

ESTTA Tracking number: **ESTTA273771**

Filing date: **03/23/2009**

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	Orouba Agrifoods Processing Company		
Entity	Corporation	Citizenship	Egypt
Address	Misr El-Gedida 95 G El-Mergany Street Cairo, EGYPT		

Attorney information	Szymon M. Gurda Cherskov & Flaynik 20 N. Wacker Drive Suite 1447 Chicago, IL 60606 UNITED STATES mail@cherskov.com Phone:3126211330
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Registration Subject to Cancellation

Registration No	3398369	Registration date	03/18/2008
Registrant	UNITED FOOD IMPORT 3 Chris Court Suite K Dayton, NJ 08810 UNITED STATES		


Goods/Services Subject to Cancellation

Class 029. First Use: 1998/01/01 First Use In Commerce: 1998/01/01 All goods and services in the class are cancelled, namely: FROZEN FRUIT AND VEGETABLES, NAMELY, OKRA, MOLOKHIA, ARTICHOKES, GREEN PEAS, GREEN BEANS, MIXED VEGETABLES, CAULIFLOWER, COLCASSIA, ALSO KNOWN AS TARO ROOT, GREEN SPINACH, BROAD BEANS VINE LEAVES ALSO KNOWN AS GRAPE LEAVES, FALAFEL, BROCCOLI, STRAWBERRIES, SWEET CORN, CARROTS, CORIANDER, GARLIC, POTATOES
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Grounds for Cancellation

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
<i>Torres v. Cantine Torresella S.r.l. Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
The registration is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used.	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	78870359	Application Date	04/26/2006
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BASMA		
Design Mark			
Description of Mark	The mark consists of a semi circle with arabic letters on top of a ribbon design enclosing BASMA.		
Goods/Services	Class 029. First use: First Use: 1999/12/31 First Use In Commerce: 2003/02/17 Meat, fish, poultry; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs, milk and milk products excluding ice cream, ice milk and frozen yogurt; edible oils and fats		

Attachments	78870359#TMSN.jpeg (1 page)(bytes) Cancellation.pdf (16 pages)(1644384 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	/Szymon M. Gurda/
Name	Szymon M. Gurda
Date	03/23/2009

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

OROUBA AGRIFOODS	)	Serial No.	: 78/421,214
PROCESSING COMPANY	)	Reg. No.	: 3,398,369
	)	Date of Filing	: May 19, 2004
Petitioner,	)	Registration Date	: March 18, 2008
)		
	)	Cancellation No.	: _____
)		
v.)		
	)	Mark	: BASAMA GREEN
	)		MOLOKHIA
)		
UNITED FOOD IMPORT)		
)		
Registrant)		

PETITION FOR CANCELLATION

Orouba Agrifoods Processing Company (“Petitioner”), an Egyptian joint stock company having offices at Misr El-Gedida 95 G El-Mergany Street, Cairo, Egypt, is harmed and damaged by registration of the mark shown in Application Serial Number 78/421,214 (the “Mark”) and hereby petitions to cancel registration of same under §14 of the Trademark Act of 1946, 15 U.S.C. 1064.

The grounds for the Cancellation are as follows:

I. Lanham Act § 2(d): Prior Adoption and Use of an Identical Mark

1. Registrant United Food Import (“Registrant”) filed an application, Serial Number 78/421,214, for registration of BASAMA GREEN MOLOKHIA 400 G (and design) (the “Mark”) for “frozen fruit and vegetables, namely, okra, molokhia, artichokes, green peas, green beans, mixed vegetables, cauliflower, colcassia, also known as taro root, green spinach, broad beans vine leaves also known as grape leaves, falafel, broccoli, strawberries, sweet corn, carrots, coriander, garlic, potatoes” in Class 29 (the “Application”). The first date of use alleged by the registrant is

Jan. 1, 1998. The United States Patent and Trademark Office (“USPTO”) registered the mark on the principal register on March 18, 2008.

2. Petitioner attempted to Oppose the Application, but on February 12, 2008 the matter was dismissed with prejudice prior to any decision on the merits of the Opposition.

3. Petitioner, a produce distributor/importer, first began using the Mark in the United States with first use of the mark occurring in late 1999. Petitioner continues to use the Mark in conjunction with “meat, fish, poultry; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs, milk and milk products; and edible oils and fats” belonging in International Class 29, as is outlined in Petitioner’s Application, Serial Number 78/870,359. Specimens of Petitioner’s current use are attached hereto as Exhibit A.

4. Petitioner is the owner of several foreign registrations for the Mark. Exhibit B includes Petitioner’s registrations in Egypt, Turkey, United Arab Emirates, and Germany.

