

ESTTA Tracking number: **ESTTA688450**

Filing date: **08/08/2015**

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	THE CLEARLY FOOD & BEVERAGE COMPANY, INC.		
Entity	Corporation	Citizenship	DE
Address	PO Box 325 Perrysburg, OH 43552 UNITED STATES		

Correspondence information	Jennifer Black Trademark Director THE CLEARLY FOOD & BEVERAGE COMPANY, INC. PO Box 325 Perrysburg, OH 43552 UNITED STATES robert@clearlyfab.com, jennifer.black@clearlyfab.com Phone:646-872-8164
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**Registration Subject to Cancellation**

Registration No	3830605	Registration date	08/10/2010
Registrant	Brooklyn Bottling Co. of Milton, New York, Inc. 1900 Linden Blvd. Brooklyn, NY 11207 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 032. First Use: 2009/08/01 First Use In Commerce: 2009/08/01 All goods and services in the class are cancelled, namely: Bottled drinking water; Bottled water; Carbonated waters; Drinking water; Drinking water with vitamins; Drinking waters
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**Grounds for Cancellation**

Abandonment	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

**Mark Cited by Petitioner as Basis for Cancellation**

U.S. Registration No.	1697898	Application Date	12/22/1987
Registration Date	06/30/1992	Foreign Priority Date	06/23/1987
Word Mark	CLEARLY CANADIAN		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 0 First Use In Commerce: 0 FLAVORED MINERAL WATERS, FRUIT FLAVORED MINERAL WATERS, NON-FLAVORED MINERAL WATERS, CARBONATED MINERAL WATERS, NON-CARBONATED MINERAL WATERS, BOTTLED DRINKING WATERS, SPRING WATERS, SOFT DRINKS AND FRUIT JUICES

Attachments	Clearly Refreshing! Petition to Cancel.pdf(111593 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	/rrk/
Name	Robert R. Khan
Date	08/08/2015

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

In the matter of trademark Registration No. **3,830,605**  
For the mark **CLEARLY REFRESHING!**  
Date registered **August 10, 2010**

THE CLEARLY FOOD & BEVERAGE  
COMPANY, INC.

Petitioner

**PETITION TO CANCEL**

v.

BROOKLYN BOTTLING CO. OF  
MILTON, NEW YORK, INC.

Registrant

**PETITION TO CANCEL**

Petitioner, The Clearly Food & Beverage Company, Inc., a Delaware company with principal address of P.O. Box 325, Perrysburg, OH United States 43552 (“Petitioner”).

To the best of Petitioner’s knowledge, the name and address of the current owner of U.S. Registration No. 3,830,605 is the Brooklyn Bottling Co. of Milton, New York, Inc., a New York Corporation with principal address of 1900 Linden Blvd. Brooklyn, New York 11207 United States (“Registrant”).

The Petitioner believes that it is and will be damaged by the above-identified trademark registration, and hereby petitions to cancel it.

The grounds for cancellation are as follows:

1. Petitioner is the owner of U.S. Trademark CLEARLY CANADIAN (Registration No. 1697898) filed on December 22, 1987 and registered on June 30, 1992.

2. Petitioner's trademark is distinctive and famous and was distinctive and famous at the time Registrant filed for its trademark.

3. Petitioner's trademark has clear priority over that of Registrants in the same class of goods and services in which Registrant's trademark is filed.

4. Registrant's trademark is dilutive to the distinctiveness of Petitioner's long-held trademark in the same class of goods and services.

5. Registrant's trademark is likely to cause confusion or mistake, or is likely to deceive as to the origin or sponsorship of Registrant's goods and services.

6. Registrant has ceased all use of its trademark in connection with the goods identified in its U.S. Registration and has abandoned the trademark.

**WHEREFORE**, Petitioner prays that the Trademark Trial and Appeal Board grant its petition and cancel U.S. Trademark Registration No. 3,830,605.

Respectfully submitted,

August 8, 2015



Robert R. Khan  
Director

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of this PETITION TO CANCEL was served on the following on August 8, 2015, via first class mail, postage prepaid to:

Mr. Eric Miller  
Brooklyn Bottling Co. of Milton, New York, Inc.  
1900 Linden Blvd  
Brooklyn NY 11207



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Robert R. Khan