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Filing date: **01/10/2013**

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	XAN CONFECTIONS, INC.		
Entity	Corporation	Citizenship	CALIFORNIA
Address	1202 McGaw Avenue Irvine, CA 92618 UNITED STATES		

Attorney information	David G. Duckworth RUSSO & DUCKWORTH, LLP 9090 Irvine Center Drive, Second Floor Irvine, CA 92618 UNITED STATES usptofilings@russoandduckworth.com Phone:9497241255		
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Registration Subject to Cancellation

Registration No	4014834	Registration date	08/23/2011
International Registration No.	NONE	International Registration Date	NONE
Registrant	TA-XAN AG Adolfsallee 21 65185 Wiesbaden, GERMANY		

Goods/Services Subject to Cancellation

<p>Class 030. All goods and services in the class are cancelled, namely: Coffee, in particular, coffee beverages; tea, in particular, tea beverages; non-alcoholic beverages primarily consisting of tea; mixes in the nature of powders used in the preparation of non-alcoholic tea based beverages and ready-to-drink tea and tea essence-based beverages; non-medicinal herbal tea extracts and herbal tea; cacao, in particular, cacao beverages; sugar, rice, tapioca, sago, coffee substitute; flours and flour compounds in the nature of gluten, protein reduced and gluten free flour, bread, pastries and confectionary in the nature of frozen confectionery, confectionery chips for baking, candy, chocolate, pastilles, ice cream, honey, molasses syrup, salt, mustard, vinegar, sauces, namely, seasoning; spices, ice</p>
<p>Class 032. All goods and services in the class are cancelled, namely: Beers, mixed drinks composed of beers; mineral and aerated waters and other non-alcoholic drinks, namely, non-alcoholic beer and lemonade; fruit drinks and fruit juices; syrups and other preparations for making beverages in the nature of soft drinks, sports drinks, energy drinks and fruit drinks</p>

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.	76706576	Application Date	02/28/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	XAN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2009/01/01 First Use In Commerce: 2009/01/01 candies, namely, chocolates and chocolates infused with nutritional supplements		

Attachments	76706576#TMSN.gif (1 page)(bytes) PetitionToCancel.pdf (6 pages)(82003 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	/David G. Duckworth/
Name	David G. Duckworth
Date	01/10/2013

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

Xan Confections, Inc. (a California Corporation), Petitioner, v. TA-XAN AG, (a German Corporation) Registrant.	Petition to Cancel No.: Registration Serial No: 4,014,834 Date registered: August 23, 2011 Mark: XAN
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PETITION TO CANCEL

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Sir:

Petitioner, Xan Confections, Inc., a California Corporation, located and doing business at 1202 McGaw Avenue, Irvine, CA 92614, believes that it would be damaged by the continued registration for the trademark “XAN” as registered in Trademark Registration Serial No: 4,014,834, and therefore petitions to cancel the same.

To the best of petitioner’s knowledge, the name and address of the current owner of the registration are TA-XAN AG, located and doing business at Adolfsallee 21, 65185 Wiesbaden, GERMANY.

The above-identified petitioner believes that it will be damaged by the above-identified

registration, and hereby petitions to cancel the same.

As grounds for its Petition to Cancel, Petitioner, by and through its attorneys, alleges as follows:

1. In about 2009, Petitioner adopted and commenced use of the trademark XAN and has since then continuously used, and is using, the trademark throughout the United States and in interstate commerce.

2. Petitioner's business has consisted and continues to consist of goods, namely candies, namely, chocolates and chocolates infused with nutritional supplements.

3. Petitioner filed a United State Trademark Application for the trademark XAN for use in connection with "candies, namely, chocolates and chocolates infused with nutritional supplements", Serial No. 76/706,576 filed on February 28, 2011.

4. Registrant has obtained United States Federal Registration of the trademark XAN for use in connection with "coffee, in particular, coffee beverages; tea, in particular, tea beverages; non-alcoholic beverages primarily consisting of tea; mixes in the nature of powders used in the preparation of non-alcoholic tea based beverages and ready-to-drink tea and tea essence-based beverages; non-medicinal herbal tea extracts and herbal tea; cacao, in particular, cacao beverages; sugar, rice, tapioca, sago, coffee substitute; flours and flour compounds in the

nature of gluten, protein reduced and gluten free flour, bread, pastries and confectionary in the nature of frozen confectionary, confectionary chips for baking, candy, chocolate, pastilles, ice cream, honey, molasses syrup, sal, mustard, vinegar, sauces, namely, seasoning; spices, ice” in International Class 30; and “beers, mixed drinks composed of beers; mineral and aerated waters and other non-alcoholic drinks, namely, non-alcoholic beer and lemonade; fruit drinks and fruit juices; syrups and other preparations for making beverages in the nature of soft drinks, sports drinks, energy drinks and fruit drinks” in International Class 32, Registration No. 4,014,834, registered August 23, 2011.

5. Petitioner’s goods are of uniformly high quality and Petitioner has acquired very significant commercial goodwill which is an important and very valuable asset of Petitioner’s business. Based on such goodwill and the expenditures of large sums of money and efforts for advertising and market promotion under its “XAN” trademark, Petitioner Xan Confections, Inc., has become recognized to its consumers as providing high quality candies, namely, chocolates and chocolates infused with nutritional supplements.

REGISTRANT’S MARK IS LIKELY TO CAUSE CONFUSION

6. Petitioner repeats and re-alleges the allegations contained in paragraphs 1 through 5 above, as if fully set forth herein.

7. The mark that Registrant has registered is identical in sight, sound, meaning and

commercial impression to Petitioner's XAN mark, and is registered on goods that are substantially similar to the goods provided by Petitioner under its mark. Based on the similarities of the marks and the goods, the public is likely to associate the goods offered by the Registrant under the mark "XAN" with Petitioner or Petitioner's goods, or to believe that Registrant's services are sponsored, endorsed or licensed by Petitioner, or that there is some relationship between Registrant and Petitioner.

8. For the above reasons, any use of the mark "XAN" by Registrant is likely to cause confusion, cause mistake or deceive the public, and cause the public to believe that the services associated with the "XAN" mark emanate from or otherwise sponsored by or endorsed by Petitioner, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d).

9. Moreover, registration of XAN by Registrant is likely to impede Petitioner's ability to register its trademark in connection with other goods and services, which Petitioner has used in the United States and in interstate commerce long before Registrant used the mark XAN in the United States and before Registrant filed for trademark registration of the mark XAN in the United States.

10. For the reasons set forth in the foregoing paragraphs 1 through 9, Petitioner will be damaged by the continued registration of the mark "XAN" by Registrant.

WHEREFORE, Petitioner respectfully requests that this Petition to Cancel be sustained and that Registration No. 4,014,834 be canceled.

By: /David G. Duckworth/
David G. Duckworth
Registration No. 39,516
Attorney for Applicant
Telephone: (949) 724-1255

Date: January 10, 2013

PROOF OF SERVICE

I hereby certify that a true and complete copy of the foregoing **PETITION TO CANCEL** has been served on John J. Arnott, P.C., counsel for Opposer, on January 10, 2013 via facsimile at (972) 479-0464, and via First Class Mail, postage prepaid to:

Mr. John J. Arnott, P.C.
Howison & Arnott, LLP
Two Lincoln Center
5420 LBJ Freeway, Suite 660
Dallas, TX 75240-2318

By: /Keisha Vidrio/
Keisha Vidrio

Date: January 10, 2013