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Filing date: **01/21/2013**

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	01/21/2013
Attachments	FACG_Trademark_Meeting_Request_012013.pdf ( 6 pages )(788623 bytes )

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Mr. Majaewski  
Ms. Parson  
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**April Tomasko-Arfa**  
312 622 7377  
farmer@freshandcleangreens.com

7075 Elm Street, 2 South B  
Frisco, TX 75034  
www.FreshandCleanGreens.com

January 20, 2013

**VIA E-MAIL AND FIRST CLASS MAIL**

Bassam.ibrahim@bipc.com

Mr. Bassam N. Ibrahim  
Buchanan Ingersoll Rooney PC  
1737 King Street, Suite 500  
Alexandria, VA 22314-2727

*Request for  
Immediate Withdrawal of Opposition  
With Prejudice*

P.O. Box 1404  
Alexandria, VA 22313-1402

**VIA FIRST CLASS MAIL**

Can Corporation of America Inc  
John Majaewski, President  
Brenda Parson  
326 June Avenue  
Blandon, PA 19510

Giorgio Foods, Inc.  
Phillip Impink, CFO  
P.O. Box 96  
Temple, PA 19560

Re: Opposition of FRESH & CLEAN GREENS & Design  
Opposition No. 91208201  
U.S. Trademark Application Ser. No. 85/500, 520  
Our Reference: 301-011913



Dear Mr. Ibrahim (Giorgifred Company Representing Attorney):

Fresh & Clean Green's Inc. (FACG) acknowledges receipt of the Giorgifred Company's request to hold a meet-and-confer to discuss discovery procedure and settlement no later than February 6, 2013.

April Tomasko-Arfa, CEO and President of FACG can be made available Monday February 4<sup>th</sup> or Tuesday February 5<sup>th</sup> between 11:00 a.m. and 3:00 p.m. CST for a conference call to last no more than one hour. Please confirm meeting date and time via email to Ms. Tomasko-Arfa at Farmer@freshandcleangreens.com by 2:00p.m. CST on Tuesday, January 22, 2013. Ms. Tomasko-Arfa can be easily reached for conference at (312) 622-7377.

FACG is formally requesting a Trademark Appeal Board interlocutory attorney or administrative trademark judge to participate in the proposed Meet-And-Confer conference for Opposition No.

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91208201. We have notified Benjamin U. Okeke ((571)270-1524) of the Trademark and Appeal Board of our interest in having him or an appropriate associate attend the conference. Once there is an exact time and date of the conference, FACG will follow with Mr. Okeke.

FACG contest the statement made in the Giorgifred Company letter that Fresh N' Clean is one of Giorgifred's most valuable brands as subjective. As stated in the FACG Opposition Answer letter, there is no documentation filed with the United States Patent and Trademark Office that shows Giorgifred Company filing for "Fresh & Clean" or "Fresh N' Clean" for any product categories other than mushrooms. Also, cited below Giorgifred Company uses "Fresh" and "Fresh N' Clean" in conjunction with their company abbreviated name "Giorgio" for specifically mushrooms which is what they are legally allowed to use. Through discovery, FACG identified that there is a Giorgio Fresh Company in existence under the Giorgifred Company umbrella which sells mushrooms that are identified as "Fresh". The word "Fresh" is in the same location as the trade dress as Giorgio "Fresh N' Clean", please see exhibits A-F below. So, is the value with the descriptor "Fresh" which is not trademarked or "Fresh N' Clean" which is marketed in the same way? Either way, the FACG products do not look, sound or resemble Giorgifred Company products in anyway.

