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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



12-27-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #30

Blarney Castle Oil Co.,)
)
Petitioner,)
)
vs.)
)
Cadillac Coffee Company,)
(now Kmart of Michigan, Inc.))
)
Registrant.)

Cancellation No. 9204111

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ANSWER TO PETITION TO CANCEL

Registrant, Cadillac Coffee Company (now, Kmart of Michigan, Inc., assignee), through its attorneys identified below, hereby answers Petitioner Blarney Castle Oil Co.'s Petition To Cancel as follows;

1. Admit that Cadillac Coffee Company was the previous owner of the registration for the mark JAVA MOUNTAIN for "coffee, coffee beans, coffee-based beverage containing milk." Kmart of Michigan, Inc. ("Kmart") is the current owner of the JAVA MOUNTAIN mark and registration by assignment, a copy of which is attached hereto as Exhibit A.

2. Kmart is without sufficient information and therefore neither admits nor denies the allegations in Paragraph 2 of the Petition to Cancel.

3. Kmart is without sufficient information and therefore neither admits nor denies the allegations in Paragraph 3 of the Petition to Cancel.

4. Kmart admits that the registration is for "coffee, coffee beans, coffee-based beverage containing milk." Kmart denies the remaining allegations in Paragraph 4.

5. Kmart denies the allegations in Paragraph 5.

6. Kmart denies the allegations in Paragraph 6.

7. Kmart admits that it has the exclusive right to use the JAVA MOUNTAIN mark in connection with "coffee, coffee beans, coffee-based beverage containing milk."

Kmart further admits that Petitioner does not have the right to use and register the trademark JAVA MOUNTAIN for coffee products. Kmart denies the remaining allegation in Paragraph 7.

AFFIRMATIVE DEFENSES

1. The Petition to Cancel is barred by waiver.
2. The Petition to Cancel is barred by estoppel.
3. The Petition to Cancel is barred by laches.

WHEREFORE, Registrant prays that the Petition to Cancel be dismissed with prejudice.

Respectfully submitted,

RADER, FISHMAN & GRAUER, PLLC

Attorneys for Kmart of Michigan, Inc.

BY: 

Kristin L. Murphy

Michael A. Lisi

Rader, Fishman & Grauer PLLC

39533 Woodward Ave., Ste 140

Bloomfield Hills, MI 48304

(248) 594-0600

(248) 594-0610 (Fax)

CERTIFICATE OF MAILING

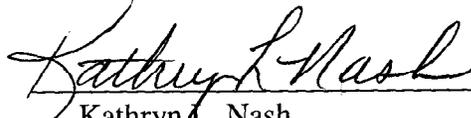
I hereby certify that the foregoing *Answer to Petition to Cancel* is being deposited with the United States Postal Service as First Class Mail and is addressed to Box TTAB, Assistant Commissioner of Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513 on December 20, 2002.


Kathryn L. Nash

CERTIFICATE OF SERVICE

This will certify that a copy of the foregoing *Answer to Petition to Cancel* has been served upon counsel for Petitioner via first class mail with the United States Postal Service with postage fully pre-paid on December 20, 2002, as follows:

R. Scott Keller
WARNER NORCROSS & JUDD LLP
900 Fifth Third Center
111 Lyon Street, N.E.
Grand Rapids, MI 49503-2487


Kathryn L. Nash

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Blarney Castle Oil Co.,)
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Kmart of Michigan, Inc.,)
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Registrant.)

Cancellation No. 92041111

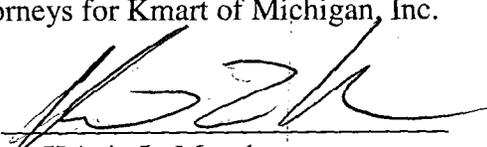
ENTRY OF APPEARANCE

The law firm of Rader, Fishman & Grauer PLLC hereby enters its appearance on behalf of Kmart of Michigan, Inc., the assignee of Registrant. A copy of the assignment from Registrant, Cadillac Coffee Company, to Kmart of Michigan, Inc., assignee, which has been separately recorded, is attached hereto.

Respectfully submitted,

RADER, FISHMAN & GRAUER, PLLC

Attorneys for Kmart of Michigan, Inc.

