

ESTTA Tracking number: **ESTTA56568**

Filing date: **12/07/2005**

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	Rexam Closures and Containers, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	3245 Kansas Road Evansville, IN 47711 UNITED STATES		

Attorney information	Julie Ann Gregory and Brian P. McGraw Middleton Reutlinger 2500 Brown & Williamson Tower Louisville, KY 40202 UNITED STATES bmcgraw@middreut.com Phone:1-502-584-1135		
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Registration Subject to Cancellation

Registration No	2827685	Registration date	03/30/2004
Registrant	Berry Plastics Corporation 101 Oakley Street P.O. Box 959 Evansville, IN 477060959 UNITED STATES		
Goods/Services Subject to Cancellation	Class 020. First Use: 1988/03/19 , First Use In Commerce: 1988/03/19 Goods/Services: tamper-evidence plastic closures for food and beverage products		

Attachments	Petition to Cancel.pdf (5 pages)
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Signature	/Brian McGraw/
Name	Julie Ann Gregory and Brian P. McGraw
Date	12/07/2005

1. Petitioner is a corporation organized and existing under the laws of Delaware, located at 4201 Congress Street, Suite 340, Charlotte, North Carolina 28209, and is also doing business at 3245 Kansas Road, Evansville, Indiana 47711.

2. On November 4, 2004, Petitioner filed an application under Section 1(a) of the Trademark Act with the United States Patent & Trademark Office (hereinafter referred to as "USPTO") to register the mark SNAP LOK, for use in connection with "non-metal closures for containers" in International Class 20. Serial No. 78/511,323 was assigned to that application.

3. Petitioner has been using the mark SNAP LOK in connection with the applied-for goods since at least as early as June 30, 1976. Over the many years, Petitioner has developed substantial goodwill and consumer recognition in its mark and products sold thereunder.

4. Petitioner's predecessor company, that being Rexam Plastics Inc., was the owner of U.S. Reg. No. 1,681,224 (hereinafter referred to as the '224 registration) for the mark SNAP-LOK for use in connection with "child resistant threaded plastic closures for containers" in International Class 20. The '224 registration issued on March 31, 1992, and was inadvertently allowed to be cancelled under Section 8 of the Trademark Act on January 4, 2003.

5. On information and belief, the Respondent, Berry Plastics Corporation ("Berry Plastics" or "Respondent"), is an Indiana corporation located at 101 Oakley Street, P.O. Box 959, Evansville, Indiana 47706-0959.

6. On information and belief, on June 13, 2002, Respondent filed an application under Section 1(a) of the Trademark Act with the USPTO for the mark

SNAPLOC for use in connection with “tamper-evidence plastic closures for food and beverage products”. Serial No. 78/135,648 was assigned to that application. On March 30, 2004, the USPTO issued Reg. No. 2,827,685 to the Respondent for the mark SNAPLOC, for use in connection with “tamper evidence plastic closures for food and beverage products.”

7. Pursuant to documents filed by Respondent with the USPTO, Respondent claims to have been using its mark SNAPLOC in connection with those goods recited in its registration since at least as early as March 19, 1988.

8. On information and belief, Petitioner and Respondent market, advertise for sale, and sell, or will market, advertise for sale, and sell, their respective goods under their respective marks, in the same channels of trade, in the same outlets, and to the same customers or customer groups. Alternatively, Petitioner states that Respondent’s goods are sufficiently related to those of Petitioner such that Petitioner will be damaged by the continued registration of Respondent’s mark. 15 U.S.C. §1064.

9. As between the parties, Petitioner has priority of use of the mark SNAP LOK, which is similar in sight, sound and commercial impression to Respondent’s mark SNAPLOC.

10. Reg. No. 2,827,685 for the mark SNAPLOC, which stands in the name of Respondent, has been cited under Section 2(d) of the Trademark Act as a basis for refusing registration of Petitioner's mark SNAP LOK.

11. Petitioner will be damaged by the continued registration of Reg. No. 2,827,685, because the registration is blocking registration of Petitioner's mark SNAP LOK under App. Serial No. 78/511,323.

12. On information and belief, Petitioner will be damaged by the continued registration of Reg. No. 2,827,685 because Respondent's mark SNAPLOC so resembles Petitioner's mark SNAP LOK, as to be likely to cause confusion, to cause mistake, or to deceive as to the affiliation, connection, or association of Respondent with Petitioner, or as to the origin, sponsorship, or approval of Respondent or Respondent's goods by Petitioner. 15 U.S.C. §1052(d); 15 U.S.C. §1064.

13. On information and belief, Respondent's mark is confusingly and deceptively similar to Petitioner's mark, such that the use and registration of Respondent's mark for the goods identified in Reg. No. 2,827,685 would be likely to cause confusion in the minds of consumers as to the source of Petitioner's or Respondent's goods, and would be likely to confuse and deceive the trade and purchasing public into believing that Respondent's goods originate with or are otherwise authorized, licensed, or sponsored by Petitioner. 15 U.S.C. §1052(d); 15 U.S.C. §1064.

14. On information and belief, Respondent's use and registration of the mark SNAPLOC falsely suggests a connection between Respondent's goods and Petitioner, in violation of 15 U.S.C. §1052(a); 15 U.S.C. §1064.

15. By reason of all the foregoing, Petitioner believes that it will be damaged by the continued registration of Reg. No. 2,827,685, and Petitioner hereby petitions for cancellation of same.

WHEREFORE, Petitioner, Rexam Closures and Containers Inc., respectfully requests that U.S. Reg. No. 2,827,685 be cancelled.

Respectfully submitted,



Julie Ann Gregory
Brian P. McGraw
Middleton Reutlinger
2500 Brown & Williamson Tower
Louisville, Kentucky 40202
Tel: (502) 584-1135
Fax: (502) 561-0442
jgregory@midtreut.com and/or
bmcgraw@midtreut.com.

COUNSEL FOR PETITIONER
REXAM CLOSURES & CONTAINERS,
INC.