

ESTTA Tracking number: **ESTTA376673**

Filing date: **11/03/2010**

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	Barnhardt Manufacturing Company		
Entity	Corporation	Citizenship	North Carolina
Address	1100 Hawthorne Lane P.O. Box 34276 Charlotte, NC 28234 UNITED STATES		

Correspondence information	Jonathan Spence Attorney of record Adams Intellectual Property Law 201 South College Street Suite 2350 Charlotte, NC 28244 UNITED STATES tmbox@adamspat.com Phone:704-375-9249
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### Registration Subject to Cancellation

Registration No	3670482	Registration date	08/18/2009
Registrant	Wildwood Gin, Inc. 1005 River Birch Cove Greenwood, MS 38930 UNITED STATES		

### Goods/Services Subject to Cancellation

Class 022. First Use: 2008/06/02 First Use In Commerce: 2008/06/02  
All goods and services in the class are cancelled, namely: Raw cotton

### Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	85072021	Application Date	06/25/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ULTRACLEAN		

Design Mark	<b>ULTRACLEAN</b>
Description of Mark	NONE
Goods/Services	Class 022. First use: First Use: 2006/03/21 First Use In Commerce: 2006/03/21 Raw cotton that has been optimally cleaned to be purified or used as an unbleached raw material

Attachments	85072021#TMSN.jpeg ( 1 page )( bytes ) Petition for Cancellation.pdf ( 29 pages )(3459551 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 Facsimile or email (by agreement only) on this date.

Signature	/Jonathan Spence/
Name	Jonathan Spence
Date	11/03/2010

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

<b>BARNHARDT MANUFACTURING COMPANY</b>	)	
	)	
	)	
<b>Petitioner,</b>	)	<b>Cancellation No.</b> _____
	)	
<b>v.</b>	)	
	)	
<b>WILDWOOD GIN, INC.</b>	)	
	)	
<b>Registrant</b>	)	
_____	)	

**PETITION FOR CANCELLATION PURSUANT TO 15 U.S.C. §1064**

Petitioner Barnhardt Manufacturing Company, a North Carolina Company with a business address of 1100 Hawthorne Lane, P.O. Box 34276, Charlotte, North Carolina, believes that it has been and continues to be damaged, including as a result a likelihood of dilution by blurring or dilution by tarnishment under 15 U.S.C. §1125 (c), by the registration of the mark “ULTRACLEAN” for “raw cotton” in International Class 22, as set forth in U.S. Trademark Registration Number 3,670,482, registered August 18, 2009, and hereby petitions the commissioner to cancel said registration.

As grounds for this Petition, it is alleged that:

1. Petitioner Barnhardt Manufacturing Co. (“Barnhardt”) is the owner of U.S. Trademark Application Serial No. 85/072,021 for the trademark ULTRACLEAN for “Raw cotton that has been optimally cleaned to be purified or used as an unbleached raw material” in International Class 22. Petitioner’s Application was filed on June 25, 2010. (Exhibit 1)
2. Barnhardt established rights in and to the mark ULTRACLEAN through its continuous use on its cotton products in interstate commerce since March of 2006, over two years prior to May 9,

2008, the filing date upon which Wildwood Gin, Inc. (“Registrant”) filed for “ULTRACLEAN” under then Application Serial Number 77/470,041. (Exhibit 2)

