

ESTTA Tracking number: **ESTTA773370**

Filing date: **09/28/2016**

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	Rao's Specialty Foods, Inc.		
Entity	Corporation	Citizenship	New York
Address	17 Battery Place New York, NY 10004 UNITED STATES		

Attorney information	Jennifer Lee Taylor Morrison & Foerster LLP 425 Market Street San Francisco, CA 94105 UNITED STATES TMdocket@mofo.com, jtaylor@mofo.com, cburns@mofo.com, lhoyos@mofo.com		
----------------------	--	--	--

**Registration Subject to Cancellation**

Registration No	4299317	Registration date	03/05/2013
Registrant	Straci, Sharon L. Suite 610 New York, NY 10004 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 030. First Use: 2010/10/14 First Use In Commerce: 2012/11/30 All goods and services in the class are cancelled, namely: Pizza sauce; Ready-made sauces; Spaghetti sauce; Tomato sauce
--

**Grounds for Cancellation**

Registrant not rightful owner of mark for identified goods or services	Trademark Act Sections 14(1) and 1
Fraud on the USPTO	Trademark Act Section 14(3); In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)

Attachments	2016-09-28 Petition for Cancellation.pdf(82531 bytes )
-------------	--

**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	/Jennifer Lee Taylor/
Name	Jennifer Lee Taylor
Date	09/28/2016

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

Rao's Specialty Foods, Inc.,	Cancellation No.:	To Be Assigned
Petitioner,	Registration No.:	4,299,317
vs.	Issued:	March 5, 2013
SHARON STRACI,	Mark:	THE WOMAN BEHIND THE SAUCE
Respondent.		

**PETITION FOR CANCELLATION**

Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3513

Dear Commissioner:

Rao's Specialty Foods, Inc. ("Petitioner"), a N.Y. corporation having its principal place of business at 17 Battery Place, New York, N.Y. 10004, believes that it is and will continue to be injured if the mark in Registration No. 4,299,317 is not canceled, and hereby petitions to cancel the same.

To the best of Petitioner's knowledge, the name and address of the current owner of the registration is Sharon Straci ("Respondent"), located at 17 Battery Place, New York, N.Y. 10004.

The grounds for cancellation are as follows:

1. Petitioner has been a family-owned provider of homemade Italian specialty foods since 1993. Petitioner has developed a range of products for the retail trade, including twelve different pasta sauce varieties.

2. Until recently, Respondent worked as the Chief Operating Officer of Petitioner's specialty foods business.

3. On April 16, 2012, Respondent filed a use-based trademark application, Serial No. 85/599,299, for the mark THE WOMAN BEHIND THE SAUCE in Class 30 for "Pizza sauce; Ready-made sauces; Spaghetti sauce; Tomato sauce." At the time, Respondent was employed by Petitioner as its Chief Operating Officer. On March 5, 2013, that application matured into Registration No. 4,299,317.

**FIRST CLAIM FOR RELIEF: RESPONDENT DOES NOT OWN THE MARK**

4. Petitioner incorporates by reference paragraphs 1 through 3, inclusive, as though fully set forth therein.

5. 15 U.S.C. § 1051 states that only "[t]he owner of a trademark used in commerce may request registration of its trademark on the principal register." At the time of her application, Respondent did not own the mark THE WOMAN BEHIND THE SAUCE because Petitioner exclusively created, distributed, and sold the sauce labeled with this mark. As a result, the Petitioner, and not the Respondent, is the sole owner of the sauce labeled with THE WOMAN BEHIND THE SAUCE mark.

6. Respondent knew petitioner was the rightful owner of THE WOMAN BEHIND THE SAUCE when she filed her Application Serial No. 85/599,299 for that mark because she was employed by Petitioner at that time. In fact, as Chief Operating Officer of Petitioner, Respondent filed numerous other applications in Petitioner's name, using sauce labels from Petitioner that were the same or similar to the specimen that she used for Application Serial No. 85/599,299. For example, Respondent filed Application Serial No. 86/128,498 for RAO'S SPECIALTY FOODS, INC. for Petitioner on November 25, 2013 using a Rao's Homemade Marinara Sauce label. Respondent filed Application Serial No. 85/758,627 for TWIST YOUR WRIST for Petitioner on October 19, 2012 using the same label. Respondent also filed one of Petitioner's labels for Rao's Homemade Tomato Basil sauce in connection with the Section 8

and 9 renewal affidavit for Registration No. 2,840,596 for the mark BRINGING THE EXTRAORDINARY HOME—a label that also bore Petitioner’s THE WOMAN BEHIND THE SAUCE mark.

