

ESTTA Tracking number: **ESTTA677182**

Filing date: **06/09/2015**

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 parties request to cancel indicated registration.

**Petitioner Information**

Name	Jerry#s Famous Deli, Inc.		
Entity	Corporation	Citizenship	California
Address	12711 Ventura Blvd., #400 Studio City, CA 91604 UNITED STATES		

Name	Epicure With Love, LLC		
Entity	Limited liability company	Citizenship	Florida
Address	17190 Collins Ave. Sunny Isles Beach, FL 33160 UNITED STATES		

Attorney information	David K. Friedland Friedland Vining, P.A. 1500 San Remo Ave., Suite 200 Coral Gables, FL 33146 UNITED STATES trademarks@friedlandvining.com, dkf@friedlandvining.com, jrv@friedlandvining.com Phone:305-777-1725		
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**Registration Subject to Cancellation**

Registration No	4290901	Registration date	02/19/2013
Registrant	Epicure Catering, LLC P.O. Box 212 Omena, MI 49674 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 043. First Use: 2003/03/31 First Use In Commerce: 2003/03/31 All goods and services in the class are cancelled, namely: Services for providing food and drink, namely, serving food and drinks, providing of food and drinks for guests, catering of food and drinks
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**Grounds for Cancellation**

Priority and likelihood of confusion	Trademark Act section 2(d)
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**Marks Cited by Petitioner as Basis for Cancellation**

U.S. Registration No.	2754745	Application Date	06/24/1999
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Registration Date	08/26/2003	Foreign Priority Date	NONE
Word Mark	EPICURE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 029. First use: First Use: 1950/00/00 First Use In Commerce: 1950/00/00  PRE-PACKAGED FROZEN ENTREES CONSISTING PRIMARILY OF MEAT, [ FISH, ] POULTRY OR VEGETABLES, [ EXCLUDING SHELLFISH ]</p> <p>Class 030. First use: First Use: 1950/00/00 First Use In Commerce: 1950/00/00  PRE-PACKAGED FROZEN ENTREES CONSISTING PRIMARILY OF PASTA OR RICE; BREAD</p> <p>Class 035. First use: First Use: 1950/00/00 First Use In Commerce: 1950/00/00  RETAIL FOOD STORE SERVICES</p>		

U.S. Registration No.	2787801	Application Date	06/24/1999
Registration Date	12/02/2003	Foreign Priority Date	NONE
Word Mark	EPICURE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 029. First use: First Use: 1950/00/00 First Use In Commerce: 1950/00/00  PRE-PACKAGED FROZEN ENTREES CONSISTING PRIMARILY OF MEAT,[ FISH,] POULTRY OR VEGETABLES [, EXCLUDING SHELLFISH ]</p> <p>Class 030. First use: First Use: 1950/00/00 First Use In Commerce: 1950/00/00  PRE-PACKAGED FROZEN ENTREES CONSISTING PRIMARILY OF PASTA OR RICE; BREAD</p> <p>Class 035. First use: First Use: 1950/00/00 First Use In Commerce: 1950/00/00  RETAIL FOOD STORE SERVICES</p>		

U.S. Application No.	86219950	Application Date	03/13/2014
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	EPICURE WITH LOVE		

