

ESTTA Tracking number: **ESTTA739221**

Filing date: **04/11/2016**

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	Mary's Gone Crackers, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	P.O. Box 965 Gridley, CA 95948 UNITED STATES		

Attorney information	Lauren Refinetti Jones Day 222 East 41st Street New York, NY 10017 UNITED STATES NYTEF@jonesday.com Phone:2142203939
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Registration Subject to Cancellation

Registration No	4904042	Registration date	02/23/2016
Registrant	LUV Ice Cream 13201 Ozark Trail North Stillwater, MN 55082 UNITED STATES		

Goods/Services Subject to Cancellation

Class 030. First Use: 2013/12/22 First Use In Commerce: 2014/01/02 Cancelled goods and services in the class: no-sugar-added bakery desserts

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
No use of mark in commerce before application was filed	Trademark Act section 1(a)

Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	3861121	Application Date	05/06/2010
Registration Date	10/12/2010	Foreign Priority Date	NONE
Word Mark	MARY'S GONE CRACKERS LOVE COOKIES		

Design Mark	MARY'S GONE CRACKERS LOVE COOKIES
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2010/02/02 First Use In Commerce: 2010/02/02 Cookies

U.S. Registration No.	4303741	Application Date	12/22/2011
Registration Date	03/19/2013	Foreign Priority Date	NONE

Word Mark	MARY'S GONE CRACKERS LOVE COOKIES
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Description of Mark	The mark consists of a background consisting of a tan rectangle with a green border. Superimposed upon the upper quarter of the background rectangle and overlapping its upper edge is a second tan rectangle containing the word "MARY'S" in black characters. The upper rectangle has a green border on its upper portion, which border is a continuation of the border of the background rectangle. Superimposed upon the middle of the background rectangle is a dark green rectangle with a red line around the border. The rectangle is broader than the background rectangle and contains the word "CRACKERS" in tan characters, with a black background outline. There is a crescent moon located within the middle letter "C" in the word "CRACKERS". The red line is jagged, the rectangle's surface is textured, and the edge of the rectangle is fringed. A small light green banner containing the word "GONE" in black lettering is superimposed on the top of this rectangle. Underneath the above described set of rectangles and banner the words "LOVE COOKIES" are located in a tan, orange and red italic relief script logotype.
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Goods/Services	Class 030. First use: First Use: 2010/02/02 First Use In Commerce: 2010/02/02 Cookies
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U.S. Registration No.	4796488	Application Date	06/10/2014
Registration Date	08/18/2015	Foreign Priority Date	NONE
Word Mark	LOVE COOKIES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2015/05/19 First Use In Commerce: 2015/05/19 Cookies		

Attachments	85031747#TMSN.png(bytes) 85502569#TMSN.png(bytes) 86305905#TMSN.png(bytes) Luv Petition for Cancellation.pdf(200140 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	/Lauren Refinetti/
Name	Lauren Refinetti
Date	04/11/2016

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

MARY'S GONE CRACKERS, INC.,

Opposer,

v.

LUV ICE CREAM,

Applicant.

Cancellation No. _____

Registration No.: 4,904,042

Registration Date: Feb. 23, 2016

Trademark: LUV (Stylized)

International Class: 30



PETITION FOR CANCELLATION

Mary's Gone Crackers, Inc. ("Mary's Gone Crackers"), a Delaware corporation, having an address of P.O. Box 965, Gridley, California 95948, believes that it is being damaged by U.S. Trademark Registration No. 4,904,042 for "no-sugar-added bakery desserts," in Class 30, and through its attorneys, hereby petitions to cancel that portion of the registration pursuant to 15 U.S.C. § 1064 and 37 CFR § 2.111(b). As grounds for this petition, it is alleged that:

1. Mary's Gone Crackers manufactures, promotes, markets, advertises, distributes, and sells organic, gluten free, vegan baked goods, including cookies and crackers. In connection with its organic, gluten free, vegan cookies, and since at least as early as 2010, Mary's Gone Crackers has used its mark "LOVE COOKIES" (the "LOVE COOKIES Mark") in commerce in the United States, including on its website, marketing materials, and packaging of its cookies.

2. Mary's Gone Crackers has prominently and extensively promoted and advertised its award-winning cookies bearing the LOVE COOKIES Mark, expending significant resources in connection with such advertising and promotional efforts and building a valuable business based on the high demand for its cookies sold under the LOVE COOKIES Mark.

3. As a result of Mary's Gone Crackers' continuous and extensive use, advertising and promotion of the LOVE COOKIES Mark, as well as the distinctiveness of the mark, the LOVE COOKIES Mark has become well-known, and consumers have come to recognize the LOVE COOKIES Mark as uniquely associated with Mary's Gone Crackers and an indication of origin.

