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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	Tyson Foods, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	2200 Don Tyson Parkway Springdale, AR 72762 UNITED STATES		

Attorney information	Clifford C. Dougherty, III McAfee & Taft 211 North Robinson 10th Floor, Two Leadership Square Oklahoma City, OK 73102 UNITED STATES Email: cliff.dougherty@mcafeetaft.com, zach.oubre@mcafeetaft.com, teresa.purcell@mcafeetaft.com, allyson.crow@mcafeetaft.com, ipdock-et@mcafeetaft.com Phone: (405) 552-2302
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Registration Subject to Cancellation

Registration No.	3543222	Registration date	12/09/2008
Registrant	Hyson USA Inc. 4472 Four Winds Lane Northbrook, IL 60062 UNITED STATES Email: corder@vciplaw.com		

Goods/Services Subject to Cancellation

Class 029. First Use: 2006/06/01 First Use In Commerce: 2006/06/01
All goods and services in the class are subject to cancellation, namely: Olive oil; Olive oil; Olive oils; Preserved meats and sausages; Sausages

Grounds for Cancellation

Abandonment	Trademark Act Section 14(3)
Fraud on the USPTO	Trademark Act Section 14(3); In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)

Attachments	Petition to Cancel - U.S. Reg. No. 3543222.pdf(3341296 bytes)
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Signature	/CCD, III/
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Name	Clifford C. Dougherty, III
Date	11/21/2017

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

Tyson Foods, Inc.,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. _____
)	
Hyson USA Inc.,)	
)	
Registrant.)	

Re: Registration No. 3,543,222
 Registered on the Principal Register on December 9, 2008

Mark:



Commissioner for Trademarks
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, Virginia 22313-1451

PETITION TO CANCEL

Tyson Foods, Inc. ("Petitioner"), a Delaware corporation having a principal place of business at 2200 Don Tyson Parkway, Springdale, Arkansas 72762, petitions to cancel United States Registration No. 3,543,222 (the "Registration") as stated herein. As grounds for cancellation, Petitioner states as follows:

1. Petitioner is the owner of the well-known mark TYSON, which has been used continuously by Petitioner and its predecessor in interest in commerce since the 1930s in connection with chicken, other proteins and a variety of related food products. Numerous United

States trademark registrations have been issued for TYSON and related marks (collectively the “TYSON Mark”), including the following:

<u>Mark</u>	<u>Reg. No.</u>	<u>Reg. Date</u>	<u>Goods</u>
TYSON & design	1,205,623	08/17/1982	Fresh and frozen chicken and parts thereof, Class 029
TYSON	1,748,683	01/26/1993	Fresh and frozen, cooked and uncooked meat and poultry sold separately and as part of prepackaged prepared meats, Class 029
TYSON	2,810,231	02/03/2004	Beef and pork, Class 029
TYSON	2,833,874	04/20/2004	Luncheon meats and sausage, Class 029
TYSON	2,868,632	08/03/2004	Canned chicken, chicken in a pouch, and chicken prepared with mayonnaise and sweet relish, Class 029
TYSON	3,204,061	01/30/2007	Omelets, Class 029; crepes, Class 030
TYSON	3,998,293	07/19/2011	Chicken sandwich, Class 030
TYSON	4,222,004	10/09/2012	Bread bowls filled with pork or chicken and vegetables or eggs, and cheese, Class 030
TYSON	4,222,031	10/09/2012	Bruschetta-topped bread, Class 030

2. The Registration is directed to the mark HYSON USA & Design (the “HYSON USA Mark”) for “Olive oil; Olive oil; Olive oils; Preserved meats and sausages; [and] Sausages” in International Class 029 (the “Goods”). According to the online records of the United States Patent and Trademark Office (the “Office”), the application for what would become the Registration was filed on April 22, 2008 by Hyson USA, Inc., an Illinois corporation (“Registrant”). The Registration issued on December 9, 2008. No assignments of or other transfers of ownership relating to the Registration have been recorded in the Office.

3. According to the online records of the Office, on February 20, 2014, counsel of record for Registrant filed a Declaration of Use and Incontestability directed to the Registration on behalf of Registrant. The Declaration of Use and Incontestability stated as follows:

For International Class 029, [the HYSON USA Mark] is in use in commerce on or in connection with all of the goods/all of the services...listed in the existing registration for this specific class: Olive oil; Olive oil; Olive oils; Preserved meats and sausages; Sausages; and [the HYSON USA Mark] has been continuously used in commerce for five (5) consecutive years after the date of registration, or the date of publication under Section 12(c), and is still in use in commerce on or in connection with all goods/all services...listed in the existing registration for this class. Also, no final decision adverse to the owner's claim of ownership of such mark for those goods/services...or to the owner's right to register the same or to keep the same on the register; and, no proceeding involving said rights pending and not disposed of in either the U.S. Patent and Trademark Office or the courts exists.

