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Filing date: **04/28/2008**

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 party requests to cancel indicated registration.

Petitioner Information

Name	Cargill, Incorporated		
Entity	Corporation	Citizenship	Delaware
Address	15407 McGinty Road West Wayzata, MN 55391 UNITED STATES		

Attorney information	Allen Hinderaker Merchant & Gould, P.C. 80 South Eighth St. Suite 3200 Minneapolis, MN 55402 UNITED STATES cargilltm@merchantgould.com Phone:612.332.5300
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Registration Subject to Cancellation

Registration No	2710446	Registration date	04/29/2003
Registrant	Southwest Landmark, Inc. 415 Bellbrook Avenue Xenia, OH 45385 UNITED STATES		

Goods/Services Subject to Cancellation

Class 031. First Use: 2000/10/12 First Use In Commerce: 2001/01/19 All goods and services in the class are cancelled, namely: Feeds for cattle, swine, lamb, poultry and goats

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Related Proceedings	none
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	WINNER'S CIRCLE		
Goods/Services	feeds for cattle, swine, lamb, poultry and goats		

Attachments	2008 04 28 Petition to Cancel.PDF.PDF (5 pages)(190001 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/William Schultz/
Name	William Schultz
Date	04/28/2008

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

Cargill, Incorporated)	
)	Cancellation No. _____
Petitioner,)	
)	Mark: WINNER'S CIRCLE SHOW FEEDS
v.)	
)	Registration No. 2,710,446
Southwest Landmark, Inc.)	
)	Filed: August 22, 2000
Registrant.)	
)	Registered: April 29, 2003
_____)	

PETITION FOR CANCELLATION

Cargill, Incorporated, a corporation duly organized and existing under the laws of Delaware, having a principal place of business at 15407 McGinty Road West, Wayzata, Minnesota 55391, believes that it is or will be damaged by the existence of Registration No. 2,710,446 (WINNER'S CIRCLE SHOW FEEDS (and design)), and hereby petitions for cancellation of said registration.

The grounds for cancellation are as follows:

1. Registrant, Southwest Landmark, Inc., has registered the mark WINNER'S CIRCLE SHOW FEEDS (and design) for "feeds for cattle, swine, lamb, poultry and goats" in International Class 31 (U.S. Reg. No. 2,710,446, filed on August 22, 2000, registered on April 29, 2003, asserting a date of first use of October 12, 2000 and a first date of use in commerce of January 19, 2001).

2. Petitioner and its predecessor in interest, Mountaire Feeds, Inc., have been continuously using the mark WINNER'S CIRCLE in connection with feed products since at least as early as August 24, 2000.

3. Mountaire adopted and began using the WINNER'S CIRCLE mark before Registrant applied for federal registration of the WINNER'S CIRCLE SHOW FEEDS (and design) mark in connection with "feeds for cattle, swine, lamb, poultry and goats." Petitioner acquired all right, title, and interest in and to the WINNER'S CIRCLE mark, including the goodwill, from Mountaire on December 18, 2006.

4. Mountaire's date of first use predates Registrant's subsequent use of the mark WINNER'S CIRCLE SHOW FEEDS (and design). Mountaire's and Petitioner's use has been valid and continuous since said date of first use and has not been abandoned. The continuous use of Petitioner's WINNER'S CIRCLE mark since August of 2000 renders Petitioner the prior user of the mark WINNER'S CIRCLE mark with exclusive rights to use said mark in commerce on animal feeds.

5. Petitioner seeks to maintain its rights associated with its WINNER'S CIRCLE trademark without risk of Registrant asserting its subsequently-filed federal trademark against it.

6. In view of the identical nature of the respective marks and the identical nature of the goods of the respective parties, it is alleged that Registrant's registered marks so resemble Petitioner's mark as to result in the likelihood that Petitioner's continued and legal use of its WINNER'S CIRCLE mark will be impaired by the continued registration of Registrant's WINNER'S CIRCLE SHOW FEEDS (and design) mark.

7. Petitioner's WINNER'S CIRCLE mark has extensive good will and consumer recognition built up by Petitioner and its predecessor in interest through substantial amounts of time and effort in advertising and promotion. In view of the similarity of the respective marks and the similar nature of the goods of the respective parties, it is alleged that Registrant's registered marks 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.

WHEREFORE, Petitioner prays that Registration Nos. 2,710,446 (WINNER'S CIRCLE SHOW FEEDS (and design)) be cancelled under Section 14, subparagraph 3 of the Lanham Act, 15 U.S.C. § 1064 and that this Petition for Cancellation be sustained in favor of Petitioner.

Please direct all correspondence to:

Allen Hinderaker
MERCHANT & GOULD P.C.
P.O. Box 2910
Minneapolis, MN 55402

The Petitioner herein appoints Allen Hinderaker, William Schultz and other attorneys of Merchant & Gould, P.C. to transact all business in the U.S. Patent and Trademark Office related to this matter with full power of substitution.

Accompanying the signed copy of this Petition for Cancellation is the required fee of \$300.00. Please charge any excess fees or credit any overpayment to the Deposit Account No. 13-2725 of Petitioner's counsel noted below.

CARGILL, INCORPORATED

By its attorneys,




Allen Hinderaker
William Schultz
MERCHANT & GOULD P.C.
P.O. Box 2910
Minneapolis, MN 55402
(612) 336-4725

April 28, 2008
Date

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing PETITION FOR CANCELLATION was served upon the following attorney of record for Registrant by Certified First Class Mail, postage pre-paid, this 28th day of April 2008:

Lyman F. Spitzer
Shumaker, Loop & Kendrick, LLP
1000 Jackson Street
Toledo, Ohio 43604-5573

A handwritten signature in black ink, appearing to read "William Schultz", written over a horizontal line.

William Schultz