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

Proceeding	92046478
Party	Plaintiff MCKEE FOODS KINGMAN, INC. MCKEE FOODS KINGMAN, INC. ,
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Date	11/13/2006
Attachments	First Amended Petition for Cancellation.pdf ( 4 pages )(35195 bytes )

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

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MCKEE FOODS KINGMAN, INC.	:	
Petitioner,	:	Cancellation No. 92046478
-against-	:	
LGS SPECIALTY SALES, LTD.	:	<u>FIRST AMENDED PETITION FOR CANCELLATION</u>
Registrant.	:	
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Petitioner McKee Foods Kingman, Inc. (“Petitioner”), a corporation organized and existing under the laws of the State of Arizona, with its principal place of business at 2675 West Oatman Road, Kingman, Arizona 86413, believes that it is or will be damaged by (i) Registration No. 2,122,356 issued on the Principal Register on December 16, 1997 to LGS Specialty Sales, Ltd. (“Registrant”) for the trademark BLUE PLANET PRODUCE for “fresh fruits and vegetables” in International Class 31, and (ii) Registration No. 2,133,271 issued on the Principal Register on January 27, 1998 to Registrant for the trademark BLUE PLANET for “fresh fruits and vegetables” in International Class 31 (collectively, the “Registrations”), and hereby petition to cancel the same. As grounds for petition, it is alleged that:

1. Petitioner is now, and for many years has been, engaged in the marketing, sale, promotion and/or distribution of a wide variety of baked goods, snack products and cereal products.
2. Since at least as early as September 2005, Petitioner has manufactured, marketed and sold granola cereal and oat bran cereal under the trademark BLUE PLANET. The granola

and oat bran products sold by Petitioner under the BLUE PLANET mark enjoy a high level of recognition in the cereal field.

3. Petitioner is the proprietor of Application Serial No. 78/735,319 (the “Application”), filed on October 18, 2005 in the United States Patent and Trademark Office (“PTO”) based on first use of the trademark BLUE PLANET as of September 2005 for granola cereals and oat bran cereals in International Classes 30 and 31, respectively.

4. The examining attorney has issued an office action on Petitioner’s Application, citing the Registrations as bars to registration of Petitioner’s BLUE PLANET mark under Trademark Act Section 2(d), based on her determination that Petitioner’s mark so resembles the marks in the Registrations as to be likely to cause confusion, or to cause mistake, or to deceive.

5. Upon information and belief, the BLUE PLANET and BLUE PLANET PRODUCE marks that are the subjects of the Registrations that were cited as a bar to registration of Petitioner’s BLUE PLANET trademark were not in use (i) for all of the goods set forth in the Notice of Allowance at the time the Statements of Use were filed, specifically, for fresh fruits, and/or (ii) for all of the goods listed in the Registrations at the time the Section 8 and Section 15 Affidavits were filed, specifically, for fresh vegetables.

6. On the basis that Registrant knowingly made material misrepresentations to the PTO that the BLUE PLANET and BLUE PLANET PRODUCE marks were in use for all of the goods set forth in the Notice of Allowance at the time the Statements of Use were filed; and that Registrant knowingly made material misrepresentations that the BLUE PLANET and BLUE PLANET PRODUCE marks were in use for all of the goods listed in the Registrations at the time the Section 8 and Section 15 Affidavits were filed, Registrant maintained such Registrations in a fraudulent manner.

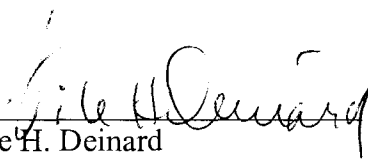
7. By virtue of the foregoing, if the aforementioned Registrations are permitted to remain on the Principal Register, with all the presumptions conferred by their status as Principal Registrations, Petitioner will be unable to obtain a federal registration for its BLUE PLANET trademark for Petitioner's goods and subjected to damage as a consequence and Registrant will enjoy unlawful gain and advantage to which it is not entitled under the Lanham Act, 15 U.S.C. §§ 1051, et seq.

WHEREFORE, Petitioner respectfully requests that this Amended Petition be granted and that Registration Nos. 2,122,356 and 2,133,271 be cancelled pursuant to 15 U.S.C. § 1064.

Please recognize as attorneys for Petitioner in this proceeding Lile H. Deinard, Bruce R. Ewing and Amy Stasik, members of the Bar of the State of New York, whose address is Dorsey & Whitney LLP, 250 Park Avenue, New York, New York, 10177, telephone number (212) 415-9200.

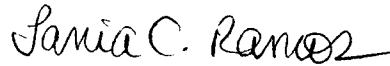
DORSEY & WHITNEY LLP

Date: November 9, 2006

By:   
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New York, New York 10177  
Attorneys for Petitioner  
McKee Foods Kingman, Inc.

**CERTIFICATE OF ELECTRONIC FILING**

I hereby certify that on this 13th day of November 2006, the First Amended Petition for Cancellation was filed electronically with the Trademark Trial and Appeal Board.

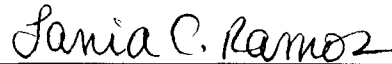


Tania C. Ramos

**CERTIFICATE OF SERVICE**

I hereby certify that on this 13th day of November 2006, a copy of First Amended Petition for Cancellation was served on Registrant via First Class Mail at:

LGS Specialty Sales Ltd.  
302 Hunts Point Market  
Bronx, NY 10474

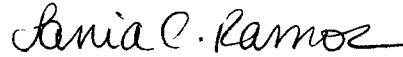


Tania C. Ramos

**CERTIFICATE OF SERVICE**

I hereby certify that on this 13th day of November 2006, a copy of First Amended Petition for Cancellation was served on Registrant's attorneys via First Class Mail at:

Deborah Schavey Ruff, Esq.  
Mayer, Brown, Rowe & Maw LLP  
71 S. Wacker Drive  
Chicago, IL 60606



Tania C. Ramos