

ESTTA Tracking number: **ESTTA647371**

Filing date: **12/29/2014**

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	McCormick & Company, Incorporated		
Entity	Corporation	Citizenship	Maryland
Address	18 Loveton Circle Sparks, MD 21152 UNITED STATES		

Attorney information	Jordan S. Weinstein, Esquire Barnes & Thornburg, LLP 1717 Pennsylvania Avenue, N.W. Suite 500 Washington, DC 20006 UNITED STATES docketingtm-dc@btlaw.com, jweinstein@btlaw.com, dbondurant@btlaw.com Phone:202-289-1313
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Registration Subject to Cancellation

Registration No	4646275	Registration date	11/25/2014
Registrant	Beaver Street Fisheries, Inc. 1741 W. Beaver Street Jacksonville, FL 32209 UNITED STATES		

Goods/Services Subject to Cancellation

Class 029. First Use: 2014/09/22 First Use In Commerce: 2014/09/22
All goods and services in the class are cancelled, namely: Meat; packaged meats; prepared meats; processed meats; preserved meats and sausages; wieners; frankfurters and hot dogs

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Related Proceedings	Opposition proceeding: v. Mark: GRILLMAN'S (Stylized); Appln. No. 86/074,767: Opp. No. 91215931
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	1488730	Application Date	07/31/1987
Registration Date	05/17/1988	Foreign Priority Date	NONE
Word Mark	GRILL MATES		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 1987/05/22 First Use In Commerce: 1987/05/22 FOOD SEASONINGS OF VARIOUS FLAVOR BLENDS CONTAINING SALT AND SPICES

U.S. Registration No.	3011499	Application Date	01/20/2005
Registration Date	11/01/2005	Foreign Priority Date	NONE

Word Mark	GRILL MATES
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Design Mark	
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Description of Mark	NONE
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Goods/Services	Class 030. First use: First Use: 1987/05/22 First Use In Commerce: 1987/05/22 Sauces, [sauce mixes,] marinades, marinade mixes, spices, seasonings, seasoningmixes
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Attachments	78550907#TMSN.png(bytes) Petition for Cancellation-BSF.pdf(642947 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	/jsw/
Name	Jordan S. Weinstein, Esquire
Date	12/29/2014

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

_____)	
McCormick & Company, Incorporated,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. _____
)	Registration No. 4,646,275
Beaver Street Fisheries, Inc.,)	Mark: GRILLMAN'S
)	
Respondent.)	
_____)	

PETITION FOR CANCELLATION

MCCORMICK & COMPANY, INCORPORATED, a corporation duly organized and existing under the laws of the State of Maryland, with a principal place of business at 18 Loveton Circle, Sparks, Maryland 21152 (hereinafter "Petitioner"), believes that it is or will be damaged by the continued registration of the mark identified above and hereby petitions to cancel the registration.

As grounds for this Petition, Petitioner alleges:

1. Beaver Street Fisheries, Inc. (hereinafter, "Respondent") is the record owner of U.S. Registration No. 4,646,275 for the mark GRILLMAN'S, for use on meat, packaged meats; prepared meats; processed meats; preserved meats and sausages; wieners; frankfurters and hot dogs in International Class 29 (the "Registration").

2. Commencing long prior to Respondent’s priority date of August 28, 2013, Petitioner has engaged, and is now engaged in the advertising, promotion and sale of its goods under its GRILL MATES marks.

3. Commencing long prior to Respondent’s priority date, Petitioner has engaged, and is now engaged in the distribution, sale, advertising, and selling in interstate commerce of food seasonings of various flavor blends containing salt and spices; sauces, marinades, marinade mixes, spices, seasonings, and seasoning mixes in retail grocery stores in commerce and on the Internet.

4. Commencing long prior to Respondent’s priority date, Petitioner has used, and is now using Petitioner’s GRILL MATES marks (hereinafter sometimes referred to as “Petitioner’s Marks” or “Petitioner’s GRILL MATES Marks”) in connection with a wide range of seasonings, spices, sauces and marinade products distributed and sold by Petitioner in commerce and on the Internet.

