

RLM

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GOVERNMENT RELATIONS
STEPHEN FRERICHS
ECONOMIST

September 5, 2002

BY HAND DELIVERY AND REGULAR MAIL

Trademark Trial and Appeal Board
c/o Assistant Commissioner for Trademarks
United States Patent & Trademark Office
2900 Crystal Drive, South Tower Building
Arlington Virginia 22202-3513

09-05-2002
U.S. Patent & TMO/TM Mail Rcpt. Dt. #40

RECEIVED
SEP 12 PM 12:18
TRADemark TRIAL AND
APPEAL BOARD

Re: CAB LLC's Opposition to GFI Trademark Application Serial Number 76102426

Dear Sir or Madam:

This firm represents Certified Angus Beef, LLC, the owner of various registered and common law trademarks for Certified Angus Beef. On August 6, 2002, your office published the above-referenced mark for opposition. The application is for registration of a mark for the word mark "PRIDE OF THE DAKOTA'S, USDA CERTIFIED BLACK ANGUS BEEF," Serial Number 76102426, filed by GFI America, Inc. ("GFI") on or about August 2, 2000.

Please be advised that my client opposes the registration of this mark for all of the following reasons.

First, the mark is confusingly similar to my client's marks that contain the words "Certified Angus Beef."

Second, the subject mark has been the subject of infringement litigation in federal court in Minnesota. That lawsuit was settled by, among other things, the agreement by GFI, the applicant for this mark, to withdraw its application and not further prosecute same. Counsel for GFI has advised us that GFI has filed the withdrawal of the application with the USPTO. Such a withdrawal should moot this matter and cause the USPTO to close the file on this application as having been withdrawn by the applicant and not further consider this mark for registration.

Third, in a consent order entered in connection with the settlement of the lawsuit referenced above, the Court has entered an order prohibiting the applicant from using the mark in question. A copy of the Settlement Agreement and the Stipulation for Consent Judgment and Permanent Injunction is attached.

For all these reasons, CAB LLC hereby opposes the registration of the referenced mark and respectfully requests that registration be denied.

09/10/2002 EP1WR1 00000066 76102426
01 FC:377 300.00 OP

MCLEOD, WATKINSON & MILLER

September 5, 2002
Page 2

Very truly yours,

MCLEOD, WATKINSON & MILLER

By: 

Richard T. Rossier

cc: Mr. James Riemann
Ms. Amanda Barstow

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SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into as of July 19, 2002, by and between Certified Angus Beef, LLC ("CAB") and American Angus Association ("American Angus"), on the one hand, and GFI America, Inc. ("GFI"), on the other.

WHEREAS, GFI commenced an action in the United States District Court for the District of Minnesota, Case No. 01-CV-1017 (the "Action") by filing a complaint seeking declaratory relief relating to its pending trademark applications; and

WHEREAS CAB filed a counterclaim for violations of the Federal Trademark (Lanham) Act of 1946, as amended 125 U.S.C. §§ 1051, *et seq.* (including trademark infringement, false designation of origin, and trademark dilution), and violations of the Minnesota Deceptive and Unfair Trade Practices Act, Minn. Stat. § 325D.43 *et seq.*; and

WHEREAS, CAB, American Angus, and GFI desire to and have agreed to resolve all claims and counterclaims asserted in the Action, without any admission of liability, on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby covenant and agree as follows:

I. AUTHORITY.

As conditions precedent to the execution of this Agreement, GFI, CAB, and American Angus represent and warrant as follows:

1. GFI is a duly organized and validly existing corporation under the laws of the State of Minnesota and has full authority to enter into this Agreement and to perform its

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obligations hereunder. The execution, delivery, and performance of this Agreement does not conflict with any other agreement, oral or written, to which GFI is a party;

2. CAB is a duly organized and validly existing limited liability company formed under the laws of the State of Delaware and has full authority to enter into this Agreement and to perform its obligations hereunder. The execution, delivery, and performance of this Agreement does not conflict with any other agreement, oral or written, to which CAB is a party;

3. American Angus is a duly organized and validly existing non-profit corporation formed under the laws of the State of Illinois and has full authority to enter into this Agreement and to perform its obligations hereunder. The execution, delivery, and performance of this Agreement does not conflict with any other agreement, oral or written, to which American Angus is a party

II. ENTRY OF ORDER.

1. The parties hereby agree that the Stipulation for Consent Judgment and Permanent Injunction, and Order ("Stipulation and Order") that is attached hereto as Exhibit A and incorporated herein by reference shall be executed by the parties and their counsel within five (5) business days of the final execution of this Agreement. CAB and American Angus shall file the Stipulation and Order with Clerk of the United States District Court for the District of Minnesota within two (2) business days after execution of same and the parties agree to take such further additional action as may become necessary to have the Stipulation and Order entered promptly by the Court.