3. Barnhardt has used the ULTRACLEAN mark solely in connection with specially cleaned Raw Cotton since it began using the mark in March of 2006. (Exhibit 3).
4. The ULTRACLEAN mark registered by Registrant is identical in appearance, sound and commercial impression to Barnhardt’s pre-existing ULTRACLEAN mark.
5. Barnhardt’s products, namely raw cotton, are also virtually identical, and legally identical, to those sold by Registrant using Barnhardt’s ULTRACLEAN mark.
6. Upon information and belief, Registrant was aware of Barnhardt’s use of its ULTRACLEAN mark before Registrant adopted it for Registrant’s own use.
7. As a consequence, consumers are likely to mistakenly believe that Registrant’s goods, bearing Barnhardt’s ULTRACLEAN mark, originate with Barnhardt, or vice versa.
8. The consumers for Registrant’s products are the same as the consumers for Barnhardt’s products.
9. Due to the confusing similarity between Registrant’s use of Barnhardt’s ULTRACLEAN mark and Barnhardt’s own pre-existing use of its ULTRACLEAN mark, as well as the identical nature of the goods to which the parties’ marks apply, there is a likelihood of confusion in the marketplace and damage to Barnhardt as a result of Registrant’s continuing use of Barnhardt’s pre-existing trademark.
10. Because the parties’ marks and respective goods are virtually identical in all respects, the existence of Registrants’ ULTRACLEAN mark, and the corresponding U.S. Registration, is likely to cause a mistaken belief by consumers that Registrant’s goods are endorsed by, sponsored by, or approved by Barnhardt; all of which is damaging to Barnhardt.

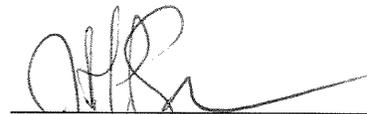
11. Barnhardt has been damaged and will continue to be damaged by the continued registration by Registrant of Barnhardt's ULTRACLEAN mark. The continued registration of the ULTRACLEAN mark by Registrant will cause confusion and uncertainty in the industry.
12. Registrant's continued use of Barnhardt's ULTRACLEAN mark will handicap and damage the legitimate present and future activities of Barnhardt with regard to its ULTRACLEAN mark; as evidenced by Barnhardt being denied a federal registration for its ULTRACLEAN mark despite its seniority in terms of use of the mark on its cotton product. (Exhibit 4).
13. As a result, Barnhardt stands to eventually be deprived of all distinctiveness in its ULTRACLEAN mark, as Registrant's use will blur Barnhardt's mark along with the goods identified therewith, and the association that Barnhardt's mark has come to convey will be tarnished.

WHEREFORE, Petitioner prays that U.S. Registration No. 3,670,482 be cancelled and that this Petition for Cancellation be sustained in Barnhardt's favor.

If there are any fees due in connection with this matter, please charge the undersigned's Deposit Account No. 01-0265.

Respectfully submitted,

**ADAMS INTELLECTUAL PROPERTY LAW**



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Jonathan P. Spence  
N.C. Bar No. 28,093  
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing PETITION FOR CANCELLATION was duly served upon the Registrant by delivering copies thereof, via email, addressed to the following attorney of record:

Ernest B. Lipscomb, III  
BARNWELL WHALEY PATTERSON & HELMS, LLC  
885 Island Park Drive  
Charleston, South Carolina 29492-7956  
elipscomb@barnwell-whaley.com

This the 3rd day of November, 2010



---

Jonathan P. Spence  
NC Bar No. 28,093  
Attorney for Petitioner  
**ADAMS INTELLECTUAL PROPERTY LAW**  
201 South College Street, Suite 2350  
Charlotte, North Carolina 28244  
Tel: 704-375-9249  
Fax: 704-375-0729  
[jps@adamspat.com](mailto:jps@adamspat.com)

## Exhibit 1

# Trademark/Service Mark Application, Principal Register

Serial Number: 85072021

Filing Date: 06/25/2010

The table below presents the data as entered.

Input Field	Entered
<b>SERIAL NUMBER</b>	85072021
<b>MARK INFORMATION</b>	
*MARK	ULTRACLEAN
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	ULTRACLEAN
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
<b>APPLICANT INFORMATION</b>	
*OWNER OF MARK	Barnhardt Manufacturing Co.
INTERNAL ADDRESS	P.O. Box 34276
*STREET	1100 Hawthorne Lane
*CITY	Charlotte
*STATE (Required for U.S. applicants)	North Carolina
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	28244
<b>LEGAL ENTITY INFORMATION</b>	
TYPE	corporation
STATE/COUNTRY OF INCORPORATION	North Carolina