BY: 

Kristin L. Murphy

Michael A. Lisi

Rader, Fishman & Grauer PLLC

39533 Woodward Ave., Ste 140

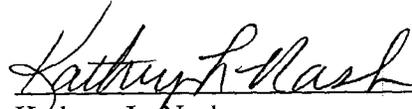
Bloomfield Hills, MI 48304

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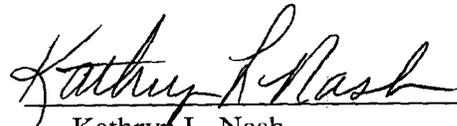
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111 Lyon Street, N.E.
Grand Rapids, MI 49503-2487


Kathryn L. Nash

Recordation Form Cover Sheet

Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof

1. Name of conveying party(ies):
Cadillac Coffee Company
1801 Michael Street
Madison Heights, Michigan 48071

2. Name and address of receiving party(ies):
Kmart of Michigan, Inc.
3100 West Big Beaver Road
Troy, Michigan 48084

Individual(s) Association
General Partnership Limited Partnership
[X] Corporation-State: Michigan
Other

Individual(s) citizenship:
Association:
General Partnership:
Limited Partnership:
[X] Corporation-State: Michigan
Other:

3. Nature of conveyance:
[X] Assignment Merger
Security Agreement Change of Name
Other:

If assignee is not domiciled in the United States, a
domestic representative designation is attached:
Yes No
(Designations must be a separate document from
Assignment)
Additional name(s) & address(es) attached?
Yes [X] No

Execution Date: 12/19/02

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

2,599,446 Issued 07/23/02
2,526,171 Issued 01/01/02

Additional numbers attached?

Yes [X] No

5. Name and address of party to whom correspondence
concerning document should be mailed:

Michael A. Lisi
Rader, Fishman & Grauer PLLC
39533 Woodward Avenue
Suite 140
Bloomfield Hills, Michigan 48304
(248) 594-0629

6. Total number of applications and registrations
involved: One (2)

7. Total fee (37 CFR 3.41).....\$65.00

Enclosed
[X] Authorized to be charged to deposit account.

8. Deposit Account Number: 18-0013
(Attach duplicate copy of this page if using
deposit account)

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy
is a true copy of the original document.

Michael A. Lisi
Name

Signature [Handwritten Signature]

December 20, 2002
Date

Total number of pages comprising cover sheet: 1

CERTIFICATE OF MAILING

I hereby certify that this paper is being deposited with the U.S. Postal Service as First Class Mail in
an envelope addressed to BOX ASSIGNMENT FEE, Commissioner of Trademarks, 2900 Crystal Drive, Arlington,
Virginia 22202-3413 on December 20, 2002.

Date: December 20, 2002

[Handwritten Signature]
Mary Jennifer Wunsche

Assignment

ASSIGNMENT made this 19 day of ~~DECEMBER~~, 2002, by and between CADILLAC COFFEE COMPANY, a corporation of the State of Michigan with a principal address at 1801 Michael Street, Madison Heights, Michigan 48071 ("Assignor"), and KMART OF MICHIGAN, INC., a corporation of the State of Michigan, with a principal address at 5100 West Elg Beaver Road, Troy, Michigan 48064 ("Assignee").

WHEREAS, Assignor owns U.S. Trademark Registration No. 2,598,446 in Class 30 for the mark JAVA MOUNTAIN EXPRESS, as well as U.S. Trademark Registration No. 2,526,171 in Class 30 for the mark JAVA MOUNTAIN (collectively, the "Marks"); and

WHEREAS, Assignee desires to acquire the Marks and the goodwill of the business associated therewith;

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other valuable consideration, the receipt of which is hereby acknowledged, Assignor conveys, transfers, and assigns to Assignee all of its right, title, and interest in and to the Marks together with the goodwill of the business symbolized thereby.

Assignor further assigns to Assignee all rights of renewal, and all rights to sue for and receive all damages occurring from past infringing uses of the Marks. This assignment is made on an "AS IS" basis and Assignor makes no representations or warranties as to title or non-infringement of third party rights.

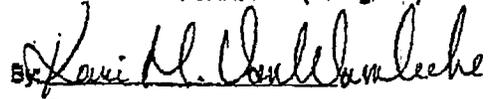
Assignor agrees that upon request by Assignee, at Assignee's expense, Assignor shall execute all papers, make all rightful oaths, testify on behalf of Assignee and do all other lawful acts reasonably necessary to carry out the intent of this Assignment.

This Assignment shall be binding on the parties, and their successors and assigns.

CADILLAC COFFEE COMPANY ("Assignor")


By: _____
Title: President

KMART OF MICHIGAN, INC. ("Assignee")


By: Kari M. Vandamleeche
Title: VICE PRESIDENT AND TREASURER