

ESTTA Tracking number: **ESTTA565673**

Filing date: **10/17/2013**

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	Sambazon, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	1160 CALLE CORDILLERA SAN CLEMENTE, CA 92673 UNITED STATES		

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

Registration No	4159272	Registration date	06/12/2012
Registrant	AM BEVERAGE INTERMEDIAÃ#Ã#O DE NEGÃ#CIOS LTDA. Rua Jacurici, 70 - Jd. Paulista SÃ£o Paulo - SP, BRAZIL		

Goods/Services Subject to Cancellation

Class 032. First Use: 2011/01/00 First Use In Commerce: 2011/01/00 All goods and services in the class are cancelled, namely: non-alcoholic drinks, namely, fruit drinks, fruit juices, mineral and aerated waters, coconut water, fruit nectar and mixed drinks

Grounds for Cancellation

Abandonment	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	2829762	Application Date	02/19/2001
Registration Date	04/06/2004	Foreign Priority Date	NONE
Word Mark	AMAZON ENERGY		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 032. First use: First Use: 2001/02/01 First Use In Commerce: 2001/02/01 Non-alcoholic fruit extracts used in the preparation of beverages, namely, Acai, Cupuacu, Cashew, Mango, Passion Fruit, Acerola, Guava		
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U.S. Registration No.	3289200	Application Date	03/16/2005
Registration Date	09/04/2007	Foreign Priority Date	NONE
Word Mark	AMAZON SUPERFOOD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2005/03/16 First Use In Commerce: 2005/03/16 dietary supplements		

U.S. Registration No.	3469960	Application Date	12/07/2005
Registration Date	07/15/2008	Foreign Priority Date	NONE
Word Mark	AMAZON ENERGY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2008/04/00 First Use In Commerce: 2008/04/00 non-alcoholic fruit based beverages		

U.S. Registration No.	3588876	Application Date	05/15/2001
Registration Date	03/10/2009	Foreign Priority Date	NONE
Word Mark	AMAZON CHERRY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2001/04/30 First Use In Commerce: 2001/04/30 FRUIT PUREES		

U.S. Registration No.	3614296	Application Date	11/30/2006
Registration Date	05/05/2009	Foreign Priority Date	NONE
Word Mark	AMAZON ENERGY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2008/04/00 First Use In Commerce: 2008/04/00 non-alcoholic fruit based beverages		

U.S. Registration No.	4109677	Application Date	08/13/2010
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Registration Date	03/06/2012	Foreign Priority Date	NONE
Word Mark	AMAZON OJ		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2011/10/01 First Use In Commerce: 2011/10/01 Non alcoholic fruit based drinks		

Attachments	Petition for Cancellation2.pdf(50669 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	10/17/2013

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

SAMBAZON, INC.,)	Cancellation No. _____
)	
Petitioner,)	Registration No. 4,159,272
)	
v.)	
)	
AM BEVERAGE INTERMEDIACÃO DE)	
NEGÓCIOS LTDA.,)	Docket No. 830090.843
)	
Respondent.)	
)	

PETITION FOR CANCELLATION

Petitioner Sambazon, Inc. (“Petitioner”) hereby requests that the Trademark Trial and Appeal Board cancel United States Trademark Registration No. 4,159,272 (“Respondent’s Registration”) for the design mark AMAZON, which issued to Respondent Am Beverage Intermediacao de Negocios Ltda. (“Respondent”) on June 12, 2012 for the following goods in International Class 32: “non-alcoholic drinks, namely, fruit drinks, fruit juices, mineral and aerated waters, coconut water, fruit nectar and mixed drinks.”

The grounds asserted by Petitioner for cancellation are as follows:

1. Petitioner is a Delaware corporation with an address at 1160 Calle Cordillera, San Clemente, California 92673. Petitioner is in the business of marketing fruit pulp and purees, fruit juices and drinks, fruit smoothies and nutritional supplements, and operating cafes where such food and beverage products are sold.

2. Commencing well prior to the December 10, 2010 filing date of Respondent’s application and subsequent registration date of June 12, 2012, Petitioner has used and continues to use at least the following marks in commerce in connection with the marketing and sale of acai-based food and beverage products: SAMBAZON, AMAZON POWER, AMAZON ENERGY, AMAZON SUPERFOOD, and AMAZON CHERRY.

3. Petitioner is the owner of the following “AMAZON Marks” and U.S. Trademark Registrations.

Registration No./Date	Mark	Class/Description
2,829,762 April 6, 2004	AMAZON ENERGY and Design	32: Non-alcoholic fruit extracts used in the preparation of beverages, namely, Acai, Cupuacu, Cashew, Mango, Passion Fruit, Acerola, Guava
3,289,200 September 4, 2007	AMAZON SUPERFOOD	05: Dietary supplements
3,469,960 July 15, 2008	AMAZON ENERGY	32: Non-alcoholic fruit based beverages
3,588,876 March 10, 2009	AMAZON CHERRY	29: Fruit purees
3,614,296 May 5, 2009	AMAZON ENERGY	32: Non-alcoholic fruit based beverages
4,109,677 March 6, 2012	AMAZON OJ	32: Non alcoholic fruit based drinks

4. The goods described in Respondent’s Registration are so closely related to Petitioner’s goods and services that confusion is likely to result if the parties’ goods are marketed and sold under the same or confusingly similar marks.

5. The mark shown in Respondent’s Registration for the described goods is confusingly and deceptively similar to Petitioner’s SAMBAZON and AMAZON Marks for

Petitioner’s above-described goods and services, such that the trade and purchasing public will be confused by and deceived into believing that Respondent’s goods originate with Petitioner, or are otherwise authorized by, sponsored by, licensed by, affiliated with, or associated with Petitioner.

6. Respondent registered a highly stylized version of the AMAZON mark, depicted immediately below, in which the letters “AMA” are in bold print and at least twice the size of the letters “ZON,” which are formatted as a superscript with respect to the letters “AMA”:



7. Respondent has since abandoned the registered version of the AMAZON mark and replaced it one in which all of the letters are of equal size, prominence, and position. As shown below, none of the letters is larger than the others, none is formatted in superscript, and none is bolder than the others.



COUNT I – LIKELIHOOD OF CONFUSION

6. Petitioner is entitled to cancel Respondent's registration of AMAZON based on Petitioner's senior, registered rights in its SAMBAZON and AMAZON Marks, and a likelihood of confusion between its mark and Respondent's SAMBAZON and AMAZON Marks.

COUNT II – ABANDONMENT

7. Respondent has abandoned any rights it may have had in Respondent's Registration in the United States due to discontinuance of use with an intent not to resume any use as a trademark.

WHEREFORE, Petitioner prays that this Petition for Cancellation be sustained and Registration No. 4,159,272 be canceled.

DATED this 17th day of October, 2013.

Respectfully submitted,
SEED IP Law Group PLLC

/Kevin S. Costanza/
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Attorneys for Petitioner
SAMBAZON, INC.

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of October, 2013, the foregoing **PETITION FOR CANCELLATION** was served upon Respondent by United States first-class mail, postage-prepaid, addressed as follows:

Am Beverage Intermediacao de Negocios Ltda.
Rua Jacurici, 70 - Jd. Paulista
São Paulo - SP
BRAZIL

A courtesy copy was served on Respondent's counsel by United States first-class mail, postage prepaid, addressed as follows:

Elizabeth F. Janda
BROOKS KUSHMAN P.C.
1000 Town Ctr, Floor 22
Southfield, Michigan 48075-1183

/Kelly Brennan/
Kelly Brennan