

ESTTA Tracking number: **ESTTA1167604**

Filing date: **10/21/2021**

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	Seneca Foods Corporation		
Entity	Corporation	Citizenship	New York
Address	3736 SOUTH MAIN STREET MARION, NY 14505 UNITED STATES		
Attorney information	SHERYL DE LUCA NIXON & VANDERHYE P.C. 901 N. GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203 UNITED STATES Primary Email: nixonptomail@nixonvan.com Secondary Email(s): sld@nixonvan.com, csmith@nixonvan.com, jsp@nixonvan.com 703-816-4063		
Docket Number	3146-346		

Registration Subject to Cancellation

Registration No.	5719357	Registration date	04/09/2019
Registrant	Gemsa Enterprises, LLC 14370 GANNET STREET LA MIRANDA, CA 90638 UNITED STATES		

Goods/Services Subject to Cancellation

Class 029. First Use: 2017/09/01 First Use In Commerce: 2017/09/01 All goods and services in the class are subject to cancellation, namely: Blended oil for food; Canola oil for food; Extra virgin olive oil for food; Grapeseed oil for food; Oils for food; Olive oil for food; Rice bran oil for food; Soybean oil for cooking

Grounds for Cancellation

Other	Section 18 of the Lanham Act, 15 U.S.C. Section 1068
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Attachments	3146-346_Petition_for_Partial_Cancellation.pdf(39810 bytes) 3146-346 Ex. A Gemsa Oils.pdf(763612 bytes)
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Signature	/Sheryl De Luca/
Name	Sheryl De Luca
Date	10/21/2021

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

)	Atty. Ref.: 3146-346
)	
)	
SENECA FOODS CORPORATION)	
)	
Petitioner)	Cancellation No. _____
)	Reg. No. 5719357
v.)	Mark: FARM TO MARKET &
)	Design
)	
GEMSA ENTERPRISES, LLC DBA)	
GEMSA OILS)	
)	
Registrant)	

PETITION FOR PARTIAL CANCELLATION UNDER TRADEMARK ACT §18

Petitioner, Seneca Foods Corporation, a corporation of New York with a mailing address at 3736 South Main Street, Marion, New York 14505, believes that it is being damaged by Registration No. 5719357 for FARM TO MARKET & Design, issued April 9, 2019, and hereby petitions under Section 18, 15 U.S.C. § 1068, to partially cancel by restriction of the same.

As grounds for the present petition, it is alleged that:

1. Gemsa Enterprises, LLC DBA Gemsa Oils (hereinafter "Registrant") is the record owner of United States Trademark Registration No. 5719357, issued April 9,



2019, of the trademark FARM TO MARKET & Design, , for *Blended oil for food; Canola oil for food; Extra virgin olive oil for food; Grapeseed oil for food; Oils for food; Olive oil for food; Rice bran oil for food; Soybean oil for cooking*, in International Class 29.

2. Petitioner is the owner of the trademark FARM TO MARKET & Design,



, for canned vegetables for sale to retail customers and not sold into foodservice industry channels, in International Class 29, having adopted said mark and filed Application Serial No. 90199720 to register said mark in connection with said goods on September 22, 2020, under a Section 1(b) filing basis and having filed a voluntary amendment to amend the identification of goods to the foregoing identification on October 20, 2021.

3. In an official communication dated February 22, 2021 in Application Serial No. 90100720, Petitioner's application to register the mark FARM TO MARKET & Design was refused registration for its International Class 29 goods under § 2(d) of the Trademark Act based on, *inter alia*, Registration No. 5719357 for the mark FARM TO MARKET & Design for *Blended oil for food; Canola oil for food; Extra virgin olive oil for food; Grapeseed oil for food; Oils for food; Olive oil for food; Rice bran oil for food; Soybean oil for cooking*, in International Class 29.

4. On July 23, 2021 Petitioner filed a response to the refusal of registration, arguing against the refusal based on, *inter alia*, the differences in the marks, the differences in the goods, the fact that Petitioner has prior existing rights of its related company Gray & Company's standard character mark FARM TO MARKET of Reg. No. 4635093 for "Maraschino cherries" in Class 29, filed October 19, 2012, which was registered November 11, 2014; and the ability of the marks cited by the Examining Attorney and Reg. No. 4635093 to coexist.