Design Mark	<h1>EPICURE WITH LOVE</h1>
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Description of Mark	NONE
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Goods/Services	<p>Class 016. First use: First Use: 0 First Use In Commerce: 0 Cookbooks, newsletters in the field of cooking</p> <p>Class 029. First use: First Use: 2011/08/00 First Use In Commerce: 2011/08/00 Canned fruits and vegetables; soups; food package combinations consisting primarily of cheese, meat and/or processed fruit; prepared entrees and side dishes consisting primarily of fish, seafood, meat or vegetables</p> <p>Class 030. First use: First Use: 2011/08/00 First Use In Commerce: 2011/08/00 Salad dressings; sauces; bakery products; food package combinations consisting primarily of bread, crackers and/or cookies; prepared entrees and side dishes consisting primarily of pasta or rice</p> <p>Class 035. First use: First Use: 2011/08/00 First Use In Commerce: 2011/08/00 Retail and online grocery store services</p> <p>Class 043. First use: First Use: 2011/08/00 First Use In Commerce: 2011/08/00 Restaurant services</p>
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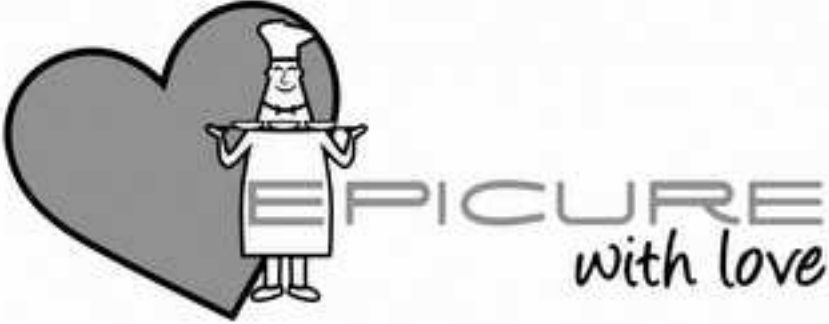
U.S. Application No.	86219974	Application Date	03/13/2014
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Registration Date	NONE	Foreign Priority Date	NONE
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Word Mark	EPICURE WITH LOVE
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Design Mark			
Description of Mark	<p>The mark consists of the stylized word "EPICURE" above the phrase "with love". To the left appears the cartoon image of a chef holding a serving platter. To the left rear of the chef is a rectangle.</p>		
Goods/Services	<p>Class 016. First use: First Use: 0 First Use In Commerce: 0 (Based on Intent to Use) Cookbooks; newsletters in the field of cooking</p> <p>Class 029. First use: First Use: 2011/08/00 First Use In Commerce: 2011/08/00 (Based on Use in Commerce) Canned fruits and vegetables; soups; food package combinations consisting primarily of cheese, meat and/or processed fruit; prepared entrees and side dishes consisting primarily of fish, seafood, meat or vegetables</p> <p>Class 030. First use: First Use: 2011/08/00 First Use In Commerce: 2011/08/00 (Based on Use in Commerce) Salad dressings; sauces; bakery products; food package combinations consisting primarily of bread, crackers and/or cookies; prepared entrees and side dishes consisting primarily of pasta or rice</p> <p>Class 035. First use: First Use: 2011/08/00 First Use In Commerce: 2011/08/00 (Based on Use in Commerce) Retail and online grocery store services</p> <p>Class 043. First use: First Use: 2011/08/00 First Use In Commerce: 2011/08/00 (Based on Use in Commerce) Restaurant services</p>		
U.S. Application No.	86219990	Application Date	03/13/2014
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	EPICURE WITH LOVE GOURMET CREATIONS BY SPECIALTY CHEF MICHAEL LOVE		

Design Mark			
Description of Mark	<p>The mark consists of the stylized word "EPICURE" above the phrase "with love". Below this appears the phrase, "GourmetCreations by Specialty Chef Michael Love" with a brush stroke below "Michael Love". To the left appears the cartoon image of a chef holding a serving platter. To the left rear of the chef is a rectangle.</p>		
Goods/Services	<p>Class 016. First use: First Use: 0 First Use In Commerce: 0 (Based on Intent to Use) Cookbooks; newsletters in the field of cooking</p> <p>Class 029. First use: First Use: 2011/08/00 First Use In Commerce: 2011/08/00 (Based on Use in Commerce) Canned fruits and vegetables; soups; food package combinations consisting primarily of cheese, meat and/or processed fruit; preparedentrees and side dishes consisting primarily of fish, seafood, meat or vegetables</p> <p>Class 030. First use: First Use: 2011/08/00 First Use In Commerce: 2011/08/00 (Based on Use in Commerce) Salad dressings; sauces; bakery products; food package combinations consisting primarily of bread, crackers and/or cookies; preparedentrees and side dishes consisting primarily of pasta or rice</p> <p>Class 035. First use: First Use: 0 First Use In Commerce: 0 (Based on Intent to Use) Retail and online grocery store services</p> <p>Class 043. First use: First Use: 0 First Use In Commerce: 0 (Based on Intent to Use) Restaurant services</p>		
U.S. Application No.	86522313	Application Date	02/03/2015
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	EPICURE WITH LOVE		

