

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

**In the Matter of Application Serial No. 74/419,977
Filed July 29, 1993; Published in the Official Gazette on May 7, 1996**

AUSTIN NICHOLS & CO., INC.,

Opposer,

-against-

CINNABON, INC.,

Applicant.

Opposition No. 102,333

03-06-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #30

(International Classes: 29, 30, 32 and 42)

WITHDRAWAL OF OPPOSITION

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202
Attention: BOX TTAB – NO FEE

Sir:

The Opposer, Orangina Beverages, Inc. ("Orangina"), the successor-in-interest to Austin Nichols & Co., Inc., through its attorneys, hereby withdraws its Notice of Opposition in the above-captioned matter.

Orangina and Applicant, Cinnabon, Inc., are parties to a Settlement Agreement, a copy of which is attached as Exhibit A, and under which Cinnabon, Inc. has consented to this withdrawal.

CERTIFICATE OF EXPRESS MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as Express Mail (Label No. EV 056023223 US) in an envelope addressed to: Asst. Commissioner for Trademarks, BOX TTAB-NO FEE, 2900 Crystal Drive, Arlington, Virginia 22202 on March 6, 2003:

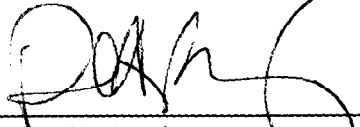


Signature

Maria Lagdameo

Respectfully submitted,

MILBANK, TWEED, HADLEY & McCLOY LLP

By: 

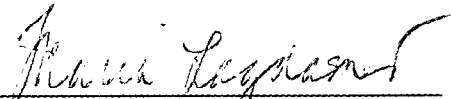
Parker H. Bagley
1 Chase Manhattan Plaza
New York, NY 10005-1413
(212) 530-5000
Attorneys for Opposer,
Orangina Beverages, Inc.



CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing Withdrawal of Opposition was served by facsimile and first class mail, postage prepaid, this 6th day of March 2003 upon:

Mark L. Seigel, Esq.
Needle & Rosenberg
The Candler Building
127 Peachtree Street NE
Atlanta, Georgia 30303-1811
(Facsimile: 404-688-9880)



Maria Lagdameo

A

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made this ~~5th~~ ^{14TH} day of ~~December~~ ^{JANUARY}, 2003 ("Effective Date"), by and between Cinnabon, LLC. ("Cinnabon"), a Washington Limited Liability Company with its principal place of business at Six Concourse Parkway Suite 1700 Atlanta, Georgia 30328, and Orangina Beverages, Inc. ("Orangina"), a Florida company with its principal place of business at 709 Westchester Avenue, White Plains, New York 10604.

WHEREAS, Cinnabon is the owner of numerous United States and Canadian trademark registrations and applications featuring the Cinnabon Swirl Design, as identified in Exhibit A hereto;

WHEREAS, Orangina is the owner of numerous United States and Canadian trademark registrations and applications featuring the Orangina Swirl Design, as identified in Exhibit B hereto;

WHEREAS, a dispute has arisen between Cinnabon and Orangina regarding the parties' respective rights to register their respective Swirl Design for beverage products;

WHEREAS, this dispute has resulted in the commencement of several trademark opposition proceedings, in both the United States and Canada, namely U.S. Opposition No. 102,333 brought by Austin Nichols & Co., Inc., Orangina's predecessor-in-interest, and Canadian opposition filed by Cinnabon against Orangina's Application No. 830,078, and by Orangina against Cinnabon's Application Nos. 734,657, 734,696 and 734,783;

WHEREAS, Cinnabon and Orangina wish to mutually resolve their dispute regarding their rights to register their respective Swirl Devices, on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises set forth below, the sufficiency of which is hereby acknowledged, Cinnabon and Orangina agree as follows:


1. Within thirty (30) days of the effective date of this Agreement, Cinnabon will file an Amendment with the United States Patent and Trademark Office to delete the following goods from its United States Registration No. 2,056,372 and United States pending application Serial No. 74/419,977: "fruit drinks, soft drinks, juices, and spring water" with Orangina's consent.
2. Within thirty (30) days of the effective date of this Agreement, Cinnabon will file an Amendment with the Canadian Trademark Office to delete the following goods from Canadian Trademark Application Nos. 734,696, 734,783, and 734,657: "coffee, fruit drinks, soft drinks, juices and spring water" with Orangina's consent.

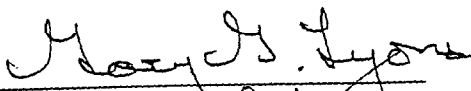
3. Within thirty (30) days of the effective date of this Agreement, Cinnabon will withdraw its opposition to Orangina's Canadian Application Serial No. 830,078, with Orangina's consent.
4. Within thirty (30) days of receiving confirmation that the amendments in paragraphs one and two have been entered, Orangina will withdraw its opposition to Cinnabon's United States pending application Serial No. 74/419,977, (Opposition No. 102,333) and Canadian application Serial Nos. 734,657, 734,696, and 734,783, with Cinnabon's consent.
5. In exchange for these promises and in consideration therefore, the parties hereby release and discharge each other, along with their officers, directors, shareholders, related companies, affiliates, employees, agents, attorneys, successors, and heirs, from any claims, demands, damages, or causes of action that arose or may have arisen by reason of either party's use of their respective Swirl Designs.

Accepted and Agreed to:

CINNABON, LLC.

ORANGINA BEVERAGES, INC.


Name: Lisa P. Morse
Title: Assistant Secretary
Date: 12-13-02


Name: Gary G. Lyons
Title: SVP
Date: 1/14/03