

ESTTA Tracking number: **ESTTA540910**

Filing date: **05/30/2013**

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	Gorilla Coffee, Inc.		
Entity	Corporation	Citizenship	New York
Address	360 Furman Street Brooklyn, NY 11201 UNITED STATES		

Attorney information	Michelle C. Morris LAUNCH IP - The Law Office of Michelle C. Morris 18 St. Marks Place Brooklyn, NY 11217 UNITED STATES launchip@gmail.com Phone:(718) 412-0868
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Registration Subject to Cancellation

Registration No	3682135	Registration date	09/15/2009
International Registration No.	NONE	International Registration Date	NONE
Registrant	Conservation Through Public Health Plot 51 Kanjokya Street, P.O. Box 10950 Kampala, UGANDA		

Goods/Services Subject to Cancellation

Class 030. All goods and services in the class are cancelled, namely: Coffee

Grounds for Cancellation

Abandonment	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	4319261	Application Date	04/06/2012
Registration Date	04/16/2013	Foreign Priority Date	NONE
Word Mark	BROOKLYN ROASTED COFFEE GORILLA BRAND		
Design Mark			
Description of	The mark consists of a round symbol with concentric outlines of brown, black		

Mark	and red with the word "COFFEE" in black in the center on a rectangular design that has a brown background, both are outlined in red; the top third of the design is in yellow with brown stripe and outline and includes a gorilla in black and red standing on all fours. The word "BROOKLYN" in black is to the left and the word "ROASTED" in black is to the right of the gorilla; the word "GORILLA" appears in brown on the bottom third of the design which is red background and includes a yellow star on each side of the word "GORILLA" and the word "BRAND" appears in brown at the bottom on a black banner that is outlined in brown.
Goods/Services	<p>Class 016. First use: First Use: 2003/02/01 First Use In Commerce: 2003/08/01 Boxes, cartons, storage containers and packaging containers made of paper or cardboard; Cardboard containers; Containers for storage or transport made of paper or cardboard; Packaging containers of paper; Packaging cardboard containers; Paper closures for containers; Paper closures for sealing containers; Paper containers; Storage containers made of paper; Paper bags; Paper bags for packaging</p> <p>Class 021. First use: First Use: 2003/02/01 First Use In Commerce: 2003/08/01 Coffee cups, Tea cup mugs, Coffee mugs, Earthenware mugs, Glass mugs, Mugs not of precious metal, Porcelain mugs, Lunch boxes, Lunch box made of metal, Lunch box made of plastic</p> <p>Class 025. First use: First Use: 2003/02/01 First Use In Commerce: 2003/08/01 Tee shirts, Sweat shirts, Hooded sweat shirts, Hats</p> <p>Class 030. First use: First Use: 2003/02/01 First Use In Commerce: 2003/08/01 Coffee, Coffee, namely, roasted, powered, granulated or in drinks, Coffee based beverages, Coffee beans, Coffee beverages with milk, Coffee extracts, Coffee flavored syrup used in making food beverages, Beverages made with a coffee base, Coffee essences, Roasted coffee beans, Coffee and tea</p>

U.S. Application No.	76707877	Application Date	06/06/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	GORILLA COFFEE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 016. First use: First Use: 2003/02/01 First Use In Commerce: 2003/08/01 Boxes, cartons, storage containers and packaging containers made of paper or cardboard; Cardboard containers; Containers for storage or transport made of paper or cardboard; Packaging containers of paper; Packaging cardboard containers; Paper closures for containers; Paper closures for sealing containers; Paper containers; Storage containers made of paper; Paper bags; Paper bags for packaging</p> <p>Class 021. First use: First Use: 2003/02/01 First Use In Commerce: 2003/08/01 Coffee cups, Tea cup mugs, Coffee mugs, Earthenware mugs, Glass mugs, Mugs not of precious metal, Porcelain mugs, Lunch boxes, Lunch box made of metal, Lunch box made of plastic</p> <p>Class 025. First use: First Use: 2003/02/01 First Use In Commerce: 2003/08/01 Tee shirts, Sweat shirts, Hooded sweat shirts, Hats</p> <p>Class 030. First use: First Use: 2003/02/01 First Use In Commerce: 2003/08/01 Coffee, Coffee, namely, roasted, powered, granulated, or in drinks, Coffee based beverages, Coffee beans, Coffee beverages with milk, Coffee extracts, Coffee flavored syrup used in making food beverages, Beverages made with a coffee base, Coffee essences, Roasted coffee beans, Coffee and tea</p>		

Attachments	GORILLA KAWA - Petition for Cancellation-1.pdf(120862 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	/Michelle C. Morris/
Name	Michelle C. Morris
Date	05/30/2013

