



12-11-2002

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

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

-----X	Cancellation No.
Makin' Dough, Inc.,	:
	:
Petitioner,	:
	:
v.	:
	:
Anubis Enterprises, Inc.,	:
	:
Registrant.	:
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In the Matter of
Registration No. 2,403,037
Mark: COOKIE BLOOMERS and Design
Registered: November 14, 2000
Classes: 030 and 035
Registration No. 2,522,388
Mark: COOKIE BLOOMERS
Registered: December 25, 2001
Class: 035

BOX TTAB - FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

PETITION FOR CANCELLATION

Petitioner Makin' Dough, Inc. d.b.a. Bloomin' Cookies ("Makin' Dough" or "Petitioner"), a corporation duly organized and existing under the laws of the state of Georgia with a principal place of business at 502 Amsterdam Avenue, Atlanta, Georgia 30306, believes that it will be damaged by the continued registration by Anubis Enterprises, Inc. d.b.a. Cookie Bloomers ("Registrant" or "Cookie Bloomers") of U.S. Registration No. 2,403,037 for the trademark COOKIE BLOOMERS and Design for "cookies", in International Class 030 and "retail shops, mail order services, telephone shop-at-home, and on-line retail store services featuring baked goods sales of baked goods" in International Class 035 which registration issued on November 14, 2000; and U.S. Registration No. 2,522,388 for "COOKIE BLOOMERS" for

“retail services featuring gift baskets, cookies, drinking mugs and cookies formed to simulate flowers” in International Class 035 which registration issued on December 25, 2001 (hereinafter collectively referred to as “Registrant’s Marks”).

Makin’ Dough hereby petitions to cancel the same pursuant to Section 14 of the Lanham Act, 15 U.S.C. § 1064.

As grounds for the petition, Petitioner alleges as follows:

1. Petitioner makes and sells cookies, cookies formed into the shape of flowers, bouquets and plants, and cookie gift baskets throughout the United States. Petitioner sells its products on-line, through catalog orders and through its retail stores.

2. Over eighteen years ago, in February, 1984, Petitioner first began using the marks BLOOMIN’ COOKIES and BLOOMING COOKIES in commerce on or in connection with its cookies.

3. On October 10, 1984, Petitioner file a trademark application with the United States Patent and Trademark Office directed to the mark BLOOMIN’ COOKIES for “cookies for sale or consumption on or off the premises” in International Class 030. This mark was registered under Registration No. 1,337,030 on May 21, 1985.

4. Despite its continuous and exclusive use of its registered trademark BLOOMIN’ COOKIES since the date of registration, in 1981, Petitioner unintentionally let its trademark registration lapse by forgetting to file the Section 8 Affidavit of Use during the fifth and sixth year of registration. At no time did Petitioner abandon its use of the mark BLOOMIN’ COOKIES. Petitioner has continuously used its mark on or in connection with the identified goods in commerce since February, 1984.

5. On August 16, 1993, Petitioner re-filed its mark BLOOMIN' COOKIES for "cookies and cookies on flower stems for consumption on or off the premises" in International Class 030. This application was assigned the filing number Serial No. 74/425,025.

6. The mark BLOOMIN' COOKIES appears on the product packaging and in Petitioner's catalogs.

7. This line of products has proved to be very successful. As a result, there is considerable interest among consumers for goods bearing the mark BLOOMIN' COOKIES.

8. As a result of Petitioner's exclusive use and promotion of its mark, the mark has acquired enormous value and has become well known to the consuming public and trade as identifying and distinguishing the goods emanating exclusively from or authorized by Petitioner. Moreover, as a result of Petitioner's use of the mark, the mark has become associated with flower cookies that come from or find their source in Petitioner.

9. On May 11, 1992, Registrant Anubis Enterprises, Inc. d.b.a. Cookie Bloomers , a Connecticut Corporation located at 158C Research Driver, Milford, Connecticut 06460, applied to register the mark COOKIE BLOOMERS and Design for "cookies", in International Class 030 and "retail shops, mail order services, telephone shop-at-home, and on-line retail store services featuring baked goods sales of baked goods" in International Class 35. Registrant claimed dates of first use of the listed goods and services in November, 1990, six and a half years after Petitioner first began use of its mark.

10. Thereafter, on March 2, 2001, Registrant filed a trademark application for "COOKIE BLOOMERS" for "retail services featuring gift baskets, cookies, drinking mugs and cookies formed to simulate flowers" in International Class 035 which application matured into a

registration under Registration No. 2,522,388 on December 25, 2001. Registrant claimed dates of first use of November, 1997, thirteen years after Petitioner's date of first use.

11. Registrant also filed a trademark application for "COOKIE BLOOMERS" for "cookies and cookies formed to simulate flowers" in International Class 030 on March 5, 2001, which application is still pending under Serial No. 76/220,397. Registrant claims a date of first use of November, 1990. This pending application is not subject to this cancellation proceeding as it has not yet registered. Should the application be published for opposition, Petitioner intends to file an opposition proceeding wherein it will oppose the registration of Petitioner's application COOKIE BLOOMERS on the basis of Petitioner's prior rights in and to a nearly identical mark for identical goods.

12. Petitioner's pending application for BLOOMIN' COOKIES has been denied registration by the Trademark Office in a final refusal based upon a likelihood of confusion with Registrant's registered trademark "COOKIE BLOOMERS" Registration No. 2,403,037.

13. Petitioner's use of the mark BLOOMIN' COOKIES predates the date of first use of the mark COOKIE BLOOMERS by Registrant.

