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Filing date: **06/02/2014**

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

Proceeding	92058913
Party	Plaintiff Sahara Afghani Gourmet Foods, Inc.
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Date	06/02/2014
Attachments	20140602-opposition to registrants motion to dismiss- YOUUSO-41001.pdf(138915 bytes )

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

In re Registration Serial Nos. : 3724235 and 3738603  
For the Marks : Bolani  
Filed : February 19, 2008  
Published in the Trademark  
Official Gazette on : September 29, 2009 and November 3, 2009,  
respectively

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Sahara Afghani Gourmet :  
Foods, Inc. :  
Petitioner, : Cancellation No. 92058913  
:  
v. :  
:  
Nazie Sidiq, Billal Sidiq and : Opposition to Registrant's  
Rob Sidiq, dba East & West : Motion to Dismiss  
Gourmet Afghan Food, Inc. :  
Registrant. :  
:  
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Commissioner for Trademarks  
P.O. Box 1451  
Arlington, VA 22313-1451

**OPPOSITION TO REGISTRANT'S MOTION TO DISMISS**

Sahara Afghani Gourmet Foods, Inc. (hereinafter "Petitioner"), located and doing business in Dublin, California, by and through its undersigned counsel hereby opposes the motion to dismiss filed by Nazie Sidiq et al. (hereinafter "Registrants").

## I. INTRODUCTION

Petitioner notes that this cancellation has been filed in relation to two registered trademarks, Nos. 3724235 and 3738603. At the time of filing the petition to cancel, Petitioner paid the fee for the cancellation of two registrations and noted both registration numbers in the initial pleading. Moreover, the initial pleading was stamped by the Board to indicate that two \$300 fees were received and noted the applicable registration numbers on the fee stamp on the face of the pleading.

Currently, the USPTO record for cancellation number 92058913 only lists one of the registrations as being the subject of this cancellation. Petitioner's prior counsel notified the USPTO of this oversight in a letter dated April 25, 2014 that was made part of the record of this cancellation on April 25, 2014 and May 1, 2014. Petitioner respectfully requests that the USPTO correct the record for this cancellation to reflect the two registrations paid for and plead in the petition to cancel.

## II. ARGUMENT

### A. The Standard of Review in a Motion Dismiss Requires that All Facts at Issue be Resolved in the Favor of Petitioner

A motion to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6), functions to test the legal adequacy of a complaint; it is a vehicle by which courts may evaluate pure legal questions. In other words, a motion to dismiss argues that the "harm" of which the plaintiff complains is not recognized as a violation of legal rights. For the purposes of a 12(b)(6) motion-to ensure that they focus only on matters of law-courts accept as true all reasonable allegations of fact in the complaint. Sutton v. Utah State School for the Deaf and Blind, 173 F.3d 1226, 1236 (10th Cir. 1999).

### B. The Standard for Stating a Claim is Notice Pleading and Petitioner has met this Standard

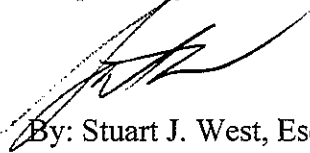
Petitioner's Petition to Cancel filed on February 25, 2014, meets the standard for stating a claim since Petitioner has indicated in its initial pleading the grounds for cancellation of Registrant's trademarks. Petitioner has listed the grounds for cancellation in the initial pleading, including but not limited to, Registrant's mark being descriptive of the goods/services listed in the registration.

Finally, Petitioner believes the grounds for cancellation are plead sufficiently. Given that Petitioner has plead the grounds sufficiently, the appropriate standard for review for a motion to dismiss, must be resolved in favor of the non-moving party.

### III. PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests that Registrant's Motion to Dismiss Petition for Failure to State a Claim upon which Relief can be Granted Pursuant to Fed. R. Civ. Proc. 12(B)(6) be denied. In the alternative, if this tribunal finds Petitioner's pleading deficient, Petitioner respectfully requests that Petitioner be allowed to amend its pleading.

Respectfully Submitted,



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Attorneys for Petitioner

## Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

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on: June 2, 2014.

By: *Dawn Callender*  
Dawn Callender

Dated: June 2, 2014