

ESTTA Tracking number: **ESTTA441978**

Filing date: **11/18/2011**

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	Red Robin International, Inc.		
Entity	Corporation	Citizenship	Nevada
Address	6312 S. Fiddlers Green Cir. #200N Greenwood Village, CO 80111 UNITED STATES		

Attorney information	Kevin S. Costanza Seed IP Law Group LLP 701 Fifth Avenue, Suite 5400 Seattle, WA 98104 UNITED STATES kevinc@Seedlp.com, litcal@Seedlp.com Phone:206-622-4900		
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Registration Subject to Cancellation

Registration No	4050817	Registration date	11/01/2011
Registrant	Berri Yummi, LLC 3100 Naamans Road #5 Wilmington, DE 19810 UNITED STATES		

Goods/Services Subject to Cancellation

Class 030. First Use: 2010/12/17 First Use In Commerce: 2010/12/17 All goods and services in the class are cancelled, namely: Frozen yogurt
Class 043. First Use: 2010/12/17 First Use In Commerce: 2010/12/17 All goods and services in the class are cancelled, namely: Frozen yogurt shop services in the nature of a restaurant

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Related Proceedings	TTAB Opposition No. 91200383
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	3800456	Application Date	12/08/2008
Registration Date	06/08/2010	Foreign Priority Date	NONE
Word Mark	YUMMM		

Design Mark	YUMMMM
Description of Mark	NONE
Goods/Services	Class 043. First use: First Use: 2004/05/17 First Use In Commerce: 2004/05/17 Restaurant services

U.S. Registration No.	3720771	Application Date	09/04/2008
Registration Date	12/08/2009	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark	NON-VISUAL MARK		
Description of Mark	The mark consists of a quartet of male voices singing "YUMMMM," as a whole-note chord consisting of G2, D3, B3, and D4.		
Goods/Services	Class 043. First use: First Use: 2004/06/00 First Use In Commerce: 2004/06/00 restaurant services		

Attachments	77628562#TMSN.jpeg (1 page)(bytes) 77562482#TMSN.jpeg (1 page)(bytes) PtC Berri Yummi.pdf (5 pages)(376951 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	/Kevin S. Costanza/
Name	Kevin S. Costanza
Date	11/18/2011

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

RED ROBIN INTERNATIONAL, INC.,)	
Petitioner,)	Cancellation No.
)	
v.)	Registration No. 4050817
)	
BERRI YUMMI, LLC,)	
)	Docket No. 790017.850
Respondent.)	
)	
)	
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PETITION FOR CANCELLATION

Petitioner Red Robin International, Inc. (“Petitioner”) hereby requests that the Trademark Trial and Appeal Board cancel United States Trademark Registration No. 4,050,817 for the mark BERRI YUMMI issued to Respondent Berri Yummi, LLC (“Respondent”) on November 1, 2011, for the following goods and services:

Frozen yogurt in International Class 30; and

Frozen yogurt shop services in the nature of a restaurant in International Class 43.

The grounds asserted by Petitioner for cancellation are as follows:

1. Petitioner is a corporation of the State of Nevada with an address of 6312 South Fiddlers Green Circle, Suite 200N, Greenwood Village, Colorado 80111. Petitioner is in the business of providing restaurant and bar services and selling restaurant-related goods including food and promotional items.

2. On or before May 2004, well prior to the January 19, 2011 filing date of Respondent's intent-to-use application and subsequent registration date of November 1, 2011, Petitioner adopted and, since then, has continuously used the mark YUMMM in interstate commerce in the United States as a trademark.

3. Petitioner is the owner of U.S. Trademark Registration No. 3,800,456 for the word mark YUMMM for restaurant services in International Class 43, which issued June 8, 2010. Petitioner is also the owner of the U.S. Trademark Registration No. 3,720,771 for the sound mark "YUMMM" for restaurant services, which issued December 8, 2009.

4. Since commencing use of the word and sound versions of the mark YUMMM ("Petitioner's Mark"), Petitioner has generated and continues to generate substantial revenue from the provision of services in connection with the mark in the United States. Additionally, Petitioner has expended and Petitioner continues to expend substantial sums of money, time, and effort in advertising, promoting and popularizing Petitioner's Mark in the United States.

5. As a result of the use of Petitioner's Mark as alleged above, and the advertising and promotion of services offered in connection with Petitioner's Mark, Petitioner's Mark has become well known in the United States and is recognized as identifying Petitioner's high-quality services. Thus, Petitioner's Mark and the associated goodwill are valuable assets of Petitioner.

6. Respondent's Mark incorporates the words "BERRI YUMMI." The term "YUMMI" is the dominant portion of Respondent's registered mark. Thus, the dominant portion of Respondent's Mark is substantially identical to Petitioner's YUMMM mark.

7. Respondent's described goods – all food items – are typically offered in restaurants; and Respondent's recited services are closely related, if not identical, to at least a portion of Petitioner's services.

8. Respondent's described goods and services are so closely related to Petitioner's services that confusion is likely to result if the parties' respective goods and services are marketed and sold under the same or confusingly similar marks.

9. Respondent's BERRI YUMMI mark, for the described goods and services, is confusingly and deceptively similar to Petitioner's Mark, for Petitioner's above-described services, such that the trade and purchasing public will be confused by and deceived into believing that Respondent's goods and services originate with Petitioner, or are otherwise authorized by, sponsored by, licensed by, affiliated with, or associated with Petitioner.

10. To the extent there is any likelihood of confusion between Respondent's '817 registered mark and Petitioner's Mark, Petitioner is the senior user and entitled to cancellation of Respondent's Trademark Registration No. 4050817.

12. Petitioner has conducted an investigation and has unsuccessfully attempted to negotiate a settlement amending Respondent's registration of the mark BERRI YUMMI.

WHEREFORE, Petitioner prays that this Petition for Cancellation be sustained and Registration No. 4050817 be cancelled.

Correspondence Address

Please direct all communications to:

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DATED this 18th day of November, 2011.

Respectfully submitted,

SEED IP Law Group PLLC



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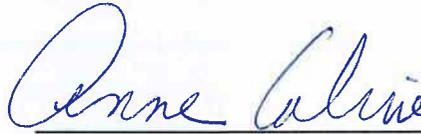
Attorneys for Petitioner
RED ROBIN INTERNATIONAL, INC.

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of November, 2011, the foregoing **PETITION FOR CANCELLATION** was served upon Respondent's counsel by depositing same with the U.S. Postal Service, first-class postage prepaid, addressed as follows:

Christoper Glancy, Esq.
White & Case LLP
1155 Avenue of the Americas
New York, NY 10036-2711



Anne Calico