5. In view of the identity of the respective marks (e.g., Petitioner’s and Registrant’s BASMA mark), the commonality in characteristics of end-users, and the related nature of the goods described in the registrations of the respective parties, it is alleged that Registrant’s mark so resembles Petitioner’s trademark previously used in the United States, and not abandoned, so as to likely cause confusion, or to cause mistake, or to deceive.

II. Lanham Act § 2(a): False Suggestion of a Connection of Registrant’s Mark with Petitioner

6. Petitioner incorporates above paragraphs 1 to 5 of Petitioner’s grounds of cancellation against Registrant and makes such paragraph a part hereof.

7. Petitioner distributes information about its products to the public at considerable cost. Typical vehicles utilized by Petitioner to disseminate information about its products include trade publications, direct sales contact, and the Internet, including the *www.orouba.fuzing.com*

website. The website is made available to the public through means such as direct browsing, but is also made available for indexing by search companies and for searching.

8. As part of its marketing efforts, Petitioner has developed considerable brand recognition for the Mark and has used the Mark in commerce to create an association between the Mark and itself.

9. Registrant has caused to be registered under its own name an identical mark.

10. In view of the similarity of Registrant's mark with Petitioner's mark, and in view of the related nature of the uses thereof, it is alleged that Registrant's mark consists of and comprises matter that may falsely suggest a connection with Petitioner.

III. Lanham Act § 14: Registration was Obtained Fraudulently by Registrant

11. Petitioner incorporates above paragraphs 1 to 10 of Petitioner's grounds of cancellation against Registrant and makes such paragraph a part hereof.

12. In 1998, Petitioner entered into an agreement with Registrant under which Registrant would import Petitioner's products into the United States for resale. The parties understood that the "BASMA" marks, including the Mark, were owned by Petitioner, and that Registrant's role was simply the importer and distributor of those goods, not the source of those goods or the owner of the "BASMA" marks.

13. When Registrant filed its Application in 2004, upon information and belief, Registrant had actual knowledge of Petitioner's use of "BASMA" marks and Petitioner's prior rights in and to those marks. For that reason, upon information and belief, Registrant's several verifications under Lanham Act §1 were false. Specifically, Registrant falsely affirmed that it was "the owner of the mark sought to be registered" and also falsely affirmed that "no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form

thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive.”

14. The false affirmations referenced in ¶13 were made by an authorized agent of Registrant with the knowledge and belief that said statement was false. Said false statements were made with the intent to induce authorized agents of the U.S. Patent and Trademark Office to grant said registration. Reasonably relying upon the truth of said false statement, the U.S. Patent and Trademark Office did, in fact, grant said registration to Registrant.

15. Petitioner further alleges that given Registrant’s actual knowledge of Petitioner’s use, Registrant could only have filed a concurrent use application pursuant to Lanham Act §1(a)(3).

IV. Lanham Act § 14 (3): Misrepresentation by Registrant as to the Source of the Goods

16. Petitioner incorporates above paragraphs 1 to 15 of Petitioner’s grounds of cancellation against Registrant and makes such paragraph a part hereof.

17. Petitioner has never granted permission or consent for Registrant to register or attempt to register the “BASMA” mark, including the Mark, in the United States or anywhere else.

18. In September 2005 Petitioner terminated the importer and distributor relationship with Registrant. Upon termination of this relationship, Registrant had a greater duty to distinguish and differentiate its products from Petitioner’s products.

19. However, after the termination of the relationship referenced above in paragraph 18, Registrant used packaging for its products that was nearly identical, in printing style and labeling, to Petitioner’s packaging.

20. Registrant has continued to promote, distribute, and sell products within Class 29 that bear the “BASMA” mark.

21. In view of the similarity of Registrant's mark with Petitioner's mark, and in view of the related nature of the uses thereof, it is alleged that Registrant's mark consists of and comprises matter that may falsely suggest a connection with Petitioner.

22. Upon information and belief, Registrant filed the Application with the intent to trade off of the goodwill represented by Petitioner's "BASMA" mark.

V. Standing: Likelihood of Damage to Petitioner

23. Petitioner incorporates above paragraphs 1 to 22 of Petitioner's grounds of cancellation against Registrant and makes such paragraph a part hereof.

24. Petitioner believes it has been damaged by Registrant's Application because Registrant's Application was cited against Petitioner's Application when Petitioner's Application was examined. In addition, Petitioner is the rightful owner of the Mark.

25. By reason of the foregoing, Petitioner has been harmed by the registration of Registrant's Application Serial Number 78/421,214.

WHEREFORE, Petitioner prays that Registration Number 3,398,369 be cancelled and that this Petition for Cancellation be sustained in favor of Petitioner.