**GOODS AND/OR SERVICES AND BASIS INFORMATION**

<b>INTERNATIONAL CLASS</b>	022
<b>*IDENTIFICATION</b>	Raw cotton that has been optimally cleaned to be purified or used as an unbleached raw material.
<b>FILING BASIS</b>	SECTION 1(a)
<b>FIRST USE ANYWHERE DATE</b>	At least as early as 03/21/2006
<b>FIRST USE IN COMMERCE DATE</b>	At least as early as 03/21/2006
<b>SPECIMEN FILE NAME(S)</b>	\\TICRS\EXPORT10\IMAGEOUT 10\850\720\85072021\xml1\ APP0003.JPG
	\\TICRS\EXPORT10\IMAGEOUT 10\850\720\85072021\xml1\ APP0004.JPG
	\\TICRS\EXPORT10\IMAGEOUT 10\850\720\85072021\xml1\ APP0005.JPG
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<b>SPECIMEN DESCRIPTION</b>	Purchase orders, invoices, labels, and photographs of Applicant's product.
<b>ATTORNEY INFORMATION</b>	
<b>NAME</b>	Jonathan P. Spence
<b>ATTORNEY DOCKET NUMBER</b>	1905/72
<b>FIRM NAME</b>	Adams Intellectual Property Law
<b>INTERNAL ADDRESS</b>	Suite 2350
<b>STREET</b>	201 S. College Street
<b>CITY</b>	Charlotte
<b>STATE</b>	North Carolina
<b>COUNTRY</b>	United States

<b>ZIP/POSTAL CODE</b>	28244
<b>PHONE</b>	704-375-9249
<b>FAX</b>	704-375-0729
<b>EMAIL ADDRESS</b>	tmbox@adamspat.com
<b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes
<b>OTHER APPOINTED ATTORNEY</b>	W. Thad Adams III, Kathryn Gromlovits
<b>CORRESPONDENCE INFORMATION</b>	
<b>NAME</b>	Jonathan P. Spence
<b>FIRM NAME</b>	Adams Intellectual Property Law
<b>INTERNAL ADDRESS</b>	Suite 2350
<b>STREET</b>	201 S. College Street
<b>CITY</b>	Charlotte
<b>STATE</b>	North Carolina
<b>COUNTRY</b>	United States
<b>ZIP/POSTAL CODE</b>	28244
<b>PHONE</b>	704-375-9249
<b>FAX</b>	704-375-0729
<b>EMAIL ADDRESS</b>	tmbox@adamspat.com
<b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes
<b>FEE INFORMATION</b>	
<b>NUMBER OF CLASSES</b>	1
<b>FEE PER CLASS</b>	325
<b>*TOTAL FEE DUE</b>	325
<b>*TOTAL FEE PAID</b>	325
<b>SIGNATURE INFORMATION</b>	
<b>SIGNATURE</b>	/Jonathan P. Spence/
<b>SIGNATORY'S NAME</b>	Jonathan P. Spence
<b>SIGNATORY'S POSITION</b>	Attorney of record, NC bar member
<b>DATE SIGNED</b>	06/25/2010

## **Trademark/Service Mark Application, Principal Register**

**Serial Number: 85072021**

**Filing Date: 06/25/2010**

### **To the Commissioner for Trademarks:**

**MARK:** ULTRACLEAN (Standard Characters, see mark)

The literal element of the mark consists of ULTRACLEAN.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Barnhardt Manufacturing Co., a corporation of North Carolina, having an address of  
P.O. Box 34276,  
1100 Hawthorne Lane  
Charlotte, North Carolina 28244  
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 022: Raw cotton that has been optimally cleaned to be purified or used as an unbleached raw material.

In International Class 022, the mark was first used at least as early as 03/21/2006, and first used in commerce at least as early as 03/21/2006, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) Purchase orders, invoices, labels, and photographs of Applicant's product..

Specimen File1  
Specimen File2  
Specimen File3  
Specimen File4  
Specimen File5  
Specimen File6  
Specimen File7

The applicant hereby appoints Jonathan P. Spence and W. Thad Adams III, Kathryn Gromlovits of Adams

Intellectual Property Law

Suite 2350  
201 S. College Street  
Charlotte, North Carolina 28244  
United States

to submit this application on behalf of the applicant. The attorney docket/reference number is 1905/72.

