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Filing date: **02/06/2015**

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	Sinterklaas, S.A.		
Entity	Corporation	Citizenship	Panama
Address	Edificio Scotia Plaza No. 18 Avenida Fed Pisos 9, 10 Y 11 Panama City, PANAMA		

Attorney information	Philip A. Allen, III Garbett, Stiphany, Allen & Roza 80 S.W. 8th Street, Suite 3100 Miami, FL 33130 UNITED STATES pallen@gsarlaw.com Phone:305-810-2790
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### Registration Subject to Cancellation

Registration No	4283663	Registration date	01/29/2013
Registrant	INDUSTRIAL MOLINERA DE CHILES EL BERCIANO, S.A. DE C.V. ESCOBILLERIA 10, COL. EJIDOS DEL MORAL DISTRITO FEDERAL, 09040 MEXICO		

### Goods/Services Subject to Cancellation

Class 030. First Use: 1995/04/27 First Use In Commerce: 2006/08/11 All goods and services in the class are cancelled, namely: Candy; caramels; chocolate; chocolate candies; coffee; flavored and sweetened gelatins; flavored, sweetened gelatin desserts
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### Grounds for Cancellation

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

### Mark Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	3691862	Application Date	03/04/2009
Registration Date	10/06/2009	Foreign Priority Date	NONE
Word Mark	MOLINERA		

Design Mark	
Description of Mark	The mark consists of a windmill atop the word "MOLINERA" each in its own oval stacked one on top of the other.
Goods/Services	<p>Class 029. First use: First Use: 1993/01/01 First Use In Commerce: 1993/01/01 Blended oil; Cooking oil; Corn oil; Dried beans; Olive oil; [ Processed asparagus; ] Processed beans; Processed olives; [ Processed onions; Processed peppers; ] Seafood; Vegetable oils</p> <p>Class 030. First use: First Use: 1993/01/01 First Use In Commerce: 1993/01/01 [ Capers; ] Food seasonings; Marinades; Pasta; Rice; Sauces; Seasonings; Vinegar; Wine vinegar</p> <p>Class 033. First use: First Use: 1993/01/01 First Use In Commerce: 1993/01/01 Cooking wine</p>

Attachments	77683193#TMSN.png( bytes ) 2015-02-06 Petition for Cancellation of La Molinera.pdf(49934 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	/Philip A. Allen, III/
Name	Philip A. Allen, III
Date	02/06/2015

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

In the Matter of Trademark Registration  
No. 4,283,663 for  
For the mark: LA MOLINERA  
Date Registered: January 29, 2013

Sinterklaas, S.A.

Petitioner

v.

Cancellation No.: \_\_\_\_\_

Industrial Molinera De Chiles El Berciano,  
S.A. De C.V.,

Registrant

\_\_\_\_\_ /

**PETITION TO CANCEL**

Petitioner, Sinterklaas, S.A., (“Sinterklaas”), with its principal place of business at Edificio Scotia Plaza No. 18 Avenida Federico Boyd Y Calle 51, Pisos 9, 10 Y 11, Panama City, Panama, believes that it is or will be damaged by continued registration of Registration Number 4,283,663 (the “663 Registration”) and hereby petitions to cancel the same:

Upon information and belief, Registrant Industrial Molinera De Chiles El Berciano, S.A. De C.V. Corporation Mexico (“Registrant”) is a corporation formed and existing under the laws of Mexico, with an address of Escobilleria 10, Col. Ejidos Del Moral Distrito Federal Mexico 09040.

Description of Registrant’s Registration: Respondent filed its application for registration on August 29, 2011 for the mark “LA MOLINERA.” The 663 Registration is registered on the Principal Register in Class 030 for: “Candy; caramels; chocolate; chocolate candy; flavored and

sweetened gelatins; flavored, sweetened gelatin desserts,” claiming first use in commerce of August 11, 2006. Because the 663 Registration is less than five years old, the cancellation sought in this Petition may be based upon any ground which would have prevented registration initially. *International Order of Job's Daughters v. Lindeburg & Co.*, 727 F.2d 1087, 220 U.S.P.Q. 1017 (Fed. Cir. 1984).

As grounds for this cancellation, it is alleged that:

1. Petitioner is the owner by recorded assignment of the federally registered trademark MOLINERA, Registration No. 3,691,862 (the “862 Registration”), in International Classes 29, 30 and 33 for, among other things, Food seasonings; Marinades; Pasta; Rice; Sauces; Seasonings; Vinegar; and Wine vinegar. Petitioner owns and holds the 862 Registration by assignment from its affiliate, Molinera Foods, LLC (“Molinera”). For convenience, Sinterklaas and Molinera will be collectively referred to herein for convenience as “Petitioner.”

2. Petitioner adopted and it has continuously utilized the 862 Mark in commerce in connection with the sale and offering for sale of such products since at least as early as January 1, 1993. The 862 Registration has become incontestable by reason of continuous use in commerce.

3. Petitioner’s Mark consists of a the word “MOLINERA” and a drawing of a windmill atop the word “MOLINERA” each in its own oval, stacked one on top of the other, as follows:



4. Respondent. Respondent’s junior Mark consists of the words “LA MOLINERA” and also “consists of a figure of a woman dressed as a peasant with a waistband who looks to the

left and a stylized windmill design. Behind the figure and the windmill is a shaded triangle. Under the figure and the windmill are the words LA MOLINERA inside shaded rectangle, and under this is another shaded triangle.” The drawing is as follows:



As noted above, Respondent’s 663 Registration of this junior Mark is based on a first use in Interstate Commerce of April 11, 2006, some thirteen years after the first use in commerce for the 862 Registration.

5. Respondents “LA MOLINERA” Mark is confusingly similar to Petitioner’s senior “MOLINERA” mark. Both marks feature the word “Molinera” (Spanish for “miller’s wife”) and the drawings each depict that word below a drawing of a windmill. The word elements of the Marks are essentially identical. The drawing elements of these Mark are very similar in that both feature a drawing of a windmill above the word “Molinera.”

6. Moreover, both Petitioner’s and Respondent’s marks are registered in International Class 30 four food products. While there are differences between the goods described in the registrations, the Marks are nearly identical in appearance. Where, as here, the marks of the respective parties are identical or virtually identical, the relationship between the relevant goods and/or services need not be as close to support a finding of likelihood of confusion. *See In re Shell Oil Co.*, 992 F.2d 1204, 1207, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993); *In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202 (TTAB 2009); *In re Thor Tech, Inc.*, 90 USPQ2d 1634, 1636 (TTAB 2009); TMEP §1207.01(a).

7. In addition, petitioner can find no evidence after diligent search that Respondent has made a continuous use of the junior LA MOLINERA mark in commerce. Therefore, on information and belief, respondent is presumed to have abandoned any trademark rights it may have had in its junior LA MOLINERA Mark.

Wherefore, Petitioner prays for judgment granting this petition and canceling Registration Number 4,283,663.

Respectfully submitted,

**GARBETT, STIPHANY, ALLEN & ROZA,  
P.A.**

Counsel to Petitioner  
Brickell City Tower, Suite 3100  
80 S.W. 8th Street  
Miami, Florida 33130  
Tel: (305) 536-8866  
Fax: (305) 579-4722  
E-mail: [pallen@gsarlaw.com](mailto:pallen@gsarlaw.com)

By: /s/ Philip A. Allen, III  
Florida Bar No. 338575