

ESTTA Tracking number: **ESTTA538298**

Filing date: **05/16/2013**

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	Jollibee Foods Corporation		
Entity	Corporation	Citizenship	PHILIPPINES
Address	10th Floor, Jollibee Plaza Building F. Ortigas Jr. Avenue, Ortigas Center Pasig City, 1600 PHILIPPINES		

Attorney information	Leslie Bertagnolli Baker & McKenzie LLP 300 East Randolph Street Suite 5000 Chicago, IL 60601 UNITED STATES leslie.bertagnolli@bakermckenzie.com, tally.george@bakermckenzie.com, Meri.McLaughlin@bakermckenzie.com Phone:312-861-8000
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**Registration Subject to Cancellation**

Registration No	3567736	Registration date	01/27/2009
International Registration No.	NONE	International Registration Date	NONE
Registrant	Chick-N-Joy Systems Limited 4449 Kingston Road Toronto, Ontario, M1E 2N7 CANADA		

**Goods/Services Subject to Cancellation**

Class 043. All goods and services in the class are cancelled, namely: RESTAURANT SERVICES, TAKE-OUT RESTAURANT SERVICES
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**Grounds for Cancellation**

Abandonment	Trademark Act section 14
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Attachments	Jollibee - Petition for Cancellation of CHICK-N-JOY.pdf(696907 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	/MTGeorge/
Name	M Tally George
Date	05/16/2013

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

Registrant: Chick-N-Joy Systems Limited	)	
	)	
Registration No.: 3567736	)	
	)	
Registration Date: January 27, 2009	)	
	)	
Mark: CHICK-N-JOY	)	
	)	
_____	)	Cancellation No. _____
Jollibee Foods Corporation,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	
Chick-N-Joy Systems Limited	)	
	)	
Registrant.	)	
_____	)	

**PETITION FOR CANCELLATION**

Jollibee Foods Corporation, a company incorporated in the Philippines with its principal place of business at 10th Floor, Jollibee Plaza Building, F. Ortigas Jr. Avenue, Ortigas Center Pasig City PHILIPPINES 1600 ("Petitioner"), believes it will be damaged by continued registration of U.S. Registration No. 3567736 for CHICK-N-JOY, and therefore petitions to cancel same. Chick-N-Joy Systems Limited, a Canadian company, located at 4449 Kingston Road Toronto, Ontario CANADA M1E 2N7 ("Registrant") registered CHICK-N-JOY on January 27, 2009. Registration No. 3567736 covers "restaurant services, take-out restaurant services" in Class 43.

As grounds for cancellation, Petitioner alleges that:

1. Petitioner is a well-known provider of restaurant goods and services to customers globally.

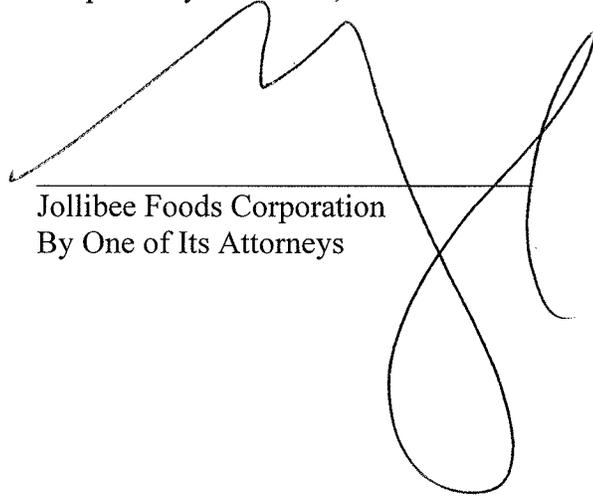
2. Petitioner has since at least as early as 1998 provided goods and/or services, throughout the United States under the trademark CHICKENJOY ("Petitioner's Use").
3. In the United States, Petitioner is the current owner of a valid and existing registration for CHICKENJOY, Registration No. 3949145, which registered under Section 1(a), on April 19, 2011, covering "prepared dishes primarily containing chicken cooked Filipino-style, sold only in Jollibee's stores," in Class 29 ("Petitioner's Registration").
4. In the United States, Petitioner is the current owner of a pending application for a CHICKENJOY mark, Application No. 85524814 ("Petitioner's Application"), covering "services for providing food and drink, and restaurant services, namely, providing prepared dishes primarily containing chicken cooked Filipino-style, and Filipino-style beverages, sold only in Jollibee's stores," in Class 43.
5. Petitioner's Application and Petitioner's Registration remain valid and owned in the name of Petitioner.
6. Registrant's Registration No. 3567736 has been cited under Section 2(d) as a bar to registration of Petitioner's Application No. 85524814.
7. Petitioner has standing to bring this cancellation action.
8. Registrant's Registration No. 3567736 for CHICK-N-JOY was registered on January 27, 2009.
9. Registrant's Registration No. 3567736 covers "restaurant services, take-out restaurant services" services in Class 43.
10. The application resulting in Registrant's Registration No. 3567736 was filed on an intent to use or Section 1(b) basis, and a Notice of Allowance was issued on December 27, 2005.