4. Upon information and belief, Registrant is no longer in business and/or has ceased using and abandoned the HYSON USA Mark in connection with all of the Goods.

5. Upon information and belief, Registrant had no intention to resume use of the HYSON USA Mark in connection with any of the Goods at the time it ceased using the mark, and has not used the HYSON USA Mark in connection with any of the Goods for at least three years immediately preceding the filing of this Petition.

6. In addition and/or in the alternative, upon information and belief, if the HYSON USA Mark is currently in use in commerce, it is being used by Leonid Tansky ("Mr. Tansky") in connection with only some of the Goods. Upon information and belief, Registrant has no control over Mr. Tansky or the quality of any goods sold by Mr. Tansky in connection with the HYSON USA Mark.

7. Petitioner offers goods and services that are, were and/or could be in competition with the goods stated in the Registration, and Petitioner is damaged by the Registration in that if

it is allowed to subsist even though the HYSON USA Mark has been abandoned, the Registration may impart rights that conflict with Petitioner's rights in the Tyson Mark.

Count I – Abandonment Due to Non-Use of Mark

8. Petitioner incorporates by reference all preceding paragraphs.
9. Registrant has abandoned all of its rights in and to the HYSON USA Mark and the Registration with respect to all of the Goods. As a result, pursuant to 15 U.S.C. § 1064(c), the Registration should be cancelled in its entirety.
10. Alternatively, Registrant has abandoned its rights to the HYSON USA Mark with respect to one or more of the Goods and, as a result, the Registration should be limited only to those goods in connection with which Registrant has not abandoned the mark.

Count II – Abandonment Due to Lack of Quality Control of Goods

11. Petitioner incorporates by reference all preceding paragraphs.
12. Upon information and belief, the HYSON USA Mark and the Goods are not and/or cannot be controlled by Registrant. Upon information and belief, Registrant has not and is not controlling the quality of any goods provided by Mr. Tansky in connection with the HYSON USA Mark. As a result, the HYSON USA Mark has been abandoned and the Registration should be cancelled in its entirety.

Count III - Fraud in Filing Declaration of Use and Incontestability

13. Petitioner incorporates by reference all preceding paragraphs.
14. Registrant filed a Declaration of Use and Incontestability on February 20, 2014 attesting to the following:
 - a. That Registrant was the owner of the HYSON USA Mark;
 - b. That the HYSON USA Mark had been "continuously used in commerce for five (5) consecutive years" by Registrant "on or in connection with all of ...Olive oil; Olive oil; Olive oils; Preserved meats and sausages; Sausages"; and

- c. That as of February 20, 2014, the HYSON USA Mark was “still in use in commerce on or in connection with all [of] [“Olive oil; Olive oil; Olive oils; Preserved meats and sausages; Sausages”]”;

15. Upon information and belief, as of February 20, 2014, Registrant was not the owner of the HYSON USA Mark, had no control over use of the HYSON USA Mark and/or had not control over the quality of the Goods.

16. Upon information and belief, the HYSON USA Mark was not continuously used by Registrant “in commerce on or in connection with all of ...Olive oil; Olive oil; Olive oils; Preserved meats and sausages; Sausages” for five consecutive years following December 9, 2008.

17. Upon information and belief, as of February 20, 2014, the HYSON USA Mark was not “in use in commerce on or in connection with all of ...Olive oil; Olive oil; Olive oils; Preserved meats and sausages; Sausages” for five consecutive years following December 9, 2008.

18. Upon information and belief, the Office would not have accepted the Declaration of Use and Incontestability if it had known that one or more of the statements therein was inaccurate; as a result, the Declaration of Use and Incontestability should have never been accepted by the Office and the Registration should be cancelled in its entirety.

WHEREFORE, for the reasons set forth herein, Petitioner believes and asserts that it is being and will continue to be damaged by United States Trademark Registration No. 3,543,222 and Petitioner prays that this Petition to Cancel be sustained and that Registration No. 3,543,222 be cancelled in its entirety.

Please charge Deposit Account No. 500449 to cover any deficiencies in the fee required to file this petition and any additional fees which may be required.

Respectfully submitted,



Clifford C. Dougherty, III
Zachary A.P. Oubre
McAfee & Taft
10th Floor, Two Leadership Square
211 N. Robinson
Oklahoma City, Oklahoma
Phone: (405) 552-2302
Fax: (405) 270-7223
E-Mail: clifford.dougherty@mcafeetaft.com
Attorneys for Petitioner