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Filing date: **07/03/2010**

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	Schiff's Restaurant Service, Inc.		
Entity	Corporation	Citizenship	Pennsylvania
Address	3410 North Main Avenue Scranton, PA 18508 UNITED STATES		

Attorney information	Mitchell A. Smolow Dr. Mitchell A. Smolow, LL.M. 720 Hampton Road Shavertown, PA 18708 UNITED STATES msmolow@smolowlaw.com Phone:570-714-4000		
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**Registration Subject to Cancellation**

Registration No	2966071	Registration date	07/12/2005
Registrant	Scavazzo Enterprises Inc. RR#1 Box 15 Stevensville, PA 18845 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 035. First Use: 2003/04/01 First Use In Commerce: 2003/04/01 All goods and services in the class are cancelled, namely: Butcher shop
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**Grounds for Cancellation**

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)
Other	No use in commerce Registrant is not the owner

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

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		

Design Mark	
Goods/Services	wholesale and retail stores featuring groceries; wholesale food distributorship services; meats; produce; and condiments

Attachments	schiff_mark (00008346).JPG filed_petition.pdf ( 13 pages )(398660 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	/Mitchell A. Smolow/
Name	Mitchell A. Smolow
Date	07/03/2010

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

Schiff's Restaurant Service, Inc.	:	
	:	Registration No. 2966071
Petitioner	:	
	:	Issued July 12, 2005
v.	:	
	:	
Scavazzo Enterprises Inc.	:	
d/b/a Dotti-Lou Packing Co.	:	Cancellation No. _____
	:	
Registrant	:	

PETITION FOR CANCELLATION

Petitioner, Schiff's Restaurant Service, Inc. ("Petitioner") a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with a business address of 3410 North Main Avenue, Scranton, PA 18508, believes that it will/has been damaged by U.S. Registration No. 2966071, owned by Scavazzo Enterprises Inc. d/b/a Dotti-Lou Packing Co. ("Registrant"), located at RR#1 Box 15 Stevensville PA 18845.

Petitioner petitions to cancel the registration on the grounds that 1) Registrant's mark so resembles Petitioner's mark identified in Exhibit 1 (the

“Mark”) previously and continuously used in the United States by Petitioner and not abandoned, as to be likely, when used on or in connection with the goods or services of the Registrant, to cause confusion, or to cause mistake, or to deceive; 2) there was no bona fide use of Registrant’s mark in commerce prior to the filing of the use-based application for its registration under Section 1(a) of the Trademark Act; 3) Registrant is not and was not, at the time of the filing of its application for registration, the rightful owner of the registered mark; and 4) Registrant’s mark has diluted the distinctive quality of Petitioner’s famous mark.

In support of this complaint, Petitioner avers:

1. In the early part of 1985, Petitioner engaged the services of a graphic artist to design its Mark.
2. Petitioner began to market its goods and services using its Mark about May, 1985, long before Registrant’s claimed first use date of April 1, 2003, and has continued without break to market its goods and services using its Mark.
3. Petitioner’s goods and services include wholesale and retail stores featuring groceries; wholesale food distributorship services; meats; produce; and condiments.

4. Petitioner has spent substantial sums for the advertisement and promotion of its goods and services using its Mark on/in billboards, buildings, newspapers, printed flyers, delivery vehicles and package labeling. A representative sample is attached as Exhibit 2.
5. By virtue of such use and expense, Petitioner's Mark is favorably known and is a valuable asset of Petitioner. The Mark is a symbol of considerable good will and recognition built up by Petitioner through the use of its Mark.
6. By reason of the widespread advertising and widespread distribution of Petitioner's goods and services bearing Petitioner's Mark, and the extended period of Petitioner's use of its Mark, the trade and purchasing public have come to recognize Petitioner's Mark as signifying Petitioner and as identifying Petitioner as the source of goods and services sold under Petitioner's Mark.
7. By reason of the widespread advertising and widespread distribution of Petitioner's goods and services bearing Petitioner's Mark, and the extended period of Petitioner's use of Petitioner's Mark, the Mark has become famous.
8. Registrant's trademark dilutes the distinctive quality of Petitioner's famous Mark and is likely to cause irreparable harm to Petitioner.

