

ESTTA Tracking number: **ESTTA559565**

Filing date: **09/16/2013**

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	Mars, Incorporated		
Entity	Corporation	Citizenship	Delaware
Address	6885 Elm Street McLean, VA 22101 UNITED STATES		

Attorney information	Luna M. Samman Arent Fox LLP 1717 K Street, NW Washington, DC 20017 UNITED STATES tmdocket@arentfox.com, luna.samman@arentfox.com, jason.mazur@arentfox.com, marsdocket@arentfox.com, kwan.koehler@arentfox.com Phone:202-857-6000
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**Registration Subject to Cancellation**

Registration No	4336657	Registration date	05/21/2013
International Registration No.	NONE	International Registration Date	NONE
Registrant	QIAQIA FOOD CO., LTD. Lianhua Road Economic & Technological Development Zone, Hefei ANHUI, CHINA		

**Goods/Services Subject to Cancellation**

Class 029. All goods and services in the class are cancelled, namely: Charqui, namely, dried meat; food products made from fish, namely, processed fish; fruits, tinned; fruit chips; fruit-based snack food; potato chips; potato crisps; peanut butter; jams; compote, namely, cranberry sauce, tahini, namely, sesame seed paste; vegetables, dried; pickles; preserved vegetables, namely, salted vegetables; flavored radish; dried bamboo shoots; eggs; soybean milk; cheese; yoghurt; milk based beverages, namely, milk based beverages containing fruit juice, milk based beverages with chocolate, milk based beverages containing coffee; milk products excluding ice cream, ice milk and frozen yogurt; milk based beverage containing tea; chocolate nut butter; cocoa butter for food purposes; vegetable salads; fruit salads; fruit jellies; prepared nuts; processed peanuts; processed sunflower seeds; processed edible melon seeds; processed pine nuts; processed pistachios; processed beans, namely, flavored beans; canned cooked beans; processed mushrooms, namely, dried edible mushroom; albumen for use in food; processed peanuts with honey
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**Grounds for Cancellation**

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)

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

U.S. Registration No.	2598461	Application Date	05/24/1999
Registration Date	07/23/2002	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	The mark consists of a design of a hand holding a cocoa bean.		
Goods/Services	Class 030. First use: First Use: 2000/01/00 First Use In Commerce: 2000/01/00 confectionery products, namely candy		

U.S. Registration No.	4324406	Application Date	09/06/2012
Registration Date	04/23/2013	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	The mark consists of a design of a hand holding a cocoa bean.		
Goods/Services	Class 030. First use: First Use: 2010/02/19 First Use In Commerce: 2010/02/19 Grain based food bars also containing dark chocolate, nuts, and fruit; grain based snack foods; granola based snack bars		

U.S. Registration No.	4289175	Application Date	08/19/2012
Registration Date	02/12/2013	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	The mark consists of a design of a hand holding a cocoa bean.		
Goods/Services	Class 005. First use: First Use: 2010/10/31 First Use In Commerce: 2010/10/31 dietary and nutritional supplements; powdered nutritional supplement drink mix; powdered dietary supplement drink mix; nutritionally fortified beverage mix		

Attachments	(Mars) Petition for Cancellation to CHACHA & Design.pdf(101107 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	/luna m. samman/
Name	Luna M. Samman

Date	09/16/2013
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Registration No. 4336657 for the mark CHACHA & Design, registered May 21, 2013

MARS, INCORPORATED,	)	
	)	
Petitioner,	)	
	)	
v.	)	Cancellation No. _____
	)	
QIAQIA FOOD CO., LTD.	)	
	)	
Registrant.	)	
_____	)	

**PETITION FOR CANCELLATION**

Mars, Incorporated (“Petitioner”), a corporation duly organized and existing under the laws of the State of Delaware, having a place of business at 6885 Elm Street, McLean, Virginia 22101, believes that it will be damaged by the registration of the mark shown in Registration No. 4336657, and hereby petitions to cancel the same under the provisions of Section 14 of the Trademark Act of 1946, 15 U.S.C. § 1064.

As grounds for opposition, Petitioner alleges the following:

1. Petitioner is the owner of all right, title, and interest in and to the highly distinctive design mark shown below (“Petitioner’s Mark”), which Petitioner has used in interstate commerce for years in connection with a variety of goods as detailed herein.



2. Petitioner’s rights in Petitioner’s Mark have been recognized by the United States Patent and Trademark Office, which issued to Petitioner as Registration No. 2598461 for

Petitioner's Mark for "confectionery products, namely, candy." Petitioner's Registration No. 2598461 issued on July 23, 2002 and is now incontestable. This registration provides conclusive evidence of Petitioner's ownership of Petitioner's Mark, of the validity of Petitioner's Mark, and of Petitioner's exclusive right to use Petitioner's Mark in commerce.

3. Petitioner is also the owner of Registration No. 4324406 for Petitioner's Mark for "grain based food bars also containing dark chocolate, nuts, and fruit; grain based snack foods; granola based snack bars." Petitioner's Registration No. 4324406 issued on April 23, 2013. This registration provides presumptive evidence of Petitioner's ownership of Petitioner's Mark, of the validity of Petitioner's Mark, and of Petitioner's exclusive right to use Petitioner's Mark in commerce.

4. Petitioner also owns Registration No. 4289175 for "dietary and nutritional supplements; powdered nutritional supplement drink mix; powdered dietary supplement drink mix; nutritionally fortified beverage mix." Petitioner's Registration No. 4289175 issued on February 12, 2013. This registration provides presumptive evidence of Petitioner's ownership of Petitioner's Mark, of the validity of Petitioner's Mark, and of Petitioner's exclusive right to use Petitioner's Mark in commerce.

