

ESTTA Tracking number: **ESTTA264700**

Filing date: **02/05/2009**

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	Farley's & Sathers Candy Company, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	P.O. Box 28 One Sathers Plaza Round Lake, MN 56167 UNITED STATES		

Attorney information	William Schultz Mer' Suite 3200 80 South Eighth St. MINNEAPOLIS, MN 55402 UNITED STATES wschultz@merchantgould.com, aries@merchantgould.com, dockmpls@merchantgould.com, aehard@merchantgould.com Phone:612.332.5300
----------------------	---

Registration Subject to Cancellation

Registration No	3215434	Registration date	03/06/2007
Registrant	Newsteder, Robert 277 Evans Ave. Elmont, NY 11003 UNITED STATES		

Goods/Services Subject to Cancellation

Class 030. First Use: 2005/09/01 First Use In Commerce: 2006/03/25
All goods and services in the class are cancelled, namely: Chocolate


Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------


Related Proceedings	None
---------------------	------

Marks Cited by Petitioner as Basis for Cancellation


U.S. Registration No.	610000	Application Date	03/12/1954
Registration Date	08/02/1955	Foreign Priority Date	NONE
Word Mark	BOBS		


Design Mark	
Description of Mark	NONE
Goods/Services	Class U046 (International Class 029, 030). First use: First Use: 1923/00/00 First Use In Commerce: 1923/00/00 CANDY [; SHELLED, SALTED PEANUTS; AND PEANUT BUTTER SANDWICHES]

U.S. Application No.	77530677	Application Date	07/24/2008
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	BOBS
Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 1923/00/00 First Use In Commerce: 1923/00/00 candy

U.S. Registration No.	3087325	Application Date	12/13/2004
Registration Date	05/02/2006	Foreign Priority Date	NONE
Word Mark	BOBS		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2003/08/00 First Use In Commerce: 2003/08/00 Candy

U.S. Registration No.	2196676	Application Date	05/09/1997
Registration Date	10/13/1998	Foreign Priority Date	NONE
Word Mark	BOBS SWEET STRIPES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1997/10/00 First Use In Commerce: 1997/10/00 candy		

U.S. Registration No.	3150533	Application Date	12/13/2004
Registration Date	10/03/2006	Foreign Priority Date	NONE
Word Mark	BOBS SWEET STRIPES BRAND		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2003/08/00 First Use In Commerce: 2003/08/00 Candy





Attachments	71662507#TMSN.gif (1 page)(bytes) 77530677#TMSN.jpeg (1 page)(bytes) 78531457#TMSN.gif (1 page)(bytes) 75290196#TMSN.gif (1 page)(bytes) 78531473#TMSN.gif (1 page)(bytes) 2009 02 05 Petition.pdf (19 pages)(565374 bytes)
-------------	---

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	02/05/2009

3. Petitioner is the owner of the following U.S. Registrations composed primarily of the term BOBS in connection with candy (hereinafter referred to as “Petitioner’s BOBS Marks”):

Reg. No.	Reg. Date	Mark	Goods	First Use
610000	08-02-1955	BOBS 	Candy	00-00-1923
3087325	05-02-2006	BOBS 	Candy	08-00-2003
2196676	10-13-1998	BOBS SWEET STRIPES 	Candy	01-00-1997
3150533	10-03-2006	BOBS SWEET STRIPES 	Candy	08-00-2003

TARR printouts from the USPTO website showing the current status of these registrations are attached hereto as Exhibit A.

4. On September July 24, 2008, Petitioner filed trademark application Serial No. 77/530677 for the mark BOBS in standard character form for “candy,” in International Class 30 (hereinafter referred to as “Petitioner’s BOBS Application”).

5. Petitioner and its predecessors in interest have advertised and promoted its BOBS Marks extensively since at least as early as 1923. Petitioner and its predecessors in interest have also continuously used the trademark BOBS in connection with candy since 1923. As a result of such use and promotion, Petitioner's BOBS Marks have developed and represents valuable goodwill inuring to the benefit of Petitioner.

6. Petitioner adopted and commenced use of Petitioner's BOBS Mark as a trademark long before Registrant adopted, used and applied to register the BOB'S BEST Mark. Petitioner's usage of the term BOBS as a trademark commenced at least as early as 1923, more than eighty (80) years prior to the filing date of Registrant's application for its BOB'S BEST Mark. Petitioner therefore has priority over Registrant with respect to the marks at issue.

7. Petitioner has been and is being damaged because registration of Petitioner's BOBS Application as shown in Application Serial No. 77/530677 has been refused under Section 2(d) of the Trademark Act because of Registrant's Mark.

