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

Proceeding	92054455
Party	Plaintiff Pastry Art Bake Shoppe, LLC
Correspondence Address	MICHAEL S DENNISTON BRADLEY ARANT BOULT CUMMINGS LLP 1819 FIFTH AVENUE NORTH BIRMINGHAM, AL 35203 UNITED STATES mdenniston@babc.com
Submission	Withdrawal of Cancellation
Filer's Name	Michael S. Denniston
Filer's e-mail	mdenniston@babc.com, jneu@babc.com
Signature	/Michael S. Denniston/
Date	02/28/2012
Attachments	DOCS-#2796337-v1-Pastry_Art___Motion_to_Withdraw_Cancellation.pdf (1 page)(166066 bytes) PastryArtpdf.pdf (4 pages)(158834 bytes)

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

In the Matter of Registration No. 3,926,228
Date of Issue: March 1, 2011

Pastry Art Bake Shoppe, LLC)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92054455
)	
Metabusiness International)	
)	
Registrant.)	

PETITION TO WITHDRAW WITHOUT PREJUDICE

Petitioner Pastry Art Bake Shoppe, LLC, an Alabama limited liability company, hereby withdraws its Petition to Cancel Registration No. 3,926,228 for BABY BITES, which was filed August 4, 2011 and assigned Cancellation No. 92054455. Per Section 3(b) of the attached consent agreement entered into between Petitioner and Registrant, Petitioner's withdrawal shall be deemed to be "without prejudice."

Please address all correspondence to Michael S. Denniston, Bradley Arant Boult Cummings, 1819 Fifth Avenue North, Birmingham, Alabama 35203.

Dated: February 28, 2012

Respectfully submitted,

BRADLEY ARANT BOULT CUMMINGS, LLP

By: /Michael S. Denniston/

Michael S. Denniston
1819 5th Avenue North
Birmingham, AL 35203
(205) 521-8244

Attorney for Petitioner

CO-EXISTENCE AGREEMENT

This Co-Existence Agreement is made and entered into on the 5th day of February, 2012 by and between Pastry Art Bake Shoppe, LLC ("Pastry Art"), an Alabama limited liability company with a business address at 1927 29th Ave S, Birmingham, AL 35209 and Metabusiness International, Inc. ("Metabusiness"), an Ohio corporation with a business address of 304 Whitetail Dr, Chagrin Falls, OH 44022 (each a "Party" and collectively the "Parties").

WHEREAS Pastry Art is a bakery that has adopted and uses the mark BABY BITE since June 1, 2006 and has applied for the mark in Ser. No. 77745172, filed on May 27, 2009, for "bakery goods" ("the '172 Application"); and

WHEREAS Metabusiness, through its Skye Foods label to produce gluten-free products, has registered the mark BABY BITES in Reg. No. 3926228, filed on March 9, 2009, for "bakery goods; bakery products, namely, sweet bakery goods; mixes for bakery goods; mixes for making baking batters; [and] muffins" with first use in commerce on May 14, 2009 ("the '228 Registration"); and

WHEREAS Pastry Art petitioned to cancel the '228 Registration following a rejection of its '172 Application in view of the '228 Registration; and

WHEREAS the parties have not encountered any significant actual confusion as to the origin of their respective goods; and

WHEREAS the parties acknowledge and agree that any confusion or dilution between the parties' respective marks can continue to be avoided if their respective marks are used as described in this Agreement;

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein and other good and valuable consideration, the sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Coexistence Findings. Following due investigation of the Parties' respective marks in the context of the marketplace, the differences in goods and services of the Parties, the differences in the channels of trade and marketing of the goods and services of the Parties, and the differences in the likely users and purchasers of the Parties' respective products and services; the Parties conclude, and hereby expressly acknowledge and agree, that the Parties can peacefully coexist with each Party using its respective mark for its respective goods and services without creating a likelihood of confusion if the limitations agreed to in Sections 2 and 3 are observed.
2. Metabusiness' Use and Registration of the '228 Registration
 - (a) Metabusiness consents to Pastry Art's current and future registration and maintenance and renewal of the '172 Application in accordance with the Agreement. Metabusiness will not oppose the '172 Application or other applications necessary to secure Pastry Art's rights in the BABY BITE mark.
 - (b) Metabusiness will forthwith use the mark of the '228 Registration only in close proximity to its house mark SKYE in Reg. No. 3908412 or SKYE FOODS (see

Attachment A) (collectively the “House Marks”), and will use the term “gluten-free” in conjunction with the ‘228 Registration.