5. Petitioner adopted and first used Petitioner's Mark in interstate commerce at least as early as January, 2000.

6. Since at least as early as January, 2000, Petitioner has used Petitioner's Mark in interstate commerce on or in connection with confectionery products, namely, candy. Petitioner's Mark is and has been used on and in connection with goods that include confectionery products sold under the famous DOVE® chocolate brand.

7. Since at least as early as February 19, 2010, Petitioner has used Petitioner's Mark in interstate commerce on or in connection with grain-based food bars also containing dark chocolate, nuts, and fruit; grain-based snack foods; and granola-based snack bars.

8. Since at least as early as October 31, 2010, Petitioner has used Petitioner's Mark on or in connection with dietary and nutritional supplements; powdered nutritional supplement drink mixes; powdered dietary supplement drink mixes; and nutritionally fortified beverage mixes.

9. Petitioner has extensively used, advertised, and promoted Petitioner's Mark in interstate commerce in connection with Petitioner's goods.

10. As a result of such extensive use, advertising, and promotion, Petitioner's Mark has become well-known as a distinctive indicator of the origin of Petitioner's goods, and the mark has become a valuable symbol of Petitioner's goodwill.

11. Notwithstanding Petitioner's prior established rights in Petitioner's Mark, and long after Petitioner's adoption and first use of Petitioner's Mark, Registrant QiaQia Food Co., Ltd. ("Registrant") filed U.S. application Serial No. 79/103656 on May 12, 2011 for the mark shown below ("Registrant's Mark") for "Charqui, namely, dried meat; food products made from fish, namely, processed fish; fruits, tinned; fruit chips; fruit-based snack food; potato chips; potato crisps; peanut butter; jams; compote, namely, cranberry sauce, tahini, namely, sesame seed paste; vegetables, dried; pickles; preserved vegetables, namely, salted vegetables; flavored radish; dried bamboo shoots; eggs; soybean milk; cheese; yoghurt; milk based beverages, namely, milk based beverages containing fruit juice, milk based beverages with chocolate, milk based beverages containing coffee; milk products excluding ice cream, ice milk and frozen yogurt; milk based beverage containing tea; chocolate nut butter; cocoa butter for food purposes;

vegetable salads; fruit salads; fruit jellies; prepared nuts; processed peanuts; processed sunflower seeds; processed edible melon seeds; processed pine nuts; processed pistachios; processed beans, namely, flavored beans; canned cooked beans; processed mushrooms, namely, dried edible mushroom; albumen for use in food; processed peanuts with honey” in Class 29. The application subsequently issued to Registration No. 4336657.



12. Upon information and belief, Registrant knew or had reason to know of Petitioner’s prior rights in Petitioner’s Mark when Registrant filed its application.

**Count I – Likelihood of Confusion – §2(d)**

13. The mark that Registrant has registered so closely resembles Petitioner’s Mark that the use and registration thereof is likely to cause confusion, mistake, and deception as to the source or origin of Registrant’s goods and will injure and damage Petitioner and the goodwill and reputation symbolized by Petitioner’s Mark.

14. Registrant’s goods are similar or identical to Petitioner’s goods such that the public is likely to be confused, to be deceived, and to assume erroneously that Registrant’s goods are those of Petitioner, or that Registrant is in some way connected or affiliated with, or approved or sponsored by, Petitioner, all to Petitioner’s irreparable damage.

15. Likelihood of confusion is enhanced by the well-known character of Petitioner’s Mark and by the fact that consumers associate this mark with goods sold, approved, or endorsed by Petitioner.

16. Likelihood of confusion is enhanced by the fact that purchasers of Registrant’s goods are purchasers or prospective purchasers of Petitioner’s goods, and vice-versa.

17. Likelihood of confusion is enhanced by the fact that Petitioner's Mark and the design element of Registrant's Mark are nearly identical and are both comprised of the stylized depiction of a left hand holding a rounded object between the thumb and index finger.

**Count II – Deception/False Suggestion of Connection – §2(a)**

18. Registrant's mark so closely resembles Petitioner's Mark that it is likely to cause deception in violation of Section 2(a) of the Trademark Act, in that the mark misdescribes the nature or origin of the goods, prospective purchasers are likely to believe that the misdescription actually describes the nature or origin of the goods, and this is likely to materially alter prospective consumers' decisions whether to purchase Registrant's goods.

19. Registrant's mark so closely resembles Petitioner's Mark that it falsely suggests a connection with Petitioner in violation of Section 2(a) of the Trademark Act because Registrant's mark points uniquely to Petitioner, and purchasers and prospective purchasers will assume that goods offered under Registrant's mark are affiliated or connected with Petitioner.

20. Registrant's mark is deceptive in that it falsely suggests a connection with or approval by Petitioner.

WHEREFORE, Petitioner prays that the Board sustain this petition and cancel Registrant's registration No. 4336657.

MARS, INCORPORATED



Dated: September 16, 2013

By:

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*Attorneys for Petitioner  
Mars, Incorporated*

**CERTIFICATE OF SERVICE**

It is hereby certified that the foregoing **PETITION FOR CANCELLATION** (re: Reg. No. 4336657) has been served on Registrant's attorney of record at the following address as listed in US Patent and Trademark Office records:

N-YUN CHENG  
PRO-TECHTOR INTERNATIONAL SERVICES  
20775 NORADA CT  
SARATOGA, CALIFORNIA 95070

by first class mail, postage prepaid, this 16<sup>th</sup> day of September, 2013.

