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Filing date: **07/10/2017**

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 has filed a petition to cancel the registration indicated below.

### Petitioner Information

Name	E.A. Sween Company		
Entity	Corporation	Citizenship	Minnesota
Address	16101 West 78th Street Eden Prairie, MN 55344 UNITED STATES		

Attorney information	Stephen R. Baird Winthrop & Weinstine, P.A. 225 South Sixth Street Capella Tower, Suite 3500 Minneapolis, MN 55402 UNITED STATES Email: trademark@winthrop.com, sbaird@winthrop.com, tchambers@winthrop.com Phone: 612-604-6585		
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### Registration Subject to Cancellation

Registration No.	4170037	Registration date	07/10/2012
Registrant	GF Baked Goods, Inc. 262 W Sparkleberry Ave Orange, CA 92865 UNITED STATES		

### Goods/Services Subject to Cancellation

Class 030. First Use: 2010/10/17 First Use In Commerce: 2010/10/17 All goods and services in the class are subject to cancellation, namely: Gluten-free pastries and baked goods, namely, muffins, cookies, cakes, and cup cakes to accommodate special medical and health conditions
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### Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
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### Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	86797961	Application Date	10/23/2015
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	SIMPLY DELICIOUS		

Design Mark	<b>SIMPLY DELICIOUS</b>
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 1994/03/00 First Use In Commerce: 1994/03/00 Bakery products

Attachments	86797961#TMSN.png( bytes ) 20170710 Petition to Cancel GF BAKED GOODS SIMPLY DELICIOUS and Design with Exhibit A.pdf(3293761 bytes )
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Signature	/Tucker A. Chambers/
Name	Tucker A. Chambers
Date	07/10/2017

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

E.A. Sween Company,	)	
	)	
	)	
	)	
Petitioner,	)	Cancellation No. _____
vs.	)	
	)	
GF Baked Goods, Inc.,	)	
	)	
Respondent.	)	
	)	
	)	

**PETITION TO CANCEL**

E.A. Sween Company (“Petitioner”), a Minnesota corporation, having a principal place of business at 16101 West 78th Street, Eden Prairie, Minnesota 55344, believes that it is and will continue to be damaged by the registration of the mark GF BAKED GOODS SIMPLY DELICIOUS & Design, U.S. Reg. No. 4,170,037, and hereby petitions to cancel the same pursuant to 15 U.S.C. §§ 1064 and 1052(d).

The grounds for cancellation are as follows:

1. GF Baked Goods, Inc. (“Respondent”) is the record owner of U.S. Reg. No. 4,170,037 (“Respondent’s Registration”) for the mark GF BAKED GOODS SIMPLY DELICIOUS & Design (“Respondent’s SIMPLY DELICIOUS Mark”) in connection with “Gluten-free pastries and baked goods, namely, muffins, cookies, cakes, and cup cakes to accommodate special medical and health conditions” in Int’l Class 30 (“Respondent’s Bakery Goods”).

2. Respondent represented to the U.S. Patent and Trademark Office (“USPTO”) that Respondent first used the mark depicted in Respondent’s Registration in connection with Respondent’s Bakery Goods anywhere and in commerce on October 17, 2010.

3. Respondent filed the application that matured into Respondent’s Registration on January 4, 2011.

4. Respondent’s Registration issued on July 10, 2012, within five years of the filing date of this Petition to Cancel.

5. This Petition to Cancel is timely filed.

6. Since at least as early as March of 1994, Petitioner has continuously used in commerce Petitioner’s SIMPLY DELICIOUS mark in connection with a variety of food products, including but not limited to “bakery products” in Int’l Class 30 (“Petitioner’s Bakery Goods”).

7. Attached as Exhibit A is a true and correct copy of a brochure available on Petitioner’s website showing the use of Petitioner’s SIMPLY DELICIOUS mark with a variety of types of bakery products, including but not limited to, pastries, baked goods, muffins, cookies, cakes, donuts, brownies, bars, cinnamon rolls, Danishes, buns, and turnovers.

8. Upon information and belief, Respondent cannot claim a date of first use for Respondent’s Registration prior to the claimed first use date of October 17, 2010.

9. Upon information and belief, Respondent cannot claim a constructive first use date for Respondent’s Registration prior to the application date of January 4, 2011.

10. Petitioner first used Petitioner’s SIMPLY DELICIOUS mark in commerce for Petitioner’s Bakery Goods long before Respondent’s represented date of first use of Respondent’s SIMPLY DELICIOUS Mark for Respondent’s Bakery Goods.

11. Petitioner has expended considerable time, effort, and expense in promoting, advertising, and popularizing Petitioner's SIMPLY DELICIOUS mark in connection with Petitioner's Bakery Goods.

12. The purchasing public has come to know, rely upon, and recognize Petitioner's SIMPLY DELICIOUS mark as a strong indicator of the source of Petitioner's Bakery Goods.