9. Upon information and belief, Vince Scavazzo is the owner of the Registrant, Scavazzo Enterprises, Inc.
10. Mr. Scavazzo was employed by Petitioner from October 15, 1984 through October 18, 1991.
11. His employment coincided with Petitioner's engagement of the graphic artist to develop its Mark and Petitioner's use of its Mark.
12. Petitioner first discovered Registrant's use of its trademark on March 19, 2010 after an employee saw the trademark in a newspaper advertisement.
13. Registrant's trademark is identical to Petitioner's mark for identical goods and services.
14. Upon information and belief, Mr. Scavazzo wrongfully took Petitioner's Mark for his own use without the knowledge or consent of Petitioner.
15. Upon information and belief, Registrant's goods and services are marketed through the same channels of trade and to the same class of consumers as the goods and services of Petitioner.
16. Prospective purchasers of Registrant's goods and services are likely to erroneously believe that such goods and services are produced by or under the authority of Petitioner, or to erroneously assume that there is some other trade connection between Petitioner and Registrant.

17. Registrant's trademark so resembles Petitioner's Mark that, when used on or in connection with the goods and services of Registrant:
- a. It is likely to cause confusion, or to cause mistake, or to deceive;
  - b. It falsely suggests a connection with Petitioner; and
  - c. It tends to damage Petitioner's goodwill in its Mark.
18. Registration No. 2966071 was applied for under Section 1 (a). The applicant, now Registrant, declared under penalty of perjury that it or a related company or licensee, was using its trademark in commerce in connection with "butcher shop" services, at least as early as April 1, 2003.
19. Upon information and belief, applicant, now Registrant was not and continues to not be engaged in interstate commerce, limiting its marketing and sales to Northeastern Pennsylvania.
20. Therefore, the declaration of actual use in commerce as applied to federal trademark law contained in the original application was false and fraudulent. Registrant was not entitled to apply for its trademark under Section 1 (a) and was not entitled to have a registration issued based on the application, which was defective from the start. The application and now registration for Registrant's trademark was based on the false and fraudulent declaration of actual use in commerce.

21. For the foregoing reasons, Petitioner has been and continues to be damaged by the continued presence on the Principal Register of Registration No. 2966071.

WHEREFORE, Petitioner respectfully requests that its petition be granted and that Registration No. 2966071 be cancelled.

Please recognize Mitchell A. Smolow, member of the State Bar of Pennsylvania, USPTO Registration No. 43140, as attorney for Petitioner and address all communications regarding this Petition to him via e-mail or at the address below.

