

TTAB

UNITED STATES PAT
OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Mailed: June 23, 2004

MCCORMICK DELAWARE, INC.

1105 NORTH MARKET STREET, SUITE 1326
WILMINGTON, DE 19890

Serial No: 79054421
Cancellation No. 92043424
Reg. No. 674701

Robert W Smith
McCarter & English LLP
Four Gateway Center 100 Mulberry St P.O. Box 652
Newark, NJ 07101-0652



Celestial Seasonings, Inc

V.

07-12-2004

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #66

MCCORMICK DELAWARE, INC.

Duion L. Walker, Legal Assistant

A petition, a copy of which is attached, has been filed to cancel the above-identified registration.

Proceedings will be conducted in accordance with the Trademark Rules of Practice.

ANSWER IS DUE FORTY DAYS after the mailing date hereof.
(See Trademark Rule 2.196 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that affect the rules of practice before the TTAB. See Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003); Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12, 2003). Notices concerning the rules changes, as well as the

Trademark Trial and Appeal Board Manual of Procedure (TBMP), are available at www.uspto.gov.

The parties are particularly referred to Trademark Rule 2.126 pertaining to the form of submissions. Paper submissions, including but not limited to exhibits and depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.

Discovery and testimony periods are set as follows:

Discovery period to open:	July 13, 2004
Discovery period to close:	January 09, 2005
30-day testimony period for party in position of plaintiff to close:	April 09, 2005
30-day testimony period for party in position of defendant to close:	June 08, 2005
15-day rebuttal testimony period for plaintiff to close:	July 23, 2005

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NOTE: The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68 (June 20, 2000). The notice is available at <http://www.uspto.gov>. Interlocutory matters which the Board agrees to discuss or decide by phone conference may

be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

New Developments at the Trademark Trial and Appeal Board

TTAB forms for electronic filing of extensions of time to oppose, notices of opposition, and inter partes filings are now available at <http://estta.uspto.gov>. Images of TTAB proceeding files can be viewed using TTABVue at <http://ttabvue.uspto.gov>.

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

In the Matter of Trademark Registration No. 674,701

For the Mark: TEA HOUSE



06-08-2004

Registration Date: February 24, 1959

U.S. Patent & TMO/c/TM Mail Rpt Dt. #78

Celestial Seasonings, Inc.)	
)	
Petitioner,)	
)	CANCELLATION NO.
v.)	
)	
McCormick Delaware, Inc.)	
)	
Respondent.)	

PETITION FOR CANCELLATION

Petitioner, CELESTIAL SEASONINGS, INC., believes that it is or will be damaged by Registration No. 674,701, for the mark TEA HOUSE (the "Registration" and the "Mark"), and hereby petitions to cancel the Registration. As grounds for this Petition, Petitioner alleges that:

1. Petitioner, McCormick Delaware, Inc. ("McCORMICK"), is a Delaware corporation located and doing business at 1105 North Market Street, Wilmington, Delaware 19890.

2. To the best of Petitioner's knowledge, the current information regarding Registration No. 674,701 is as follows:

Original Registrant: McCormick & Company, Incorporated

Last Listed Owner: McCormick Delaware, Inc.

06/21/2004 KSONCHAN 00000124 502639 674701

01 FC:6402 300.00 DA

NWK2: 1170393.01

Mark: TEA HOUSE

Registration Date: February 24, 1959

International Classes: 30

Goods/Services: Tea.

4. Petitioner manufactures and sells a variety of teas throughout the United States to a wide variety of consumers.

5. Petitioner has spent significant sums advertising its tea products and as a result of its extensive sales, marketing efforts, advertising and promotional efforts, Petitioner has developed recognition in the United States among consumers for these products.

6. Petitioner is using the marks TEAHOUSE LATTE and TEAHOUSE CHAI on teas, coffees, ciders and lemonade products sold in United States commerce, and intends to file trademark applications for those marks.

7. Upon information and belief, Respondent has ceased to use and has abandoned the mark TEA HOUSE.

8. Petitioner has been and will be damaged by the Respondent's Registration because Respondent's Registration, although the underlying Mark has been abandoned, constitutes prima facie evidence of Respondent's exclusive right to use the alleged mark in commerce. This prima facie evidentiary right is inappropriate because it would confer an unfair competitive advantage on Respondent and would be damaging to Petitioner. Therefore, Petitioner has standing to maintain this proceeding.

WHEREFORE, Petitioner prays that Registration No. 674,701 be cancelled and that this Petition for Cancellation be sustained in favor of the Petitioner.

Petitioner submits this Petition in duplicate and includes the required filing fee of
\$300.00.

Dated: June 8, 2004.

Respectfully submitted,

By: 

Robert W. Smith
McCarter & English, LLP
Four Gateway Center
100 Mulberry Street
P.O. Box 652
Newark, New Jersey 07101-0652
Phone (973) 622-4444

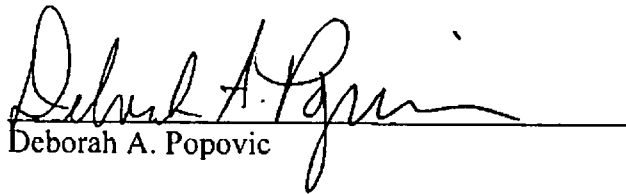
Attorneys for Petitioner

CERTIFICATE OF EXPRESS MAIL UNDER 37 CFR 1.10

"Express Mail" mailing label number: EV 419462836 US

Date of Deposit: June 8, 2004

I hereby certify that the original and two copies of the foregoing Petition for Cancellation, along with authorization to access our deposit account in the amount of \$300.00 to cover the filing fee, is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under CFR 1.10 on the date indicated above, addressed to: BOX TTAB - Fee, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, V.A. 22202-3514.


Deborah A. Popovic

Date: June 8, 2004

Robert W. Smith

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Fax 973.624.7070
E-mail: rsmith@mccarter.com

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June 8, 2004

VIA EXPRESS MAIL

BOX TTAB - FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

Re: Celestial Seasonings, Inc. v. McCormick Delaware, Inc.
Petition for Cancellation of U.S. Registration No. 674,701
Mark: TEA HOUSE

Dear Sir/Madam:

We enclose for filing an original and two (2) copies of a Petition for Cancellation.

Please charge our Deposit Account, No. 502639, the required \$300.00 filing fee for this petition and any other fees that are required for this matter.

Kindly acknowledge receipt of the enclosed documents by stamping and returning the pre-paid self-addressed postcard to us.

Thank you for your consideration.

Very truly yours,


Robert W. Smith

Enclosures

TTAB



06-08-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #78

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9204...
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118... MARKET STREET, SUITE 1326
W... NGT... DE 19890



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