

miscellaneous  
Ex parte

I HEREBY CERTIFY THAT THE CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO: COMMISSIONER FOR TRADEMARKS, P.O. BOX 1451, ALEXANDRIA, VIRGINIA 22313-1451, ON THE DATE INDICATED BELOW.

BY: Smarthia Tsif  
DATE: July 26, 2005

TTAB

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re	: Trademark Application of	:
	: FL Food Lion, Inc.	: Law Office 108
	:	:
For	: SIERRA MADRE	: Trademark Attorney
	:	: A. D. Saunders
Serial No.	: 76/577,945	:
	:	: Attorney Docket No.
Filed	: February 26, 2004	: 080996.0002(50)

**REQUEST UNDER 37 C.F.R. § 2.142(d) TO SUSPEND APPEAL AND REMAND FOR CONSIDERATION OF ADDITIONAL EVIDENCE**

On January 13, 2005, the examining Trademark Attorney made final the refusal to register Applicant's ("Food Lion") mark for Class 30, for "Authentic Hispanic-style foods, namely, salsas, rice, spices, candies, cookies, and tortillas" on the ground that Applicant's mark was confusingly similar to SIERRA MADRE PROVISION CO., *Supplemental* Registration No. 2,336,898, issued March 28, 2000, for "beef jerky", to James Schaft. On May 17, 2005, Food Lion filed a Request for Reconsideration, which was denied. On July 11, 2005, Food Lion's Notice of Appeal was instituted.

Food Lion submits herewith additional evidence in the nature of a Letter of Consent ("Letter") from Mr. James Schaft to Food Lion's use and registration of the subject mark for the goods covered under the above application, including in Class 30. Accordingly, Food Lion respectfully requests that the case be remanded to the examining Trademark Attorney for consideration of the additional evidence.



Food Lion respectfully submits that the attached Letter establishes the absence of any reasonable likelihood of confusion between the marks at issue. "The Court of Appeals for the Federal Circuit has made it clear that consent agreements should be given *great weight*, and that the Office should not substitute its judgment concerning likelihood of confusion for the judgment of the real parties in interest without good reason, that is, unless the other factors clearly dictate a finding of likelihood of confusion." *TMEP* § 1207.01(d)(viii) (emphasis added), *citing Amalgamated Bank of New York v. Amalgamated Trust & Savings Bank*, 6 U.S.P.Q.2d 1305 (Fed. Cir. 1988); *Bongrain International (American) Corp. v. Delice de France Inc.*, 1 U.S.P.Q.2d 1775 (Fed. Cir. 1987); and *In re N.A.D. Inc.*, 224 U.S.P.Q. 969 (Fed. Cir. 1985).

Respectfully submitted,

AKIN GUMP STRAUSS HAUER & FELD LLP

Date: July 26, 2005

By: David C. Lee  
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**ATTORNEYS FOR APPLICANT  
FL FOOD LION, INC.**

James Schaft  
Sierra Madre Provision Co.  
821 Skyland, Sierra Madre, California 91024  
Tel.: 626.914.6040  
Fax: 626.358.0546

July 14, 2005

Joseph A. Hayes III, Esquire  
FL Food Lion, Inc.  
2110 Executive Drive  
Salisbury, NC 28147

Re: Letter of Consent

Dear Mr. Hayes:

I own SIERRA MADRE PROVISION CO., Supplemental Registration No. 2,336,898, issued March 28, 2000, for "beef jerky".

FL Food Lion, Inc. ("Food Lion") owns SIERRA MADRE, Application Serial No. 76/577,945, filed February 26, 2004, for "Class 29: Hispanic-style foods, namely, processed beans, namely, refried beans, pinto beans, and black beans, and jalapeno peppers; Class 30: authentic Hispanic-style foods, namely salsas, rice, spices, candies, cookies, and tortillas; and Class 32: Hispanic-style beverages, namely fruit nectars". The U.S. Patent and Trademark Office ("PTO") has cited the Supplemental Registration No. 2,336,898 against Food Lion's above application for Class 30.

This letter will confirm that Food Lion and I have reviewed and considered information regarding the respective products offered or intended to be offered under the marks at issue as stated above. This letter confirms our agreement that there is no reasonable likelihood of confusion as to source, sponsorship or affiliation resulting from the concurrent use and registration of our respective marks, in connection with the parties' respective products, because the nature of the products are sufficiently different as to avoid any reasonable likelihood of confusion.

Therefore, I hereby consent to Food Lion's use and federal registration of SIERRA MADRE for the goods covered under Application Serial No. 76/577,945.

Notwithstanding that the parties believe that confusion is unlikely, if any instance of actual confusion comes to the attention of either party, the parties agree to promptly provide appropriate notice to the other and cooperate to address such confusion.

Joseph A. Hayes III, Esquire  
FL Food Lion, Inc.  
July 14, 2005  
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This letter may be submitted to the PTO in support of Food Lion's Application Serial No. 76/577,945. Should any modification of this letter of consent be necessary to secure acceptance of said application, the parties will sign a modified letter as may be reasonably required.

Very truly yours,

James Schaft  
President/Owner - Sierra Madre Provision Co.

A large, stylized handwritten signature in black ink that reads "James Schaft". The signature is written in a cursive style with a long horizontal line extending to the right from the end of the name.