4. Mary's Gone Crackers owns the following valid U.S. trademark registrations for its LOVE COOKIES Mark:

MARK	REG. NO.	REG. DATE	GOODS
MARY'S GONE CRACKERS LOVE COOKIES	U.S. Reg. No. 3,861,121	October 12, 2010	Cookies
	U.S. Reg. No. 4,303,741	March 19, 2013	Cookies
LOVE COOKIES	U.S. Reg. No. 4,796,488	August 18, 2015	Cookies

5. On information and belief, Registrant LUV Ice Cream (“Registrant”), a limited liability company with an address of 13201 Ozark Trail North, Stillwater, Minnesota 55082-9550, is the owner of U.S. Trademark Registration No. 4,904,042 for “Gluten-free desserts, namely, no-sugar-added dairy ice creams; non-dairy no-sugar-added frozen confections; no-sugar-added chocolates and candy bars; sugar-free and no-sugar-added candies, no-sugar-added bakery desserts” in International Class 30 (the “Registration”). The Registration issued on February 23, 2016.

Grounds for Cancellation

Likelihood of Confusion

6. Mary’s Gone Crackers has used its LOVE COOKIES Mark on cookies in International Class 30 well before the January 2, 2014 first use in commerce date alleged in the Registration.

7. Registrant is not affiliated with or sponsored by Mary’s Gone Crackers, and Registrant has never been authorized by Mary’s Gone Crackers to use the LOVE COOKIES Mark.

8. Registrant’s mark LUV (Stylized) is very similar in appearance, sound, and commercial impression to Mary’s Gone Crackers’ LOVE COOKIES Mark. As such, consumers are likely to be confused, mistaken or deceived into the belief, contrary to fact, that the no-sugar-added bakery desserts offered under the mark LUV (Stylized), which category encompasses cookies, emanate from and/or are in some way sponsored or approved by Mary’s Gone Crackers, and/or that Registrant is somehow affiliated with Mary’s Gone Crackers, thereby damaging Mary’s Gone Crackers.

9. In addition, the no-sugar-added bakery desserts identified in the Registration are related to and include the cookies sold by Mary's Gone Crackers under its LOVE COOKIES Mark and covered by Mary's Gone Crackers' trademark registrations for the LOVE COOKIES Mark because cookies are a type of bakery dessert.

10. The no-sugar-added bakery desserts identified in the Registration are also likely to be sold to the same or overlapping classes of purchasers and trade channels as cookies bearing the LOVE COOKIES Mark.

11. Because of the high degree of similarity between the parties' respective marks, goods, and trade channels, as well as the fame of the LOVE COOKIES Mark in the natural products industry, Registrant's continued registration of the LUV (Stylized) mark for "no-sugar-added bakery desserts" is likely to cause consumer confusion, mistake or deception, violating Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

Void Ab Initio

13. Registrant claims the mark LUV (Stylized) was first used in interstate commerce on "no-sugar-added bakery desserts" at least as early as January 2, 2014. However, upon information and belief, no valid use in interstate commerce was made for "no-sugar-added bakery desserts" as of the claimed first use date or as of the application date of March 22, 2015.

14. Registrant's failure to use the LUV (Stylized) mark in commerce for "no-sugar-added bakery desserts" as identified in the Registration as of the application date renders the Registration *void ab initio*.

Prayer for Relief

15. On the bases of likelihood of confusion and *void ab initio*, the “no-sugar-added bakery desserts” portion of U.S. Trademark Registration No. 4,904,042, is subject to cancellation under Section 14 of the United States Trademark Act of 1946, 15 U.S.C. § 1064.

16. Mary’s Gone Crackers believes that it is being damaged and will be damaged by the continued registration of the LUV (Stylized) registered mark.

17. In view of the above, Registrant is not entitled to maintain a federal registration for the mark LUV (Stylized) for “no-sugar-added bakery desserts.”

WHEREFORE, Mary’s Gone Crackers prays that said U.S. Trademark Registration No. 4904042 be cancelled as to “no-sugar-added bakery desserts” and that this Petition for Cancellation be sustained in favor of Mary’s Gone Crackers. The appropriate fee is submitted herewith. Please direct all future correspondence to the undersigned.

Dated: April 11, 2016

Respectfully submitted,

By: Lauren Refinetti

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Attorneys for Opposer
MARY'S GONE CRACKERS, INC.

CERTIFICATE OF SERVICE

It is hereby certified that a true and complete copy of the foregoing entitled Petition for Cancellation has been served on Registrant LUV Ice Cream at the correspondence address of record in the United States Patent and Trademark Office by mailing said copy on April 11, 2016 via Priority Mail, postage prepaid at the correspondence address of record in the Patent and Trademark Office:

LUV ICE CREAM
13201 Ozark Trl N
Stillwater, Minnesota 55082-9550



Lauren Refinetti