

ESTTA Tracking number: **ESTTA774398**

Filing date: **10/03/2016**

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	General Mills, Inc.		
Entity	Corporation	Citizenship	Deleware
Address	1209 Orange Street Wilmington, DE 19801 UNITED STATES		

Attorney information	William C. Rava Perkins Coie LLP 1201 Third Avenue Suite 4900 Seattle, WA 98101 UNITED STATES wrava@perkinscoie.com Phone:206-359-6338		
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Registrations Subject to Cancellation

Registration No	4035020	Registration date	10/04/2011
Registrant	THAT'S IT NUTRITION, LLC 269 S. BEVERLY DR. #412 CA, CA 90212 UNITED STATES		

Goods/Services Subject to Cancellation

Class 029. First Use: 2011/03/03 First Use In Commerce: 2011/03/03 All goods and services in the class are cancelled, namely: Dehydrated fruit snacks
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Grounds for Cancellation

The mark is merely descriptive	Trademark Act Sections 14(1) and 2(e)(1)		
Registration No	4638221	Registration date	11/11/2014
Registrant	That's it Nutrition, LLC 16106 Hart St Van Nuys, CA 91406 UNITED STATES		

Goods/Services Subject to Cancellation

Class 032. First Use: 2014/05/01 First Use In Commerce: 2014/05/01 All goods and services in the class are cancelled, namely: Fruit drinks and fruit juices; Fruit juice concentrates; Non-alcoholic fruit juice beverages; Vegetable juice beverage

Grounds for Cancellation

The mark is merely descriptive	Trademark Act Sections 14(1) and 2(e)(1)		
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Related Proceedings	USDC for CDCA Case No. 2:16-cv-02871 SVW (GJS)
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Attachments	General Mills - Petition for Cancellation.pdf(16301 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	/William C. Rava/
Name	William C. Rava
Date	10/03/2016

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

GENERAL MILLS, INC.,

Petitioner,

V.

THAT'S IT NUTRITION, LLC,

Registrant.

Cancellation No.:

PETITION FOR CANCELLATION

Mark: THAT'S IT

Registration Nos.: 4,035,020 & 4,638,221

General Mills, Inc. ("General Mills" or "Petitioner") believes that it will be damaged by the continued registration by That's It Nutrition, Ltd. ("Respondent") of the mark THAT'S IT (the "Registered Mark") in International Classes 29 and 32, and covering those goods ("Registered Goods") listed in Registration Nos. 4,035,020 and 4,638,221 ("Registrations"), and hereby petitions to cancel the Registrations. As grounds for its petition, Petitioner alleges as follows:

I. PARTIES

1. Petitioner is a Delaware corporation, with its principle place of business located at Number One General Mills Boulevard, Minneapolis, Minnesota.

2. Respondent is a California limited liability company, with a place of business in 16106 Hart Street, Van Nuys, California.

II. THE REGISTRATIONS

3. Registration No. 4,035,020 issued on October 4, 2011, from Application No. 85257601 filed by Respondent or its predecessor on March 3, 2011 for the mark THAT'S IT in International Class 29 for use in connection with "Dehydrated fruit snacks." This registration is not incontestable.

4. Registration No. 4638221 issued on November 11, 2014, from Application No. 86053545 filed by Respondent or its predecessor on September 2, 2013 for the mark THAT'S IT in International Class 32 for use in connection with "Fruit drinks and fruit juices; Fruit juice concentrates; Non-alcoholic fruit juice beverages; Vegetable juice beverage." This registration is not incontestable.

III. CLAIMS

5. Respondent markets and sells a line of all-fruit snack bars using the trademark "THAT'S IT" as reflected in the Registration, which mark literally describes the essential nature of its products.

6. General Mills manufactures and distributes healthy snack bars under the LÄRABAR® mark. General Mills also manufactures and distributes LÄRABAR Bites, which are bite-sized versions of the bars, and are made with six or fewer simple ingredients.

7. In connection with the marketing and sale of its LÄRABAR and LÄRABAR Bites products, General Mills has used the phrase "That's It" not as a source indicator but in its everyday-definition sense to mean "nothing more." General Mills' use of the phrase "That's It" has been purely descriptive and always in its primary, definitional sense to emphasize the few, simple, healthy ingredients contained in the LÄRABAR and LÄRABAR Bites products.

8. Respondent has challenged General Mills' use of the phrase "That's It" in the United States District Court for the Central District of California, Case No. 2:16-cv-02871 SVW (GJS) ("District Court Litigation"), alleging trademark infringement and seeking damages and an injunction to prevent General Mills from using the phrase "That's It."

9. Respondent's use of the Registered Mark in connection with the Registered Goods directly and immediately conveys a characteristic and/or nature of the Registered Goods, and the Registered Mark does not have secondary meaning in connection with the

Registered Goods. Respondent uses the phrase “that’s it” in a purely descriptive manner and in its in its primary, definitional sense.

10. The continued registration of the Registered Mark in the Registrations would prevent General Mills from using a common, everyday phrase for its common, everyday meaning. The continued registration of the Registered Mark in the Registrations could also subject General Mills to liability in the District Court Litigation, and could support statutory rights for Respondent in violation and derogation of General Mill’s right to use a descriptive phrase in its descriptive sense.

11. By reason of all of the foregoing, General Mills would be greatly damaged by the continued registration of the Registrations for the Registered Goods.

IV. REQUEST FOR RELIEF

WHEREFORE, Petitioner requests that Registration Nos. 4,035,020 and 4,638,221 be cancelled.

V. FEES

The \$300.00 fee for this Petition for Cancellation has been electronically submitted.

DATED: October 3, 2016

Respectfully submitted,

Perkins Coie LLP

By: s/William C. Rava/

William C. Rava
1201 Third Avenue, 49th Floor
Seattle, Washington 98101
Phone: (206) 359-8000

Attorneys for Petitioner General Mills, Inc.

CERTIFICATE OF SERVICE

I hereby certify that this Petition for Cancellation is being deposited with the United States Postal Service with sufficient postage as first class mail on October 3, 2016, in an envelope addressed to Respondent's attorney of record at:

THAT'S IT NUTRITION, LLC
269 S. BEVERLY DR. #412
CA, CALIFORNIA UNITED STATES 90212

RAJ ABHYANKER
RAJ ABHYANKER, P.C.
1580 W EL CAMINO REAL STE 8
MOUNTAIN VIEW, CALIFORNIA UNITED STATES 94040-2462

Signature s/Tracy A. Brandon/

Print Name: Tracy A. Brandon