11. Registrant did not file any proof of use in U.S. commerce for CHICK-N-JOY in the three year Notice of Allowance period.
12. The intent to use basis for the application resulting in Registrant's Registration No. 3567736 was deleted, and the application amended to a Section 44(e) basis only, as of December 23, 2008.
13. Registrant did not file any proof of use in U.S. commerce for CHICK-N-JOY prior to issuance of its Registration No. 3567736 on January 27, 2009.
14. Registrant's Registration No. 3567736 was not and is not based on use in U.S. commerce.
15. Upon information and belief, Registrant did not use its mark in U.S. commerce within the three years following the issuance of its Registration No. 3567736 on January 27, 2009.
16. Upon information and belief, Registrant has not used its mark in U.S. commerce during the three years preceding the date of this Petition for Cancellation.
17. Registrant has abandoned its CHICK-N-JOY mark in the U.S.
18. The continued registration of Registrant's CHICK-N-JOY mark creates statutory rights in Registrant in violation and derogation of the rights of Petitioner, resulting in harm, detriment and damage to Petitioner by denying and blocking Petitioner's Application from proceeding to registration.

WHEREFORE, Petitioner Jollibee Foods Corporation prays that Registration No. 3567736 be cancelled, and that this Petition for Cancellation be sustained in Petitioner's favor.

Please charge the statutory filing fee of \$300.00, as well as any shortfall, missing or excess fee to Deposit Account No. 501-649, in the name of undersigned Attorneys for Petitioner.

Respectfully submitted,



A handwritten signature in black ink, consisting of several loops and a long horizontal stroke that extends to the left. The signature is positioned above a horizontal line.

Jollibee Foods Corporation  
By One of Its Attorneys

Date: May 16, 2013

BAKER & McKENZIE LLP  
Leslie Bertagnolli  
M. Tally George  
300 E. Randolph Street, Suite 5000  
Chicago, IL 60601  
Leslie.Bertagnolli@bakermckenzie.com  
Tally.George@bakermckenzie.com  
Telephone: 312-861-8000  
Facsimile: 312-698-2937

**PROOF OF FILING AND SERVICE**

The undersigned hereby certifies that the foregoing **PETITION FOR CANCELLATION** was filed via ESTTA and served upon Registrant via the United States Postal Service, as first class mail, postage prepaid, in an envelope addressed as follows:

Chick-N-Joy Systems Limited  
4449 Kingston Road  
Toronto, Ontario M1E 2N7  
CANADA

and

Kyle T. Peterson  
PATTERSON, THUENTE, SKAAR & CHRISTENSEN,  
80th South 8th Street  
4800 IDS CENTER  
Minneapolis, MINNESOTA 55402

this 16th day of May 2013.

\_\_\_\_\_  
/MTGeorge/  
M. Tally George

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Mark: CHICKENJOY

CHICKENJOY

**US Serial Number:** 78773490      **Application Filing Date:** Dec. 14, 2005  
**US Registration Number:** 3949145      **Registration Date:** Apr. 19, 2011  
**Register:** Principal  
**Mark Type:** Trademark  
**Status:** Registered. The registration date is used to determine when post-registration maintenance documents are due.  
**Status Date:** Apr. 19, 2011  
**Publication Date:** Nov. 10, 2009      **Notice of Allowance Date:** Feb. 02, 2010

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## Mark Information

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**Mark Literal Elements:** CHICKENJOY  
**Standard Character Claim:** Yes. The mark consists of standard characters without claim to any particular font style, size, or color.  
**Mark Drawing Type:** 4 - STANDARD CHARACTER MARK

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## Goods and Services

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**Note:** The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [.] indicate deleted goods/services;
- Double parenthesis ((.)) identify any goods/services not claimed in a Section 15 affidavit of
- Asterisks \*.\* identify additional (new) wording in the goods/services.

