

ESTTA Tracking number: **ESTTA342393**

Filing date: **04/14/2010**

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    | Mother Parker's Tea & Coffee, Inc.                      |             |        |
| Entity  | Corporation   | Citizenship | Canada |
| Address | 2530 Stanfield Road<br>Mississauga, ON L4Y1S4<br>CANADA |             |        |

|                      |   |  |  |
|----------------------|---|--|--|
| Attorney information | Priscilla L. Dunckel<br>Baker Botts L.L.P.<br>2001 Ross Avenue Suite 600<br>Dallas, TX 752012980<br>UNITED STATES<br>priscilla.dunckel@bakerbotts.com, daltmdept@bakerbotts.com<br>Phone:214.953.6618 |  |  |
|----------------------|---|--|--|

**Registration Subject to Cancellation**

|                 |  |                   |            |
|-----------------|--|-------------------|------------|
| Registration No | 3514570  | Registration date | 10/14/2008 |
| Registrant      | CAFÉ# MYSTIQUE INC.<br>166, Benjamin Hudon<br>Saint-Laurent (Québec), H4N 1H8,<br>CANADA |                   |            |

**Goods/Services Subject to Cancellation**

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| Class 030. First Use: 1998/04/24 First Use In Commerce: 1998/04/24<br>All goods and services in the class are cancelled, namely: Coffees |
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**Grounds for Cancellation**

|                                      |                            |
|--------------------------------------|----------------------------|
| False suggestion of a connection     | Trademark Act section 2(a) |
| Abandonment                          | Trademark Act section 14   |
| Priority and likelihood of confusion | Trademark Act section 2(d) |

**Mark Cited by Petitioner as Basis for Cancellation**

|                                       |               |                  |      |
|---------------------------------------|---------------|------------------|------|
| U.S. Application/<br>Registration No. | NONE          | Application Date | NONE |
| Registration Date                     | NONE          |                  |      |
| Word Mark                             | CAFE MYSTIQUE |                  |      |
| Goods/Services                        | Coffee        |                  |      |

|             |   |
|-------------|---|
| Attachments | CAFE MYSTIQUE - Petition to Cancel.PDF ( 6 pages )(249471 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 | /Priscilla L. Dunckel/ |
| Name      | Priscilla L. Dunckel   |
| Date      | 04/14/2010             |

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

MOTHER PARKER'S TEA & COFFEE,  
INC.,

Petitioner,

vs.

CAFÉ MYSTIQUE, INC.,

Respondent.

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Cancellation No. \_\_\_\_\_

Mark: **CAFÉ MYSTIQUE  
COFFEE & Design**

Registration No. 3,514,570  
Issued October 14, 2008

Trademark Trial and Appeal Board  
U.S. Patent and Trademark Office  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

**PETITION TO CANCEL**

TO THE TRADEMARK TRIAL AND APPEAL BOARD:

MOTHER PARKER'S TEA & COFFEE, INC., a Canadian corporation, located and doing business at 2530 Stanfield Road, Mississauga, Ontario L4Y 1S4, Canada, believes it will be damaged by Registration No. 3,514,570 owned by Café Mystique, Inc., a Canadian corporation with an address of 166 Benjamin Hudon, Saint-Laurent, Quebec H4N 1H8, Canada, and hereby petitions to cancel the Registration No. 3,514,570 for the mark CAFÉ MYSTIQUE COFFEE & Design for the goods in International Class 30.

As grounds therefor, it is alleged that:

1. Petitioner has been using the mark CAFÉ MYSTIQUE in connection with the sale of coffee in the United States since about 1998 ("Petitioner's Mark").

2. Respondent owns Registration No. 3,514,570 (the "Registration"), which is sought to be cancelled, for the trademark CAFÉ MYSTIQUE COFFEE & Design ("Respondent's Alleged Mark"), registered for use in connection with "coffee," in International Class 30.



3. The Registration was filed by Respondent on October 15, 2007, based on use in commerce in or with the United States, claiming a first date of use and first date of use in commerce of April 24, 1998.

4. Respondent's website at [www.mystiquecoffee.com](http://www.mystiquecoffee.com) states "[y]ou may find Café Mystique products in major food chains and retail natural food stores, namely IGA, Metro, Rachelle Bery, etc. *throughout the Province of Quebec.*" [Emphasis added.]

5. On information and belief, Respondent's coffee products are not currently available and have never been sold in commerce in the United States under Respondent's Alleged Mark. The packaging submitted to support Respondent's application for the Registration is in French and appears to be packaging for the Canadian market, specifically for Quebec. On information and belief, Respondent's coffee products have not been sold in such packaging in the United States.

6. Respondent's Registration and Respondent's Alleged Mark are for a design which includes the phrase CAFÉ MYSTIQUE, a mark identical to Petitioner's CAFÉ MYSTIQUE mark, which Petitioner has used in the United States since 1998.

