

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

In the Matter of Registration No. 2,913,468

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DURKEE-MOWER, INC.,

Petitioner,

v.

GOLD MEDAL PRODUCTS COMPANY, INC.,

Registrant.
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Serial No: 76203284
Cancellation No.

PETITION FOR CANCELLATION

Petitioner, Durkee-Mower, Inc., a corporation organized and existing under the laws of the State of Massachusetts, having its principal business address at 2 Empire Street, Post Office Box 470, Lynn, Massachusetts, 01903, believes that it will be damaged by the continued existence of Registration No. 2,913,468 of the trademark CANDEE FLUFF, issued December 21, 2004, for "containers for cotton candy" in Class 21, and therefore petitions to cancel the same. As grounds for its cancellation, Petitioner, by its attorneys Ostrolenk, Faber, Gerb & Soffen, LLP, alleges as

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1. Since well prior to December 21, 2004 date of Registrant's registration, and the January 31, 2001 filing date of the underlying intent-to-use application, Petitioner has used the mark MARSHMALLOW FLUFF for marshmallow cream. Registrant has used the mark MARSHMALLOW FLUFF for marshmallow cream in U.S. commerce since at least as early as 1917.

2. Petitioner owns U.S. trademark registration No. 374,337, issued on January 9, 1940, of the mark MARSHMALLOW FLUFF (Stylized) for "marshmallow cream" in Class 30.



This registration issued from an application that was filed on March 17, 1938. Petitioner's registration and application dates are both well prior to the date of Registrant's registration and the filing date of its underlying intent-to-use application. Petitioner's registration is valid, subsisting and incontestable.

3. Petitioner has also used its mark MARSHMALLOW FLUFF on a wide variety of different kinds of product merchandise over the years. Petitioner owns U.S. Registration Number 2,883,841 of the mark MARSHMALLOW FLUFF for printed recipes and books in Class 16, mugs in Class 21, towels in Class 24 and marshmallow cream in Class 30.

4. Petitioner has invested a substantial amount of time, effort and money in promoting the mark MARSMALLOW FLUFF, which is famous among the consuming public. As a result, the mark has become distinctive of Petitioner's goods and has come to represent enormous goodwill for Petitioner.

5. On January 31, 2001, Registrant, Gold Medal Products Company, Inc. filed an intent-to-use application to register the mark CANDEE FLUFF for "containers for cotton candy" in Class 21. That application issued to registration on December 21, 2004.

6. The mark that Registrant has registered is very similar to Petitioner's mark MARSHMALLOW FLUFF and will be used for goods that are closely related to the goods for which Petitioner has previously used and registered its mark. Based on the similarities of the marks and the goods, the public is likely to associate the goods offered by Registrant under the mark CANDEE FLUFF with Petitioner or with Petitioner's goods, or to believe that Registrant's goods are sponsored, endorsed or licensed by Petitioner, or that there is some relationship between Registrant and Petitioner.

7. For the above reasons, any use of the mark CANDEE FLUFF by Registrant is likely to cause confusion, cause mistake or deceive the public, and cause the public to believe that the goods offered under the mark CANDEE FLUFF emanate from or are otherwise sponsored by or endorsed by Petitioner, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

8. Also for the above reasons, any use of the mark CANDEE FLUFF by Registrant is likely to cause dilution of Registrant's famous mark MARSHMALLOW FLUFF in violation of 2(f) of the Lanham Act, 15 U.S.C. § 1052(f).

By reason of the foregoing, Petitioner will be damaged by the continued registration of the mark CANDEE FLUFF to Registrant.

WHEREFORE, it is respectfully requested that this cancellation action be sustained and that Registration No. 2,913,468 be cancelled.

The cancellation fee in the amount of \$300.00 for one class is filed herewith. If for any reason this amount is insufficient, it is requested that Petitioner's attorneys' deposit account No. 15-0700 be charged with any deficiency. This paper is filed in duplicate.


Date: July 26, 2005
New York, New York

"Express Mail" mailing label No. EV604826243US

Date of Deposit: July 26, 2005

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner of Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451.

Peter S. Sloane
(Printed name of person mailing paper or fee)



(Signature)

Respectfully submitted,



Peter S. Sloane

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