5. In an official communication dated August 26, 2021, the refusal based on Registration No. 5719357 was made final.

6. On information and belief, Registrant only uses the trademark FARM TO MARKET & Design of Registration No. 5719357 for the identified goods “*Blended oil for food; Canola oil for food; Extra virgin olive oil for food; Grapeseed oil for food; Oils for food; Olive oil for food; Rice bran oil for food; Soybean oil for cooking*” sold to the foodservice industry. Specifically, the registrant promotes its Farm to Market brand of oil goods on the website <http://www.gemsaoils.com/foodservice.html> (emphasis added) (See Exhibit A); and notably, each of the pictured products on that web page (which match the type of product shown in the specimen of use Registrant filed with its application for Registration No. 5719357) are for containers of oil of 35 pounds each, which are atypical of products sold to a retail store.

7. On information and belief, Registrant has *not* used the trademark FARM TO MARKET & Design of Registration No. 5719357 for any of its goods “*Blended oil for food; Canola oil for food; Extra virgin olive oil for food; Grapeseed oil for food; Oils for food; Olive oil for food; Rice bran oil for food; Soybean oil for cooking*” in the retail customer market. Thus, the scope of goods covered by Reg. No. 5719357 is broader than the scope of goods on which its owner arguably uses its mark FARM TO MARKET & Design of Registration No. 5719357.

8. On information and belief, in view of the fact that Registrant does not use the trademark FARM TO MARKET & Design of Registration No. 5719357 on all of the goods in the registration, the description of the goods in the registration is overly broad and should be limited in relation to the goods’ channel of trade.

9. Accordingly, the identification of goods in Registration No. 5719357 should be restricted to read as follows: *Blended oil for food; Canola oil for food; Extra virgin olive oil for food; Grapeseed oil for food; Oils for food; Olive oil for food; Rice bran oil for food; Soybean oil for cooking; all the foregoing sold to the foodservice industry.*

10. On information and belief, the goods upon which Registrant uses its FARM TO MARKET & Design mark are different and have different customers and channels of trade and classes of purchasers than Petitioner's goods as amended, such that confusion is unlikely. As such, should the identification of goods in Registration No. 5719357 be accordingly restricted to the foodservice industry, the refusal against Petitioner's App. No. 90100720 should be withdrawn and the application for Petitioner's Mark should be permitted to proceed toward registration.

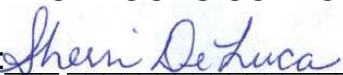
11. For the reasons set forth above, Petitioner is suffering irreparable damage by the continued existence of Registration No. 5719357 without restriction, and the business and goodwill of Petitioner is further damaged in that said registration tends to create or maintain statutory rights in Registrant in violation and derogation of the established rights of Petitioner.

The requisite filing fee for this Petition for Partial Cancellation is submitted herewith.

WHEREFORE, Petitioner prays that judgment be entered herein partially canceling by restriction United States Trademark Registration No. 5719357 and for such other and further relief as may be just and proper.

Dated: October 21, 2021

SENECA FOODS CORPORATION

By: 
Sheryl De Luca
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Solutions for Foodservice

At GEMSA, the foodservice division has rooted itself as one of the corner stones of the Western United States foodservice industry, changing the way that commercial kitchens cook since 1993 through contributions such as truth in labeling, and proven quality and service. Off the shelf house brands are ready to use, with private label options available for distributors.

Solutions for Foodservice

At GEMSA, the foodservice division has rooted itself as one of the corner stone's of the Western United States foodservice industry, changing the way that commercial kitchen's cook since 1993 through contribution's such as truth in labeling, and proven quality and service. Off the shelf house brands are ready to use, with private label options available for the distributors.

Albergo: All-Purpose Cooking Oils

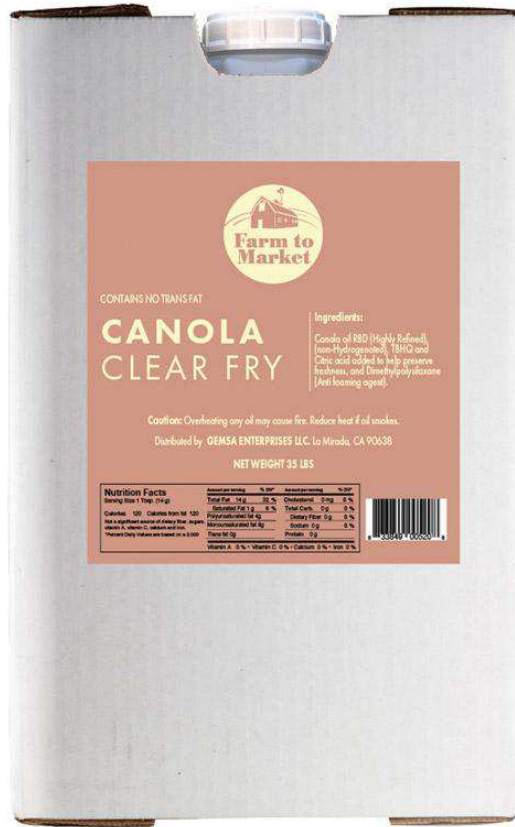


PREMIUM EXTRA VIRGIN OLIVE OIL (PRODUCTS/NUTRIVITA/NTVEVOO.HTML)

