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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	Unilever Supply Chain, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	1 John Street Clinton, CT 06413 UNITED STATES		

Name	Conopco, Inc. d/b/a Unilever		
Entity	Corporation	Citizenship	New York
Address	800 Sylvan Avenue Englewood Cliffs, NJ 07632 UNITED STATES		

Attorney information	Eric W. McCormick Duane Morris LLP 1540 Broadway New York, NY 10036 UNITED STATES ewmccormick@duanemorris.com		
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Registration Subject to Cancellation

Registration No	3038811	Registration date	01/10/2006
Registrant	WARNCKE, JOAN R. 1207 Bayou Oaks Drive Friendswood, TX 77546 UNITED STATES		

Goods/Services Subject to Cancellation

Class 030. First Use: 1998/08/13 First Use In Commerce: 1998/11/09 All goods and services in the class are cancelled, namely: Pies, cakes, candy, muffins, cookies, tarts, and breads
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Grounds for Cancellation

Abandonment	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Registration	1257722	Application Date	12/04/1981
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No.			
Registration Date	11/15/1983	Foreign Priority Date	NONE
Word Mark	I CAN'T BELIEVE IT'S NOT BUTTER!		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1980/07/09 First Use In Commerce: 1980/07/09 Vegetable Oil Spread		

Attachments	DIABETICDELITECANC.pdf (8 pages)(654179 bytes)
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Signature	/Eric W. McCormick/
Name	Eric W. McCormick
Date	08/02/2007

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

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In the Matter of Application :
Registration No. 3,038,811 :
Registration Date: January 10, 2006 :
 : Cancellation No. _____
UNILEVER SUPPLY CHAIN, INC. and :
CONOPCO, INC. d/b/a UNILEVER :
 :
 : Petitioners, :
 :
 : v. :
 :
JOAN R. WARNCKE :
 : Registrant. :
 :
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PETITION FOR CANCELLATION

Unilever Supply Chain, Inc., a Delaware corporation located at 1 John Street, Clinton, Connecticut 06413 (“Unilever Supply Chain”), and Conopco, Inc. d/b/a Unilever (“Conopco”), a corporation organized and existing under the laws of New York with a place of business at 800 Sylvan Avenue, Englewood Cliffs, New Jersey 07632, (collectively “Petitioners”), believe that they will be damaged by the continued registration of the mark DIABETIC'S DELITE... I CAN'T BELIEVE IT'S NOT SUGAR! TRY IT... YOU'LL LIKE IT! and Design, as shown in Registration No. 3,038,811 (hereinafter, the “I CAN'T BELIEVE IT'S NOT SUGAR! Mark”), issued on January 10, 2006, to Joan R. Warncke (hereinafter referred to as “Warncke” or “Registrant”), and hereby petition to cancel the same pursuant to Section 14 of the Lanham Trademark Act of 1946, 15 U.S.C. § 1064.

As grounds therefor, Petitioners allege as follows:

BACKGROUND FACTS REGARDING PETITIONERS' CONTINUOUS AND LONGSTANDING USE OF THE I CAN'T BELIEVE IT'S NOT BUTTER! MARK

1. Petitioner Unilever Supply Chain is the owner of the famous trademark I CAN'T BELIEVE IT'S NOT BUTTER![®] for vegetable oil spreads.
2. Unilever Supply Chain owns Registration No. 1,257,722 issued by the United States Patent and Trademark Office on November 15, 1983 for the mark I CAN'T BELIEVE IT'S NOT BUTTER![®] for "vegetable oil spread" in International Class 29.
3. Registration No. 1,257,722 is valid and subsisting and has become incontestable pursuant to § 15 of the Lanham Act, 15 U.S.C. § 1065, meaning that, pursuant to § 33(b) of the Lanham Act, 15 U.S.C. § 1115(b), the registration is conclusive evidence of the validity of the registered mark and of the registration of the mark, of Unilever Supply Chain's ownership of the mark, and of Unilever Supply Chain's exclusive right to use the registered mark in commerce in connection with the goods specified in the registration.
4. Petitioner Conopco is the exclusive licensee of Unilever Supply Chain to manufacture, distribute and sell vegetable oil spreads under the I CAN'T BELIEVE IT'S NOT BUTTER![®] trademark in the United States.
5. Conopco and its predecessors have manufactured, distributed and sold vegetable oil spreads under the I CAN'T BELIEVE IT'S NOT BUTTER![®] trademark continuously in interstate commerce in the United States since at least as early as July 1980, long prior to any priority date on which Warncke can rely.