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

Gorilla Coffee, Inc.,	:	
	:	
Petitioners,	:	Cancellation No. _____
	:	Mark: GORILLA KAWA
v.	:	Registration No.: 3,682,135
	:	Registration Date: September 15, 2009
Conservation Through Public Health,	:	
Registrant.	:	
	:	

PETITION FOR CANCELLATION

Gorilla Coffee, Inc. (“Petitioner”), a New York Corporation with a principal place of business at 360 Furman Street Brooklyn, New York 11201, believes it is being damaged and will continue to be damaged by the maintenance of Registration Number 3,682,135 on the Principal Register by “Conservation Through Public Health” (“Registrant”), a non-governmental organization of Uganda, with a last known address of, Plot 51 Kanjokya Street, P.O. Box 10950 Kampala, Uganda. Petitioner hereby petitions to cancel the Registration and, as grounds for cancellation, alleges:

1. Petitioner is informed and believes that Registrant is the owner of record of Registration Number 3,682,135 of the mark GORILLA KAWA for “Coffee” (the “GORILLA KAWA Registration”).
2. Petitioner is the owner of the registration “BROOKLYN ROASTED COFFEE GORILLA BRAND” (Reg. No. 4,319,261) and has applied to register the mark “GORILLA COFFEE” (Ser. No. 76/707,877) for inter-alia “Coffee, Coffee, namely, roasted, powered, granulated, or in drinks, Coffee based beverages, Coffee beans, Coffee beverages with milk, Coffee extracts, Coffee flavored syrup used in making

- food beverages, Beverages made with a coffee base, Coffee essences, Roasted coffee beans, Coffee and tea” (the “Gorilla Application”) with the United States Patent and Trademark (collectively referred to herein as, the “GORILLA Mark”).
3. Petitioner has used its GORILLA Mark in commerce in the United States in connection with, *inter-alia*, coffee, since at least as early as August 1, 2003.
 4. The examining attorney assigned to Petitioner’s Gorilla Application has issued Section 2(d) likelihood of confusion refusal rejecting Petitioner’s application citing Registrant’s GORILLA KAWA Registration as the prior registration.
 5. Registrant’s GORILLA KAWA Registration is likely to cause injury to Petitioner and Petitioner’s rights in the GORILLA Mark.
 6. Petitioner’s use of its GORILLA Mark predates the earliest priority date that Registrant can claim, and consequently there is no question of priority of rights, such priority clearly belonging to Petitioner.
 7. Through Petitioner’s activities, and promotional and advertising efforts, the public and trade have come to associate the GORILLA Mark with Petitioner, and its products.
 8. By virtue of its prior use in commerce of the GORILLA Mark, Petitioner is entitled to hold itself out to the public and trade as having the exclusive right to use the GORILLA Mark, and variations thereof, as trademarks for its products.
 9. Thus, the GORILLA KAWA Registration should be cancelled under Lanham Act Section 2(d) (15 U.S.C. § 1052(d)), because the Registration is confusingly similar to Petitioner’s GORILLA Mark. Registrant’s proposed use and registration of the mark is causing cause injury to Petitioner’s rights in its GORILLA Mark, as such use and

- registration will cause confusion and mistake and will deceive the public into believing that the goods of Registrant are affiliated with, sponsored by, or jointly developed with Petitioner, and that such goods emanate from the same source, all to Petitioner's injury.
10. Additionally, the application by Registrant to register GORILLA KAWA was based on an intent- to-use the use the mark in commerce with a Section 44(E) claim of priority with a registration basis in Uganda.
 11. The GORILLA KAWA application never included an assertion of use in United States commerce.
 12. On information and belief, the GORILLA KAWA mark that is subject to the challenged registration has never been used by Registrant in United States commerce in conjunction with the goods set forth in the GORILLA KAWA Registration.
 13. Upon information and belief, Registrant never had a bona fide intent to use the mark GORILLA KAWA in United States commerce in connection with the goods in the application (and resulting registration).
 14. By virtue of the false and material claims regarding a bona fide intent to use the mark GORILLA KAWA in United States commerce in connection with the goods listed in the application and resulting registration, the registration was invalidity obtained and should be cancelled.
 15. Finally, upon information and belief, Registrant has not used its mark in the United States within the last three years, if ever, and has abandoned any rights in the GORILLA KAWA mark.

WHEREFORE, Petitioner requests that the registration challenged herein be cancelled.

Dated: May 30, 2013

By: 
Michelle C. Morris
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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this correspondence is being filed through the electronic system for the Trademark Trial and Appeal Board in the United States Patent and Trademark Office on May 30, 2013.

By: 

Michelle C. Morris

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document, entitled "Petition for Cancellation," was served by first-class mail, postage prepaid, on this 30th day of May, 2013, on Registrant, pursuant to 37 CFR 2.111 (a) and (b), as follows:

Conservation Through Public Health
Plot 51 Kanjokya Street
P.O. Box 10950
Kampala, Uganda

By: 
Michelle C. Morris