Correspondence Information: Jonathan P. Spence

Adams Intellectual Property Law  
Suite 2350  
201 S. College Street  
Charlotte, North Carolina 28244  
704-375-9249(phone)  
704-375-0729(fax)  
tmbox@adamspat.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

**Declaration**

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Jonathan P. Spence/ Date Signed: 06/25/2010  
Signatory's Name: Jonathan P. Spence  
Signatory's Position: Attorney of record, NC bar member

RAM Sale Number: 4074  
RAM Accounting Date: 06/28/2010

Serial Number: 85072021  
Internet Transmission Date: Fri Jun 25 17:36:42 EDT 2010

ULTRACLEAN



**NOT ELIGIBLE FOR CCC PAYMENT**



**BCV10018BL1**

BCC Ultra-Clean  
Moisture Content: 6.5%



**BL1 - B002263 - 001 - M - 3**



**529**

**Lbs**



**240**

**Kg**



## Exhibit 2

Int. Cl.: 22

Prior U.S. Cls.: 1, 2, 7, 19, 22, 42, and 50

United States Patent and Trademark Office

Reg. No. 3,670,482

Registered Aug. 18, 2009

TRADEMARK  
PRINCIPAL REGISTER

ULTRACLEAN

WILDWOOD GIN, INC. (SOUTH CAROLINA  
CORPORATION)  
1005 RIVER BIRCH COVE  
GREENWOOD, MS 38930

THE MARK CONSISTS OF STANDARD CHAR-  
ACTERS WITHOUT CLAIM TO ANY PARTICULAR  
FONT, STYLE, SIZE, OR COLOR.

FOR: RAW COTTON, IN CLASS 22 (U.S. CLS. 1, 2,  
7, 19, 22, 42 AND 50).

SN 77-470,041, FILED 5-9-2008.

FIRST USE 6-2-2008; IN COMMERCE 6-2-2008.

KATHY DE JONGE, EXAMINING ATTORNEY

## Exhibit 3



INVOICE  
5106943

# BARNHARDT

PO BOX 34276 - CHARLOTTE, NC 28234

*Manufacturing Co.*

D-U-N-S 814-8285  
Phone 704-376-0382  
Fax 704-342-1892  
WWW.Barnhardt.Net

Page Number: 1  
Invoice Date: 12/11/06

REMIT TO: PO BOX 890616  
CHARLOTTE, NC 28289-0616

BMC BRACHRY CRT

TERMS	SALESMAN	ORDERED	REQUIRED	REFERENCE	SHIP VIA	F.O.B	ORDER #
NET 60	Garland Green /INEL	11/09/06	12/12/06	02/000394-7	TRUCK	PREPAID	5106943

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ITEM NUMBER	DESCRIPTION	UM	QUANTITY ORDERED	QUANTITY SHIPPED	T X	UNIT PRICE	UP	EXTENDED PRICE
02077310	BCC Ultra Clamp THESE COMMODITIES, TECHNOLOGY OR SOFTWARE WERE EXPORTED FROM THE UNITED STATES IN ACCORDANCE WITH THE EXPORT ADMINISTRATION REGULATIONS. DIVERSION CONTRARY TO U. S. LAW PROHIBITED COUNTRY OF ORIGIN USA RMC BIN# 66-0134883 N.H. SPUNTECH INDUSTRIES LTD VAT NO. 512280713 BKN# 87239500 CONT# T8H0313512 BRACH K315402270 VESSEL: JIM SHENZHEN VOY# V010 06667 SHIPPED 60 BAKES @ 21.889 LBS BY US JAMES ON 12-11-06 CURRENCY US DOLLARS	LB	28500.00	31569.00	2	.93500	LB	25846.10
** LATE PAYMENT FEES ARE 1.5% PER MONTH. PLEASE MAKE PAYMENT BY THE DUE DATE **								

SHIPPED VIA	PROJOL NO.	PPENCL/PPA	F O B	PKGS.	WEIGHT	STATE TAX	LOCAL TAX	FRT CHARGES	INVOICE TOTAL
TRUCK			PREPAID			.00	.00	.00	25846.10