2. The parties agree that they shall take no action to contest or appeal the court's entry of the Order.

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III. GFI TO DESIST FROM CERTAIN ACTIVITIES.

1. GFI agrees not use or seek to register the marks it had applied to register at the United States Patent and Trademark Office, specifically, "PRIDE OF THE DAKOTA'S, USDA CERTIFIED BLACK ANGUS BEEF," serial no. 76/102426; and "PRIDE OF THE DAKOTA'S, USDA CERTIFIED BLACK ANGUS BEEF & Design," serial no. 76/102427.

2. GFI has withdrawn its application for the marks identified as "PRIDE OF THE DAKOTA'S, USDA CERTIFIED BLACK ANGUS BEEF," serial no. 76/102426; and "PRIDE OF THE Dakota's, USDA CERTIFIED BLACK ANGUS BEEF & Design," serial no. 76/102427 and agrees not to file in the future any applications for federal registration for either of these marks.

3. GFI agrees not to use the mark "USDA CERTIFIED BLACK ANGUS BEEF."

4. GFI agrees not to use any mark that incorporates the words "CERTIFIED" and "ANGUS BEEF" in the same mark.

4. GFI agrees that if it decides to use a logo or mark that includes the word "CERTIFIED" and if it uses such mark or logo on any product labeled as "Angus Beef" or on the primary or secondary packaging for any such product, it will do so only on the following conditions: (1) the word "CERTIFIED" as used in such separate logo or mark does not appear on the same side or panel of the package or box (whether primary or secondary packaging) as the words "ANGUS BEEF;" (2) the word "CERTIFIED" as used in such separate logo or mark is part of a phrase containing at least four words; (3) the word "CERTIFIED" as used on that separate logo or mark is not the last word of the phrase; (4) the word "CERTIFIED" is used as an adverb, adjective, or verb; and (5) the word

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"CERTIFIED" appears in a font or typeface no larger than the other words of the logo or mark.

IV. RELEASES.

GFI, for itself and for its successors, assigns, and assigns, hereby unconditionally releases and forever discharges CAB and American Angus and their present and past agents, representatives, attorneys, servants, employees, officers, directors, licensees, successors, assigns, stockholders, and insurers, jointly and severally, of and from any and all claims, actions, causes of action, suits, demands, liabilities, and damages, whether known or unknown, suspected or unsuspected, accrued or unaccrued, in law, equity, or otherwise, which they ever had or now have against CAB or American Angus for, upon, or by reason of anything from the beginning of time to the date of this Agreement, which were or could have been asserted by GFI in the Action.

CAB, for itself and for its successors, assigns, and assigns, hereby unconditionally releases and forever discharges GFI and its present and past agents, representatives, attorneys, servants, employees, officers, directors, licensees, successors, assigns, stockholders, and insurers, jointly and severally, of and from any and all claims, actions, causes of action, suits, demands, liabilities, and damages, whether known or unknown, suspected or unsuspected, accrued or unaccrued, in law, equity, or otherwise, which they ever had or now have against GFI for, upon, or by reason of anything from the beginning of time to the date of this Agreement, which were or could have been asserted by CAB in the Action.

American Angus, for itself and for its successors, assigns, and assigns, hereby unconditionally releases and forever discharges GFI and its present and past agents, representatives, attorneys, servants, employees, officers, directors, licensees, successors, assigns, stockholders, and insurers, jointly and severally, of and from any and all claims, actions, causes of action, suits, demands, liabilities, and damages, whether known or unknown, suspected or

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unsuspected, accrued or unaccrued, in law, equity, or otherwise, which they ever had or now have against GFI for, upon, or by reason of anything from the beginning of time to the date of this Agreement, which were or could have been asserted by American Angus in the Action.

V. MISCELLANEOUS.

1. This Agreement and the Stipulation constitute the entire agreement between the parties in relation to the subject matter. No term or provision of this Agreement may be varied, changed, modified, waived or terminated orally, but only by an instrument in writing signed by the party against whom the enforcement of the variation, change, modification, waiver or termination is sought.
2. If any part or provision of this Agreement shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect the remaining terms of this Agreement and all remaining terms and obligations shall be binding on the parties hereto.
3. The parties enter into this Agreement as a full and complete settlement and compromise of all claims by the parties hereto which were made or could have been made in the Action prior to the date of this Agreement.
4. The parties represent and state that they are represented by counsel and have been fully informed and have knowledge of the terms, conditions, and effects of this Agreement. The parties further represent and state that no promise or inducement has been made except as is set forth in this Agreement.
5. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto, and their subsidiaries, divisions, affiliates, parent companies, successors, successors in interest, assigns, trustees, officers, directors, shareholders, agents, representatives, attorneys, insurers, and employees. There shall be no assignment, merger, or other transfer of this Agreement, or of any rights or obligations arising hereunder, without the prior written consent of

