

ESTTA Tracking number: **ESTTA513472**

Filing date: **12/28/2012**

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

| | |
|------------------------|--|
| Proceeding | 91208201 |
| Party | Defendant Fresh and Clean Greens Inc. |
| Correspondence Address | FRESH AND CLEAN GREENS INC. FRESH AND CLEAN GREENS INC. 5729 LEBANON RD # 144-401 FRISCO, TX 75034-7260 aprilarfa@live.com;davearfa@live.com |
| Submission | Answer |
| Filer's Name | April Arfa |
| Filer's e-mail | farmer@freshandcleangreens.com, aprilarfa@live.com |
| Signature | /April Arfa/ |
| Date | 12/28/2012 |
| Attachments | FACG_Trademark_Response 122812.pdf (9 pages)(457445 bytes) |

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

| | | |
|----------------------------|---|--|
| GIORGIFRED COMPANY |) | |
| |) | Opposition No: 91208201 |
| Opposer |) | |
| |) | |
| v. |) | |
| |) | |
| FRESH & CLEAN GREENS INC., |) |  |
| |) | |
| Applicant. |) | |
| |) | |

ANSWER TO NOTICE OF OPPOSITION WITH AFFIRMATIVE DEFENSE

Applicant, Fresh & Clean Greens Inc. hereby submits its Answer to the Notice of Opposition filed by Opposers, Giorgifred Company as follows, with the following numbered Paragraphs of the Notice of Opposition under the headings used in the Notice of Opposition:

1. Applicant is without knowledge or information sufficient to form a belief as to the accuracy in the statement made by the Opposer.
2. Applicant denies accuracy of data and provides corrected information of Paragraph 2. Fresh & Clean Greens denies the statement in the Giorgifred Company opposition letter for inaccurately describing the company. Please accept the following information as fact to replace the statement made.

Fresh & Clean Greens Inc. is a national company that operates out of Illinois and is also registered to do business in Texas. Fresh & Clean Greens Inc. is an agricultural organic soil and soilless grower of vegetative greens. The company's goal is to supply fresh, organically certified vegetable greens at cost efficient price to businesses. The mailing address is 500 N. Michigan Avenue South, #1415, Chicago IL 60611, 5729 Lebanon Rd 144-401, Frisco TX 75034 and has a growing facility at 7075 Elm Street, 2 South A, Frisco TX 75034.

3. Applicant denies the allegations of Paragraph 3. Giorgifred Company holds a trademark for specifically "Mushrooms" within International Class 031, U.S. Class 01 and 46. This does not

overlap the Fresh & Clean Greens Inc. application which is for products within International Class 29 and 31 (Fruit salads and vegetable salads; Pre-cut vegetable salad) nor U.S. Class 01 (Fresh fruit and vegetables) and which is for products not similar to “Mushrooms”. Also, the statement that Giorgifred Company “has been using Fresh n’ Clean” is vague and misleading. Giorgifred Company uses “Fresh n’ Clean” as a descriptor in conjunction with the Giorgio logo and only for their Mushroom line of products. The Giorgifred Company does not use “Fresh n’ Clean” as a standalone (without the Giorgio logo) name or branding element for any of the products listed on their website.