5. Petitioner is the owner of, and will rely herein, upon the following Federal trademark registrations, pursuant to Trademark Rule 2.122(d):

<u>MARK</u>	<u>REG NO.</u>	<u>ISSUED</u>	<u>GOODS/SERVICES</u>
GRILL MATES	1,488,730	May 17, 1988	Food seasonings of various flavor blends containing salt and spices
GRILL MATES	3,011,499	November 1, 2005	Sauces, marinades, marinade mixes, spices, seasonings, seasoning mixes

6. The above registrations for Petitioner’s GRILL MATES Marks are valid and subsisting, and are conclusive evidence of Petitioner’s exclusive right to use said marks in connection with the goods specified in said registrations. Copies of the USPTO’s TARR and Assignment records therefor are attached as Exhibit 1.

7. Petitioner will also rely on its common law rights in its GRILL MATES Marks.
8. Upon information and belief, notwithstanding Petitioner's rights in and to its GRILL MATES Marks, on August 28, 2013, Respondent filed an application pursuant to Section 1(B) of the Trademark Act, 15 U.S.C. §1051(b), for registration of the GRILLMAN'S HOT DOGS mark for "meat; packaged meats; prepared meats; processed meats; preserved meats and sausages; wieners; frankfurters and hot dogs, in International Class 10," and it was assigned application Serial No. 86/050,678.
9. Upon information and belief, the application misidentified the International Class as 10, rather than the proper class, 29.
10. Upon information and belief, on September 26, 2013, Respondent filed an amendment to the application to delete the words "HOT DOGS" from the mark.
11. Upon information and belief, on November 20, 2013, the USPTO issued a Notice of Publication for the subject GRILLMAN'S application, which notice carried forward the misidentified International Class as being International Class 10, instead of 29.
12. Upon information and belief, Respondent never notified the USPTO of the error relating to the misidentification of the International Class prior to publication.
13. Said application was published for Opposition in the *Official Gazette* of December 10, 2013, at Page TM 606, under International Class 10.
14. Upon information and belief, due to the misidentification in the International Class, the application did not appear in Petitioner's trademark watch notice reports and Petitioner did not oppose the mark at that time.
15. Upon information and belief, on February 14, 2014, the USPTO issued a Notice of Allowance for the application.

16. Upon information and belief, on September 29, 2014, Respondent filed a Statement of Use for the application, listing a date of first use anywhere, and a date of first use in commerce, of September 22, 2014.

17. Upon information and belief, on October 21, 2014, the USPTO issued a Notice of Acceptance of the Statement of Use and subsequently issued the certificate of registration on November 25, 2014.

18. Upon information and belief, Respondent did not use its GRILLMAN'S mark on or in connection with any of the goods listed in the Registration prior to August 28, 2013.

19. Upon information and belief, Respondent's goods marked with the GRILLMAN'S mark are offered to the same general classes of purchasers who purchase Petitioner's line of GRILL MATES products.

20. Upon information and belief, one of the consumer demographics for Respondent's goods marked with the GRILLMAN'S mark is grilling enthusiasts.

21. Upon information and belief, Respondent's goods are offered through retail grocery stores and other trade channels that overlap with the trade channels for Petitioner's products sold under its GRILL MATES Marks.

22. Upon information and belief, Respondent promotes some of its goods, on the packaging, as containing a "delicious blend of spices".

23. Respondent's goods are related to Petitioner's products sold under its GRILL MATES Marks.

24. Respondent's GRILLMAN'S mark is similar to each of Petitioner's GRILL MATES Marks.

25. Respondent's GRILLMAN'S mark so resembles each of Petitioner's aforesaid "GRILL MATES Marks" as to be likely, when used in connection with Respondent's goods, to cause confusion or mistake or to deceive purchasers, all in violation of Section 2(d) of the Trademark Act, 15 USC §1052(d).

