

ESTTA Tracking number: **ESTTA139818**

Filing date: **05/10/2007**

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	A.L. Bazzini Co., Inc.		
Entity	Corporation	Citizenship	New York
Address	200 Food Center Drive Bronx, NY 10474 UNITED STATES		

Attorney information	David Mitnick Amster Rothstein & Ebenstein LLP 90 Park Avenue New York, NY 10016 UNITED STATES ptodocket@arelaw.com Phone:212-336-8000
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Registration Subject to Cancellation

Registration No	2699329	Registration date	03/25/2003
International Registration No.	NONE	International Registration Date	NONE
Registrant	Lidl Stiftung & Co. KG Stiftsbergstraße 1 D-74167 Neckarsulm, GERMANY		
Goods/Services Subject to Cancellation	Class 030 Goods/Services: Chocolate and chocolate goods, namely candies, pralines, with fruit and or spirit filled candies, chocolate, covered biscuits and cookies		

Related Proceedings	A.L. Bazzini Co., Inc. v. Lidl Stiftung & Co. KG, Cancellation No. 92047483
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Attachments	78855399#TMSN.jpeg (1 page)(bytes) 73502138#TMSN.gif (1 page)(bytes) Petition to Cancel 2699329.pdf (5 pages)(208488 bytes)
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Signature	/David Mitnick/
Name	David Mitnick
Date	05/10/2007

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

In the matter of Trademark Registration No. 2,699,329
For the mark: BASINI
Int'l Class: 30
Date registered: March 25, 2003

A.L. BAZZINI CO., INC.,	X	
	:	
Petitioner,	:	CANCELLATION NO. _____
	:	
v.	:	
	:	
LIDL STIFTUNG & CO., KG	X	
	:	
Registrant.	:	
	X	

PETITION TO CANCEL

Attn: TTAB
Commissioner for Trademarks
Trademark Assistance Center
Madison East, Concourse Level Room C55
600 Dulany Street
Alexandria, VA 22314

Hon. Commissioner:

A.L. Bazzini Co., Inc., a corporation organized and existing under the laws of the State of New York, located and doing business at 200 Food Center Drive Bronx, New York 10474 ("Petitioner"), believes it will be damaged by U.S. Trademark Registration

No. 2,699,329 (“the ‘329 Registration”), owned by LIDL STIFTUNG & CO., KG, a corporation organized and existing under the laws of the country of Germany with an address listed in the records of the Patent and Trademark Office as Stiftsbergstrasse 1 D-74167 Neckarsulm, Germany (“Registrant”), for the mark BASINI, covering in class 30, chocolate and chocolate goods, namely candies, pralines, with fruit and/or spirit filled candies, chocolate, covered biscuits and cookies.

Pursuant to Section 14 of the Trademark Act of 1946, as amended, Petitioner hereby petitions to cancel the ‘329 Registration on the basis of the following facts and grounds:

1. Petitioner was founded in New York by Mr. Anthony Bazzini. Mr. Bazzini emigrated to the United States from Italy in his early childhood and, at a young age, began working at a nut processing company in New York City. In approximately 1888 Mr. Bazzini bought the nut processing company he had worked at for many years.
2. Since *at least* as early as December 31, 1936, the company founded by Mr. Bazzini has been known by the trademark BAZZINI in conjunction with its nuts and related products.
3. Petitioner’s use of the BAZZINI mark has been continuous since its first use and, since that time, the goods offered under the mark have been extensively utilized and promoted. Such goods include a wide variety of nuts and related products, including raw nuts, processed nuts, nut mixes, dried fruit, roasted nutmeats, seeds, brittles, chocolates, snack mixes and the like.

Petitioner's products are sold in markets, stores, and shopping centers all over the United States.

4. Petitioner owns several registrations for the BAZZINI and related trademarks, including U.S. Trademark Reg. No. 1,416,837 for BAZZINI's in Class 29 for roasted nutmeats and dried fruit, and U.S. Trademark Reg. No. 1,416,816 for HOUSE OF BAZZINI FRUITION & NUTRITION in Class 29 for fruit and nut mix, and in Class 31 for seeds.

5. Based on the foregoing, the BAZZINI mark has gained widespread recognition among consumers in the nut products and snacks marketplace.

6. On March 17, 2006, Petitioner filed an application to federally register the trademark BAZZINI (Design) covering the following goods (as amended by the Petitioner per the request of the Examining Attorney in a subsequent Office Action): roasted nuts, flavored nuts, nut butters, roasted seeds, snack mixes consisting of processed fruit and processed nuts, and fruits, in Class 29; confections, namely, peanut brittles, candy bar crunches, chocolate covered nuts and chocolate covered dried fruits, in Class 30; and, raw nuts, raw hulled seeds, namely, pumpkin seeds and sunflower seeds, in Class 31. The application was assigned Serial No. 78/853,399 ("the '399 Application").

7. At present, the '399 Application has been rejected, *inter alia*, under Section 2(d) of the Trademark Act on the basis of an alleged likelihood of confusion with the '329 Registration.

8. The '329 Registration was filed in October 2000.

9. The '329 Registration is not incontestable, and, as of the present filing date, to the best of Petitioner's knowledge the mark covered thereby was not in use in the United States.

10. Petitioner adopted and used the trademark BAZZINI to identify and distinguish its services approximately sixty-three (63) years prior to the filing date of the Registrant's application for its BASINI mark.

11. Since there has been a contention by the Examining Attorney that there may be a likelihood of confusion between Petitioner's BAZZINI (Design) mark, which is the subject of the '399 Application, and Registrant's BASINI mark, which is the subject of the '329 Registration, the continued existence of the '329 Registration on the principal register is causing damage, and will continue to damage Petitioner. Among other things, the continued existence on the principal register of the '329 Registration is likely to prevent Petitioner from obtaining a registration, to which it is entitled, for its BAZZINI (Design) mark in connection with its goods.

WHEREFORE, Petitioner requests that this petition to cancel be granted and the
'329 Registration be cancelled.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP
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By: 

Anthony F. Lo Cicero
David Mitnick

Dated: New York, New York
May 10, 2007