Design Mark	
Description of Mark	<p>The mark consists of the stylized word "EPICURE" above the phrase "WITH LOVE." To the left appears the cartoon image of a chef holding a serving platter. To the left rear of the chef is a heart.</p>
Goods/Services	<p>Class 029. First use: First Use: 2011/08/00 First Use In Commerce: 2011/08/00  Canned fruits and vegetables; soups; food package combinations consisting primarily of cheese, meat and/or processed fruit; prepared entrees and side dishes consisting primarily of fish, seafood, meat or vegetables</p> <p>Class 030. First use: First Use: 2011/08/00 First Use In Commerce: 2011/08/00  Salad dressings; sauces; bakery products; food package combinations consisting primarily of bread, crackers and/or cookies; prepared entrees and side dishes consisting primarily of pasta or rice</p> <p>Class 043. First use: First Use: 2011/08/00 First Use In Commerce: 2011/08/00  Restaurant services</p>

Attachments	<p>75735983#TMSN.png( bytes )  86219950#TMSN.png( bytes )  86219974#TMSN.png( bytes )  86219990#TMSN.png( bytes )  86522313#TMSN.png( bytes )  PET - Petition to Cancel - AS FILED.pdf(129026 bytes )  EXHIBIT A.pdf(131582 bytes )</p>
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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	/David K. Friedland/
Name	David K. Friedland
Date	06/09/2015

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

**Jerry's Famous Deli, Inc.,  
and Epicure With Love, LLC,**  
Petitioners,

Cancellation No.:  
Registration No.: 4,290,901  
Mark: **EPICURE CATERING**  
Registration Date: February 19, 2013

v.

**Epicure Catering, LLC,**  
Registrant.

**PETITION TO CANCEL**


Pursuant to the provisions of 15 U.S.C. § 1064 and TBMP § 307, Petitioners Jerry's Famous Deli, Inc. ("JFD"), a California corporation located and doing business at 12711 Ventura Blvd., #400, Studio City, CA 91604, and Epicure With Love, LLC ("EWL"), a Florida corporation located and doing business at 17190 Collins Ave., Sunny Isles Beach, FL 33160 (collectively, "Petitioners"), believe that they are and will continue to be damaged by Registration No. 4,290,901, and hereby petition to cancel the same.

As grounds for this Petition, Petitioners allege as follows:

1. For over half a century, JFD has utilized a family of **EPICURE** trademarks (hereinafter the "**EPICURE** Marks") in connection with the sale of prepared foods and other groceries through its retail food stores and catering services.

2. JFD owns the following United States Trademark Registrations for the **EPICURE** Marks:

<b>EPICURE</b>	Reg. No. 2,754,745	Pre-packaged frozen entrees consisting primarily of meat, fish, poultry or vegetables,
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		excluding shellfish, in International Class 29; pre-packaged frozen entrees consisting primarily of pasta or rice; bread, in International Class 30; and retail food store services, in International Class 35
	Reg. No. 2,787,801	Pre-packaged frozen entrees consisting primarily of meat, fish, poultry or vegetables, excluding shellfish, in International Class 29; pre-packaged frozen entrees consisting primarily of pasta or rice; bread, in International Class 30; and retail food store services, in International Class 35

True and correct copies of the registration certificates and status information for the

**EPICURE** Marks are attached as Composite Exhibit A.

3. JFD’s federal trademark registrations have become incontestable by virtue of long and continuous use, and by virtue of JFD having submitted the requisite affidavits pursuant to the provisions of 15 U.S.C. § 1065. These registrations therefore constitute conclusive evidence of the validity of the marks shown therein, and of the registrations of said marks, of JFD’s ownership of said marks, and of JFD’s exclusive right to use said marks in commerce in connection with the goods and services specified therein.

