

TTAB

UNITED STATES PATENT AND TRADEMARK
OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: January 23, 2007

Southern Specialty Brands, Inc.
One American Center, Suite 1200, 3100 West End Avenue
Nashville, TN 37203

Cancellation No. 92046938
Reg. No. 2621962

LILE H. DEINARD, ESQ.
DORSEY & WHITNEY LLP
250 PARK AVENUE, 15TH FL,
NEW YORK, NY 11232

McKee Foods Kingman, Inc. and
McKee Foods Corporation

V.

Southern Specialty Brands, Inc.

Amy Matelski, Paralegal Specialist

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

02-06-2007

U.S. Patent & TMO/TM Mail Rcpt Dt. #72

Trademark Trial and Appeal Board Manual of Procedure (TBMP), are available at www.uspto.gov/web/offices/dcom/ttab/.

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: 2/12/07

Discovery period to close: 8/11/07

30-day testimony period for party
in position of plaintiff to close: 11/9/07

30-day testimony period for party
in position of defendant to close: 1/8/08

15-day rebuttal testimony period
for plaintiff to close: 2/22/08

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>.

ESTTA Tracking number: **ESTTA121015**

Filing date: **01/23/2007**

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

Petition for Cancellation

Notice is hereby given that the following parties request to cancel indicated registration.

Petitioner Information

Name	McKee Foods Kingman, Inc.		
Entity	Corporation	Citizenship	Arizona
Address	2675 West Oatman Road Kingman, AZ 86413 UNITED STATES		

Name	McKee Foods Corporation		
Entity	Corporation	Citizenship	Tennessee
Address	P.O. Box 750 Collegedale, TN 37315-0750 UNITED STATES		

Attorney information	Lile H. Deinard, Esq. Dorsey & Whitney LLP 250 Park Avenue, 15th Floor New York, NY 11232 UNITED STATES ny.trademark@dorsey.com, deinard.lile@dorsey.com, stasik.amy@dorsey.com Phone:(212) 415-9200		
----------------------	--	--	--

Registration Subject to Cancellation

Registration No	2621962	Registration date	09/17/2002
Registrant	Southern Specialty Brands, Inc. One American Center, Suite 1200 3100 West End Avenue Nashville, TN 37203 UNITED STATES		
Goods/Services Subject to Cancellation	Class 030. First Use: 2000/10/30 , First Use In Commerce: 2000/10/30 Goods/Services: MIXES FOR BAKERY GOODS		

Attachments	Petition for Cancellation - COSMIC CHERRY.pdf (3 pages)(26310 bytes)
-------------	---

Signature	/lhd/
Name	Lile H. Deinard, Esq.
Date	01/23/2007

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

In the Matter of Trademark Registration No. 2,621,962
For the mark COSMIC CHERRY
Registered on September 17, 2002

-----X
: MCKEE FOODS KINGMAN, INC., and :
: MCKEE FOODS CORPORATION : Cancellation No.
: :
: Petitioner, :
: v. : Petition for Cancellation
: :
: SOUTHERN SPECIALTY BRANDS, INC. :
: :
: Registrant. :
: :
-----X

McKee Foods Kingman, Inc., a corporation organized and existing under the laws of the state of Arizona, located at 2675 West Oatman Road, Kingman, Arizona 86413, and McKee Foods Corporation, a corporation of Tennessee, located at Collegedale, Tennessee (hereinafter collectively referred to as "Petitioner") believes that it will be damaged by Registration No. 2,621,962 issued on the Principal Register on September 17, 2002 to Southern Specialty Brands, Inc., a Tennessee corporation doing business at One American Center, Suite 1200, 3100 West End Avenue, Nashville, Tennessee 37203 ("Registrant") for the trademark COSMIC CHERRY for "mixes for bakery goods" in Class 30 (the "Registration"), and hereby petitions to cancel the same.

The grounds for cancellation are as follows:

1. Petitioner is now, and for many years has been, engaged in the marketing, sale, promotion and distribution of a wide variety of baked goods, snack products and cereal products.

2. Petitioner McKee Foods Kingman, Inc. is the proprietor of Registration No. 3,047,312, which issued on January 24, 2006 in the United States Patent and Trademark Office, based on the first use of the trademark COSMIC of November 5, 1996 for snack cakes and brownies. Petitioner McKee Foods Kingman, Inc. also owns pending Application No. 78/751,496, which was filed on November 10, 2005 in the United States Patent and Trademark Office, based on the first use of the trademark COSMIC of November 5, 1996 for cookies. Petitioner McKee Foods Corporation uses the COSMIC trademark under license and is McKee Food's Kingman related company within the meaning of Section 45 of the Lanham Act.

3. Petitioner's registered COSMIC mark is valid and subsisting and constitutes prima facie evidence of Petitioner's exclusive right to use said mark in commerce on snack cakes and brownies.

4. On November 10, 2005 Petitioner filed Application Serial No. 78/751,496 to register the trademark COSMIC in Class 30 in connection with cookies. The examining attorney has issued an office action on Petitioner's COSMIC application citing the Registration as a bar to registration of Petitioner's mark for cookies.

5. Upon information and belief, Registrant has ceased using the COSMIC CHERRY mark for the goods identified in the Registration by discontinuing use of the mark on said goods for a period of at least three consecutive years prior to the date of this Petition and has no intent to resume use of this mark.

6. By reason of the foregoing, Registrant has abandoned the mark that is the subject of the Registration within the meaning of 15 U.S.C. §§ 1064(3) and 1127.

7. By virtue of the foregoing, if the aforementioned Registration is permitted to remain on the Principal Register with all the presumptions conferred by its status as a Principal Registration, Petitioner will be damaged, including in its inability to secure a registration for the mark COSMIC as set forth in Application No. 78/751,496 as a result of the Registration, 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 Petition be granted and that Registration No. 2,621,962 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.

Dated: January 23, 2007

DORSEY & WHITNEY LLP

By: 

Lile H. Deinard
A Member of the Firm
250 Park Avenue
New York, New York 10177
(212) 735-0778

Attorneys for Petitioner
McKee Foods Kingman, Inc. and
McKee Foods Corporation

U.S. POSTAL SERVICE

AN EQUAL OPPORTUNITY EMPLOYER

United States Patent and Trademark Office
Commissioner of Patents and Trademarks
P.O. Box 1451
Alexandria, VA 22303-1451

If Undeliverable Return in Ten Days

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, \$300

92046938

SOUTHERN SPECIALTY BRANDS, INC.
ONE AMERICAN CENTER, SUITE 1200
3100 WEST BROAD AVENUE
NASHVILLE, TN 37203