(SEE REVERSE SIDE HEREOF FOR ADDITIONAL TERMS AND CONDITIONS)

INVOICE  
5106946

# BARNHARDT

PO BOX 34276 - CHARLOTTE, NC 28234 *Manufacturing Co.*

D-0-N-S 314-8285  
Phone 704-378-0380  
Fax 704-342-1882  
WWW.Barnhardt.Net

Page Number: 1  
Invoice Date: 12/12/06

REMIT TO: PO BOX 890616  
CHARLOTTE, NC 28289-0616

BMC BLEACHERY OLY

TERMS	SALESMAN	ORDERED	REQUIRED	REFERENCE	SHIP VIA	F.O.B	ORDER #
NET 60	Garland Brown /TNTL	11/09/06	12/12/06	03/000304-2	TRUCK	PREPAID	5106946

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14133 ISRAEL, 00000000  
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N.R.SPUNTECH IND. LTD  
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VAT # 512286713  
14133 ISRAEL, 00000000  
ISRAEL

0210

ITEM NUMBER	DESCR PTION	UM	QUANTITY ORDERED	QUANTITY SHIPPED	T X	UNIT PRICE	UP	EXTENDED PRICE
02077310	BMC Ultra-Clean THESE COMPUTERS, TECHNOLOGY OR SOFTWARE WERE EXPORTED FROM THE UNITED STATES IN ACCORDANCE WITH THE EXPORT ADMINISTRATION REGULATIONS. DIVERSION CONTRARY TO U. S. LAW PROHIBITED COUNTRY OF ORIGIN USA BMC BIN# 86-8234380 N.R.SPUNTECH INDUSTRIES LTD VAT NO. 512286713 BMC# 89939560 COM# 8890528659 SRALU K215-02952 VESSEL:ZIM SHENZHEN VOY# V31C 06688 SHIPPED 82 BAIRS 631,352 LBS BY SS JAMES ON 12-12-06 CURRENCY US DOLLARS	LB	28500.00	31292.00	Y	.93600	LB	29289.31
** LATE PAYMENT FEES ARE 1.5% PER MONTH. PLEASE MAKE PAYMENT BY THE DUE DATE **								

SHIPPED VIA	PROBOL NO.	PPC/CLT/PPA	F O B	PKGS.	WEIGHT	STATE TAX	LOCAL TAX	FRT CHARGES	INVOICE TOTAL
TRUCK			PREPAID			.00	.00	.00	29289.31

(SEE REVERSE SIDE HEREOF FOR ADDITIONAL TERMS AND CONDITIONS)

INVOICE  
5106947

# BARNHARDT *Manufacturing Co.*

PO BOX 34276 - CHARLOTTE, NC 28234

D-U-N-S 314-8285  
Phone 704-376-0380  
Fax 704-342-1892  
WWW.Barnhardt.Net

Page Number: 1  
Invoice Date: 12/12/06

REMIT TO: PO BOX 890616  
CHARLOTTE, NC 28289-0616

DNC BLEACHERY CLT

TERMS	SALESMAN	ORDERED	REQUIRED	REFERENCE	SHIP VIA	F.O.B	ORDER #
NET 60	Carland Green /INTL	11/09/06	12/12/06	03/000304-3	TRUCK	DEPRD	5106947

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SPUNTECH IND. LTD, N.S. UPPER TIBERIAS P O BOX 3328 14133 ISRAEL, ISRAEL	50236
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N.R. SPUNTECH IND. LTD UPPER TIBERIAS VAT # 512288713 14133 ISRAEL, ISRAEL	6218
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ITEM NUMBER	DESCRIPTION	UM	QUANTITY ORDERED	QUANTITY SHIPPED	T X	UNIT PRICE	UP	EXTENDED PRICE
02077310	<u>DOC Ultra Clean</u> THESE COMMODITIES, TECHNOLOGY OR SOFTWARE WERE EXPORTED FROM THE UNITED STATES IN ACCORDANCE WITH THE EXPORT ADMINISTRATION REGULATIONS. DIVERSION CONTRARY TO U. S. LAW PROHIBITED COUNTRY OF ORIGIN USA DNC BIN# 56-0234380 N.R. SPUNTECH INDUSTRIES LTD VAT NO. 512288713 BR# 69339560 CONT# CHN00137529 SEAL# 2615402566 VESSEL: XIN SHENSHEN VOY# 7000 06669 SHIPPED 60 BALES 877,066 LBS BY US JAMES ON 12-12-06 CURRENCY US DOLLARS	LB	28500.00	31086.00	Y	.93500	LD	29096.50
** LATE PAYMENT FEES ARE 1.5% PER MONTH. PLEASE MAKE PAYMENT BY THE DUE DATE **								