4. The **EPICURE** Marks are well-known, distinctive, and famous trademarks that JFD has continuously and substantially exclusively used since at least as early as 1950.



5. JFD's **EPICURE** Marks have been heavily advertised and promoted in connection with Petitioner's prepared foods and other grocery retail services for over 65 years. As a result of JFD's extensive use, the **EPICURE** Marks are extremely strong and have garnered international recognition among the consuming public.

6. In addition, JFD operates the website located at [epicuremarket.com](http://epicuremarket.com) and has done so since at least 1999. The website maintained at this address identified by this domain name incorporates JFD's longstanding and well-known **EPICURE** Marks.

7. JFD's **EPICURE** Marks are recognized by consumers as identifying JFD's stellar food and service.

8. The **EPICURE** Marks are famous and have acquired strong secondary meaning.

9. In 2011, JFD partnered with celebrity chef, author and culinary guru Michael Love, and formed EWL with the purpose of launching a new line of co-branded, all-natural gourmet food products under the mark **EPICURE WITH LOVE** (the "**EWL** Marks"). EWL has since filed several U.S. trademark applications to register the **EWL** Marks.

10. Petitioners have spent a considerable amount of resources, time, and effort marketing and promoting the **EPICURE** and **EWL** Marks. Additionally, Petitioners have received extensive unsolicited publicity and media coverage based on their success.

11. According to the Trademark Electronic Search System ("TESS") of the United States Patent and Trademark Office ("PTO"), Registrant Epicure Catering, LLC ("Registrant") is the record owner of U.S. Trademark Registration 4,290,901 (the "901

Registration”) for the mark **EPICURE CATERING** (“Registrant’s Mark”), which registration issued on the Principal Register on February 19, 2013.

12. The ‘901 Registration alleges that Registrant’s Mark has been in use in connection with “services for providing food and drink, namely, serving food and drinks, providing of food and drinks for guests, catering of food and drinks” in International Class 43 since March 31, 2003.

13. On or about January 15, 2015, the PTO refused certain of EWL’s pending U.S. trademark applications to register the **EWL** Marks on the basis of confusion with Registrant’s Mark.

14. Registrant’s Mark is confusingly similar to the **EPICURE** Marks in that Registrant’s Mark incorporates **EPICURE** in its entirety. In addition, the overall commercial impressions of the marks are very similar, which erroneously suggests an affiliation with Petitioners.

15. Moreover, upon information and belief, both Petitioners and Registrant provide prepared food for consumption by others, which establishes a strong relationship between Petitioners’ food services and Registrant’s catering services. *See, e.g., Zabar’s & Co., Inc. v. Zaba’s Grill, LLC*, 2008 TTAB LEXIS 568, \*30-31 (TTAB July 10, 2008)(“[W]e find that opposer's ‘food catering services, retail store services and mail order services for gourmet foods’ identified in its registration are related to applicant's restaurant services.”).

16. In view of JFD’s priority of use, the similarity of the parties’ respective marks, and the overlapping nature of the parties’ respective services, Petitioners believe

that they are and are likely to continue to be damaged by the continued existence of the '901 Registration in that Registrant's Mark so resembles the **EPICURE** Marks as to be likely to cause the public to be confused, mistaken, or deceived into believing that Registrant's services originate from Petitioners or are in some way related to, associated with, or sponsored by Petitioners.

17. Accordingly, Petitioners' continued and legal use of the **EPICURE** and **EWL** Marks will be impaired by the continued registration of the '901 Registration. Registration of Registrant's Mark should therefore be cancelled pursuant to the provisions of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), in that Registrant's Mark consists of or comprises a mark which so resembles a mark previously used in the United States by Petitioners in respect of related services as to be likely to cause the public to be confused, mistaken or deceived.