8. Registrant is an individual with a mailing address at 277 Evans Avenue, Elmont, New York 11003.

9. Registrant's goods, chocolate, are closely related to Petitioner's goods, candy, marketed and sold by Petitioner in connection with its BOBS Marks. Registrant's goods are listed as chocolate, which is commercially known to be used and sold in connection with or as an ingredient in candy. These Petitioner's and Registrant's goods are related, virtually identical, sold to the same trade channel, and could be used together by purchasers.

10. Upon information and belief, Petitioner's and Registrant's goods are marketed in the same channels of trade to the same consumers or class of consumers.

11. Due to the similarity between Registrant's BOBS BEST and Petitioner's previously used and registered BOBS Marks, the closely related nature of the goods of the respective parties, customers and potential customers are likely to believe that Registrant's goods originate from Petitioner, resulting in a likelihood of confusion in the marketplace, and damage to Petitioner.

12. The use and continued registration by Registrant of the BOB'S BEST Mark for Registrant's goods is likely to cause confusion or to cause mistake or deception in the trade, and among purchasers and potential purchasers, with Petitioner's previously BOBS Marks, again resulting in damage to Petitioner.

13. Because of the closely related nature of the goods, and the similarity of the marks, use and continued registration of the BOB'S BEST Mark by Registrant is likely to cause confusion, mistake, or deception that Registrant's goods are those of Petitioner, or are otherwise endorsed, sponsored, or approved by Petitioner, causing further damage to Petitioner.

14. Continued registration of the mark shown in Registration No. 3215434 will result in damage to Petitioner under the provisions of Section 2 of the U.S. Trademark Act, 15 U.S.C. § 1052, pursuant to the allegations stated above. Petitioner requests that the Board cancel Registrant's Mark pursuant to 15 U.S.C. § 1064.

WHEREFORE, Petitioner asks that its petition to this registration be sustained and that Registration No. 3215434 be cancelled.

Please direct all correspondence to:

William D. Schultz
MERCHANT & GOULD P.C.
P.O. Box 2910
Minneapolis, MN 55402-9944

Petitioner herein appoints Petitioner herein appoints Andrew S. Ehard, John A. Clifford, Reg. No. 30,247; Gregory C. Golla; Scott W. Johnston, Reg. No. 39,721; Heather J. Kliebenstein; Danielle I. Mattessich; Scott M. Oslick; Christopher J. Schulte; William D. Schultz and all other attorneys of the firm of Merchant & Gould P.C., its attorneys to transact all business in the U.S. Patent and Trademark Office relating to this matter with full power of substitution.

Respectfully submitted,

Farley's & Sathers Candy Company, Inc.,

By its Attorneys,

Date: 2/5/2009



Andrew S. Ehard
William D. Schultz
MERCHANT & GOULD P.C.
80 South Eighth Street, Suite 3200
Minneapolis, Minnesota 55402-2215
(612) 332-5300

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing PETITION FOR CANCELLATION was served, via first-class mail, postage prepaid to:

Robert Newsteder
277 Evans Avenue
Elmont, NY 11003

Dated this 5th day of February 2009.



William D. Schultz

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2009-02-04 11:24:22 ET

Serial Number: 71662507 Assignment Information Trademark Document Retrieval

Registration Number: 610000

Mark



(words only): BOBS

Standard Character claim: No

Current Status: This registration has been renewed.

Date of Status: 2005-11-11

Filing Date: 1954-03-12

Transformed into a National Application: No

Registration Date: 1955-08-02

Register: Principal

Law Office Assigned: (NOT AVAILABLE)

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 40S -Scanning On Demand

Date In Location: 2009-01-26

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. FARLEY'S & SATHERS CANDY COMPANY, INC.

Address:
FARLEY'S & SATHERS CANDY COMPANY, INC.
ONE SATHER PLAZA



ROUND LAKE, MN 56167
United States
Legal Entity Type: Corporation
State or Country of Incorporation: Delaware

GOODS AND/OR SERVICES

U.S. Class: 046 (International Class 029, 030)
Class Status: Active
CANDY
Basis: 1(a)
First Use Date: 1923-00-00
First Use in Commerce Date: 1923-00-00

ADDITIONAL INFORMATION

Prior Registration Number(s):
104506

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2009-01-26 - Case File In TICRS
2006-05-09 - Attorney Revoked And/Or Appointed
2006-05-09 - TEAS Revoke/Appoint Attorney Received
2006-05-08 - TEAS Change Of Correspondence Received
2006-03-29 - Assignment Of Ownership Not Updated Automatically
2005-11-11 - Third renewal 10 year
2005-11-11 - Section 8 (10-year) accepted/ Section 9 granted
2005-11-11 - Assigned To Paralegal
2005-07-20 - Combined Section 8 (10-year)/Section 9 filed
2005-07-20 - TEAS Section 8 & 9 Received

2005-06-06 - TEAS Change Of Owner Address Received

2005-05-26 - TEAS Change Of Correspondence Received

1995-07-20 - Second renewal 10 year

1995-05-31 - Section 9 filed/check record for Section 8

1975-08-02 - First renewal

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Andrew S. Ehard

Correspondent

Andrew S. Ehard

Merchant & Gould P.C.