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all parties. The parties each agree that they shall cause all of their subsidiaries, parents, affiliated entities, and related entities to be bound by the terms and conditions set forth in this Agreement as if each such subsidiary, parent, affiliated entity, and related entity were a party to this Agreement, and shall take all steps necessary to provide notice to and otherwise reasonably inform such parties of the terms and requirements of this Agreement.

6. All terms of this Agreement are contractual and not mere recital.

7. All signatory parties hereto represent and warrant that they possess the full and complete authority to covenant and agree as herein provided and further represent and warrant that they have the full an complete authority to execute this Agreement for the purposes set forth herein.

8. This Agreement shall be deemed to be drafted jointly and approved by all parties and their respective counsel. Any ambiguity or uncertainty shall not be construed for or against any party based upon any attribution of drafting to any party.

9. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Minnesota.

10. This Agreement may be executed in duplicate originals.

IN WITNESS WHEREOF the parties hereto cause this Agreement to be signed in their respective names, each signature constituting a warranty that the Agreement is enforceable against each of the signatory parties.

CERTIFIED ANGUS BEEF, LLC

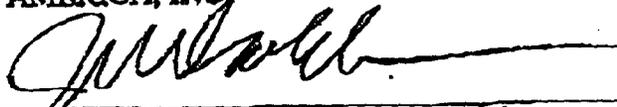
By: _____
Name:
Title:

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THE AMERICAN ANGUS ASSOCIATION

By: _____
Name:
Title:

GFI AMERICA, INC.

By: 
Name: Joseph M. Goldberger
Title: Executive VP

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8. This Agreement shall be deemed to be drafted jointly and approved by all parties and their respective counsel. Any ambiguity or uncertainty shall not be construed for or against any party based upon any attribution of drafting to any party.

9. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Minnesota.

10. This Agreement may be executed in duplicate originals.

IN WITNESS WHEREOF the parties hereto cause this Agreement to be signed in their respective names, each signature constituting a warranty that the Agreement is enforceable against each of the signatory parties.

CERTIFIED ANGUS BEEF, LLC

By: *M. James Riemann*

Name: *M. JAMES RIEMANN*

Title: *PRESIDENT*

THE AMERICAN ANGUS ASSOCIATION

By: _____

Name:

Title:

GFI AMERICA, INC.

By: _____

Name:

Title:

8. This Agreement shall be deemed to be drafted jointly and approved by all parties and their respective counsel. Any ambiguity or uncertainty shall not be construed for or against any party based upon any attribution of drafting to any party.

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10. This Agreement may be executed in duplicate originals.

IN WITNESS WHEREOF the parties hereto cause this Agreement to be signed in their respective names, each signature constituting a warranty that the Agreement is enforceable against each of the signatory parties.

CERTIFIED ANGUS BEEF, LLC

By: _____

Name:

Title:

THE AMERICAN ANGUS ASSOCIATION

By: John Crouch

Name: John Crouch

Title: Executive Vice President

GFI AMERICA, INC.

By: _____

Name:

Title:

1. From using the marks GFI has sought to register with the United States Trademark Office specifically described as “PRIDE OF THE DAKOTA’S, USDA CERTIFIED BLACK ANGUS BEEF,” Serial No. 76/102426; and “PRIDE OF THE DAKOTA’S, USDA CERTIFIED BLACK ANGUS BEEF & Design,” Serial No. 76/102427. GFI has withdrawn its applications for the registration of these two marks and is hereby enjoined from seeking federal registration for these marks in the future.
2. From using the mark “USDA CERTIFIED BLACK ANGUS BEEF.”
3. From using the mark “CERTIFIED ANGUS BEEF.”
4. From using the word “CERTIFIED” or any mark or logo that contains the word “CERTIFIED” on any product labeled as “Angus Beef” or primary or secondary packaging for any such product, except that GFI may use the word “CERTIFIED” or a logo or mark that contains the word “CERTIFIED” on the primary or secondary packaging for a product labeled as “ANGUS BEEF” provided that all of the following conditions are satisfied with respect to each use: (1) the word “CERTIFIED” as used in such separate logo or mark does not appear on the same side or panel of the package or box (whether primary or secondary packaging) as the words “ANGUS BEEF;” (2) the word “CERTIFIED” as used in such separate logo or mark is part of a phrase containing at least four words; (3) the word “CERTIFIED” as used on that separate logo or mark is not the last word of the phrase as it appears in that logo or mark; (4) the word “CERTIFIED” is used as either an adverb, adjective, or verb; and (5) the word “CERTIFIED” appears in a font or typeface no larger than the other words of the logo or mark; and it is