**SECOND CLAIM FOR RELIEF: RESPONDENT FRAUDULENTLY OBTAINED THE REGISTRATION**

7. Petitioner incorporates by reference paragraphs 1 through 6, inclusive, as though fully set forth therein.

8. 15 U.S.C. § 1115 (a) states that a registered mark can be challenged on the basis of any defect, including those set forth in subsection (b): “[t]hat the registration or the incontestable right to use the mark was obtained fraudulently.” Respondent in this case fraudulently obtained the registration of the mark THE WOMAN BEHIND THE SAUCE.

9. Respondent made false statements in connection with her Application Serial No. 85/599,299. First, Respondent falsely claimed that she had been using the mark THE WOMAN BEHIND THE SAUCE since October 14, 2010 when she filed her application under Section 1(b) of the Lanham Act on April 16, 2012. Second, Respondent falsely claimed that the substitute specimen submitted in support of the application was used by the Respondent. In reality, that specimen was a label used on a sauce created, distributed, and sold exclusively by the Petitioner. Accordingly, Respondent’s two statements regarding her ownership and use of the mark THE WOMAN BEHIND THE SAUCE were false.

10. A false statement regarding use of a mark in commerce to support an application for registration of a mark is a material misrepresentation because a mark is registered based on the validity of these statements.

11. Respondent made these statements knowing that they were false and with a subjective intent to deceive the U.S. Patent and Trademark Office. At the time of her application, Respondent was working as the Chief Operating Officer of Petitioner’s specialty foods business and knew that the mark she was registering was the Petitioner’s sole property.

Respondent's conduct induced the U.S. Patent and Trademark Office to rely on the false statements and to approve Application Serial No. 85/599,299 for publication.

12. Continued registration of the mark "THE WOMAN BEHIND THE SAUCE" is a source of damage to Petitioner, as it confers upon Respondent various statutory presumptions to which Respondent is not entitled, and may prevent registration of the THE WOMAN BEHIND THE SAUCE mark by Petitioner, to which Petitioner is entitled as the owner of that mark.

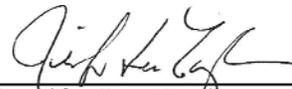
13. WHEREFORE, Petitioner prays that Registration No. 4,299,317, currently owned by Respondent, be canceled in its entirety.

14. Filing Fee: The U.S. Patent & Trademark Office is authorized to charge \$300 for the Petition for Cancellation to Morrison & Foerster's Deposit Account 03-1952 (Reference No. 76817-6001.501).

Respectfully submitted,

Dated: September 28, 2016

By:



Jennifer Lee Taylor  
Attorney for Petitioner  
Rao's Specialty Foods, Inc.

Morrison & Foerster LLP  
425 Market Street  
San Francisco, California 94105-2482  
Telephone: (415) 268-6538  
Facsimile: (415) 268-7522

## PROOF OF SERVICE BY MAIL

I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California, 94105; I am not a party to the within cause; I am over the age of eighteen years and I am readily familiar with Morrison & Foerster's practice for collection and processing of correspondence for mailing with the United States Postal Service and know that in the ordinary course of Morrison & Foerster's business practice the document described below will be deposited with the United States Postal Service on the same date that it is placed at Morrison & Foerster with postage thereon fully prepaid for collection and mailing.

I further declare that on September 28, 2016, I served a copy of:

### PETITION FOR CANCELLATION

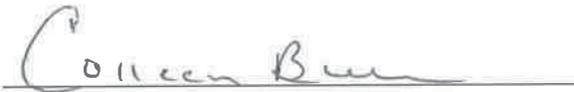
on the following by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing at Morrison & Foerster LLP, 425 Market Street, San Francisco, California, 94105, in accordance with Morrison & Foerster's ordinary business practices:

Sharon L. Straci  
17 Battery Place, Suite 610  
New York, NY 10004-1133

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed at San Francisco, California, this 28<sup>th</sup> day of September, 2016.

\_\_\_\_\_  
Colleen Burns  
(typed)

  
\_\_\_\_\_  
(signature)