26. Petitioner, upon information and belief, avers that members of the relevant purchasing public are likely to be confused, mistaken or deceived as to the origin and sponsorship of Respondent's goods marketed under Respondent's GRILLMAN'S mark, and misled into believing that such goods are offered by, emanate from, or are in some way directly or indirectly associated with or sponsored by Petitioner, to the damage and detriment of Petitioner and its reputation.

WHEREFORE, the Petitioner, McCORMICK & COMPANY, INCORPORATED, believes and avers that it is and will continue to be damaged by the continued registration of the GRILLMAN'S mark as aforesaid, and prays that said U.S. Registration No. 4,646,275 be cancelled, and that this Petition for Cancellation be sustained in favor of Petitioner.

Petitioner has appointed JORDAN S. WEINSTEIN, a member of the law firm of BARNES & THORNBURG, LLP, a member of the Bar of the District of Columbia, to prosecute this cancellation proceeding and to transact all business in and before the United States Patent and Trademark Office in connection herewith. Please address all correspondence to:

Jordan S. Weinstein, Esquire
BARNES & THORNBURG, LLP
1717 Pennsylvania Avenue, N.W.
Suite 500
Washington, D.C. 20006

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **PETITION FOR CANCELLATION** was served on Registrant, Beaver Street Fisheries, Inc., as identified by the records of the U.S. Patent and Trademark Office this 29th day of December, 2014, by sending same via First Class mail, postage prepaid, to:

Beaver Street Fisheries, Inc.
1741 W. Beaver Street
Jacksonville, Florida 32209
(904) 354-8533
(904) 633-7271 (fax)



Debra L. Bondurant

Exhibit 1

STATUS

DOCUMENTS

[Back to Search](#)

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Mark: GRILL MATES

No Image exists for this case.

US Serial Number: 73675670

Application Filing Date: Jul. 31, 1987

US Registration Number: 1488730

Registration Date: May 17, 1988

Register: Principal

Mark Type: Trademark

Status: The registration has been renewed.

Status Date: Jul. 07, 2007

Publication Date: Feb. 23, 1988

- Mark Information

Mark Literal Elements: GRILL MATES

Standard Character Claim: No

Mark Drawing Type: 1 - TYPESET WORD(S) /LETTER(S) /NUMBER(S)

- 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 incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: FOOD SEASONINGS OF VARIOUS FLAVOR BLENDS CONTAINING SALT AND SPICES

International Class(es): 030 - Primary Class

U.S Class(es): 046

Class Status: ACTIVE

Basis: 1(a)

First Use: May 22, 1987

Use in Commerce: May 22, 1987

- Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Ar

Filed ITU: No

Currently ITU: No

Ar

Filed 44D: No

Currently 44D: No

Ar

Filed 44E: No

Currently 44E: No

Ar

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

Current Owner(s) Information

Owner Name: McCormick & Company, Incorporated

Owner Address: 18 Loveton Circle
SPARKS, MARYLAND 211526000
UNITED STATES

Legal Entity Type: CORPORATION

State or Country Where Organized: MARYLAND

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Judith Sapp

Docket Number: 21434-8401-8

Attorney Primary Email Address: judith@judithsapp.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: JUDITH SAPP
KOMONDOROK LLC
111 WEST STREET
PORTLAND, MAINE 04102
UNITED STATES

Phone: 207 842 6003

Fax: 207 842 0743

Correspondent e-mail: judith@judithsapp.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Jul. 08, 2010	REVIEW OF CORRESPONDENCE COMPLETE	76293
Jul. 08, 2010	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	76293
May 21, 2010	PAPER RECEIVED	
Jun. 17, 2008	CASE FILE IN TICRS	
Jul. 07, 2007	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	59807
Jul. 07, 2007	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	
Jul. 03, 2007	ASSIGNED TO PARALEGAL	59807
Jun. 02, 2007	REGISTERED - COMBINED SECTION 8 (10-YR) & SEC. 9 FILED	