Respectfully submitted,



Date: 07/03/2010

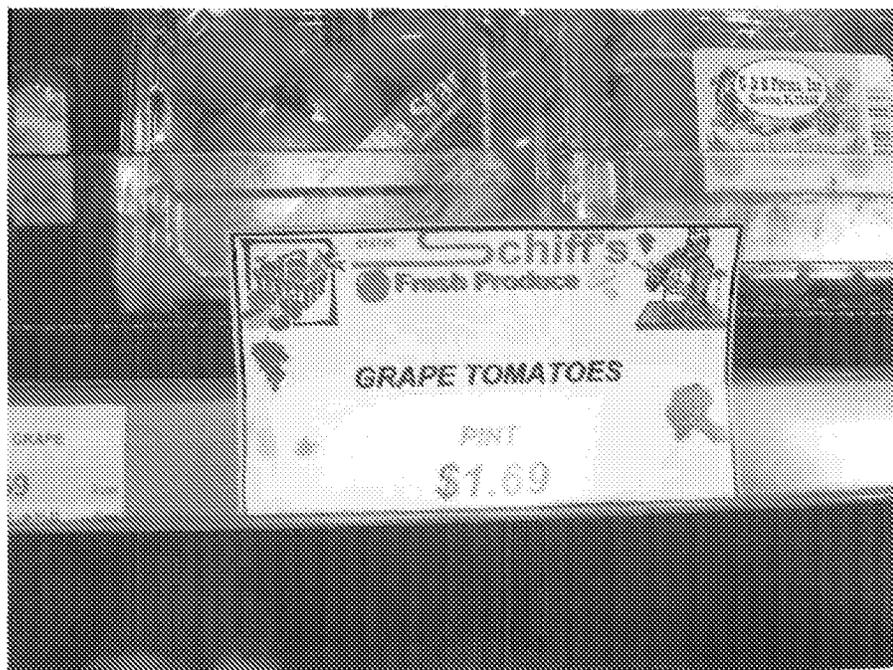
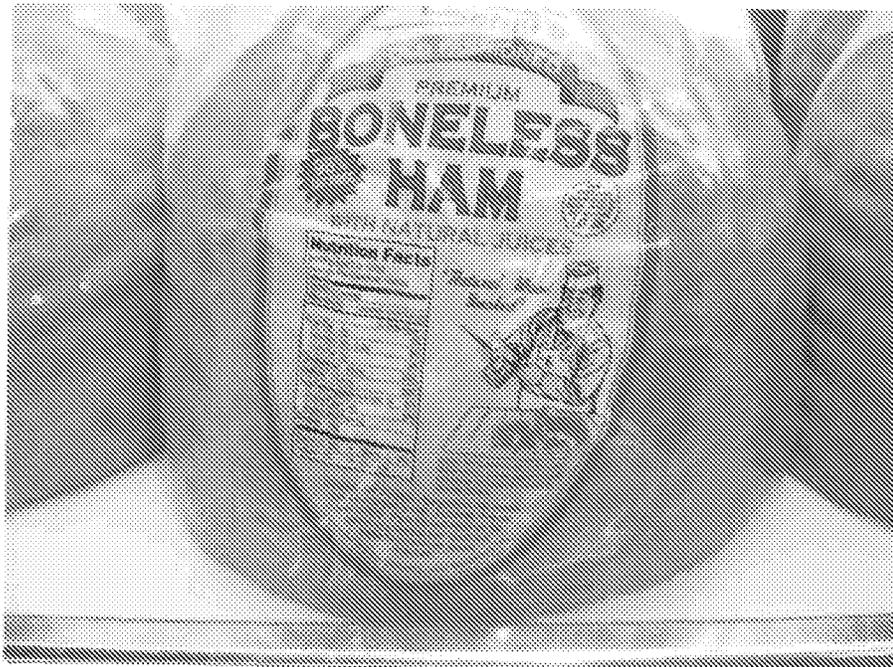
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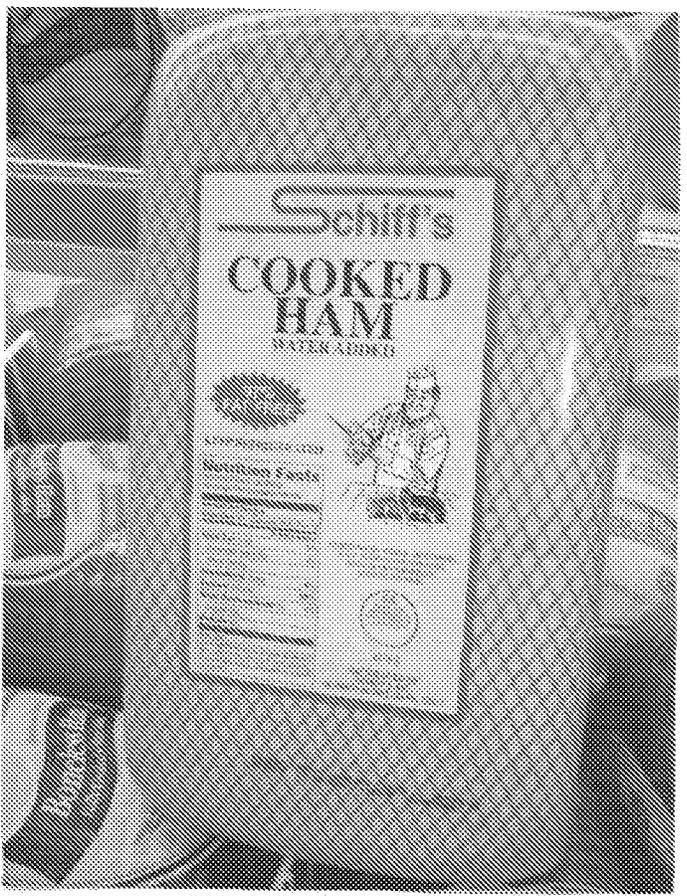
## EXHIBIT 1



## EXHIBIT 2







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

Schiff's Restaurant Service, Inc. :  
: Registration No. 2966071  
Petitioner :  
: Issued July 12, 2005  
v. :  
: Scavazzo Enterprises Inc. :  
: d/b/a Dotti-Lou Packing Co. : Cancellation No. \_\_\_\_\_  
: Registrant :

CERTIFICATE OF SERVICE

I, Mitchell A. Smolow, counsel for Petitioner, Schiff's Restaurant Service, Inc., do hereby verify that on this date, I served a copy of this Petition For Cancellation via U.S. Mail, first class, prepaid at the following address:

Scavazzo Enterprises Inc.  
d/b/a Dotti-Lou Packing Co.  
RR#1 Box 15  
Stevensville PA 18845

Respectfully submitted,



Date: 07/03/2010

Mitchell A. Smolow  
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