SHIPPED VIA	PRO/BOL NO	PPD/CLT/PPA	F O B	PKGS.	WRIGHT	STATE TAX	LOCAL TAX	FRT CHARGES	INVOICE TOTAL
TRUCK			DEPRD			.00	.00	.00	29096.50

(SEE REVERSE SIDE HEREOF FOR ADDITIONAL TERMS AND CONDITIONS)

## Exhibit 4

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**To:** Barnhardt Manufacturing Co. ([tmbox@adamspat.com](mailto:tmbox@adamspat.com))  
**Subject:** U.S. TRADEMARK APPLICATION NO. 85072021 - ULTRACLEAN - 1905/72  
**Sent:** 10/5/2010 10:57:29 AM  
**Sent As:** ECOM112@USPTO.GOV  
**Attachments:** Attachment - 1  
Attachment - 2  
Attachment - 3  
Attachment - 4  
Attachment - 5

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**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)  
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

**APPLICATION SERIAL NO.** 85072021

**MARK:** ULTRACLEAN

**\*85072021\***

**CORRESPONDENT ADDRESS:**

JONATHAN P. SPENCE  
ADAMS INTELLECTUAL PROPERTY LAW  
201 S COLLEGE ST STE 2350  
CHARLOTTE, NC 28244-0042

**CLICK HERE TO RESPOND TO THIS LETTER:**  
<http://www.uspto.gov/teas/eTEASpageD.htm>

**APPLICANT:** Barnhardt Manufacturing Co.

**CORRESPONDENT'S REFERENCE/DOCKET  
NO:**

1905/72

**CORRESPONDENT E-MAIL ADDRESS:**

[tmbox@adamspat.com](mailto:tmbox@adamspat.com)

**OFFICE ACTION**

**STRICT DEADLINE TO RESPOND TO THIS LETTER**

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

**ISSUE/MAILING DATE:** 10/5/2010

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

### **Section 2(d) Refusal—Likelihood of Confusion**

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 3670482. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the enclosed registration.

The cited registration is for use of the mark “ULTRACLEAN” in standard characters with the goods “raw cotton” while the present application is for use of the mark “ULTRACLEAN,” also in standard characters, with the goods “raw cotton that has been optimally cleaned to be purified or used as an unbleached raw material.”

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely that a potential consumer would be confused or mistaken or deceived as to the source of the goods and/or services of the applicant and registrant. *See* 15 U.S.C. §1052(d). The court in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) listed the principal factors to be considered when determining whether there is a likelihood of confusion under Section 2(d). *See* TMEP §1207.01. However, not all of the factors are necessarily relevant or of equal weight, and any one factor may be dominant in a given case, depending upon the evidence of record. *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); *see In re E. I. du Pont*, 476 F.2d at 1361-62, 177 USPQ at 567.