P.O. Box 2910

Minneapolis MN 55402-0910

Phone Number: 612-332-5300

Fax Number: 612-332-9081

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2009-02-04 11:24:46 ET

Serial Number: 78531457 Assignment Information Trademark Document Retrieval

Registration Number: 3087325

Mark



(words only): BOBS

Standard Character claim: No

Current Status: Registered.

Date of Status: 2006-05-02

Filing Date: 2004-12-13

Transformed into a National Application: No

Registration Date: 2006-05-02

Register: Principal

Law Office Assigned: LAW OFFICE 106

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 650 -Publication And Issue Section

Date In Location: 2006-05-02

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. FARLEY'S & SATHERS CANDY COMPANY, INC.

Address:
FARLEY'S & SATHERS CANDY COMPANY, INC.
ONE SATHER PLAZA

ROUND LAKE, MN 56167
United States
Legal Entity Type: Corporation
State or Country of Incorporation: Delaware

GOODS AND/OR SERVICES

International Class: 030
Class Status: Active
Candy
Basis: 1(a)
First Use Date: 2003-08-00
First Use in Commerce Date: 2003-08-00

ADDITIONAL INFORMATION

Design Search Code(s):
26.03.02 - Ovals, plain single line; Plain single line ovals
26.03.17 - Concentric ovals; Concentric ovals and ovals within ovals; Ovals within ovals; Ovals, concentric
26.03.21 - Ovals that are completely or partially shaded
26.17.13 - Letters or words underlined and/or overlined by one or more strokes or lines; Overlined words or letters; Underlined words or letters

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2006-05-09 - Attorney Revoked And/Or Appointed
2006-05-09 - TEAS Revoke/Appoint Attorney Received
2006-05-08 - TEAS Change Of Correspondence Received
2006-05-02 - Registered - Principal Register
2006-03-29 - Assignment Of Ownership Not Updated Automatically
2006-02-07 - Published for opposition
2006-01-18 - Notice of publication
2005-12-24 - Law Office Publication Review Completed

2005-12-23 - Assigned To LIE
2005-12-19 - Approved for Pub - Principal Register (Initial exam)
2005-12-01 - Amendment From Applicant Entered
2005-11-18 - Communication received from applicant
2005-11-18 - PAPER RECEIVED
2005-07-20 - Non-final action e-mailed
2005-07-20 - Non-Final Action Written
2005-07-18 - Assigned To Examiner
2005-06-06 - TEAS Change Of Owner Address Received
2005-05-26 - TEAS Change Of Correspondence Received
2004-12-23 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Andrew S. Ehard

Correspondent

Andrew S. Ehard
Merchant & Gould P.C.
P.O. Box 2910
Minneapolis MN 55402-0910
Phone Number: 612-332-5300
Fax Number: 612-332-9081

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2009-02-04 11:25:17 ET

Serial Number: 78531473 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 3150533

Mark



(words only): BOBS SWEET STRIPES BRAND

Standard Character claim: No

Current Status: Registered.

Date of Status: 2006-10-03

Filing Date: 2004-12-13

Transformed into a National Application: No

Registration Date: 2006-10-03

Register: Principal

Law Office Assigned: LAW OFFICE 106

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 650 -Publication And Issue Section

Date In Location: 2006-10-03

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. FARLEY'S & SATHERS CANDY COMPANY, INC.

Address:

FARLEY'S & SATHERS CANDY COMPANY, INC.
ONE SATHER PLAZA

ROUND LAKE, MN 56167
United States
Legal Entity Type: Corporation
State or Country of Incorporation: Delaware

GOODS AND/OR SERVICES

International Class: 030
Class Status: Active
Candy
Basis: 1(a)
First Use Date: 2003-08-00
First Use in Commerce Date: 2003-08-00

ADDITIONAL INFORMATION

Disclaimer: "BRAND"

Design Search Code(s):

26.03.17 - Concentric ovals; Concentric ovals and ovals within ovals; Ovals within ovals; Ovals, concentric
26.03.21 - Ovals that are completely or partially shaded
26.11.20 - Rectangles inside one another
26.11.21 - Rectangles that are completely or partially shaded
26.11.25 - Rectangles with one or more curved sides
26.17.13 - Letters or words underlined and/or overlined by one or more strokes or lines; Overlined words or letters; Underlined words or letters