14. Registrant's Marks are confusingly similar to Petitioner's mark.

15. The goods/services identified in Registrant's registrations are identical in type and nature to the goods offered by Petitioner. As such, it is likely that consumers would mistakenly assume some connection between the parties' cookies which are offered under confusingly similar names.

16. The mark BLOOMIN' COOKIES has been unique to Petitioner in connection with cookies and cookies in the form of flowers. Given the overwhelming similarity between the

parties' marks, people are likely to be confused into believing that Registrant's goods under its Marks constitute a spin-off or secondary cookie business associated with Petitioner or its cookies.

17. Petitioner will be damaged by the continuing registration of the Marks COOKIE BLOOMERS Registration No. 2,403,037 and COOKIE BLOOMERS Registration No. 2,522,388, as the registrations are inconsistent with Petitioner's prior rights in that mark.

18. By virtue of Petitioner's extensive use and promotion of its mark BLOOMIN' COOKIES in connection with cookies and cookies formed into flowers, bouquets and plants, Registrant's use and continued registration of the Marks COOKIE BLOOMERS in connection with cookies, cookies formed to simulate flowers, and retail, mail order, telephone shop at home, and on-line retail store services related to same are likely to cause confusion or cause mistake or to deceive the public into believing that Registrant and/or Registrant's cookies offered under its marks are associated or affiliated with Petitioner, is part of Petitioner's cookie products or is otherwise authorized by or connected with Petitioner.

WHEREFORE, Petitioner prays that Registration No. 2,226,802 and Registration No. 2,522,388 be cancelled.

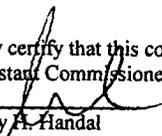
Duplicate copies of this Petition for Cancellation are enclosed herein. Also enclosed is a check for the Petition for Cancellation filing fee.

Dated: December 9, 2002

By: 
Anthony H. Handal
HANDAL & MOROFSKY
80 Washington Street
Norwalk, Connecticut 06854
(203) 838-8589

Attorneys for Petitioner
Makin' Dough, Inc.

I hereby certify that this correspondence is being deposited with the United States Postal Service as express mail in an envelope addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, on December 9, 2002.


Anthony H. Handal

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



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In re Application of: :

Makin' Dough, Inc. : Law Office No. 111

12-11-2002

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

Serial No. 74/424,025 : Examiner: Geoffrey A. Fosdick, Esq.

Mark: **BLOOMIN' COOKIES** :

Class: 30 :

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BOX RESPONSES

NO FEE

Assistant Commissioner for Trademarks

2900 Crystal Drive

Arlington, Virginia 22202-3513

RESPONSIVE LETTER

To Assistant Commissioner for Trademarks:

In response to the Office Action of June 12, 2002, please enter the following remarks into the above identified application.

REMARKS

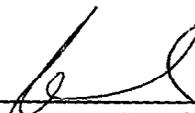
In the outstanding office action, the examiner has made a final refusal to register Applicant's mark **BLOOMIN' COOKIES** based upon a likelihood of confusion with U.S. Registration No. 2,403,037 directed to the mark **COOKIE BLOOMERS** and Design.

As indicated in its last amendment filed with the Trademark Office, Applicant first began using the **BLOOMIN' COOKIES** over six years prior to the date of first use of the cited mark

by the registrant. Applicant has filed a petition for cancellation of U.S. Registration No. 2,403,037 based upon Applicant's prior rights to the mark BLOOMIN' COOKIES. A copy of the petition for cancellation as filed today, December 9, 2002, is attached hereto for the examiner's consideration. Applicant hereby respectfully requests that the examiner suspend prosecution of Applicant's trademark application for BLOOMIN' COOKIES pending the disposition of the cancellation proceeding.

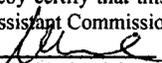
If for any reason the examiner believes that consultation with applicant's attorney will be useful in the advancement of the prosecution, the Examiner is invited to call applicant's attorney at the telephone number below.

Respectfully submitted,

By: 
Anthony H. Handal

HANDAL & MOROFSKY
80 Washington Street
Norwalk, CT 06854
(203) 838-8589

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, on December 9, 2002.


Anthony H. Handal

TTAB



HANDAL & MOROFSKY
COUNSELLORS AT LAW
80 WASHINGTON STREET

12-11-2002

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

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DISTRICT OF COLUMBIA OFFICE
AMERICAN CENTER
8300 BOONE BOULEVARD
VIENNA, VIRGINIA 22182

December 9, 2002

BOX RESPONSES-NO FEE

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Re: Makin' Dough, Inc.
Serial No. 74/425,025
Mark: BLOOMIN' COOKIES
Class: 30

To Assistant Commissioner for Trademarks:

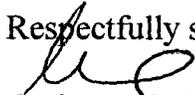
We enclose herewith:

- Responsive Letter;
- Copy of Petition for Cancellation;
- Certificate of Mailing; and
- Acknowledgment Postcard.

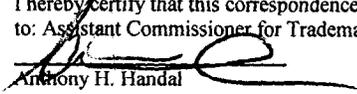
The Commissioner is hereby authorized to charge payment of the fees associated with this communication or credit any overpayment to Deposit Account No. 08-0570.

Applicant hereby petitions under 37 CFR 1.136 or other applicable rule to have the response period extended the number of months necessary to render the attached communication timely if a petition is required.

Respectfully submitted,


Anthony H. Handal, Esq.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, on December 9, 2002.


Anthony H. Handal

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