

ESTTA Tracking number: **ESTTA248322**

Filing date: **11/12/2008**

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	Joseph VERBEEK		
Entity	Individual	Citizenship	NETHERLANDS
Address	Frankley Road 52 New Plymouth, 4601 NEW ZEALAND		

Attorney information	Milena S. Mishev Graham, Campaign P.C. 36 West 44th Street, Suite 1201 New York, NY 10036-8178 UNITED STATES milenamishv@grahamcampaign.com Phone:212 3545650		
----------------------	--	--	--

Registration Subject to Cancellation

Registration No	3437016	Registration date	05/27/2008
Registrant	Ramos, Gonzalo A 12 Strathmore Rd. #1 Brookline, MA 02445 UNITED STATES		

Goods/Services Subject to Cancellation

Class 030. First Use: 2007/03/11 First Use In Commerce: 2007/11/01 All goods and services in the class are cancelled, namely: Roasted coffee beans

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	76685525	Application Date	01/09/2007
Registration Date	NONE	Foreign Priority Date	11/26/2006
Word Mark	INCA-FÃ#		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: COFFEE; ARTIFICIAL COFFEE, NAMELY, COFFEE SUBSTITUTES; COFFEE-BASED BEVERAGE CONTAINING MILK; FLAVORINGS FOR COFFEE-BASED BEVERAGES; VEGETAL PREPARATIONS FOR USE AS COFFEE SUBSTITUTES; UNROASTED COFFEE; COFFEE-BASED BEVERAGES

Attachments	76685525#TMSN.gif (1 page)(bytes) US Reg. No. 3437016 - Petition for Cancellation.pdf (4 pages)(69532 bytes)
-------------	--

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	/milena s. mishev/
Name	Milena S. Mishev
Date	11/12/2008

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

VERBEEK, Joseph Henri Gerard,
Petitioner,

vs.

Cancellation No.

Ramos, Gonzalo A, :
Registrant.

To: Commissioner for Trademarks

,Sir:

PETITION FOR CANCELLATION

In the matter of Registration No. 3,437,016, INCAFE and Design, dated May 27, 2008, VERBEEK, Joseph Henri Gerard, an individual citizen of the Netherlands, residing at Frankley Road 52, New Plymouth 4601, New Zealand, believes that he is and will be damaged by the aforesaid registration and, therefore, petitions the Board to enter an Order canceling it.

As grounds for cancellation it is alleged that:

1. Petitioner is the owner of U.S. trademark application Serial No. 76/685,525 for the mark INCA-FÉ in International Class 030 for use in connection with “COFFEE; ARTIFICIAL COFFEE, NAMELY, COFFEE SUBSTITUTES; COFFEE-BASED BEVERAGE CONTAINING MILK; FLAVORINGS FOR COFFEE-BASED BEVERAGES; VEGETAL PREPARATIONS FOR USE

AS COFFEE SUBSTITUTES; UNROASTED COFFEE; COFFEE-BASED BEVERAGES.” Such application is a transformed national application from U.S. application Serial No. 79/035,635 (Extension of Protection of International Registration No. 0916630) with a claim of priority under Section 67 of the Trademark Act on November 26, 2006.

2. In an Office Action dated July 18, 2008, the Examining Attorney cited the registration of the trademark INCAFE and Design, No. 3,437,016, for “roasted coffee beans” in the name of Ramos, Gozalo A claiming that there is a likelihood of confusion because there is a similarity of the marks, similarity of the goods, and similarity of trade channels of the goods.
3. As a matter of law, Petitioner has prior rights in the mark INCA-FÉ since his priority filing date on November 26, 2006 is earlier than Respondent’s filing date on December 22, 2006 and first use date in commerce on November 1, 2007.
4. Petitioner kindly draws the Board’s attention to the fact that in a Supplemental Office Action, dated April 3, 2008, which superseded the first Office Action of March 10, 2008 in connection with the Petitioner’s application for the mark INCA-FÉ, Serial No. 76/685,525, the Examining Attorney’s reference to the mark INCAFE and Design, still a subject of application, Serial No. 77/070.401 at that time, as a potential bar to registration of the Petitioner’s mark INCA-FÉ, was withdrawn by the Examining Attorney because of Petitioner’s prior filing date.

5. As a result of the Examining Attorney citation of Registration No. 3,437,016, Petitioner will be damaged by not being able to proceed with his application for registration of the mark INCA-FÉ.

WHEREFORE, Petitioner respectfully requests that cited registration No. 3,437,016 be cancelled.

VERBEEK, Joseph Henri Gerard

November 12, 2008

BY: _____



Milena S. Mishev
Graham, Campaign P.C.
36 West 44th Street, Suite 1201
New York, NY 10036-8178

CERTIFICATE OF SERVICE

I hereby certify that true and correct copy of the foregoing Petition for Cancellation is being deposited with the U.S. Postal Service, via first-class mail, with sufficient postage prepaid, in an envelope addressed to Respondent at the address and on date indicated below:

Mr. Ramos, Gonzalo A
12 Strathmore Rd #1
Brookline, MA 02445-1902

Date: November 12, 2008

By: 
Milena S. Mishev