- (c) Metabusiness agrees to cooperate with Pastry Art as Pastry Art may reasonably request to secure or maintain the registration of the ‘172 Application.
- (d) Metabusiness agrees to cooperate with Pastry Art and take any steps reasonably necessary to avoid trading on the goodwill or reputation of Pastry Art, to avoid inadvertent customer confusion, and to avoid future confusion if any confusion should occur. Metabusiness agrees that in the event it becomes aware of any confusion arising from the simultaneous use of the ‘172 Application or the ‘228 Application, it will promptly inform Pastry Art of such confusion and will in good faith confer and cooperate with Pastry Art to work out appropriate steps to eliminate or minimize such confusion.
- (e) Metabusiness’s obligations under this Section 2 shall expire in the event Pastry Art ceases use of or otherwise abandons the ‘172 Application, or violates any provision of this Agreement.

3. Pastry Art’s Use and Registration of the ‘172 Application

- (a) Pastry Art consents to Metabusiness’s current registration and maintenance and renewal of the ‘228 Registration in accordance with this Agreement.
- (b) Pastry Art will dismiss its cancellation proceeding of the ‘228 Registration, without prejudice, and will not further seek to cancel, oppose, or undertake any other similar proceeding with respect to the ‘228 Registration.
- (c) Pastry Art agrees to cooperate with Metabusiness as Metabusiness may reasonably request to maintain the ‘228 Registration.
- (d) Pastry Art agrees to cooperate with Metabusiness and take any steps reasonably necessary to avoid trading on the goodwill or reputation of Metabusiness, to avoid inadvertent customer confusion, and to avoid future confusion if any confusion should occur. Pastry Art agrees that in the event it becomes aware of any confusion arising from the simultaneous use of the ‘172 Application or the ‘228 Application, it will promptly inform Metabusiness of such confusion and will in good faith confer and cooperate with Metabusiness to work out appropriate steps to eliminate or minimize such confusion.
- (e) Pastry Art’s obligations under this Section 3 shall expire in the event Metabusiness ceases use of or otherwise abandons the ‘228 Registration, violates any provision of this Agreement, or the U.S. Patent and Trademark Office maintains its rejection of the ‘172 Application even in consideration of this Agreement.

4. Parties’ Intent. It is understood and agreed that this Agreement is entered into because the Parties have determined that there is no reasonable conflict between the two, and that the willingness of each Party to enter into this Agreement is not to be construed as an

admission of liability on the part of either Party, each of whom expressly deny all liability. Nothing in this Agreement shall be deemed to constitute or create any license, franchise, partnership, joint venture, distribution, affiliation or other business relationship between Pastry Art and Metabusiness, and nothing in this Agreement shall be deemed to grant to either party any right to act or take any action on behalf of the other party.

5. Entire Agreement. It is understood and agreed that this Agreement contains the entire agreement between the Parties; that no promise, inducement or agreement not expressed in this Agreement has been made to Pastry Art or Metabusiness; that it supersedes, cancels, and replaces any and all prior agreements or understandings between the Parties or their affiliates, related companies, or representatives pertaining to the subject matter of this Agreement; and that the terms of this Agreement are contractual, not a mere recital. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document with the same force and effect as though all Parties had executed the same document.
6. Binding Effect. The provisions of this Agreement and the acknowledgements contained herein shall be binding upon, and inure to the benefit of, each of the parties hereto and their related companies, affiliates, successors, and assigns.
7. Assignment. The parties may freely assign their rights, in whole or in part, under this Agreement without obtaining the prior approval of the other party, provided that the assignee agrees to comply fully with all obligations under this Agreement. In the event of any such assignment, the assigning party shall promptly notify the other party of the occurrence of such assignment and shall provide the full legal name and address of all such assignees.
8. Severability. All the terms and provisions of this Agreement are distinct and severable, and if any term or provision is held unenforceable, illegal, or void in whole or in part by any court, regulatory authority, or other competent authority, it shall to that extent be deemed not to form part of this Agreement, and the enforceability, legality, and validity of the remainder of this Agreement shall not be affected thereby.
9. Representation. This Agreement was drafted in negotiations by the Parties with the full opportunity for each Party to submit for review and comment by their respective counsel, and each Party is to be construed as the drafting party to the same degree as the other Party, for purposes of resolving doubt or ambiguity.
10. Waiver. No waiver by a Party in respect of any breach shall operate as a waiver in respect of any subsequent breach. No forbearance, failure or delay by a Party in exercising any right or remedy shall operate as a waiver thereof, nor shall any single or partial forbearance, exercise, or waiver of any right or remedy prejudice its further exercise of any right or remedy under this Agreement or at Law.
11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of Alabama, without regard to its conflicts of laws rules.

IN WITNESS WHEREOF, the Parties execute this Agreement on this the 8th day of February, 2011.

Pastry Art Bake Shoppe, LLC

By: B.D. Gugg

Its: Member

Date: 1-8-12

Metabusiness International, Inc.

By: Ann D. Rapisarda

Its: PRESIDENT

Date: JANUARY 31 2012