**PRAYER FOR RELIEF**

WHEREFORE, Petitioners pray that this Petition to Cancel be sustained and granted in favor of Petitioners and that Registration No. 4,290,901 be cancelled and removed from the Principal Register.

Date: June 9, 2015

Respectfully submitted,

**FRIEDLAND VINING, P.A.**

/s/David K. Friedland  
By: **David K. Friedland**  
Florida Bar No. 833479  
**Jaime Vining**  
Florida Bar No. 30932  
1500 San Remo Avenue, Suite 200  
Coral Gables, Florida 33146

Cancellation No.:  
Registration No.: 4,290,901

(305) 777-1720 telephone  
e-mail: dkf@friedlandvining.com  
e-mail: JRV@friedlandvining.com  
*Counsel for Petitioners*

**CERTIFICATE OF SERVICE**

**WE HEREBY CERTIFY** that the foregoing **PETITION TO CANCEL** was served upon the Registrant by delivering true and correct copies of same to Registrant and its counsel via First Class U.S. Mail on June 9, 2015 as follows:

Epicure Catering, LLC  
P.O. Box 212  
Omena, Michigan 49674

Douglas S. Bishop, Esq.  
Bishop & Heintz, P.C.  
P.O. Box 707  
Traverse City, Michigan 49685-0707

/s/David K. Friedland  
David K. Friedland

# **EXHIBIT A**

**Int. Cls.: 29, 30 and 35**

**Prior U.S. Cls.: 46, 100, 101 and 102**

**Reg. No. 2,754,745**

**United States Patent and Trademark Office**

**Registered Aug. 26, 2003**

**TRADEMARK  
SERVICE MARK  
PRINCIPAL REGISTER**

**EPICURE**

JERRY'S FAMOUS DELI, INC. (CALIFORNIA  
CORPORATION)  
12711 VENTURE BOULEVARD  
SUITE 400  
STUDIO CITY, CA 91604

FOR: PRE-PACKAGED FROZEN ENTREES CON-  
SISTING PRIMARILY OF MEAT, FISH, POULTRY  
OR VEGETABLES, IN CLASS 29 (U.S. CL. 46).

FIRST USE 0-0-1950; IN COMMERCE 0-0-1950.

FOR: PRE-PACKAGED FROZEN ENTREES CON-  
SISTING PRIMARILY OF PASTA OR RICE; BREAD,  
IN CLASS 30 (U.S. CL. 46).

FIRST USE 0-0-1950; IN COMMERCE 0-0-1950.

FOR: RETAIL FOOD STORE SERVICES, IN  
CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 0-0-1950; IN COMMERCE 0-0-1950.

SER. NO. 75-735,984, FILED 6-24-1999.

ESTHER A. BORSUK, EXAMINING ATTORNEY

Int. Cls.: 29, 30 and 35

Prior U.S. Cls.: 46, 100, 101 and 102

**United States Patent and Trademark Office**

Reg. No. 2,787,801

Registered Dec. 2, 2003

**TRADEMARK  
SERVICE MARK  
PRINCIPAL REGISTER**



JERRY'S FAMOUS DELI, INC. (CALIFORNIA  
CORPORATION)  
12711 VENTURE BOULEVARD  
SUITE 400  
STUDIO CITY, CA 91604

FOR: PRE-PACKAGED FROZEN ENTREES CON-  
SISTING PRIMARILY OF MEAT, FISH, POULTRY  
OR VEGETABLES, IN CLASS 29 (U.S. CL. 46).

FIRST USE 0-0-1950; IN COMMERCE 0-0-1950.

FOR: PRE-PACKAGED FROZEN ENTREES CON-  
SISTING PRIMARILY OF PASTA OR RICE; BREAD,  
IN CLASS 30 (U.S. CL. 46).

FIRST USE 0-0-1950; IN COMMERCE 0-0-1950.

FOR: RETAIL FOOD STORE SERVICES, IN  
CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 0-0-1950; IN COMMERCE 0-0-1950.

SER. NO. 75-735,983, FILED 6-24-1999.

ESTHER A. BORSUK, EXAMINING ATTORNEY