

ESTTA Tracking number: **ESTTA410149**

Filing date: **05/20/2011**

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	Steck Wholesale Foods, Inc.		
Entity	Corporation	Citizenship	South Dakota
Address	1001 River Drive North Sioux City, SD 57049 UNITED STATES		

Attorney information	Michael T. Griggs Boyle Fredrickson SC 840 N. Plankinton Ave. Milwaukee, WI 53203 UNITED STATES mtg@boylefred.com, mjj@boylefred.com, docketing@boylefred.com
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Registration Subject to Cancellation

Registration No	3506449	Registration date	09/23/2008
Registrants	Holje, Paul D. 921 10th Avenue SE East Grand Forks, MN 56721 UNITED STATES Kelley, George E. 921 10th Avenue SE East Grand Forks, MN 56721 UNITED STATES		

Goods/Services Subject to Cancellation

Class 030. First Use: 2005/09/20 First Use In Commerce: 2006/05/06 All goods and services in the class are cancelled, namely: Breads; rolls; pastries; doughnuts; muffins; bagels; cookies; bakery desserts; processed grain products, namely, processed wheat and other processed grains; mixes for bakery goods; pasta; pizza; sandwiches; macaroni, rice and pasta salads; coffee and tea
Class 037. First Use: 2005/11/07 First Use In Commerce: 2005/11/07 All goods and services in the class are cancelled, namely: Construction planning; construction consultation; building construction, remodeling and repair; general construction contracting; and construction management

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Abandonment	Trademark Act section 14
Other	Insufficient specimen to demonstrate use for the designated goods/services

Attachments	Petition for Cancellation.pdf (5 pages)(19500 bytes) 00419636.PDF (1 page)(163918 bytes) Dakota Harvest Bakers Website.pdf (2 pages)(185452 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	/Michael T. Griggs/
Name	Michael T. Griggs
Date	05/20/2011

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

IN THE MATTER OF TRADEMARK

DAKOTA HARVEST
Registration No. 3506449
Registered on September 23, 2008

Steck Wholesale Foods, Inc.)	
)	
Petitioner)	
)	
v.)	Cancellation No. _____
)	
Kelley, George E., and)	
Holje, Paul D.)	
d/b/a Dakota Harvest, Inc.)	
)	
Registrants)	

PETITION FOR CANCELLATION

Steck Wholesale Foods, Inc., a South Dakota Corporation with a principal place of business at 1001 River Drive North, Sioux City, South Dakota 57049 (hereinafter "Petitioner"), believes that it is and will be damaged by the continued existence of U.S. Registration No. 3506449 (the "449 Registration") owned by Mr. George E. Kelley and Mr. Paul D. Holje, individuals with a listed address of 921 10th Avenue SE, East Grand Forks, Minnesota 56721 (hereinafter collectively "Registrants"), and therefore petitions to cancel U.S. Registration No. 3506449 under 15 U.S.C. §1064. As grounds therefore, Petitioner states as follows:

1. On information and belief, Registrants are the current owner of record of the '449 Registration for the mark DAKOTA HARVEST in respect to breads; rolls; pastries; doughnuts; muffins; bagels; cookies; bakery desserts; processed grain products, namely, processed wheat

and other processed grains; mixes for bakery goods; pasta; pizza; sandwiches; macaroni, rice and pasta salads; coffee; and tea in International Class 30; and construction planning; construction consultation; building construction, remodeling and repair; general construction contracting; and construction management in International Class 37.

2. Petitioner is the owner of U.S. Application Serial No 77/700,785 for the mark DAKOTA VALLEY HARVEST in respect of "English muffins and baking powder biscuits based at a location remote from the retail location" in International Class 29 (hereinafter "Petitioner's Application"). Petitioner's Application was filed on March 27, 2009 and is currently pending.

3. Upon information and belief, Registrants abandoned and ceased use of the mark which is the subject of the '449 Registration in respect to breads; rolls; pastries; doughnuts; muffins; bagels; cookies; bakery desserts; processed grain products, namely, processed wheat and other processed grains; mixes for bakery goods; pasta; pizza; sandwiches; macaroni, rice and pasta salads; coffee; and tea in International Class 30.

4. Upon information and belief, Registrants abandoned and ceased use of the mark which is subject to the '449 Registration in respect to construction planning; construction consultation; building construction, remodeling and repair; general construction contracting; and construction management in International Class 37.

5. In the alternative, upon information and belief, Registrants have ceased use of the mark in the form which is the subject of the '449 Registration, and have alternatively adopted use of the mark "DAKOTA HARVEST BAKERS" in both the form of a standard character mark and a design mark. In support of this claim, Petitioner submits a redacted letter dated November 9, 2010, demonstrating use of the mark "DAKOTA HARVEST BAKERS". (See

Exhibit A, attached hereto). In further support of this claim, Petitioner submits a screenshot of a website last visited on December 6, 2010, demonstrating repeated use of the mark “DAKOTA HARVEST BAKERS”. (See Exhibit B attached hereto).

6. Upon information and belief, during examination, the Registrants have failed to submitted a specimen of use sufficient to demonstrate use of the mark in the form which is the subject of the ‘449 Registration in commerce with respect to breads; rolls; pastries; doughnuts; muffins; bagels; cookies; bakery desserts; processed grain products, namely, processed wheat and other processed grains; mixes for bakery goods; pasta; pizza; sandwiches; macaroni, rice and pasta salads; coffee; and tea in International Class 30, as required of 15 U.S.C. §1051(d)(1).