4. Applicant denies the allegations of Paragraph 4. Fresh and Clean Greens Inc. contest the accuracy of statement of “*owns all right, title and interest to incontestable*” as false and misleading.
5. Applicant denies the allegations of Paragraph 5. Fresh and Clean Greens Inc. contest the accuracy of statement of “*exclusive use*” “*has become famous*” as not factual and subjective. There is no concrete documentation that they are identified with just “Fresh n’ Clean”.
6. Applicant denies the allegations of Paragraph 6. Fresh & Clean Greens denies and contests Giorgifred Company’s declaration of “substantial goodwill throughout the United States” as subjective and bias. Giorgifred Company sells products that are not mushrooms and the company does not use the “Fresh n’ Clean” on any of its products outside mushrooms. Based on Trademark Act § 1(b), 15 U.S.C. § 1052(b). [Note 18.], Giorgifred Company has no grounds for opposing Applicant from registering the “Fresh & Clean Greens” trademark . These products include canned and packaged products that are not similar to products that Fresh & Clean Greens Inc. sells. At no time prior to the Trademark filing of Fresh & Clean Greens in 2011 did Giorgifred Company decide to trademark OR use the term “Fresh n’ Clean” for any of its other products outside mushrooms. Since there is no similarity in the visual appearance or audio sound between the Giorgifred Company’s *Giorgio Mushrooms Fresh n’ Clean* and Fresh & Clean Greens Inc., there will be no impact on Giorgifred Company.

7. Applicant denies the allegations of Paragraph 7. This statement is a duplicate of Paragraph 8. Applicant provides defense in Paragraph 8 and in the Second Affirmative Defense response noted in this letter.
8. Applicant denies the allegations of Paragraph 8. Fresh & Clean Greens Inc. company name or branding does not resemble Giorgifred Company's Fresh n' Clean mushrooms in sound or appearance and therefore each of these companies will not impact each other in the marketplace.
9. Applicant denies the allegations of Paragraph 9. Fresh & Clean Greens Inc. contest that it would need to ask permission of Giorgifred Company to use the Fresh & Clean Greens Inc. company name in the marketplace.
 - a. Fresh & Clean Greens did not need to request permission to use its company name due to the fact that there is no other company in the United States that uses or brands itself with the words "fresh and clean greens".
 - b. If a company was to describe their product (specifically pertaining to greens), that company would generally use the word "fresh" and or "clean" but NOT both.
 - c. The actual phrase is considered a grammatical error by creating a "double positive". This is one reason the phrase is generally not used as an adjective or descriptor.
 - d. Just in case another company does use "fresh and clean" as an adjective, Fresh & Clean Green's added a disclaimer in its trademark that another company's use is permissible as an adjective when it pertains to a product similar to Fresh & Clean Greens Inc.
10. Applicant denies the allegations of Paragraph 10. Fresh & Clean Greens Inc., denies the statement made by Giorgifred Company that there would be a likelihood of confusion and dilution pertaining to 15 U.S.C § 1052(d) and (f). In addition, Fresh & Clean Greens Inc. does not see evidence that the Giorgifred Company has "superior rights" to use the word or phrase "Fresh n' Clean" except pertaining to mushrooms, the class of goods in which they filed their trademark.

| | | |
|----------------------|---------------------|----------------------------|
| For: | mushrooms | |
| International Class: | 031 - Primary Class | U.S Class: 001, 046 |
| Class Status: | ACTIVE | |
| Basis: | 1(a) | |
| First Use: | Jul. 2003 | Use in Commerce: Jul. 2003 |

Giorgio registered “Fresh n’ Clean” under class 31 and 45, specifically for mushrooms only. Mushrooms are not vegetables, fruits or greens. They are categorized as fungus by the Federal Government in multiple offices.

INJURY TO OPPOSERS

11. Applicant is without knowledge or information as to the Opposers’ *belief* that they will be damaged by the registration of the Applicant’s mark upon the Principal Register. Applicant *denies that such registration and use will cause confusion in the marketplace* over oral, audio, written name or branding of products of Giorgifred Company’s products.

