

ESTTA Tracking number: **ESTTA1068271**

Filing date: **07/15/2020**

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	Eastasia Food And Trading Inc		
Entity	Corporation	Citizenship	New York
Address	56-02 56TH STREET MESPATH, NY 11378 UNITED STATES		
Attorney information	STEPHEN L. BAKER BAKER AND RANNELLS PA 92 EAST MAIN STREET SUITE 302 SOMERVILLE, NJ 08876 UNITED STATES Primary Email: officeactions@br-tmlaw.com Secondary Email(s): K.Hnasko@br-tmlaw.com, s.baker@br-tmlaw.com, s.cesaro@br-tmlaw.com, jmr@br-tmlaw.com 9087225640		
Docket Number			

Registration Subject to Cancellation

Registration No.	5843315	Registration date	08/27/2019
Registrants	Chowdhury, Mohammad B C/O LEGALFORCE RAPC WORLDWIDE 446 E SOUTHERN AVE TEMPE, AZ 85282 UNITED STATES NOYA DISTRIBUTORS INC C/O LEGALFORCE RAPC WORLDWIDE 446 E SOUTHERN AVE TEMPE, AZ 85282 UNITED STATES		

Goods/Services Subject to Cancellation


Class 030. First Use: 2014/12/15 First Use In Commerce: 2014/12/15
All goods and services in the class are subject to cancellation, namely: Rice; Parboiled basmati rice and rice

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
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No use of mark in commerce before application, amendment to allege use, or statement of use was filed	Trademark Act Sections 14(1) and 1(a), (c), and (d)
Abandonment	Trademark Act Section 14(3)
Registrant not rightful owner of mark for identified goods or services	Trademark Act Sections 14(1) and 1
False suggestion of a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute	Trademark Act Sections 14(3) and 2(a)
Fraud on the USPTO	Trademark Act Section 14(3); In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)

Marks Cited by Petitioner as Basis for Cancellation

U.S. Application No.	90046096	Application Date	07/10/2020
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	PADMA BRAND CLASSIC		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2004/04/00 First Use In Commerce: 2004/04/00 Rice		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	PADMA		
Goods/Services	Rice		

Attachments	90046096#TMSN.png(bytes) Petition to cancel with confusion fraud non use and 2a revised 7.10 .pdf(112096 bytes)
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Signature	/Stephen L. Baker/
Name	Stephen L. Baker
Date	07/15/2020

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

Eastasia Food And Trading Inc.

Cancellation No. .

Petitioner,
v.

Mark: PADMA BRAND CLASSIC
Reg. No. 5843315

Mohammad B. Chowdhury, and
Noya Distributors Inc.

Issued: August 27, 2019

Registrant.

PETITION FOR CANCELLATION
PURSUANT TO 15 U.S.C. § 1063

In the matter of Trademark Reg. No. 5843315 for the mark PADMA BRAND CLASSIC (“Registrant’s Mark”) for Rice; Parboiled basmati rice and rice in Class 030 (“Registrant’s Goods”), registered to Registrant on August 27, 2019, Petitioner a corporation organized and existing under the laws of New York, located and doing Business 56-02 56th Street, Maspeth, NY, 11378, believes it will be damaged by continued registration of Trademark Reg. No. 5843315 (“Registrant’s Registration”) and hereby petitions to cancel same pursuant to 15 U.S.C. §1064 (Trademark Act of 1946, §14). As grounds thereof, Petitioner alleges the following, alleges on knowledge as to its own acts and otherwise on information and belief and as grounds for cancellation as follows:

1. Petitioner is the owner of the mark PADMA BRAND CLASSIC for goods in International Class 030 (the “Petitioner’s Pending Mark”).

