

ESTTA Tracking number: **ESTTA198584**

Filing date: **03/14/2008**

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	Contessa Premium Foods, Inc.		
Entity	Corporation	Citizenship	USA
Address	222 West Sixth Street, 8th Floor San Pedro, CA 90731-3316 UNITED STATES		

Attorney information	Gary J. Nelson Christie, Parker & Hale, LLP P.O. Box 7068 Pasadena, CA 91109-7068 UNITED STATES PTO@CPH.COM Phone:(626) 795-9900		
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Registration Subject to Cancellation

Registration No	2892226	Registration date	10/12/2004
Registrant	GARTEN FOOD CORPORATION 46 NEWTOWN LANE EAST HAMPTON, NY 11937 UNITED STATES		

Goods/Services Subject to Cancellation

<p>Class 029. First Use: 1979/00/00 First Use In Commerce: 1979/00/00 All goods and services in the class are cancelled, namely: DIPS, NAMELY, VEGETABLE, YOGURT, FISH AND HERB BASED DIPS; HUMMUS, CHILI, STEWS RIBOLLITA, SOUPS, NAMELY, GAZPACHO AND CHOWDERS; SALADS EXCEPT MACARONI, RICE AND PASTA; CRANBERRY SAUCE; APPLE SAUCE, DRIED FRUITS, PROCESSED NUTS, CANDIED NUTS, SNACK MIX CONSISTING PRIMARILY OF PROCESSED FRUITS, PROCESSED NUTS AND/OR RAISINS; PROCESSED PEAS WITH WASABI FLAVORING</p>
<p>Class 030. First Use: 1979/00/00 First Use In Commerce: 1979/00/00 All goods and services in the class are cancelled, namely: VEGETABLE STRUDEL, VEGETABLE COBBLERS, SPRING ROLLS, COFFEE, BREAD CRUMBS, CROUTONS, GRANOLA, CAKES, NAMELY SOUR CREAM COFFEE CAKE; CANDY, NAMELY, STRAWBERRY FLAVORED LACES; QUESADILLA, SALSA</p>
<p>Class 031. First Use: 1994/00/00 First Use In Commerce: 1994/00/00 All goods and services in the class are cancelled, namely: FRESH VEGETABLES AND FRESH NUTS</p>
<p>Class 032. First Use: 1997/00/00 First Use In Commerce: 1997/00/00 All goods and services in the class are cancelled, namely: ORANGE JUICE, GRAPEFRUIT JUICE, LEMONADE; NON-ALCOHOLIC COCKTAIL MIXES</p>

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
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Attachments	Z41_Petition_Cancellation.pdf (4 pages)(118588 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Gary J. Nelson/
Name	Gary J. Nelson
Date	03/14/2008

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

In the matter of Trademark Registration No. 2,892,226
For the Mark BAREFOOT CONTESSA
Date registered October 12, 2004

Contessa Premium Foods, Inc.	Cancellation No.
Petitioner,	
v.	PETITION FOR CANCELLATION
Garten Food Corporation	
Registrant.	

Petitioner Contessa Premium Foods, Inc. ("Contessa"), a corporation with its principal place of business at 222 West Sixth Street, Eighth Floor, San Pedro, California 90731, believes that it is being damaged by United States Trademark Registration No. 2,892,226 and hereby petitions to cancel this registration.

As grounds for cancellation, Contessa alleges:

1. Garten Food Corporation ("GFC") is the listed owner of United States Trademark Registration No. 2,892,226 ("the '226 Registration") for BAREFOOT CONTESSA. The goods identified in the '226 Registration are "dips, namely, vegetable, yogurt, fish and herb based dips; hummus, chili, stews ribollita, soups, namely, gazpacho and chowders; salads except macaroni, rice and pasta; cranberry sauce; apple sauce, dried fruits, processed nuts, candied nuts, snack mix consisting primarily of processed fruits, processed nuts and/or raisins; processed peas with wasabi flavoring" in International Class 029, and "vegetable strudel, vegetable cobblers, spring rolls, coffee, bread crumbs, croutons, granola, cakes, namely sour cream coffee cake; candy, namely, strawberry flavored laces; quesadilla, salsa" in International Class 030, and "fresh vegetables and fresh nuts" in International Class 031, and "orange juice, grapefruit juice,

Docket No. 110.2-17/Z41

lemonade; non-alcoholic cocktail mixes” in International Class 032. The ‘226 Registration has a filing date of November 22, 2006 and an issuance date of October 12, 2004.

2. GFC is not entitled to continued registration of the ‘226 Registration because GFC committed fraud in the procurement of that registration.

3. Contessa alleges on information and belief that GFC or its agent made material representations of fact in its application and/or during the prosecution of its application, that GFC knew or should have known were false.

4. Contessa alleges on information and belief that GFC was not using the subject mark of the '226 Registration on all of the goods identified in the registration at the time it filed the Use-Based application or when it may have submitted any other subsequent and relevant declaration of use during the prosecution of the application.

5. Contessa alleges on information and belief that GFC or its agent made these false statements with the intent to induce authorized agents of United States Patent and Trademark Office to grant the ‘226 Registration, and, reasonably relying upon the truth of said false statements, the PTO did, in fact, grant this registration to GFC.

Docket No. 110.2-17/Z41

6. The continuous registration of the subject mark of the '226 Registration is causing injury to Contessa's business plans, is impairing Contessa's rights in its own trademarks for CONTESSA, is inconsistent with Contessa's rights, and will continue to cause injury to Contessa until the registration is cancelled.

WHEREFORE, Contessa requests that Registration No. 2,892,226 be canceled and that this petition for cancellation be sustained in favor of Contessa.

Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP

Date:

3/14/2008

By

Gary J. Nelson

Gary J. Nelson
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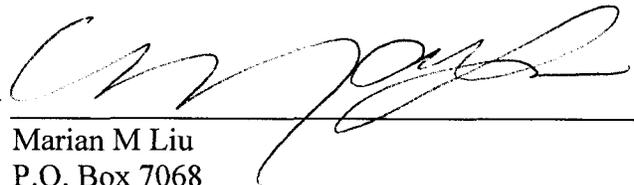
Docket No. 110.2-17/Z41

CERTIFICATE OF SERVICE

I certify that on March 14, 2008, the foregoing **PETITION FOR CANCELLATION** is being served by mailing a copy thereof by first-class mail addressed to:

GARTEN FOOD CORPORATION
46 Newtown Lane
East Hampton, NY 11937

By



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GJN/sel

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