In this case, the following factors are the most relevant: similarity of the marks, similarity of the goods and/or services, and similarity of trade channels of the goods and/or services. *See In re Opus One, Inc.*, 60 USPQ2d 1812 (TTAB 2001); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593 (TTAB 1999); *In re Azteca Rest. Enters., Inc.*, 50 USPQ2d 1209 (TTAB 1999); TMEP §§1207.01 *et seq.*

Taking into account the relevant *du Pont* factors, a likelihood of confusion determination in this case involves a two-part analysis. *See In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361-62, 177 USPQ 563, 567 (C.C.P.A. 1973); *In re 1st USA Realty Prof'ls Inc.*, 84 USPQ2d 1581, 1584 (TTAB 2007); *see also In re Dixie Rests. Inc.*, 105 F.3d 1405, 1406-07, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997). The marks are compared for similarities in their appearance, sound, connotation and commercial impression. TMEP §§1207.01, 1207.01(b). The goods and/or services are compared to determine whether they are similar or commercially related or travel in the same trade channels. *See Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002); *Han Beauty, Inc. v. Alberto-Culver Co.*, 236 F.3d 1333, 1336, 57 USPQ2d 1557, 1559 (Fed. Cir. 2001); TMEP §§1207.01, 1207.01(a)(vi).

### **Comparison of the Marks**

In a likelihood of confusion determination, the marks are compared for similarities in their appearance, sound, meaning or connotation and commercial impression. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973); TMEP §1207.01(b). Similarity in any one of these elements may be sufficient to find a likelihood of confusion. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1043 (TTAB 1987); *see* TMEP

§1207.01(b).

Here, the marks in question are identical in everyway. They are the exact same wording, spelled in the same manner. Thus, the marks are identical in appearance, sound, meaning and overall commercial impression.

#### Comparison of the Goods and Services

In addition to the marks of the parties being identical, the goods of the parties are also identical. Both parties have identified their goods as “raw cotton.” Applicant has further specified that its goods are cleaned. It appears in practice, the registrant’s goods are also cleaned. Please see attached evidence from <http://webcache.googleusercontent.com/search?q=cache:IGADuOh60UgJ:www.reeis.usda.gov/web/crisproj>

This evidence discusses the registrant’s cotton in terms of its cleanliness and purity and its application as a raw material. Thus, the goods of the parties are both raw cotton that is pure and used as a raw material and are likely found in the same channels of trade.

Accordingly, registration is refused on the Principal Register. Although registration has been refused, the applicant may present arguments and evidence in support of registration. If applicant responds to this refusal, then the applicant must also respond to any other refusals or requirements stated in this Office action.

#### Mark Differs on Specimen and Drawing

The mark on the specimen disagrees with the mark on the drawing. In this case, the specimen displays the mark as “ULTRA-CLEAN” (with hyphen); and the drawing shows the mark as “UTLRACLEAN” (one word, no hyphen). Applicant should note that the specimen of record considered was the specimen of the photographs of the product label for goods. The additional specimens in the form of the invoices are not acceptable specimens for showing use with goods. Even if they were an acceptable form, the mark still differs on the specimen and drawing.

An application based on Trademark Act Section 1(a) must include a specimen showing the applied-for mark in use in commerce for each class of goods and/or services. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a). The mark on the drawing must be a substantially exact representation of the mark on the specimen. 37 C.F.R. §2.51(a); TMEP §807.12(a); *see* 37 C.F.R. §2.72(a)(1). In addition, the drawing of the mark can be amended only if the amendment does not materially alter the mark as originally filed. 37 C.F.R. §2.72(a)(2); *see* TMEP §§807.12(a), 807.14 *et seq.*

Therefore, applicant must submit one of the following:

- (1) A new drawing of the mark that agrees with the mark on the specimen but does not materially alter the original mark. *See* 37 C.F.R. §2.72(a)(2); TMEP §§807.12(a), 807.14 *et seq.* Amending the drawing to agree with the specimen would not be considered a material alteration of the mark in this case.; or
- (2) A substitute specimen showing use in commerce of the mark on the drawing, and the following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: **“The substitute specimen was in use in commerce at least as early as the filing date of the application.”** *See* 37 C.F.R. §§2.59(a), 2.193(e)(1); TMEP §§807.12(a), 904.05. If submitting a

specimen requires an amendment to the dates of use, applicant must also verify the amended dates. 37 C.F.R. §2.71(c); TMEP §904.05.