2. Petitioner's goods include but are not limited to rice in International Class 030 (the "Petitioner's Pending Goods").
3. On July 10, 2020, Petitioner filed an application to register Petitioner's Pending Mark (PADMA BRAND CLASSIC) in International Class 030 for Petitioner's Pending Goods, which application was assigned Ser. No. 90046096 ("Petitioner's Pending Application").
4. Upon information and belief, Petitioner's Application will be refused registration because of a likelihood of confusion with Registrant's Mark for Registrant's Goods.
5. The earliest date of use of Registrant's Mark that Registrant is entitled to claim is December 15, 2014.
6. Petitioner has not authorized Registrant or any other party to use, apply for or register Registrant's Registration on or in relation to Registrant's Goods.
7. Because Petitioner will likely be refused registration of Petitioner's Pending Application and because Registrant's Mark is identical to Petitioner's and is confusingly similar to Petitioner's Registered Marks, Petitioner has been and will be damaged, such that Petitioner has sufficient standing to bring this action.
8. Petitioner has priority of use of Petitioner's Pending Mark on or in relation to Petitioner's Registered Goods over any date that may legally be claimed by the Registrant for use of Registrant's Goods in association with Registrant's Mark.

9. Registrant's Goods travel in the same channels of trade as Petitioner's Goods and the respective consumers and class of consumers are identical. Petitioner is now and has been, for many years prior to any date which may be claimed by Registrant using Petitioner's Mark as a trademark, trade names and brand names in other manners analogous to use of the same.
10. Petitioner is now and has been for many years trading as and known by Petitioner's Mark, identifying Petitioner as the source of high-quality products.
11. Registrant's Goods are identical to Petitioner's Goods.
12. Petitioner is now and has been, for many years prior to any date which may be claimed by Registrant, engaged in the use of Petitioner's Mark for Petitioner's Goods.
13. Petitioner is now and has been, for many years prior to any date which may be claimed by Registrant, engaged in the sale of and/or use of high-quality products under Petitioner's Mark.
14. Since long prior to any date which may be claimed by Registrant, Petitioner on its own behalf has been, and is now engaged in the sale of and/or use of high quality products related to those of Registrant under Petitioner's Mark in interstate commerce.
15. The use by Petitioner of Petitioner's Mark for Petitioner's Goods alleged herein is long prior to any date which may be lawfully claimed by Registrant, and Petitioner has priority.

16. Petitioner's Mark and Registrant's Mark are identical and confusingly similar when applied to the Goods of the parties.
17. Registrant's alleged intended use of Registrant's Mark in connection with Registrant's Goods is without the consent or permission of Petitioner.
18. Since Petitioner owns Petitioner's Mark by virtue of prior use, confusion, mistake or deception as to the source of origin of the goods will arise and will injure and damage Petitioner and its goodwill.

COUNT 1

LIKELIHOOD OF CONFUSION

19. The continued registration of Registrant's Mark to Registrant will cause the relevant purchasing public to erroneously assume and thus be confused, misled, or deceived, that Registrant's Goods are made by, licensed by, controlled by, sponsored by, or in some way connected, related or associated with Petitioner, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), all to Petitioner's irreparable damage.

COUNT II

FRAUD IN THE USPTO

20. Petitioner repeats and re-alleges paragraphs 1 to 19 above with the same force and effect as if set forth herein at length.
21. On December 16, 2014, in Registrant's application, Registrant, knowingly made a false and fraudulent statement in Registrant's application wherein it falsely claimed, that the specimen submitted with the application was a

“photograph of the product showing the mark as used in commerce” by Registrant’s International class 030 goods.

22. The specimen submitted with the Registrant’s application is a photograph of Petitioner’s container for Petitioner’s Goods, which container was designed by Petitioner and which petitioner has used since at least April, 2004
23. Registrant knowingly falsely claimed that the specimen submitted with its application was that of Registrant when in fact Registrant knew that the container the property of Petitioner.
24. The false and fraudulent declaration referred to above with respect to Registrant’s Mark was made by Registrant with actual knowledge of its falsity, and was not made on information and belief and was made by a person or entity who knew or should have known the same was false and fraudulent.
25. Registrant knowingly made a false, material misrepresentation of fact in connection with Registrant’s application when it made the false and fraudulent declaration referred to above.
26. The false and fraudulent declaration referred to above with respect to Registrant’s Mark was made with the intent to deceive the USPTO and that the USPTO rely upon the same.
27. The USPTO did rely on the false and fraudulent declaration when it acknowledged the filing of the applications and allowed Registrant’s application to publish.
28. As a result, Registrant willfully and knowingly perpetrated a fraud on the United States Patent and Trademark Office.