**For:** Prepared dishes primarily containing chicken cooked Filipino-style, sold only in Jollibee's stores

**International Class(es):** 029 - Primary Class

**U.S Class(es):** 046

**Class Status:** ACTIVE

**Basis:** 1(a)

**First Use:** Jun. 01, 1980

**Use in Commerce:** May 28, 1998

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## Basis Information (Case Level)

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<b>Filed Use:</b> No	<b>Currently Use:</b> Yes	<b>Amended Use:</b> No
<b>Filed ITU:</b> Yes	<b>Currently ITU:</b> No	<b>Amended ITU:</b> No
<b>Filed 44D:</b> No	<b>Currently 44D:</b> No	<b>Amended 44D:</b> No
<b>Filed 44E:</b> No	<b>Currently 44E:</b> No	<b>Amended 44E:</b> No
<b>Filed 66A:</b> No	<b>Currently 66A:</b> No	
<b>Filed No Basis:</b> No	<b>Currently No Basis:</b> No	

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## Current Owner(s) Information

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**Owner Name:** Jollibee Foods Corporation  
**Owner Address:** #10 Emerald Avenue, Ortigas Center  
7th Floor, Jollibee Plaza Building,  
Pasig City 1600  
PHILIPPINES  
**Legal Entity Type:** CORPORATION      **State or Country Where Organized:** PHILIPPINES

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## Attorney/Correspondence Information

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**Attorney of Record**

**Attorney Name:** Leslie Bertagnolli

**Docket Number:** 05-1132

**Correspondent**

**Correspondent Name/Address:** LESLIE BERTAGNOLLI  
BAKER & MCKENZIE LLP  
ONE PRUDENTIAL PLZ  
130 E RANDOLPH DR STE 3500  
CHICAGO, ILLINOIS 60601

UNITED STATES

Phone: 312-861-8617

Fax: 312-698-2064

**Domestic Representative**

**Domestic Representative Name:** Leslie Bertagnolli

**Phone:** 312-861-8617

**Fax:** 312-698-2064

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## Prosecution History

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Date	Description	Proceeding Number
Apr. 19, 2011	REGISTERED-PRINCIPAL REGISTER	
Mar. 15, 2011	NOTICE OF ACCEPTANCE OF STATEMENT OF USE MAILED	
Mar. 14, 2011	LAW OFFICE REGISTRATION REVIEW COMPLETED	66121
Mar. 14, 2011	ASSIGNED TO LIE	66121
Feb. 23, 2011	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Feb. 22, 2011	STATEMENT OF USE PROCESSING COMPLETE	76985
Jan. 31, 2011	USE AMENDMENT FILED	76985
Feb. 22, 2011	CASE ASSIGNED TO INTENT TO USE PARALEGAL	76985
Jan. 31, 2011	TEAS STATEMENT OF USE RECEIVED	
Aug. 04, 2010	NOTICE OF APPROVAL OF EXTENSION REQUEST MAILED	
Aug. 02, 2010	EXTENSION 1 GRANTED	98765
Aug. 02, 2010	EXTENSION 1 FILED	98765
Aug. 02, 2010	TEAS EXTENSION RECEIVED	
Feb. 02, 2010	NOA MAILED - SOU REQUIRED FROM APPLICANT	
Jan. 05, 2010	ASSIGNED TO EXAMINER	76745
Nov. 10, 2009	PUBLISHED FOR OPPOSITION	
Oct. 21, 2009	NOTICE OF PUBLICATION	
Oct. 07, 2009	LAW OFFICE PUBLICATION REVIEW COMPLETED	76243
Oct. 03, 2009	ASSIGNED TO LIE	76243
Oct. 02, 2009	APPROVED FOR PUB - PRINCIPAL REGISTER	
Sep. 11, 2009	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Sep. 10, 2009	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Sep. 10, 2009	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Mar. 10, 2009	NON-FINAL ACTION MAILED	
Mar. 10, 2009	NON-FINAL ACTION WRITTEN	60785
Feb. 06, 2009	LIE CHECKED SUSP - TO ATTY FOR ACTION	76539
Aug. 05, 2008	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	76539
Feb. 05, 2008	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	76539
Aug. 01, 2007	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	76539
Aug. 01, 2007	ASSIGNED TO LIE	76539
Jan. 18, 2007	LETTER OF SUSPENSION MAILED	
Jan. 17, 2007	SUSPENSION LETTER WRITTEN	60785
Dec. 20, 2006	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Dec. 19, 2006	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Dec. 19, 2006	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Jun. 19, 2006	NON-FINAL ACTION MAILED	
Jun. 17, 2006	NON-FINAL ACTION WRITTEN	60785
Jun. 13, 2006	ASSIGNED TO EXAMINER	60785
Jun. 07, 2006	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	67287
May 09, 2006	PAPER RECEIVED	