Jun. 02, 2007	TEAS SECTION 8 & 9 RECEIVED	
Feb. 18, 2005	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Dec. 10, 1993	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	
Jul. 16, 1993	REGISTERED - SEC. 8 (6-YR) & SEC. 15 FILED	
May 17, 1988	REGISTERED-PRINCIPAL REGISTER	
Feb. 23, 1988	PUBLISHED FOR OPPOSITION	
Jan. 22, 1988	NOTICE OF PUBLICATION	
Dec. 15, 1987	APPROVED FOR PUB - PRINCIPAL REGISTER	
Dec. 14, 1987	EXAMINERS AMENDMENT MAILED	
Nov. 17, 1987	NON-FINAL ACTION MAILED	
Nov. 02, 1987	ASSIGNED TO EXAMINER	62343

▼ Maintenance Filings or Post Registration Information

Affidavit of Continued Use: Section 8 - Accepted

Affidavit of Incontestability: Section 15 - Accepted

Renewal Date: May 17, 2008

▼ TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: SCANNING ON DEMAND

Date in Location: Jun. 17, 2008

▼ Assignment Abstract Of Title Information

Summary

Total Assignments: 3

Registrant: CRESCENT MANL

▼ Assignment 1 of 3

[▲ Collapse All](#)

Conveyance: ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL

Reel/Frame: 0653/0916

Pages: 0

Date Recorded: May 18, 1989

Supporting Documents: No Supporting Documents Available

Assignor

Name: CRESCENT MANUFACTURING COMPANY

Execution Date: Apr. 03, 1989

Legal Entity Type: CORPORATION

State or Country Where Organized: WASHINGTON

Assignee**Name:** MCCORMICK & COMPANY, INCORPORATED**Legal Entity Type:** CORPORATION**State or Country Where Organized:** MARYLAND**Address:** 11350 MCCORMICK ROAD
HUNT VALLEY, MARYLAND 21031**Correspondent****Correspondent Name:** CUSHMAN, DARBY & CUSHMAN**Correspondent Address:** ELEVENTH FLOOR
1615 L STREET, N.W.
WASHINGTON, DC 20036-5601**Domestic Representative - Not Found****Assignment 2 of 3****Conveyance:** ASSIGNS THE ENTIRE INTEREST**Reel/Frame:** 1479/0155**Pages:** 15**Date Recorded:** Jun. 07, 1996**Supporting Documents:** No Supporting Documents Available**Assignor****Name:** MCCORMICK & COMPANY, INCORPORATED**Execution Date:** May 10, 1996**Legal Entity Type:** CORPORATION**State or Country Where Organized:** MARYLAND**Assignee****Name:** MCCORMICK DELAWARE, INC.**Legal Entity Type:** CORPORATION**State or Country Where Organized:** DELAWARE**Address:** SUITE 1326
1105 NORTH MARKET STREET
WILMINGTON, DELAWARE 19890**Correspondent****Correspondent Name:** COVINGTON & BURLING**Correspondent Address:** JUDITH SAPP, ESQ.
1201 PENNSYLVANIA AVENUE, N.W.
P.O. BOX 7566
WASHINGTON, D.C. 20044**Domestic Representative - Not Found****Assignment 3 of 3****Conveyance:** NUNC PRO TUNC ASSIGNMENT EFFECTIVE NOVEMBER 29, 2004**Reel/Frame:** 3003/0297**Pages:** 9**Date Recorded:** Jan. 06, 2005

Supporting Documents: [assignment-tm-3003-0297.pdf](#)

Assignor

Name: MCCORMICK DELAWARE, INC.