FURTHER ORDERED that this Court shall retain continuing jurisdiction over this action for the purpose of enforcing, if and as necessary, the provisions hereof and of the Settlement Agreement dated July 19, 2002, previously executed by the parties hereto; and it is

FURTHER ORDERED that in all other respects, this action is dismissed with prejudice, on the merits, and without costs or fees to either party.

CERTIFIED ANGUS BEEF, LLC

Dated: July 26, 2002

By: M. James Rieman
Name: M. JAMES RIEMANN
Title: PRESIDENT

AMERICAN ANGUS ASSOCIATION

Dated: July __, 2002

By: _____
Name: _____
Title: _____

Approved as to form:

MCLEOD, WATKINSON & MILLER

Dated: July __, 2002

By: [Signature]
Richard T. Rossier
One Massachusetts Avenue, N.W., #800
Washington, D.C. 20001
(202) 842-2345

Approved as to form:

FAEGRE & BENSON LLP

Dated: July __, 2002

By: [Signature]
Julie Knox Chosy (#229228)
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901
(612) 766-7000

CERTIFIED ANGUS BEEF, LLC

Dated: July ___, 2002

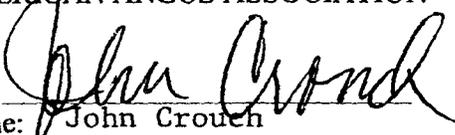
By: _____

Name:

Title:

AMERICAN ANGUS ASSOCIATION

Dated: July 26, 2002

By: 

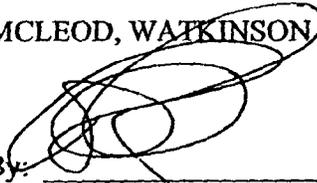
Name: John Crouch

Title: Executive Vice President

Approved as to form:

MCLEOD, WATKINSON & MILLER

Dated: July ___, 2002

By: 

Richard T. Rossier

One Massachusetts Avenue, N.W., #800

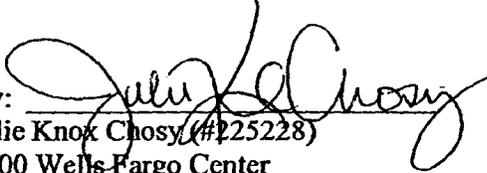
Washington, D.C. 20001

(202) 842-2345

Approved as to form:

FAEGRE & BENSON LLP

Dated: July ___, 2002

By: 

Julie Knox Chosy (#225228)

2200 Wells Fargo Center

90 South Seventh Street

Minneapolis, MN 55402-3901

(612) 766-7000

GFI America, Inc. v. Certified Angus Beef, LLC, et al., Civil No.: 01-1017 (MJD/JGL)

GFI AMERICA , INC.

Dated: July __, 2002

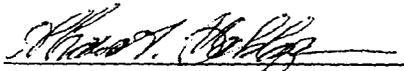
By: _____
Name:
Title:

Approved as to form:

FULBRIGHT & JAWORSKI L.L.P.

Dated: July __, 2002

August 2.

By: 
Alan M. Anderson (149500)
Sharna A. Wahlgren (241581)
225 South Sixth Street, Suite 4850
Minneapolis, MN 55402

IT IS SO ORDERED.

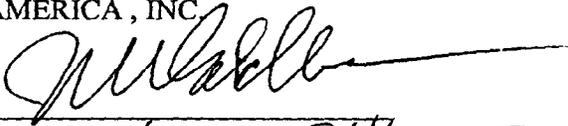
Dated: _____

MICHAEL J. DAVIS
U.S. DISTRICT COURT JUDGE

GFI America, Inc. v. Certified Angus Beef, LLC, et al., Civil No.: 01-1017 (MJD/JGL)

GFI AMERICA, INC

Dated: July 27, 2002

By: 

Name: Joseph M. Goldberger

Title: Executive VP

Approved as to form:

FULBRIGHT & JAWORSKI L.L.P.

Dated: July __, 2002

By: _____

Alan M. Anderson (149500)

Sharna A. Wahlgren (241581)

225 South Sixth Street, Suite 4850

Minneapolis, MN 55402

IT IS SO ORDERED.

Dated: Aug. 12, 2002



MICHAEL J. DAVIS

U.S. DISTRICT COURT JUDGE