

ESTTA Tracking number: **ESTTA382570**

Filing date: **12/08/2010**

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	ConAgra Foods RDM, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	One ConAgra Drive Omaha, NE 68102 UNITED STATES		

Attorney information	Christopher M. Bikus Husch Blackwell LLP 1620 Dodge Street Suite 2100 Omaha, NE 68102 UNITED STATES pto-om@huschblackwell.com, chris.bikus@huschblackwell.com Phone: 402-964-5144		
----------------------	---	--	--

### Registration Subject to Cancellation

Registration No	1463781	Registration date	11/03/1987
Registrant	EZAKI GLICO KABUSHIKI KAISHA 6-5, UTAJINA, 4-CHOME NISHIYODOGAWAKU, OSAKA, JAPAN		

### Goods/Services Subject to Cancellation

Class 030. First Use: 1986/12/12 First Use In Commerce: 1986/12/12 All goods and services in the class are cancelled, namely: READY TO EAT CEREAL DERIVED FOOD BARS; BISCUITS, CAKES, PASTRY AND CANDY
---

### Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l. Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Abandonment	Trademark Act section 14

Attachments	SNAPSTICKS - CANCELLATION.12.8.10.pdf ( 4 pages )(55928 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	/Christopher M. Bikus/
-----------	------------------------

Name	Christopher M. Bikus
Date	12/08/2010

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

CONAGRA FOODS RDM, INC.	)	
	)	
Petitioner,	)	U.S. Reg. No.: 1,463,781
	)	
v.	)	Mark: SNAPSTIKS
	)	
EZAKI GLICO KABUSHIKI KAISHA	)	
DBA EZAKI GLICO COMPANY	)	Registered: November 3, 1987
	)	
Registrant.	)	

**PETITION FOR CANCELLATION  
OF U.S. REGISTRATION NO. 1,463,781**

Petitioner ConAgra Foods RDM, Inc. ("ConAgra Foods" or "Petitioner"), a Delaware corporation with its business located at One ConAgra Drive, Omaha, Nebraska 68102, by and through its attorneys, believes that it is or will be damaged by U.S. Trademark Registration No. 1,463,781 and hereby petitions to cancel U.S. Trademark Registration No. 1,463,781. As grounds for cancellation, Petitioner alleges as follows:

**COUNT I**

**Abandonment**

1. Petitioner was the owner of U.S. Application Number 77/239,020 for the mark SLIM JIM SNAP STICKS (the "Original Application"). Petitioner is now the owner of U.S. Application Number 85/132,368 for the mark SNAP STIX (the "New Application").

2. On May 18, 2008, a trademark examiner with the United States Patent and Trademark Office issued an office action against the Original Application citing Registrant's SNAPSTIKS mark as potentially creating a likelihood of confusion. The Original Application

abandoned on December 9, 2008. Applicant has now filed the New Application in conjunction with the instant Cancellation Petition.

3. Upon information and belief, Registrant has abandoned the SNAPSTIKS mark by discontinuing use of said mark for a period of at least three years, or by discontinuing use of said mark with no intent to resume said use. Through its investigations, Petitioner has been unable to locate retailers with any record of products sold by Registrant's under the SNAPSTIKS mark for at least the last three years. Petitioner was also unable to locate any valid Universal Product Code ("UPC") for Registrant's product.

## COUNT II

### Fraud

4. Petitioner incorporates by reference all preceding paragraphs.

5. Registrant filed Combined Sections 8 & 9 Declaration of Use and Renewal Application filed by Registrant on June 25, 2007. Therein, Registrant declared that "The owner is using the mark in commerce on or in connection with the goods/services identified above, *as evidenced by the attached specimen(s) showing the mark as currently used in commerce.*" (emphasis added).

6. Upon information and belief, the UPC number shown on the packaging specimen relied upon by Registrant in its June 25, 2007 filing is not a valid UPC number. As such, Petitioner believes that Registrant filed a specimen which did not show the mark "as [then] used in commerce," despite its sworn statement to the contrary.

7. Additionally, as discussed above, Petitioner has been unable to locate Registrant's SNAPSTIKS brand products in the United States, or retailers with any record of a product

bearing the SNAPSTIKS mark over the past several years. Based on its investigation, Petitioner believes that no use of the SNAPSTIKS mark has occurred in the United States for many years.

8. Therefore, Petitioner believes that Registrant knowingly made a false, material representation with the intent to deceive the USPTO with respect to its ongoing usage of the SNAPSTIKS mark. Petitioner's investigation was unable to find any use of the SNAPSTIKS mark in the United States. In view of Registrant's apparent abandonment of its mark, Petitioner believes that the filing of a specimen showing an invalid UPC code shows that Registrant filed product packaging as a specimen which it must have known had not been used in the United States.

WHEREFORE, Petitioner ConAgra Foods RDM, Inc. prays that its Petition to Cancel U.S. Registration No. 1,463,781 be granted in its entirety, that judgment be granted in favor of ConAgra Foods RDM, Inc., and that U.S. Registration No. 1,463,781 be cancelled.

Petitioner ConAgra Foods RDM, Inc. requests that, if there is any insufficiency in the payment of the statutory filing fee, such amount be debited from our Deposit Account No. 11-0160.

Respectfully submitted,

Date: December 8, 2010

By: /s/ Christopher M. Bikus  
Christopher M. Bikus  
Husch Blackwell Sanders LLP  
1620 Dodge Street, Suite 2100  
Omaha, NE 68102  
Tel: 402-964-5144  
Fax: 402-964-5050  
[chris.bikus@huschblackwell.com](mailto:chris.bikus@huschblackwell.com)  
[pto-om@huschblackwell.com](mailto:pto-om@huschblackwell.com)

**ATTORNEYS FOR PETITIONER  
CONAGRA FOODS RDM, INC.**

**CERTIFICATE OF SERVICE**

It is hereby certified that a true and complete copy of the foregoing Petition for Cancellation has been duly served on the Registrant by mailing a copy of same via first class mail, postage prepaid, to the following on December 8, 2010:

Moonray Kojima  
BOX 627  
Williamstown, MA 01267

Attorney of Record for Registrant

/s/ Christopher M. Bikus