13. Petitioner has established valuable goodwill in Petitioner's SIMPLY DELICIOUS mark.

14. Petitioner has priority of common law rights in Petitioner's SIMPLY DELICIOUS mark in connection with Petitioner's Bakery Goods.

15. Respondent's Bakery Goods are overlapping with, closely related, and identical in part to Petitioner's Bakery Goods.

16. Respondent's Bakery Goods and Petitioner's Bakery Goods are of a kind that consumers would expect to originate from a single source under a single mark.

17. Respondent's SIMPLY DELICIOUS Mark incorporates the entirety of Petitioner's SIMPLY DELICIOUS mark.

18. In Respondent's SIMPLY DELICIOUS Mark, the design elements are less dominant and less significant compared to the SIMPLY DELICIOUS word elements.

19. In Respondent's Registration, the words "GF BAKED GOODS" are disclaimed from Respondent's SIMPLY DELICIOUS Mark, which makes those words less dominant and less significant.

20. In Respondent's SIMPLY DELICIOUS Mark, the words SIMPLY DELICIOUS are emphasized by use of a different font stylization compared to the remainder of the mark, and by use of dashes surrounding the words SIMPLY DELICIOUS.

21. The words SIMPLY DELICIOUS are the dominant element of Respondent's SIMPLY DELICIOUS Mark.

22. The dominant SIMPLY DELICIOUS element of Respondent's SIMPLY DELICIOUS Mark is identical to Petitioner's SIMPLY DELICIOUS mark.

23. Respondent's SIMPLY DELICIOUS Mark so resembles Petitioner's SIMPLY DELICIOUS mark as to be likely, when used in connection with Respondent's Bakery Goods, to cause confusion, mistake, or to deceive.

24. Consistent with the above allegations, purchasers and prospective purchasers are likely to mistakenly believe that Respondent's Bakery Goods are sponsored, endorsed, or approved by Petitioner, or are in some way affiliated, connected, or associated with Petitioner, all to the detriment of Petitioner.

25. The continued registration of Respondent's SIMPLY DELICIOUS Mark further damages Petitioner, as the registrations confer upon Respondent various statutory presumptions to which it is not entitled in view of Petitioner's prior use of Petitioner's SIMPLY DELICIOUS mark.

26. Registration of Respondent's SIMPLY DELICIOUS Mark should therefore be cancelled under 15 U.S.C. §§ 1064 and 1052(d).

WHEREFORE, pursuant to Section 14 of the Lanham Act, 15 U.S.C. § 1064, Petitioner respectfully requests that the Trademark Trial and Appeal Board sustain this Petition to Cancel and cancel U.S. Reg. No. 4,170,037.

Dated: July 10, 2017

Respectfully Submitted,

WINTHROP & WEINSTINE, P.A.

A handwritten signature in black ink, appearing to read "Tucker A. Chambers", written over a horizontal line.

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*Attorneys for Petitioner,  
E.A. Sween Company*

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# **EXHIBIT A**





TM

# NEW & IMPROVED SIMPLY DELICIOUS™ BAKERY LINE

**Designed to excite and engage consumers while driving category growth!**

- Simply Delicious™ Bakery branding – contemporary design stands out on the shelf
- Package design enhances product visibility and helps establish a premium positioning to drive impulse purchases
- Consumer approved and validated design<sup>1,2</sup>

## Merchandising Racks and POS

- Point-Of-Sale support created to attract customers and entice trial

Traffic-stopping display racks available in various sizes



#19340 Bakery New Items Sign



<sup>1</sup> Quantitative Research January 2016 - Product & Packaging  
<sup>2</sup> Qualitative Research April 2016 - Packaging & Merchandising





**SIMPLY DELICIOUS BAKERY**

# DELICIOUS NEW ITEMS, INCREMENTAL PROFITS!

- Simply Delicious™ Bakery line now offers items in all key bakery category segments<sup>3</sup>
- All dayparts, all day long – from Breakfast to late night and in-between<sup>1,3</sup>
- **9** New Snacks, Cookies and Donuts – *Simply Delicious™!*
- Higher retail ring and more penny profit to drive incremental profitability

## SNACKS **NEW**

- 7-Layer Caramel Bar • Double Chocolate Brownie
- Lemon Loaf Cake • Chocolate Marshmallow Crispy Bar



## COOKIES **NEW**

- Rainbow Chocolate Chip • Chocolate Chunk



## DOUBLE DONUTS **NEW**

- Strawberry • Blueberry • Chocolate Iced



## MUFFINS

- Double Chocolate • Blueberry • Banana Nut
- Chocolate Chip • Cream Cheese



## PASTRY/DANISH

- Glazed Jumbo Honey Bun • Cinnamon Roll
- Cherry Danish • Cheese Danish
- Raspberry Cheese Turnover • Cream Cheese Turnover



<sup>1</sup> Quantitative Research January 2016 - Product & Packaging

<sup>3</sup> IRI data 52 weeks December 2014



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