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2006-10-03 - Registered - Principal Register
2006-07-11 - Published for opposition
2006-06-21 - Notice of publication
2006-05-22 - Law Office Publication Review Completed
2006-05-09 - Attorney Revoked And/Or Appointed
2006-05-09 - TEAS Revoke/Appoint Attorney Received

2006-05-08 - TEAS Change Of Correspondence Received
2006-03-29 - Assignment Of Ownership Not Updated Automatically
2006-03-17 - Assigned To LIE
2006-03-16 - Approved for Pub - Principal Register (Initial exam)
2006-03-06 - Amendment From Applicant Entered
2005-11-18 - Communication received from applicant
2005-11-18 - PAPER RECEIVED
2005-07-20 - Non-final action e-mailed
2005-07-20 - Non-Final Action Written
2005-07-18 - Assigned To Examiner
2005-06-06 - TEAS Change Of Owner Address Received
2005-05-26 - TEAS Change Of Correspondence Received
2004-12-23 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Andrew S. Ehard

Correspondent

Andrew S. Ehard
Merchant & Gould P.C.
P.O. Box 2910
Minneapolis MN 55402-0910
Phone Number: 612-332-5300
Fax Number: 612-332-9081

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2009-02-04 15:50:52 ET

Serial Number: 75290196 Assignment Information Trademark Document Retrieval

Registration Number: 2196676

Mark



(words only): BOBS SWEET STRIPES

Standard Character claim: No

Current Status: This registration has been renewed.

Date of Status: 2008-02-08

Filing Date: 1997-05-09

Transformed into a National Application: No

Registration Date: 1998-10-13

Register: Principal

Law Office Assigned: LAW OFFICE 101

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 830 -Post Registration

Date In Location: 2008-02-08

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. FARLEY'S & SATHERS CANDY COMPANY, INC.

Address:

FARLEY'S & SATHERS CANDY COMPANY, INC.
ONE SATHER PLAZA

ROUND LAKE, MN 56167
United States
Legal Entity Type: Corporation
State or Country of Incorporation: Delaware

GOODS AND/OR SERVICES

International Class: 030
Class Status: Active
candy
Basis: 1(a)
First Use Date: 1997-10-00
First Use in Commerce Date: 1997-10-00

ADDITIONAL INFORMATION

Design Search Code(s):
26.03.21 - Ovals that are completely or partially shaded
26.17.01 - Bands, straight; Bars, straight; Lines, straight; Straight line(s), band(s) or bar(s)
26.17.05 - Bands, horizontal; Bars, horizontal; Horizontal line(s), band(s) or bar(s); Lines, horizontal

Prior Registration Number(s):
104506
610000

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2008-10-30 - Notice Of Design Search Code Mailed
2008-02-08 - First renewal 10 year
2008-02-08 - Section 8 (10-year) accepted/ Section 9 granted
2008-02-08 - Assigned To Paralegal
2008-02-05 - TEAS Section 8 & 9 Received
2006-05-09 - Attorney Revoked And/Or Appointed
2006-05-09 - TEAS Revoke/Appoint Attorney Received

2006-05-08 - TEAS Change Of Correspondence Received
2006-03-29 - Assignment Of Ownership Not Updated Automatically
2005-06-06 - TEAS Change Of Owner Address Received
2005-05-26 - TEAS Change Of Correspondence Received
2004-11-10 - Section 8 (6-year) accepted & Section 15 acknowledged
2004-10-12 - Response received to Post Registration action - Sections 8 & 15
2004-10-12 - PAPER RECEIVED
2004-08-02 - Post Registration action mailed Section 8 & 15
2004-06-22 - Section 8 (6-year) and Section 15 Filed
1998-10-13 - Registered - Principal Register
1998-08-04 - Allowed for Registration - Principal Register (SOU accepted)
1998-08-03 - Assigned To Examiner
1998-06-29 - Statement of use processing complete
1998-06-29 - Amendment to Use filed
1998-06-29 - Extension 1 granted
1998-06-29 - Extension 1 filed
1998-03-24 - Noa Mailed - SOU Required From Applicant
1997-12-30 - Published for opposition
1997-11-28 - Notice of publication
1997-10-29 - Approved for Pub - Principal Register (Initial exam)
1997-10-29 - Assigned To Examiner
1997-10-22 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record
Andrew S. Ehard

Correspondent

Andrew S. Ehard
Merchant & Gould P.C.
P.O. Box 2910
Minneapolis MN 55402-0910
Phone Number: 612-332-5300
Fax Number: 612-332-9081
