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Filing date: **08/21/2007**

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 requests to cancel indicated registration.

### Petitioner Information

Name	Wells' Dairy, Inc.		
Entity	Corporation	Citizenship	Iowa
Address	PO Box 1310, One Blue Bunny Drive Le Mars, IA 51031 UNITED STATES		

Correspondence information	Bruce W. McKee McKee, Voorhees & Sease, P.L.C. 801 Grand Ave., Suite 3200 Des Moines, IA 50309 UNITED STATES mvslit@ipmvs.com Phone:515-288-3667
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### Registration Subject to Cancellation

Registration No	3166541	Registration date	10/31/2006
Registrant	Manhattan Confectioners Inc. 2530 W. 237 ST. TORRANCE, CA 90505 UNITED STATES		

### Goods/Services Subject to Cancellation

Class 030. First Use: 2005/03/29 First Use In Commerce: 2005/03/29 All goods and services in the class are cancelled, namely: CANDY
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### Grounds for Cancellation

Abandonment	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)

### Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	78670433	Application Date	07/14/2005
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	GOOEY CHEWY TURTLE BROWNIE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2002/12/26 First Use In Commerce: 2002/12/26		

	Frozen Confections
Attachments	78670433#TMSN.jpeg ( 1 page )( bytes ) Petition to Cancel_08-21-07.pdf ( 40 pages )(2143308 bytes )
Signature	/Bruce W. McKee/
Name	Bruce W. McKee
Date	08/21/2007

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

<p>WELLS' DAIRY, INC.,</p> <p style="text-align:right">Petitioner,</p> <p>v.</p> <p>MANHATTAN CONFECTIONERS INC.,</p> <p style="text-align:right">Registrant.</p>	<p>Cancellation. No: _____</p> <p>Registration No. 3,166,541</p> <p>Mark: GOOEY CHEWY</p>
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**PETITION TO CANCEL**

Trademark Trial and Appeal Board  
U.S. Patent and Trademark Office  
P.O. Box 1451  
Alexandria, VA 22313-1451

Wells' Dairy, Inc. (hereinafter referred to as "Petitioner"), an Iowa corporation, having an address of PO Box 1310, One Blue Bunny Drive, Le Mars, Iowa 51031, believes that it will be damaged by Registration No. 3,166,541 issued October 31, 2006 to Manhattan Confectioners Inc. ("hereinafter referred to as "Respondent"), having an address of 2530 W. 237 Street, Torrance, California 90505, and hereby petitions to cancel the same. Petitioner respectfully requests the Board make this registration of record for purposes of this proceeding pursuant to 37 C.F.R. § 2.122(d)(1).

The grounds for cancellation are as follows:

1. Petitioner has used the trademark GOOEY CHEWY TURTLE BROWNIE since December 26, 2002, and is now using this trademark for frozen confection products.

2. Petitioner has filed an application to federally register the GOOEY CHEWY TURTLE BROWNIE trademark for frozen confection in Class 30, Serial No. 78/670,433 filed July 14, 2005.

3. The Patent and Trademark Office by Office Action dated February 21, 2007, a copy of which is attached as Exhibit "A", has refused registration of Petitioner's mark GOOEY CHEWY TURTLE BROWNIE, Serial No. 78/670,433, under Trademark Act Section 2(d), 15 U.S.C. § 1052(d) because the Petitioner's mark, when used on or in connection with the identified goods, so resembles the mark in Registrant's U.S. registration 3,166,541 as to be likely to cause confusion, to cause mistake, or to deceive.

4. Registrant has claimed in its registration 3,166,541 a date of first use of March 29, 2005 for candy in Class 30.

5. Petitioner, on the basis of its first use of its GOOEY CHEWY TURTLE BROWNIE trademark on December 26, 2002, has priority of use over Registrant claiming first use of its GOOEY CHEWY trademark on March 29, 2005.

6. Registrant's registration 3,166,541 is blocking Petitioner's application, Serial No. 78/670,433.

7. Because of the nature of the respective parties' goods and the similarity between their respective marks, Registrant's mark GOOEY CHEWY is likely to cause confusion, mistake, or deception with Petitioner's previously used GOOEY CHEWY TURTLE BROWNIE trademark in the marketing of frozen confection and candy products.

8. Moreover, Petitioner has investigated the status of Registrant and its use of the trademark GOOEY CHEWY for candy and has been unsuccessful in finding any evidence of current use.

9. Registrant's registration 3,166,541 will result in damage to Petitioner under the provisions of Section 2(d) of the U.S. Trademark Act, 15 U.S.C. § 1052(d) pursuant to the allegations stated above.

10. As further grounds for this cancellation action, Registrant has abandoned the registered mark.

WHEREFORE, Petitioner requests that registration 3,166,541 be canceled and this cancellation action be sustained.

Attached to this Petition to Cancel is the filing fee of \$300.00, as required by CFR § 2.6. If the amount submitted is incorrect, the Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 26-0084.

Respectfully submitted,

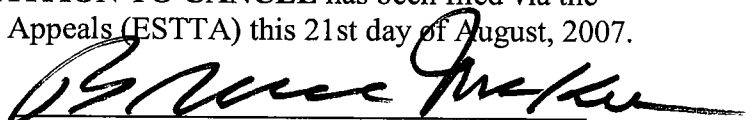


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*ATTORNEYS FOR PETITIONER*

**CERTIFICATE OF FILING**

I hereby declare that the attached **PETITION TO CANCEL** has been filed via the Electronic System for Trademark Trials and Appeals (ESTTA) this 21st day of August, 2007.



BRUCE W. McKEE

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