7. Upon information and belief, during examination, the Registrants have failed to submitted a specimen of use sufficient to demonstrate use of the mark in the form which is the subject of the ‘449 Registration, in commerce with respect to construction planning; construction consultation; building construction, remodeling and repair; general construction contracting; and construction management in International Class 37, as required of 15 U.S.C. §1051(d)(1).

8. Upon information and belief, Registrants have obtained the ‘449 Registration fraudulently, in accordance with the provisions of 15 U.S.C. §1064(3). Specifically, Registrants’ June 7, 2008 Statement of Use and Signed Declaration indicates a date of first use of September 20, 2005 for those goods and services associated with International Class 30. Registrants’ Statement of Use and Signed Declaration further indicates a date of first use of November 7, 2005 for those goods and services associated with International Class 37. Conversely, Registrant’s signed letter dated November 9, 2010, specifies that the “business has been in operation since 2006”. (See Exhibit A, attached hereto). Accordingly, Registrants made fraudulent misrepresentations to the Office as to the dates of first use, in obtaining the ‘449

Registration.

9. Petitioner is being damaged by the continued existence of Registration No. 3506449 in that the Petitioner's Application for its mark has been rejected by the Office as likely to be confused with the mark shown in the '449 Registration. The Petitioner's Application is presently pending.

WHEREFORE, Petitioner prays that this cancellation action be sustained and that Registration No. 3506449 be canceled from the Trademark Register.

The statutory Cancellation Filing Fee is submitted herewith.

/Michael T. Griggs/
Michael J. Gratz
Michael T. Griggs
BOYLE FREDRICKSON, S.C.
Attorneys for Petitioner

Date: May 20, 2011

BOYLE FREDRICKSON, S.C.
Michael J. Gratz
Michael T. Griggs
840 North Plankinton Avenue
Milwaukee, WI 53203
Telephone (414) 225-9755

Petition for Cancellation
Steck Wholesale Foods, Inc., Petitioner
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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the above document was sent via U.S. mail on May 20, 2011 to:

Paul D. Holje
921 10th Ave SE
East Grand Forks MN 56721-2317

George E. Kelley
921 10th Avenue SE
East Grand Forks, MN 56721

s/Michael T. Griggs _____
Michael T. Griggs



November 9, 2010

REDACTED

Sincerely,



George E. Kelley
President, Dakota Harvest, Inc.

Ex. A

Indulge Your Passion

17 North Third Street · Grand Forks, ND 58203-3713 · 701-772-2100 · dakotaharvest.com

[Welcome](#) [Menus](#) [Our Story](#) [Blog](#) [Directions](#) [Gallery](#)



[Mobile Menu](#)

Welcome to Grand Forks' Artisan Bakery & Cafe

Bike to the Bakery!

Visit our store on Friday, May 20th, for Bike to Work Day, show us your helmet, and get a free cookie! The city of Grand Forks has put a the area's first bike corral in front of the bakery to make commuting by bicycle much easier. We are excited to be a part of this pilot program in our community. Try the great Greenway Trails and stop off for your favorite snacks!

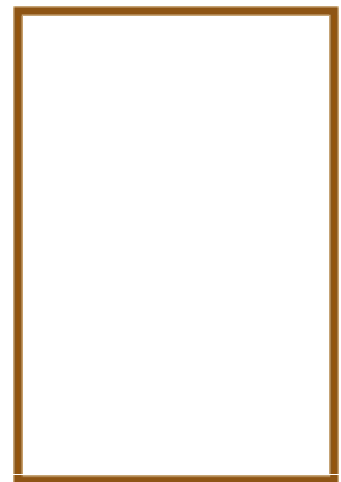
Thank you,

Paul & George

Our bread bakers mix our dough in small batches using simple ingredients. Each loaf and bun is shaped by hand. Our pastry bakers create decadent cookies, cakes, bars, and desserts for you to indulge in. Our lunch baker creates daily unique sandwiches on our fresh breads and handcrafted soups from scratch. Our breakfast baker produces tender scones, flaky croissants, and gooey caramel rolls.

Join us Sundays for a brunch of quiche, biscuits & gravy, bagels & lox, and a featured soup. We have a daily breakfast menu with our northwoods porridge, baked oatmeal, egg bake sandwiches, and of course toast & jam.

To go with our food we feature Grounds For Change Organic Fair



Ex. B



17 North Third Street
Grand Forks, ND
58203
701.772.2100

Hours

Monday — Friday
7am — 7pm
Saturday
7am — 5pm
Sunday Brunch
8am — 2pm

Holiday Hours

Trade coffee and a huge selection of Choice Organic Fair Trade teas. We have a big selection of soft drinks and juices, plus our lemon-limeade to make your summer a little more tasty.

Join the **Dakota Harvest Birthday Club & Newsletter** to get our monthly menus and specials emailed to you plus a coupon for a free slice of cake or dessert during your birthday month. Just hit the link to send us an email with your full name and birthday month.



Updated May 17, 2011

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Download Our Menus
(Printable PDF)

May Menu

May Breads