6. Petitioners' I CAN'T BELIEVE IT'S NOT BUTTER![®] products are available and sold to consumers throughout the United States, and in various other countries including Australia, New Zealand, Canada, Mexico and the United Kingdom.
7. Over the years, the volume of sales of goods in the United States sold under Petitioners' I CAN'T BELIEVE IT'S NOT BUTTER![®] mark has been enormous.
8. Petitioners' I CAN'T BELIEVE IT'S NOT BUTTER![®] brand of vegetable oil spread products is among the largest selling brands for such products in the United States.
9. The extraordinary success of Petitioners' I CAN'T BELIEVE IT'S NOT BUTTER![®] brand products over many years has engendered wide renown with the trade and the public and the products sold under the mark have a reputation for being of the highest quality.
10. Petitioners continuously and extensively advertise and promote their I CAN'T BELIEVE IT'S NOT BUTTER![®] trademark and products throughout the United States.
11. Petitioners have spent many millions of dollars to advertise and promote the I CAN'T BELIEVE IT'S NOT BUTTER![®] mark and products throughout the United States.
12. Petitioners advertise and promote the I CAN'T BELIEVE IT'S NOT BUTTER![®] brand in a wide variety of national media, including national television, nationally circulated newspapers and over the Internet.
13. Because of Petitioners' extensive advertising, promotion and use of the I CAN'T BELIEVE IT'S NOT BUTTER![®] mark, the mark has acquired enormous value

and has become extremely well known to the consuming public as identifying and distinguishing Petitioners' I CAN'T BELIEVE IT'S NOT BUTTER![®] products from those of competitors.

14. I CAN'T BELIEVE IT'S NOT BUTTER![®] is a distinctive and famous trademark and represents and symbolizes a valuable business, which belongs exclusively to Petitioners.
15. As a result of Petitioners' extensive use of the I CAN'T BELIEVE IT'S NOT BUTTER![®] trademark, the mark has come to be recognized by the public as identifying Petitioners as the source of goods bearing the mark, and represents enormous goodwill belonging exclusively to Petitioners.
16. The I CAN'T BELIEVE IT'S NOT BUTTER![®] trademark is famous and became famous prior to the filing date of Warncke's application or any use by Warncke of the I CAN'T BELIEVE IT'S NOT SUGAR! Mark.

BACKGROUND FACTS
REGARDING WARNCKE'S TRADEMARK REGISTRATION

17. Warncke filed her application Serial No. 76/435,026 for the I CAN'T BELIEVE IT'S NOT SUGAR! Mark on July 29, 2002 under § 1(a) of the Lanham Act, 15 U.S.C. § 1051(a). In the application, Warncke alleged that the date of first use of the mark was November 9, 1998.
18. Warncke sought to register the I CAN'T BELIEVE IT'S NOT SUGAR! Mark as a trademark for “[p]ies, cakes, candy, muffins, cookies, tarts, and breads.”
19. Warncke obtained a federal trademark registration for the I CAN'T BELIEVE IT'S NOT SUGAR! Mark on January 10, 2006 (“Registration”).

20. Upon information and belief, any use by Warncke of the I CAN'T BELIEVE IT'S NOT SUGAR! Mark occurred in connection with Warncke's company "Diabetic's Delite I CAN'T BELIEVE IT'S NOT SUGAR, Inc." (hereinafter "Diabetic's Delite") and a web site located at www.diabeticsdelite.com.
21. The priority date of Warncke's registration for the I CAN'T BELIEVE IT'S NOT SUGAR! Mark is long after Petitioners began using the I CAN'T BELIEVE IT'S NOT BUTTER! Mark in the United States and had acquired enormous goodwill and recognition as the source of origin for Petitioners' products only.