Dec. 20, 2005 NEW APPLICATION ENTERED IN TRAM

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## TM Staff and Location Information

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TM Staff Information - None

File Location

**Current Location:** PUBLICATION AND ISSUE SECTION

**Date in Location:** Mar. 14, 2011

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Mark: CHICKENJOY

CHICKENJOY

US Serial Number: 85524814

Application Filing Date: Jan. 25, 2012

Register: Principal

Mark Type: Service Mark

Status: A final Office action refusing registration has been sent (issued) because the applicant neither satisfied nor overcame all requirements and/or refusals previously raised. The applicant may respond by filing (1) a request for reconsideration; and/or (2) an appeal to the Trademark Trial and Appeal Board. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Status Date: Nov. 21, 2012

## Mark Information

Mark Literal Elements: CHICKENJOY

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

## Related Properties Information

Claimed Ownership of US Registrations: 3949145

## Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [.] indicate deleted goods/services;
- Double parenthesis ((.)) identify any goods/services not claimed in a Section 15 affidavit of
- Asterisks \*.\* identify additional (new) wording in the goods/services.

For: services for providing food and drink, and restaurant services, namely, providing prepared dishes primarily containing chicken cooked Filipino-style, and Filipino-style beverages, sold only in Jollibee's stores

International Class(es): 043 - Primary Class

U.S Class(es): 100, 101

Class Status: ACTIVE

Basis: 1(b)

## Basis Information (Case Level)

Filed Use: No	Currently Use: No	Amended Use: No
Filed ITU: Yes	Currently ITU: Yes	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

## Current Owner(s) Information

Owner Name: Jollibee Foods Corporation

Owner Address: 10th Floor, Jollibee Plaza Building  
F. Ortigas Jr. Avenue, Ortigas Center  
Pasig City 1600  
PHILIPPINES

Legal Entity Type: CORPORATION

State or Country Where Organized: PHILIPPINES

## Attorney/Correspondence Information

### Attorney of Record

Attorney Name: Tally George

Docket Number: 120129

Attorney Primary Email [chisptomail@bakermckenzie.com](mailto:chisptomail@bakermckenzie.com)

Attorney Email Yes

Address:

Authorized:

Correspondent

**Correspondent Name/Address:** TALLY GEORGE  
BAKER & MCKENZIE LLP  
300 E RANDOLPH ST STE 5000  
CHICAGO, ILLINOIS 60601-5014  
UNITED STATES

**Phone:** 312-861-8000

**Fax:** 312-698-2937

**Correspondent e-mail:** [chiusptomail@bakermckenzie.com](mailto:chiusptomail@bakermckenzie.com) [tally.george@bakermckenzie.com](mailto:tally.george@bakermckenzie.com)

**Correspondent e-mail Authorized:** Yes

Domestic Representative - Not Found

## Prosecution History

Date	Description	Proceeding Number
Nov. 21, 2012	NOTIFICATION OF FINAL REFUSAL EMAILED	
Nov. 21, 2012	FINAL REFUSAL E-MAILED	
Nov. 21, 2012	FINAL REFUSAL WRITTEN	76582
Oct. 27, 2012	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Oct. 26, 2012	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Oct. 26, 2012	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Apr. 26, 2012	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Apr. 26, 2012	NON-FINAL ACTION E-MAILED	6325
Apr. 26, 2012	NON-FINAL ACTION WRITTEN	76582
Apr. 18, 2012	ASSIGNED TO EXAMINER	76582
Jan. 31, 2012	NOTICE OF PSEUDO MARK MAILED	
Jan. 28, 2012	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Jan. 28, 2012	NEW APPLICATION ENTERED IN TRAM	

## TM Staff and Location Information

TM Staff Information

**TM Attorney:** SMITH, BRIDGETT G

**Law Office Assigned:** LAW OFFICE 115

File Location

**Current Location:** TMO LAW OFFICE 115 - EXAMINING  
ATTORNEY ASSIGNED

**Date in Location:** Nov. 21, 2012