If applicant cannot satisfy one of the above requirements, applicant may amend the application from a use in commerce basis under Trademark Act Section 1(a) to an intent to use basis under Section 1(b), for which no specimen is required. *See* TMEP §806.03(c). However, if applicant amends the basis to Section 1(b), registration will not be granted until applicant later amends the application back to use in commerce by filing an acceptable allegation of use with a proper specimen. *See* 15 U.S.C. §1051(c)-(d); 37 C.F.R. §§2.76, 2.88; TMEP §1103.

To amend to Section 1(b), applicant must submit the following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: **“Applicant has had a bona fide intention to use the mark in commerce on or in connection with the goods and/or services listed in the application as of the filing date of the application.”** 37 C.F.R. §2.34(a)(2); TMEP §806.01(b); *see* 15 U.S.C. §1051(b); 37 C.F.R. §§2.35(b)(1), 2.193(e)(1).

To submit a verified substitute specimen online via the Trademark Electronic Application System (TEAS), applicant should do the following: (1) answer “yes” to the TEAS response form wizard question to “submit a new or substitute specimen;” (2) attach a jpg or pdf file of the substitute specimen; (3) select the statement that “The substitute specimen(s) was in use in commerce at least as early as the filing date of the application.”; and (4) sign personally or enter personally his/her electronic signature and date after the declaration at the end of the TEAS response form. *See* 37 C.F.R. §§2.59(a), 2.193(a), (c)-(d), (e)(1); TMEP §§611.01(c), 804.01(b). Please note that these steps appear on different pages of the TEAS response form.

If applicant experiences difficulty in submitting the required substitute specimen, supporting statement and/or declaration, please e-mail [TEAS@uspto.gov](mailto:TEAS@uspto.gov) for technical assistance regarding the TEAS response form.

### **Response Guidelines**

To expedite prosecution of the application, applicant is encouraged to file its response to this Office action online via the Trademark Electronic Application System (TEAS), which is available at <http://www.uspto.gov/teas/index.html>. If applicant has technical questions about the TEAS response to Office action form, applicant can review the electronic filing tips available online at <http://www.uspto.gov/teas/eFilingTips.htm> and email technical questions to [TEAS@uspto.gov](mailto:TEAS@uspto.gov).

If applicant has questions about the application or this Office action, please telephone the assigned trademark examining attorney at the telephone number below.

/MDI/  
Marilyn D. Izzi  
Trademark Examining Attorney  
Law Office 112  
[marilyn.izzi@uspto.gov](mailto:marilyn.izzi@uspto.gov)  
P:(571) 270-1523

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**TO RESPOND TO THIS LETTER:** Use the Trademark Electronic Application System (TEAS) response form at <http://teasroa.uspto.gov/roa/>. Please wait 48-72 hours from the issue/ mailing date before using TEAS, to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail [TEAS@uspto.gov](mailto:TEAS@uspto.gov).

**WHO MUST SIGN THE RESPONSE:** It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

**PERIODICALLY CHECK THE STATUS OF THE APPLICATION:** To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using Trademark Applications and Registrations Retrieval (TARR) at <http://tarr.uspto.gov/>. Please keep a copy of the complete TARR screen. If TARR shows no change for more than six months, call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

**TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS:** Use the TEAS form at <http://www.uspto.gov/teas/eTEASpageE.htm>.

Print: Oct 5, 2010

77470041

**DESIGN MARK**

**Serial Number**

77470041

**Status**

REGISTERED

**Word Mark**

ULTRACLEAN

**Standard Character Mark**

Yes

**Registration Number**

3670482

**Date Registered**

2009/08/18

**Type of Mark**

TRADEMARK

**Register**

PRINCIPAL

**Mark Drawing Code**

(4) STANDARD CHARACTER MARK

**Owner**

Wildwood Gin, Inc. CORPORATION SOUTH CAROLINA 1005 River Birch Cove  
Greenwood MISSISSIPPI 38930

**Goods/Services**

Class Status -- ACTIVE. IC 022. US 001 002 007 019 022 042 050. G  
& S: Raw cotton. First Use: 2008/06/02. First Use In Commerce:  
2008/06/02.

**Filing Date**

2008/05/09

**Examining Attorney**

DE JONGE, KATHY

**Attorney of Record**

Ernest B. Lipscomb, III

# ULTRACLEAN