co.

By  _____

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CERTIFICATE OF MAILING

I certify that the original and two copies of the foregoing Petition to Cancel are being sent to Box TTAB, FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513, by regular U.S. mail, postage prepaid on October 2, 2002.

 _____
R. Scott Keller

WXPGR 800272-1



TTAB

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WJK

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October 2, 2002

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FEE
Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Re: Petition to Cancel Registration No. 2,526,171

Ladies and Gentlemen:

On behalf of the Petitioner, Blarney Castle Oil Co., enclosed are the original and two copies of a Petition to Cancel trademark Registration No.. 2,526,171 for JAVA MOUNTAIN. Also enclosed is a check in the amount of \$300.00 to cover the filing fee.

Sincerely,

R. Scott Keller

RSK/jsc

Enclosures

c: William T. McCarthy
Kenneth W. Vermuelen
Kimberly A. Niebling

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