29. Registrant is not entitled to a Registration on the Principal Register of Registrant's Mark as Registrant has never had any legitimate interest in Registrant's Mark, Registrant never had bona-fide use of Registrant's Mark, and because Registrant knowingly committed fraud when it filed Registrant's application.
30. Had it been aware of the false and fraudulent declaration referred to above and of Registrant's knowing fraudulent acts, the USPTO would not have accepted the filing of the applications, nor allowed Registrant's application to publish.

COUNT III

NO BONA FIDE USE OF THE MARK

31. Petitioner repeats and re-alleges paragraphs 1 to 30 above with the same force and effect as if set forth herein at length.
32. Registrant's application is void ab initio as Registrant had no use of the Registrant's Mark for Registrant's Goods at the time it filed its application on August 27, 2019
33. Registrant has taken no steps to begin commercial use of Registrant's Mark either prior to or subsequent to the filing of the Registrant's application.
34. On January 16, 2019, when Registrant filed Registrant's application, based on actual use, Registrant had no use Registrant's Mark.

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COUNT IV

UNFAIR ASSOCIATION

35. Registrant's Mark falsely suggests a connection with Petitioner, and/or will bring Petitioner into contempt or disrepute, in violation of §2(a) of the Lanham Act, 15 U.S.C. §1052(a), all to Petitioner's irreparable damage.
36. Registrant's use of Registrant's Mark points uniquely and unmistakably to Petitioner.
37. Consumers that encounter Registrant's Mark will recognize Registrant's Mark as pointing uniquely and unmistakably to Petitioner.
38. Continued registration for Registrant's Mark to Registrant creates a false and misleading connection to Petitioner all to the irreparable damage of consumers and Petitioner.

COUNT V

ABANDONMENT

39. Upon information and belief, to the extent the Registrant ever used Registrant's Mark, the Registrant has abandoned the mark covered by the Registration in class 30. The Cancellation is, therefore, appropriate under Section 14(3) of the Lanham Act, 15 U.S.C. Section 1064(3).
40. Upon information and belief, to the extent the Registrant ever used Registrant's Mark, Registrant has discontinued use of the mark covered by the Registration for those goods specified in class 30, specifically "Rice; Parboiled basmati rice and rice".

41. Upon further information and belief, to the extent the Registrant ever used Registrant's Mark, Registrant intends not to resume use of such mark for the goods specified, 30, specifically "Rice; Parboiled basmati rice and rice".
42. Upon information and belief, to the extent the Registrant ever used Registrant's Mark, the Registrant has discontinued use of the mark covered by the Registration in International Classes 33 for at least three (3) years
43. Continued registration for Registrant's Mark to Registrant creates a cloud on Petitioner's rights to use Petitioner's Mark for Petitioner's Goods.
44. Petitioner believes that it is and will be damaged by continued registration of the mark applied for by Registrant.

WHEREFORE, Petitioner prays that the application for registration of Registrant's Mark, Trademark Reg. No. 5843315, issued August 27, 2019 be cancelled and that this Petition to Cancel be sustained.

Dated: July 15, 2020

Respectfully submitted for Petitioner
Eastasia Food And Trading Inc.



By:

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via e-mail upon the correspondent identified by the TSDR, for Registrant, LegalForce RAPC Worldwide, P.C. at trademarks@legalforce.com and to Mohammad B. Chowdhury at bilalchowdhury@gmail.com on this, the 15th day of July, 2020.



Stephen L. Baker