

ESTTA Tracking number: **ESTTA437219**

Filing date: **10/21/2011**

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	Levoni S.p.A.		
Entity	Joint stock company	Citizenship	Italy
Address	Via Matteotti, 23 Castelluchio (Mantua), ITALY		

Attorney information	Cory M. Amron Vorys, Sater, Seymour and Pease LLP PO Box 2255 IPLaw@Vorys Columbus, OH 43216 UNITED STATES iplaw@vorys.com Phone:202.467.8800
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Registration Subject to Cancellation

Registration No	3854058	Registration date	09/28/2010
Registrant	FANCY FOODS, INC. 8-12 HUNTS POINT COOPERATIVE MARKET BRONX, NY 10474 UNITED STATES		

Goods/Services Subject to Cancellation

Class 029. First Use: 2010/01/01 First Use In Commerce: 2010/01/01 All goods and services in the class are cancelled, namely: Meat products, namely, corned beef, pastrami, roast beef, hams, hot dogs, sausages, and turkey breasts

Grounds for Cancellation

The mark is primarily merely a surname	Trademark Act section 2(e)(4)
Other	Application was not filed by mark owner (Trademark Act Section 1(b)); Material misidentification of original applicant (Trademark Act Section 1(b)); Invalid assignment (Trademark Act Section 10(a)(1)); Lack of bona fide intent to use the mark (Trademark Act Section 1(b))

Attachments	Petition to Cancel LEVONIAN registration.pdf (6 pages)(22580 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	/Chris Ott/
Name	Christopher M. Ott
Date	10/21/2011

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

In the matter of Trademark Registration No. 3,854,058

Mark: LEVONIAN

Registration Date: September 28, 2010

LEVONI S.P.A.	Petitioner,	Cancellation No. _____
v.		
FANCY FOODS, INC.	Registrant.	

PETITION TO CANCEL

Levoni S.p.A. (“Petitioner”), is an Italian joint stock company located at Via Matteotti, 23 – Castelluchio (Mantua), Italy.

To the best of Petitioner’s knowledge, Fancy Foods, Inc. (“Registrant”) is a New York corporation located at 8-12 Hunts Point Cooperative Market, Bronx, New York 10474 and owns U.S. Trademark Registration No. 3,854,058 (the “Registration”) for LEVONIAN (“Registrant’s Mark”).

Petitioner believes that it is and will continue to be damaged by the Registration and petitions to cancel it as set forth below.

FACTUAL BACKGROUND

1. Petitioner is a world renowned producer of various foods, including meat, salami, sausages, and ham (collectively, “Petitioner’s Goods”) and has used the mark LEVONI alone or with design elements (collectively, “Petitioner’s Mark”) in connection with Petitioner’s Goods in the United States since at least as early as 1934.

2. On June 9, 2009, Better Brands, Inc. (the “Original Applicant”) filed Application No. 76/698,141 (the “Application”) for LEVONIAN for use with *meat products*, based on a bona fide intent to use the mark in commerce.

3. In an October 21, 2009 Response to a Trademark Office Action, Original Applicant amended the description of goods to *meat products, namely, corned beef, pastrami, roast beef, hams, hot dogs, sausages, and turkey breasts* (collectively, the “LEVONIAN Goods”).

4. In the same filing, Original Applicant also stated that “LEVONIA [*sic*] is the surname of the original owners of the company Levonian Brothers, Inc. of applicant’s business.”

5. On May 11, 2010, Original Applicant purported to assign “all right, title and interest” in the Application to Registrant.

6. On June 25, 2010, Registrant filed a Statement of Use, declaring that LEVONIAN was first used on January 1, 2010 and was currently being used with the LEVONIAN Goods.

7. The Application matured to Registration No. 3,854,058 on September 28, 2010.

8. Meanwhile, on June 28, 2010, Petitioner filed Application No. 85/072,839 for LEVONI for use with *meat, fish, poultry and game; meat extracts; charcuterie, salami, sausages, cooked and raw ham, bacon, mortadella, fresh meat, frozen meat, smoked delicacies, namely, smoked meat, lard; preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs; milk and milk products excluding ice cream; cheese products, namely, cheese spreads, cheese, grana cheese, yoghurt, cream, beverages consisting principally of milk; edible fats and oils* based on a bona fide intent to use the mark in commerce.

9. In an October 5, 2010 Trademark Office Action, the Examiner cited the Registration as a bar to registering Petitioner's Application.

10. The Registration is fewer than five years old and is therefore subject to cancellation under Section 14(1) of the Lanham Act, 15 U.S.C. §1064.

COUNT I: THE APPLICATION WAS NOT FILED BY MARK OWNER

11. Petitioner realleges Paragraphs 1-10.

12. Upon information and belief, when the Application was filed, Original Applicant neither owned Registrant's Mark nor was entitled to use it.

COUNT II: MATERIAL MISIDENTIFICATION OF ORIGINAL APPLICANT

13. Petitioner realleges Paragraphs 1-10.

14. There was not and is not an entity with Original Applicant's purported name, "Better Brands, Inc.", organized or registered as a corporation with the New York Department of State.

COUNT III: INVALID ASSIGNMENT

15. Petitioner realleges Paragraphs 1-10.

16. Registrant is not a successor to the business of Original Applicant nor to any portion of Original Applicant's business to which Registrant's mark pertains.

17. The assignment of Registrant's Mark was invalid under Section 10 of the Trademark Act, 15 U.S.C. §1060.

COUNT IV: SURNAME

18. Petitioner realleges Paragraphs 1-10.

19. The primary significance of Registrant's Mark to the purchasing public is merely a surname.

COUNT V: LACK OF BONA FIDE INTENT TO USE THE MARK

20. Petitioner realleges Paragraphs 1-10.

21. Upon information and belief, Original Applicant did not have a bona fide intent to use LEVONIAN in commerce with all of Registrant's Goods.

* * *

WHEREFORE, Petitioner prays that The Trademark Trial and Appeal Board sustain this Petition and cancel Registration No. 3,854,058 for LEVONIAN.

The required fees accompany this Petition to Cancel. Please charge any additional fees to Deposit Account No. 22-0585.

Please recognize Cory M. Amron, William H. Oldach III, and Christopher M. Ott, all members of the bar of the District of Columbia, and the firm of Vorys, Sater, Seymour and Pease, LLP, as Petitioner's attorneys to prosecute this Petition to Cancel and to transact all related business in the Patent and Trademark Office.

Respectfully submitted,



Date: October 21, 2011

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Attorney for Petitioner
LEVONI S.P.A.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Petition to Cancel was served on October 21, 2011, by first-class United States Mail, postage prepaid, on:

Ms. Marian Petrone
Controller
Fancy Foods, Inc.
8-12 Hunts Point Cooperative Market
Bronx, NY 10474



Christopher M. Ott