Execution Date: Dec. 22, 2004

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Assignee

Name: MCCORMICK & COMPANY, INCORPORATED

Legal Entity Type: CORPORATION

State or Country Where Organized: MARYLAND

Address: 18 LOVETON CIRCLE
SPARKS, MARYLAND 21152-6000

Correspondent

Correspondent Name: JUDITH SAPP

Correspondent Address: 111 WEST STREET
PORTLAND, ME 04102

Domestic Representative - Not Found

▣ Proceedings - Click to Load

STATUS	DOCUMENTS	Back to Search	 Print
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Mark: GRILL MATES

GRILL MATES

US Serial Number: 78550907

Application Filing Date: Jan. 20, 2005

US Registration Number: 3011499

Registration Date: Nov. 01, 2005

Register: Principal

Mark Type: Trademark

Status: A Sections 8 and 15 combined declaration has been accepted and acknowledged.

Status Date: Dec. 14, 2011

Publication Date: Aug. 09, 2005

▾ Mark Information

Mark Literal Elements: GRILL MATES

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

Disclaimer: "GRILL"

▾ Related Properties Information

Claimed Ownership of US 1488730 Registrations:

▾ 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 incontestability; and
- Asterisks *...* identify additional (new) wording in the goods/services.

For: Sauces, [sauce mixes,] marinades, marinade mixes, spices, seasonings, seasoning mixes

International Class(es): 030 - Primary Class

U.S Class(es): 046

Class Status: ACTIVE

Basis: 1(a)

First Use: May 22, 1987

Use in Commerce: May 22, 1987

= Basis Information (Case Level)

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

= Current Owner(s) Information

Owner Name: McCormick & Company, Incorporated

Owner Address: 18 Loveton Circle
Sparks, MARYLAND 211526000
UNITED STATES

Legal Entity Type: CORPORATION

State or Country Where Organized: MARYLAND

= Attorney/Correspondence Information

Attorney of Record

Attorney Name: Jordan S. Weinstein, Esquire

Attorney Primary Email: tmddocket@oblon.com

Address:

Docket Number: 359628US56

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: Jordan S. Weinstein, Esquire
OBLON, SPIVAK, McCLELLAND, MAIER & NEUSTADT, LLP
1940 Duke Street
Alexandria, VIRGINIA 22314
UNITED STATES

Phone: 703-413-3000

Fax: 703-413-2220

Correspondent e-mail: tmddocket@oblon.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

= Prosecution History

Date	Description	Proceeding Number
Dec. 14, 2011	NOTICE OF ACCEPTANCE OF SEC. 8 & 15 - E -MAILED	
Dec. 14, 2011	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	68335

Dec. 14, 2011	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	68335
Nov. 01, 2011	TEAS SECTION 8 & 15 RECEIVED	
Jul. 08, 2010	REVIEW OF CORRESPONDENCE COMPLETE	76293
Jul. 08, 2010	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	76293
May 21, 2010	PAPER RECEIVED	
Nov. 01, 2005	REGISTERED-PRINCIPAL REGISTER	
Aug. 09, 2005	PUBLISHED FOR OPPOSITION	
Jul. 20, 2005	NOTICE OF PUBLICATION	
Apr. 18, 2005	LAW OFFICE PUBLICATION REVIEW COMPLETED	76539
Apr. 15, 2005	ASSIGNED TO LIE	76539
Apr. 11, 2005	APPROVED FOR PUB - PRINCIPAL REGISTER	
Apr. 08, 2005	EXAMINER'S AMENDMENT ENTERED	77978
Apr. 08, 2005	EXAMINERS AMENDMENT E-MAILED	6328
Apr. 08, 2005	EXAMINERS AMENDMENT -WRITTEN	80814
Apr. 07, 2005	ASSIGNED TO EXAMINER	80814
Jan. 31, 2005	NEW APPLICATION ENTERED IN TRAM	

- Maintenance Filings or Post Registration Information

Affidavit of Continued Use: Section 8 - Accepted

Affidavit of Incontestability: Section 15 - Accepted

- TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: TMEG LAW OFFICE 103

Date in Location: Dec. 14, 2011

- Assignment Abstract Of Title Information - None recorded

- Proceedings - Click to Load