BACKGROUND FACTS REGARDING WARNCKE'S
ABANDONMENT OF THE I CAN'T BELIEVE IT'S NOT SUGAR! MARK

22. Upon information and belief, Warncke's company Diabetic's Delite, which purportedly marketed Warncke's products under the I CAN'T BELIEVE IT'S NOT SUGAR! Mark, has not been in operation since January 2004.
23. Upon information and belief, Warncke has not made any commercial use of the mark I CAN'T BELIEVE IT'S NOT SUGAR! Mark since early 2004.
24. The web site located at www.diabeticsdelite.com, is no longer active and, upon information and belief, went off-line in early 2004.

COUNT I
THE REGISTRATION SHOULD BE CANCELLED BECAUSE THE
REGISTRATION WILL CAUSE CONSUMER CONFUSION, MISTAKE OR DECEPTION

25. Petitioners reallege paragraphs 1 through 24 above and incorporate them by reference as if fully set forth herein.
26. Petitioners believe that they are being damaged by the continued registration of Warncke's I CAN'T BELIEVE IT'S NOT SUGAR! Mark under 37 C.F.R. §2.111(b) because consumers, familiar with Petitioners' famous I CAN'T

BELIEVE IT'S NOT BUTTER![®] Mark are likely to believe, mistakenly, that any products offered under the I CAN'T BELIEVE IT'S NOT SUGAR! Mark emanate from, are sponsored or authorized by, or are otherwise associated or affiliated with Petitioners, in violation of § 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

COUNT II

THE REGISTRATION SHOULD BE CANCELLED
BECAUSE THE REGISTRATION WILL DILUTE PETITIONERS' MARK

27. Petitioners reallege paragraphs 1 through 26 above and incorporate them by reference as if fully set forth herein.
28. Petitioners believe they are being damaged by registration of Warncke's I CAN'T BELIEVE IT'S NOT SUGAR! Mark under 37 C.F.R. §2.111(b) because use of the I CAN'T BELIEVE IT'S NOT SUGAR! Mark is likely to dilute the distinctive quality of Petitioners' famous I CAN'T BELIEVE IT'S NOT BUTTER![®] trademark by lessening the capacity for the trademark to identify and distinguish Petitioners exclusively as the source of goods provided under the I CAN'T BELIEVE IT'S NOT BUTTER![®] Mark, in violation of § 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).
29. By reason of the foregoing, Petitioners are being damaged by the continued registration of the mark shown in Registration No. 3,038,811 and Warncke is therefore not entitled to continued registration of said mark.

COUNT III

THE REGISTRATION SHOULD BE CANCELLED
BECAUSE THE MARK HAS BEEN ABANDONED

30. Petitioners reallege paragraphs 1 through 29 above and incorporate them by reference as if fully set forth herein.
31. Warncke has abandoned said registered mark by discontinuing use of said mark for a period of more than three years with no intent to resume use.
32. The I CAN'T BELIEVE IT'S NOT SUGAR! Mark should be deemed to be abandoned because its use has been discontinued with no intent to resume such use for more than three consecutive years. Such nonuse of the mark for more than three consecutive years is prima facie evidence of abandonment.
33. Petitioners are likely to be damaged by continued registration of the I CAN'T BELIEVE IT'S NOT SUGAR! Mark. Petitioners have continuously used the I CAN'T BELIEVE IT'S NOT BUTTER!® Mark since July 19, 1980 in connection with vegetable-oil spreads. Petitioner's continued enforcement of the I CAN'T BELIEVE IT'S NOT BUTTER!® Mark could be impacted by the continued registration of the abandoned I CAN'T BELIEVE IT'S NOT SUGAR! Mark.

WHEREFORE, Petitioners respectfully request that this Petition be granted and that
Registration No. 3,038,811 for the I CAN'T BELIEVE IT'S NOT SUGAR! Mark be cancelled.

Dated: August 2, 2007

Respectfully submitted,

DUANE MORRIS LLP

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