Petitioner hereby appoints Cherskov & Flaynik, The Civic Opera Building, 20 N. Wacker Drive, Suite 1447, Chicago, IL 60606, a law firm composed of Michael J. Cherskov, Donald Flaynik, Szymon M. Gurda, and Charles Nissim-Sabat, all members of the bar of the State of Illinois, to act as attorneys for Petitioner herein, with full power to prosecute said Petition, to transact all relevant business with the Patent and Trademark Office and in the United States Courts, and to receive all official communications in connection with this Petition for Cancellation.

Respectfully submitted,

March 23, 2009
Date

/Szymon M. Gurda/

Szymon M. Gurda, Esq.
CHERSKOV & FLAYNIK
The Civic Opera Building
20 N. Wacker Drive
Suite 1447
Chicago, Illinois 60606
(Tel) 312-621-1330
(Fax) 312-621-0088
Attorney for Petitioner
OROUBA AGRIFOODS PROCESSING CO.

CERTIFICATE OF SERVICE

A true and correct copy of PETITION FOR CANCELLATION has been served by U.S. mail on this 23rd day of March 2009 to:

Donna Mirman Broome, Esq.
GOTTLIEB, RACKMAN & REISMAN, P.C.
270 Madison Avenue
New York, NY 10016-0601
(Tel) 212-684-3900
Attorney for Registrant

/Szymon M. Gurda/

Szymon M. Gurda, Esq.
CHERSKOV & FLAYNIK
The Civic Opera Building
20 N. Wacker Drive
Suite 1447
Chicago, Illinois 60606
(Tel) 312-621-1330
(Fax) 312-621-0088
Attorney for Petitioner

Exhibit A: Specimens of Current Use





Exhibit B: Petitioner's Foreign Registrations



The Egyptian International For Intellectual Property
المصرية الدولية للملكية الفكرية - وكلاء براءات

Tel/Fax : 002 02 3729887
Mob : 002 010 1595805
Mob : 002 010 3326507
P.O. Box 308 Maadi - Cairo

تلي فاكس : ٣٧٢٩٨٨٧ - ٠٠٢ ٠٢
محمول : ١٥٩٥٨٠٥ - ٠٠٢ ٠١٠
محمول : ٣٣٢٦٥٠٧ - ٠٠٢ ٠١٠
ص . ب ٣٠٨ المعادي - القاهرة

www.ei4ip.com

حدائق حلوان - عمارات القوات المسلحة - عمارة ٢٤ - شقة ١٢

متخصصون في تسجيل (براءات الاختراع ، العلامات التجارية ، النماذج الصناعية ، حقوق المؤلف) في مصر وجميع أنحاء العالم

القاهرة في : ٢٠٠٨/٠٦/١٤

المحترمين

السادة / شركة العروبة لصناعة المواد الغذائية

المحترم

السيد الفاضل / محمود السيد - المدير العام

المحترم

السيد الفاضل / جمال عامر

فاكس : ٦٤٢١١١٦

٥٥ شارع المنتزه - مصر الجديدة - القاهرة

تحية طيبة وبعد ،،،

الموضوع : بشأن شهادة تسجيل النموذج الصناعي (بسمة - BASMA) في ألمانيا

يسعدنا أن نخطر سيادتكم علما بأن الوكيل المنوط بإجراءات تسجيل النموذج الصناعي

(بسمة - BASMA) في ألمانيا قد أرسل لنا شهادة تسجيل النموذج الصناعي وبيانه كالتالي :-

النموذج	رقم الإيداع	تاريخ الإيداع	رقم التسجيل	تاريخ التسجيل
بسمة BASMA مغلف أغذية	٤٠٢٠٠٨٠٠١١٥٤,٦	٢٠٠٨/٠٣/٠٦	٤٠٢٠٠٨٠٠١١٥٤,٦	٢٠٠٨/٠٤/٢٨

اسم طالب التسجيل : شركة العروبة لصناعة المواد الغذائية .

مرسل للتكرم بالاحتفاظ بها طرفكم علما بأن مدة الحماية خمس سنوات من تاريخ الإيداع ، وان تاريخ

التجديد المقبل هو ٢٠١٣/٠٣/٠٦ .

وتفضلوا بقبول فائق التحية والاحترام ،،،

المصرية الدولية للملكية الفكرية

عبد العال عبد العليم - المدير العام



T.C.
TÜRK PATENT ENSTİTÜSÜ

MARKA TESCİL BELGESİ

Marka No : 2006 14454 - Ticaret



Marka Sahibi : CONTINENTAL COMPANY FOR TRADE &
DISTRIBUTION
MISIR
Al-Masraweya Building-Fifth Collection-New Cairo-
Cairo MISIR

Emtiası : 29

Et, balık, kümes ve av hayvanlarının etleri, et suyu,
konservelenmiş , kurutulmuş ve pişirilmiş sebze ve
meyveler, jöleler, marmelatlar, kompostolar,
yumurtalar, süt ve süt ürünleri.

