

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

CPB, Inc.)
dba Chanticlear Pizza Bethel)
)
Petitioner,)
)
v.) Cancellation No. _____
)
DalMar Corporation,)
)
Registrant.)

Mark: CHANTICLEAR PIZZA and Design
Reg. No.: 2,706,728
Int. Class: 43

PETITION FOR CANCELLATION

CPB, Inc., dba Chanticlear Pizza Bethel, a Minnesota Corporation, with its principal place of business at 18355 Hwy 65 NE, Cedar, MN 55011 ("Petitioner") believes that it will be damaged by the continued registration of the mark CHANTICLEAR PIZZA and Design, which is the subject of U.S. Reg. No. 2,706,728, by DalMar Corporation, ("Registrant"), and hereby petitions that the U.S. Patent & Trademark Office cancel the same, in accordance with Section 14 of the Lanham Act of 1946, 15 U.S.C. § 1064.

As grounds of cancellation it is alleged that:

1. Registrant has registered the mark CHANTICLEAR PIZZA and Design for restaurant services. Registrant has alleged that this mark was first used on June 8th, 1995 and first used in interstate commerce in September 2001.

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2. Petitioner, since at least 1984, has been, and is now, using the mark CHANTICLEAR PIZZA in connection with restaurant services. Such use has been valid and continuous since said date of first use and has not been abandoned. Said mark of Petitioner is symbolic of extensive good will and consumer recognition built up by Petitioner through substantial amounts of time and effort in advertising and promotion.

3. The respective goods and services of Petitioner and Registrant are closely related and would be promoted through the same channels of trade for provision to, sale to, and use by the same customers and purchasers, the same class of customers and purchasers, or represent a channel of goods through which Petitioner might logically expand.

4. In view of the similarity of the respective marks and the related nature of the goods and services of the respective parties, it is alleged that Registrant's mark so resembles Petitioner's mark previously used in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake, or to deceive.

5. The use and continued registration by Registrant of the mark in U.S. Reg. No. 2,706,728 is likely to cause confusion, mistake, deception of actual or prospective customers, consumers, or purchasers, as well as to the source of origin or affiliation as to their respective goods of Petitioner or Registrant, all to the detriment and damage of Petitioner within the meaning of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

6. The use and continued registration by Registrant of the mark in U.S. Reg. No. 2,706,728 will dilute the distinctive quality of Petitioner's mark CHANTICLEAR PIZZA and

lessen the ability of Petitioner to distinguish its products within the meaning of Section 43(c) of the Lanham Act of 1946, 15 U.S.C. § 1125(c).

7. By reason of the foregoing, Petitioner will be gravely damaged by the continued registration of Registrant's mark CHANTICLEAR PIZZA and Design, because registration of that mark would be in violation of Petitioner's trademark and trade name rights.

WHEREFORE Petitioner prays that this cancellation be sustained in favor of CPB, Inc., dba Chanticlear Pizza Bethel and that U.S. Reg. No. 2,706,728 be cancelled.

A duplicate copy of this Petition for Cancellation and the requisite fee in the amount of \$300.00 are enclosed herewith. Please charge any additional fees or credit any overpayment to our Deposit Account No. 16-0631.

Please direct all correspondence in this matter to: Michael A. Bondi.

Respectfully submitted,

Dated: 11/24/04

By: Michael Bondi
Michael A. Bondi
Kyle T. Peterson
PATTERSON, THUENTE, SKAAR
& CHRISTENSEN, P.A.
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Attorney for Petitioner

Petition for Cancellation
Mark: CHANTICLEAR PIZZA and Design
U.S. Reg. No.: 2,706,728

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Petition for Cancellation has been served upon Attorney for Registrant by First Class United States Mail, postage-prepaid, properly addressed as follows on this 24 day of November, 2004.

Jonathan D. Cran, Esq.
Jonathan D. Cran, P.A.
7362 University Avenue, Suite 305
Fridley, MN 55432

By: Michael Borch

I certify that this Petition for Cancellation is being deposited within the United States Postal Service by Express Mail No. EV611980662 US in an envelope addressed to Assistant Commissioner for Trademarks, Box TTAB - FEE, P.O. Box 1451, Alexandria, VA 22313-1451

By: Janet L. Sisk

PATTERSON, THUENTE, SKAAR & CHRISTENSEN, P.A.

Patent, Trademark, Copyright, Internet & Related Causes

TTAB

Michael Bondi
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November 24, 2004

VIA U.S. EXPRESS MAIL

Assistant Commissioner for Trademarks
Box TTAB FEE
Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

Re: CPB, INC. d/b/a Chanticlear Pizza Bethel v. DalMar Corporation
Mark: CHANTICLEAR PIZZA & Design
Reg.No.: 2,706,728 76398712
Our Ref.: 3567.01-00-01

Dear Sir:

Enclosed please find the original and one copy of Petition for Cancellation in the above-referenced matter. With a copy of this letter, we are also serving a copy of the Petition for Cancellation on Jonathan D. Cran, Esq.. Also enclosed is our check in the amount of \$300.00 for the filing fee.

Thank you for your assistance.

Sincerely,



Michael A. Bondi

MAB/ch
Enclosures

cc: Jonathan D. Cran, Esq.
Jonathan D. Cran, P.A.
7362 University Avenue, Suite 305
Fridley, MN 55432



11-24-2004

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