

ESTTA Tracking number: **ESTTA649779**

Filing date: **01/13/2015**

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	Atalanta Corporation		
Entity	Corporation	Citizenship	New York
Address	1 Atalanta Plaza Elizabeth, NJ 07206 UNITED STATES		

Attorney information	Ralph N. Gaboury, Esq. F. Chau & Associates, LLC 130 WOODBURY ROAD WOODBURY, NY 11797 UNITED STATES mail@chauiplaw.com Phone:5166928888		
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Registration Subject to Cancellation

Registration No	4476854	Registration date	02/04/2014
International Registration No.	NONE	International Registration Date	NONE
Registrant	RODRIGUEZ ALVAREZ, MARIANA, MRS. OTE. 11 NO. 244 INT. MEZZANINE ENTRE ORIZABA, VERACRUZ, 94320 MEXICO		

Goods/Services Subject to Cancellation

Class 030. First Use: 0 First Use In Commerce: 0 All goods and services in the class are cancelled, namely: Coffee, rice, sugar, flour

Grounds for Cancellation

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
The registration is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used.	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Petitioner is being and/or will be damaged by the registration sought because such registration is giving and/or will give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

Related Proceed-	91215390 91219805
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	86038612	Application Date	08/15/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	PRIMA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1954/02/15 First Use In Commerce: 1954/02/15 Canned, Frozen or Otherwise Processed Meat, Seafood and Cheese; Canned Fruits; Canned Vegetables		

Attachments	86038612#TMSN.png(bytes) Petition to Cancel 85770086.pdf(99056 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	/Ralph Gaboury/
Name	Ralph N. Gaboury, Esq.
Date	01/13/2015

3. Through its extensive sales, advertising and continuous and exclusive use for over 50 years, Petitioner has developed extensive goodwill throughout the United States and elsewhere with respect to the mark PRIMA as applied to a wide variety of food products including, *inter alia*, canned, frozen and otherwise processed meat, seafood and cheese, canned vegetables and canned fruits (hereinafter “Petitioner’s Goods”).

4. Petitioner is the owner of U.S. Trademark Application Serial No. 86/038,612, filed August 15, 2013 for the mark PRIMA covering the following goods: “Canned, Frozen or Otherwise Processed Meat, Seafood and Cheese; Canned Fruits; Canned Vegetables” in International Class 29.

5. Since long prior to the filing date of the subject Registration, Petitioner and its predecessors-in-interest have continuously used the PRIMA mark on and in connection with Petitioner’s Goods which currently include cheeses, tuna fish, apple sauce, mandarin oranges, peaches, pears, pineapple, mushrooms and sun dried tomatoes.

6. Registrant owns the Opposed Registration, which it applied for on November 2, 2012, for the mark PRIMA ¡CONSIENTE A TU FAMILIA!, with the design depicted below:



The Opposed Registration presently covers the following goods: “Coffee, rice, sugar, flour” in International Class 030 (“Registrant’s Goods”). The Opposed Registration claims priority to Mexican Registration No. 1326703 filed on May 30, 2012 and was not based upon an intent-to-use or use in interstate commerce. As such, Petitioner’s use of its PRIMA mark predates both

the filing date of the Opposed Registration and the foreign registration, thereby entitling Petitioner to priority in rights over Registrant.

7. Registrant's use of the mark depicted in the Opposed Registration as applied to Registrant's Goods is damaging and/or will damage Petitioner because it is confusingly and deceptively similar to Petitioner's PRIMA mark. The word "PRIMA" is the largest and most prominent feature of the design mark depicted in the Opposed Registration. "PRIMA" appears on its own line in the design and is printed in a large font size making it larger than the image of the woman in the design, and several times larger than the other words depicted in the design. Accordingly, consumers of Registrant's and Petitioner's goods are likely to view the word "PRIMA" as the most prominent feature of Registrant's mark, which when used on or in connection with the goods listed in the Opposed Registration, falsely suggests a connection with Petitioner, and causes those consumers to believe, falsely, that Registrant's Goods originate with or are otherwise authorized, sponsored, or licensed by Petitioner, in violation of Sections 2(a) and 2(d) of the Lanham Act, 15 U.S.C. §§ 1052(a) and (d).

8. In addition, Petitioner is being and/or will be damaged because Registrant's Goods are identical to and/or highly related and complimentary to the Petitioner's Goods, and/or are within the natural zone of expansion for Petitioner's goods, such that the use of the mark depicted in the Opposed Registration on or in connection with such goods is likely to cause confusion, or to cause mistake or to deceive in violation of Sections 2(a) and 2(d) of the Lanham Act, 15 U.S.C. §§ 1052(a) and (d).

9. Registrant's use of "PRIMA" as depicted in the Opposed Registration has and will continue to damage Petitioner because the Opposed Registration is being used by the Registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used, in violation of Section 14 of the Lanham Act, 15 U.S.C. § 1064.

10. Petitioner is being and/or will be further damaged by the registration sought because such registration is giving and/or will give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

11. Based on the foregoing, the Opposed Registration is causing and/or will cause damage to Petitioner, and the registration should, therefore, be cancelled.

WHEREFORE, as Petitioner is being and/or will be damaged by the Opposed Registration, Petitioner respectfully requests that the Opposed Registration be cancelled. Submitted herewith is the filing fee of three hundred dollars (\$300.00) to cover the filing fee for this Petition for Cancellation.

Dated: January 13, 2015

Respectfully submitted,



Ralph N. Gaboury, Esq.

F. CHAU & ASSOCIATES, LLC

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