Markaların Korunması Hakkında 556 Sayılı Kanun Hükmünde
Kararnameye göre 25/05/2006 tarihinden itibaren ON YIL müddetle
tescil edilmiştir.

Doç. Dr. Yusuf BAĞCI
Enstitü Başkanı a.
Kutay KUMBASAR
Markalar Dairesi Başkanı

TÜRK PATENT [●] ENSTİTÜSÜ

UNITED ARAB EMIRATES

Ministry of Economy
Commercial Registration Dept



دولة الامارات العربية المتحدة

وزارة الاقتصاد
إدارة التسجيل التجاري

شهادة تسجيل علامة تجارية

عملاً بأحكام المادة ١٦ من القانون الإتحادي رقم ٣٧ لسنة ١٩٩٢م بشأن تسجيل العلامات التجارية :

٨٠٧٥٢

تشهد وزارة الاقتصاد أن العلامة التجارية التي سبق تقديم طلب تسجيلها تحت رقم :



من قبل : ش. كونتنتال للتجارة والتوزيع - شركة مساهمة مصرية

٢٠٠٦/٠٥/١٦

تاريخ الإيداع :

مصر

الجنسية :

عمرات المصراوية ، التجمع الخامس ، القاهرة الجديدة ، القاهرة ، جمهورية
مصر العربية

الموطن :

بسمة Basma

إسم العلامة :

(المنتجات موضحة خلف الشهادة)

٢٩

رقم الفئة :

٢٠٠٧/٠١/١٠

بتاريخ :

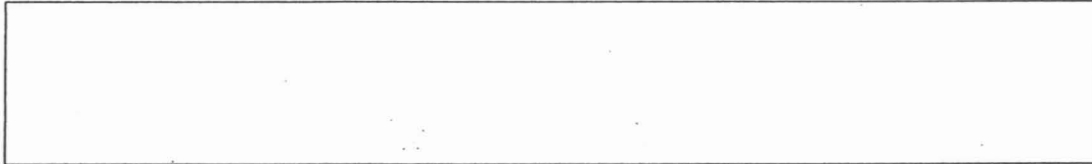
٧٨٦٨٨

قد تم تسجيلها تحت رقم :

وسيظل التسجيل نافذ المفعول لمدة عشر سنوات اعتباراً من ٢٠٠٦/٠٥/١٦ وحتى تاريخ انتهاء مدة الحماية في : ٢٠١٦/٠٥/١٦

ويجوز تجديد الحماية وفقاً لأحكام المادة ١٩ من قانون العلامات التجارية لمدد متتالية أخرى كل منها عشر سنوات .

الاشتراطات :



٢٠٠٧/٠١/١٠

تحريراً في :



مدير إدارة التسجيل

الجمهورية العربية السورية

الجمهورية العربية السورية

الجمهورية العربية السورية

الجمهورية العربية السورية

الجمهورية العربية السورية

الجمهورية العربية السورية

٢٩

للفئة :

٨٠٧٥٢

المنتجات الخاصة بالعلامة التجارية المودعة تحت رقم :

الفواكة والفواكة المطبوخة بالسكر و المرببات ، الخضروات و الخضروات المجمدة و المبردة و المجففة و المحفوظة و المطهوه ، اللحوم و الطيور ، الاسماك ، ولحوم الدواجن و الصيد ، خلاصات اللحم ، هلام (جلي) و مرببات ، الكمبوت ، البيض ، اللبن ، منتجات الالبان ، الجبن ، الزيوت المسلي ، الدهون المعدة للاكل .



٢٠٠٧/٠١/١٠

تحريريافي :

BUNDESREPUBLIK DEUTSCHLAND

URKUNDE

über die

Eintragung in das Geschmacksmusterregister

unter dem Aktenzeichen 40 2008 001 154.6

Anzahl
Geschmacksmuster: 1

Rechtsinhaber: Orouba Agrifoods Processing Co., Kairo/Cairo, EG

Tag der Anmeldung: 6. März 2008

Tag der Eintragung: 28. April 2008

Erzeugnis(se): Nahrungsmittel; Früchte; Gemüse; Verpackungen für
Nahrungsmittel

Warenklasse(n): 01; 01-02; 01-02; 09-03

München, den 28. April 2008



Der Präsident des Deutschen Patent- und Markenamts

Dr. Schade