## Count I

### Likelihood of Confusion

7. Petitioner hereby incorporates and realleges the allegations contained in Paragraphs 1-6 of this Petition for Cancellation.

8. The phrase "Café Mystique" included in Respondent's Alleged Mark is identical to, and therefore confusingly similar to, Petitioner's CAFÉ MYSTIQUE mark.

9. The goods covered by Respondent's Alleged Mark, "coffee," are similar and competitive with the coffee sold in connection with Petitioner's Mark. The goods listed in Respondent's Registration appeal to the same or similar class of purchasers and are goods of a type which are sold through the same channels of trade and which serve a similar purpose as goods sold under Petitioner's Mark.

10. Petitioner's use of Petitioner's Mark long pre-dates the filing date for Respondent's application for the Registration and, on information and belief, Respondent's use of Respondent's Mark in the United States

11. Respondent's Alleged Mark so resembles Petitioner's Mark as to be likely to cause confusion or mistake in the minds of the public. Respondent's Alleged Mark is likely to lead the public and prospective purchasers to believe that Respondent's goods are those of Petitioner, or are endorsed or sponsored by, or otherwise affiliated with Petitioner, or that Petitioner's goods are associated with Respondent, all to the damage and injury of the purchasing public, and to the damage and injury of Petitioner.

12. Accordingly, registration of Respondent's Alleged Mark is subject to cancellation under the provisions of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

## **Count II**

### **False Suggestion of Connection**

13. Petitioner hereby incorporates and realleges the allegations contained in Paragraphs 1-12 of this Petition for Cancellation.

14. Respondent's use and registration of Respondent's Alleged Mark is a false designation of Respondent's goods, whereby the consuming public would be likely to mistakenly believe that Respondent's goods emanate from or are sponsored, approved or licensed by Petitioner, within the meaning of 15 U.S.C. § 1125(a).

15. Upon information and belief, in using Respondent's Alleged Mark, Respondent suggests a connection with Petitioner.

16. Respondent has no legitimate connection with Petitioner, and has no authority or permission to use a trademark suggesting such connection.

17. Respondent's Alleged Mark falsely suggests a connection with Petitioner, and is deceptive in violation of 15 U.S.C. § 1052(a), and therefore, is not entitled to registration and is subject to cancellation.

## **Count III**

### **Abandonment**

18. Petitioner hereby incorporates and realleges the allegations contained in Paragraphs 1-17 of this Petition for Cancellation.

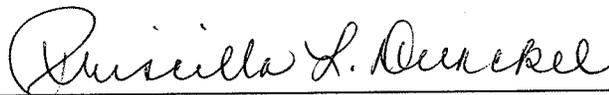
19. On information and belief, Registrant has abandoned the mark protected by Registration No. 3,514,570, as evidenced by Registrant's current non-use of the mark in the United States. On information and belief, the mark protected by the Registration has never been used in the United States.

20. Unless Registration No. 3,514,570 for CAFÉ MYSTIQUE COFFEE & Design is canceled, Petitioner's continued use of its CAFÉ MYSTIQUE mark can be impaired and subject to unwarranted attack. Petitioner will be damaged thereby within the meaning of 15 U.S.C. §1064 since it will not have the protection afforded by the Trademark Act of 1946 and may be forced to use its mark under a threat of interference that is inappropriate.

WHEREFORE, Petitioner deems that it is or will be damaged by Registration No. 3,514,570 in International Class 30, and petitions for cancellation thereof.

This Petition to Cancel is being submitted through the Electronic System for Trademark Trials and Appeals (ESTTA). Please charge the requisite \$300.00 fee and any additional fees required to Deposit Account No. 50-2147 of Baker Botts.

Respectfully submitted this the 14th day of April, 2010,



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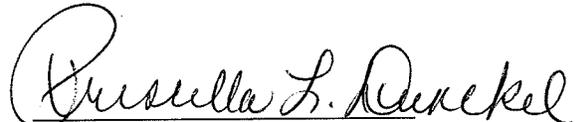
Priscilla L. Dunkel  
Jennifer Scannell  
BAKER BOTTS L.L.P.  
2001 Ross Avenue  
Dallas, Texas 75201  
Telephone: (214) 953-6618  
Telecopier: (214) 661-4818  
daltmdept@bakerbotts.com

ATTORNEYS FOR PETITIONER  
MOTHER PARKER'S TEA & COFFEE, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 14th day of April, 2010, a copy of the foregoing Petition to Cancel was served via First Class Mail to Registrant's domestic representative of record as follows:

Jess M. Collen  
Collen IP, Intellectual Property Law, P.C.  
The Hollyoke-Manhattan Building  
80 South Highland Avenue  
Ossining-on-Hudson, NY 10562

  
Priscilla L. Dunkel