FIRST AFFIRMATIVE DEFENSE – PRODUCT WITHIN CLASS OF GOODS

As and for a First Affirmative Defense, Applicant states that Opposers marks “Fresh n’ Clean” U.S. Serial Number 76422175, U.S. Registration Number 2795863 for “Mushrooms” in International Class 031 and U.S. Class 01 and 46 is not “similar” to Fresh & Clean Greens Inc. Applicant U.S. Serial Number 85500520 for either name or products within International Class 29 and 31 nor U.S. Class 01 and which is for products not similar to “mushrooms”. The category in which Giorgifred Company has trademarked “Fresh n’ Clean” is specifically for mushrooms. Giorgifred Company specifies that Fresh & Clean Greens Inc., “fresh fruit and vegetables” is being opposed. The specific item that Giorgifred Company filed a trademark for is “mushrooms” which is not in the same species of plants as fresh fruit and vegetables. (SITE) Giorgifred Company owns the rights to use specifically “Fresh n’ Clean” unstylized U.S. Reg. No. 2,795,863 in connection with “mushrooms” only. As detailed on the USDA website (<http://usda.mannlib.cornell.edu>), mushrooms are not recognized as part of the same vegetative,

agriculture nor consumer marketing categories as green leafy vegetation. Giorgifred Company does not currently have a trademark pending to expand “Fresh n’ Clean” to be for products outside “mushrooms”.

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SECOND AFFIRMATIVE DEFFENSE – APPEARANCE OF NAME OR LOGO

In prosecuting the Applicant Fresh & Clean Greens Inc. from registering, the Giorgifred Company alleged that the trademarks are similar in audio sound and appearance. Fresh & Clean Greens denies the statement that the company name mirrors Giorgifred Company’s Mushrooms Fresh n’ Clean in audio sound and visual appearance. This suite has no merit. In addition, Giorgifred Company has not shown any attempt to use “Fresh n’ Clean” for any other products in that marketing place other than “mushrooms” as stated in Trademark Act § 1(a), 15 U.S.C. § 1051(a).

[Note 17.].

- a. The word “Greens” is always with Fresh & Clean.
- b. The ampersand is always used on the name or may be type with the word spelled out as “and”.
- c. Fresh & Clean Greens Inc. uses “fresh & clean” only with greens because that is the company name. If the word “greens” is removed, then it would be “fresh & clean” and a consumer would have no idea if it was a carpet, pet cleaner or a detergent of some type.
- d. Giorgio Company uses “Fresh n’ Clean” as a descriptive adjective of their product. If Giorgifred Company decided to market products that fall in the vegetative greens the names would probably mirror the same use method. Examples include but are not limited to:
 - i. Giorgio Fresh n’ Clean Jalapenos
 - ii. Giorgio Fresh n’ Clean Haricots
 - iii. Giorgio Fresh n’ Clean Sweet Peas

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- e. The Fresh & Clean Greens logo visual appearance is customized and completely different from Giorgio Fresh n' Clean Mushroom.



