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Filing date: **10/15/2004**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	The Kroger Co. of Michigan		
Entity	Corporation	Citizenship	Michigan
Address	18334 Laurel Park Drive North Livonia, MI 48152 UNITED STATES		

Attorney information	Laura C. Gustafson PILLSBURY WINTHROP LLP Calendar / Docketing Department 50 Fremont Street San Francisco, CA 94105 UNITED STATES sftrademarks@pillsburywinthrop.com, lgustafson@pillsburywinthrop.com Phone:415 983 6318		
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Registration Subject to Cancellation

Registration No	2724576	Registration date	06/10/2003
Registrant	Monde Denmark Nissin Biscuit Corporation		
Goods/Services Subject to Cancellation	Class 030. First Use: 20010927 , First Use In Commerce: 20010927 Goods/Services: COFFEE, TEA, COCOA, SUGAR, RICE, TAPIOCA, SAGO, CHICORY BASED COFFEE SUBSTITUTE, FLOUR, CEREAL BASED SNACK FOOD, BREAD, BISCUITS, CAKES, PASTRIES, PEPPER, VINEGAR, SAUCES, SPICES, ICE		

Attachments	Petition To Cancel.pdf (2 pages)
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Signature	/Laura C. Gustafson/
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Name	Laura C. Gustafson
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Date	10/15/2004
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THE KROGER CO. OF MICHIGAN,) Cancellation
) No. _____
Petitioner,)
vs.) RN 2,724,576
MONDE DENMARK NISSIN BISCUIT) Mark: KID-O
CORPORATION)
Respondent.)
_____	—

PETITION TO CANCEL

Petitioner, The Kroger Co. of Michigan, a Michigan corporation, with a business address at 18334 Laurel Park Drive North, Livonia, Michigan 48152 (hereinafter, “Petitioner”), believes that it is or will be damaged by Registration No. 2,724,576, issued June 10, 2003, owned by Respondent, Monde Denmark Nissin Biscuit Corporation (hereinafter, “Respondent”), and hereby petitions to cancel said registration, pursuant to 15 U.S.C. §§1064(1).

The grounds for the petition to cancel are as follows:

1. Petitioner has filed applications to register KID-O’S (SN 78-317,713) and KID-O’S! and Design (SN 78-317,710), both for “creme-filled sandwich cookies” (hereinafter, “Petitioner’s Marks”).
2. Respondent owns a registration for KID-O for “coffee, tea, cocoa, sugar, rice, tapioca, sago, chicory based coffee substitute, flour, cereal based snack food, bread, biscuits, cakes, pastries, pepper, vinegar, sauces, spices and ice”, Registration No. 2,724,576 (hereinafter, “Respondent’s Mark”).
3. The Trademark Examiner has refused registration of Petitioner’s Marks on the grounds that they are likely to cause confusion with Respondent’s Mark.
4. Petitioner first used its KID-O’S marks at least as early as September 1997.

5. Respondent's application for KID-O was filed May 7, 1999.
6. According to papers filed with the U.S. Patent and Trademark Office, Respondent claims a date of first use of KID-O of September 27, 2001.
7. Petitioner's first use of its KID-O'S mark was long prior to Respondent's first actual or constructive use of KID-O in the United States.
8. Respondent's Mark consists of or comprises a mark which so resembles Petitioner's Marks, previously used in the United States, as to be likely, when used in connection with the goods of Registrant, to cause confusion or to cause mistake, or to deceive.
9. The presence on the Register of Respondent's Mark damages or will damage Petitioner.

WHEREFORE, Petitioner prays that this Petition To Cancel be sustained and the registration of Respondent's Mark be canceled, pursuant to 15 U.S.C. §§1064(1).