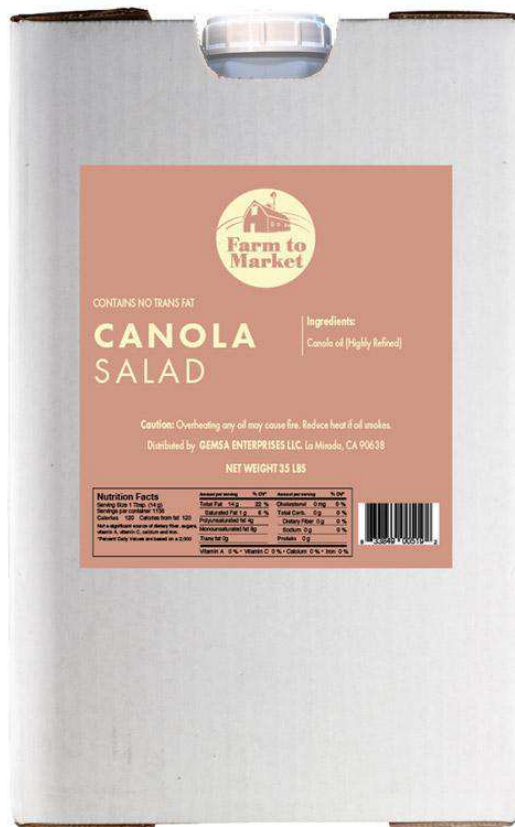
Farm to Market: Frying Oils

Bringing fresh, delicious ingredients and products to market is our passion. The Farm to Market brand showcases our efforts to offer a shortened supply chain so we can assure that fresh quality products come straight from the groves to us, then to our valued customers to enjoy.

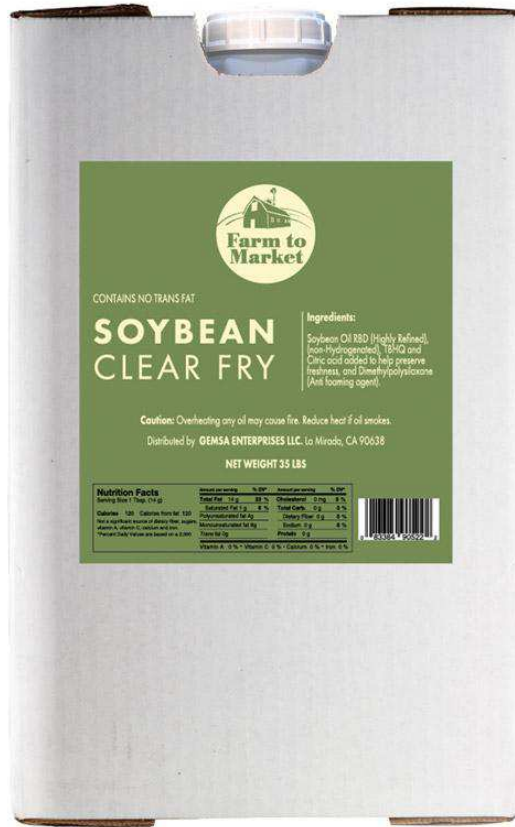
Bringing fresh delicious ingredients and products to market is our passion. The Farm to Market brand showcases our efforts to provide products with a shortened supply chain. Our process assures that fresh quality products come to us directly from our groves for bottling, then straight to our valued customers to enjoy.



CANOLA CLEAR FRY (PRODUCTS/FARMTOMARKET/F2MCLRCNL.HTML)



CANOLA SALAD (PRODUCTS/FARMTOMARKET/F2MCSLDCNL.HTML)



SOYBEAN CLEAR FRY (PRODUCTS/FARMTOMARKET/F2MCLRSOY.HTML)



SOYBEAN SALAD (PRODUCTS/FARMTOMARKET/F2MSLDSOY.HTML)

GEMSA ENTERPRISES

14370 Gannet St. La Mirada, CA 90638
(714) 521 -1736

SITE MAP

[Foodservice \(foodservice.html\)](#)

[Bulk Oils \(bulkoils.html\)](#)

[Retail \(retail.html\)](#)

[Private Label \(privatelabel.html\)](#)

[About \(about.html\)](#)

[Contact \(contact.html\)](#)