Giorgio Fresh n' Clean

vs

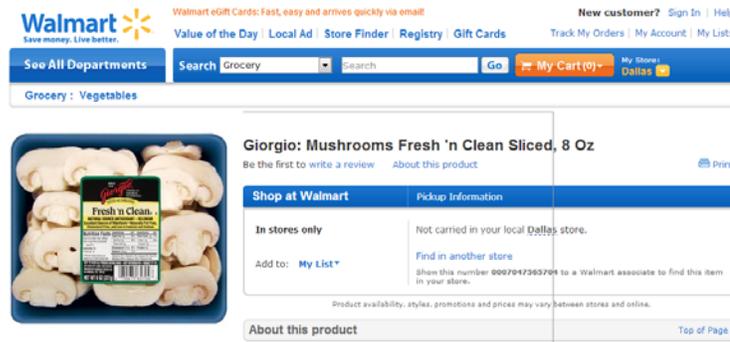


Fresh & Clean Greens

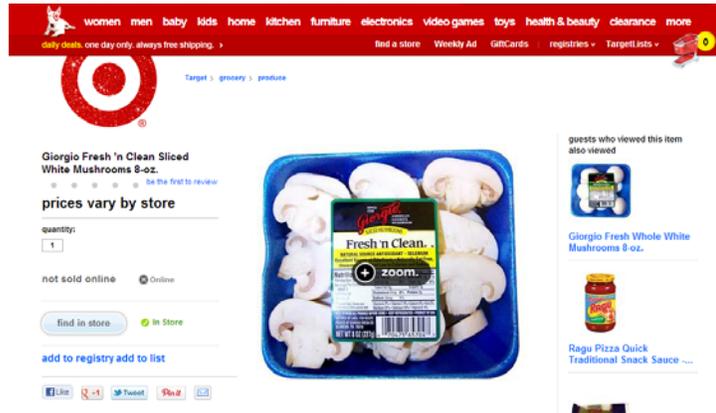
THIRD AFFIRMATIVE DEFFENSE – MARKETPLACE CONFUSION

The Applicant Fresh & Clean Greens Inc. denies all claims that there will be confusion in the marketplace with Giorgifred Company’s Mushroom product based on Trademark Act § 2(d), 15 U.S.C. § 1052(d). In addition, all listings of Giorgifred Company’s mushroom product that utilizes the “Fresh n’ Clean” tag line includes the Giorgifred Company’s logo in either design style or text. In all publically accessible resources, Fresh & Clean is always in conjunction with the Giorgio company name. Please see exhibit a., b. and c. below. Therefore, it can be said that Giorgifred Company is attempting to monopolize the phrase “Fresh n’ Clean” in that marketplace of all food categories. In addition Giorgifred Company is using “Fresh n’ Clean” as an adjective based on Trademark Act § 2(e), 15 U.S.C. § 1052(e).

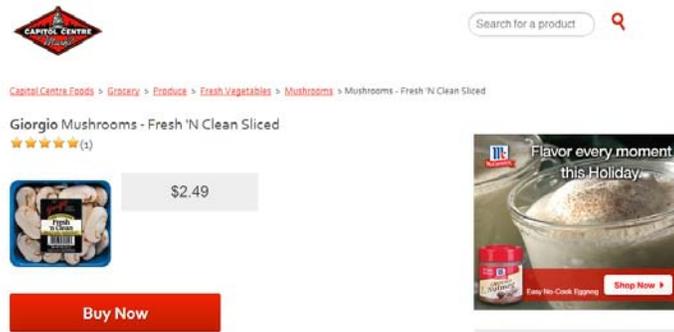
- a. Giorgio: Mushrooms Fresh n’ Clean sliced.



b. Giorgio Mushrooms Fresh n' Clean sliced.



c. Giorgio Mushrooms - Fresh n' Clean sliced.



Giorgifred Company's "Fresh n' Clean" Sliced Mushrooms and Fresh & Clean Green's products designed branding, text branding and company names are completely different. Giorgifred Company uses of "Fresh n' Clean" in conjunction with its Giorgifred Company logo. If Giorgifred Company decided in the future to brand product without their company name or logo, they may cause consumer confusion of product category. Since "Fresh n' Clean" is used in over 11 other category of goods. Therefore, if Giorgifred Company would want to keep product distinctive, they would need to use their branded company name "Giorgio". Giorgifred Company does not offer fruit salads, vegetable salads, pre-cut vegetable salad and fresh fruit and vegetables in commerce currently. Fresh & Clean Greens

is the company name and primary branding element for a company whose goods are distinctively greens, vegetation that are grown by the company Fresh & Clean Greens Inc.

WHEREFORE, Applicant does not see a legal basis for the Notice of Opposition filed by Giorgifred Company. Applicant respectfully request that the Notice of Opposition be rejected by the Trademark Trial and Appeal Board and that Applicant's mark be allowed to proceed to registration. Applicant respectfully request Opposer, to withdrawn opposition immediately.

Respectfully submitted,

By: 
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Fresh & Clean Greens Inc.
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Email: farmer@freshandcleangreens.com

Date: December 28, 2012

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing Answer to Notice of Opposition with Affirmative Defenses was served upon Opposers by depositing a copy of the same I the United States mail, first class postage prepaid, on this 28th day of December, 2012, addressed to:

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April Arfa