### Giorgio Fresh Oyster Mushrooms

★★★★★(0)



\$3.29

Exhibit A <http://www.shoprite.com/pd/Giorgio/Fresh-Oyster-Mushrooms/3-50-oz/033383675213/>

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Exhibit B

<http://www.price2watch.com/walmart/grocery/vegetables/giorgio-mushrooms-fresh-sliced-baby-bella-8-oz/p/5427500>

## Giorgio: Mushrooms Fresh Baby Bella, 8 Oz



Sold by:  Walmart 

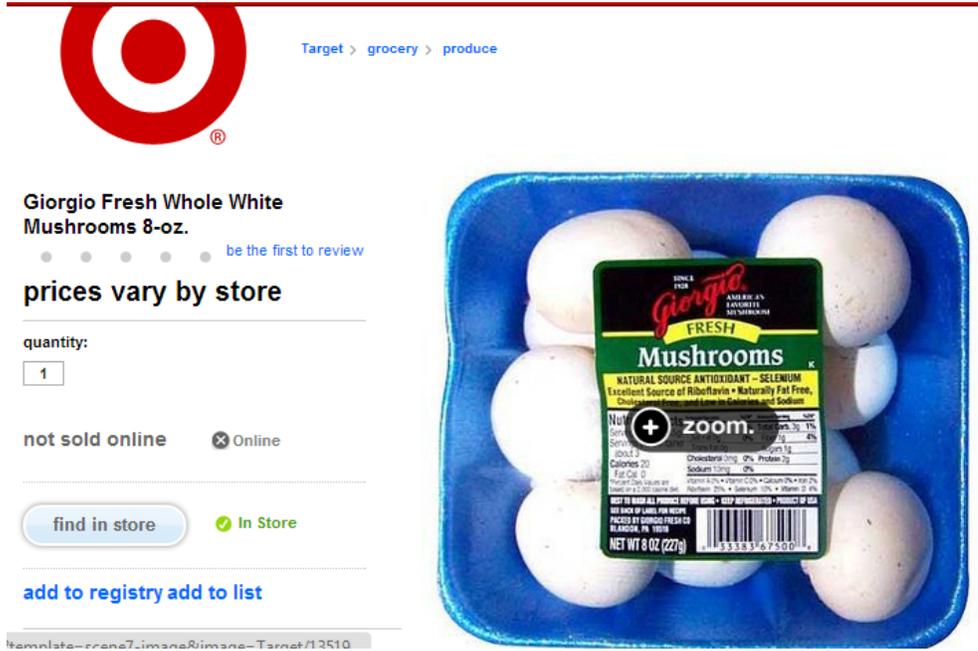
Code: 070475656064

Out of Stock

## Description

Item Description Giorgio Fresh Baby Bella Mushrooms, 8 oz America's favorite mushroom-- since 1928 Do you have questions about this product? Ask a question.

Exhibit C <http://www.price2watch.com/walmart/grocery/vegetables/giorgio-mushrooms-fresh-baby-bella-8-oz/p/5301918>



Target > grocery > produce

**Giorgio Fresh Whole White Mushrooms 8-oz.**  
be the first to review

prices vary by store

quantity:

not sold online  Online

In Store

[add to registry](#) [add to list](#)



Exhibit D <http://www.target.com/p/giorgio-fresh-whole-white-mushrooms-8-oz/-/A-13519319>



Exhibit E [http://www.walmart.com/browse/grocery/fresh-food/giorgio/976759\\_1071964/YnJhbmQ6R2lvcmdpbwieie?refineresult=true](http://www.walmart.com/browse/grocery/fresh-food/giorgio/976759_1071964/YnJhbmQ6R2lvcmdpbwieie?refineresult=true)

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[Giorgio Organic Sliced Mushro...](#)

**\$21** [Coupons](#)

Exhibit F <http://www.thefind.com/food/info-sliced-mushrooms>

FACG has reviewed the Giorgifred Company U.S. Trademark Registration No. 2,795,863 for “Fresh N’ Clean” pertaining to the notation about being incontestable of their mark. FACG addressed the use of “Fresh N’ Clean” as a descriptor to highlight how both companies have completely different names all together, are not similar in trade dress and do not have competitive products.

After review of the cited case *Park ‘N Fly v. Dollar Park & Fly Inc., 469 U.S. 189 (1985)*, FACG does not see that this case is relevant to the Giorgifred Company Opposition #9120821. Both companies noted in the cited case offered the same exact services, had similar full company names, similar trade dress and were in close geographic proximity to each other. *Giorgio Mushrooms Fresh N’ Clean* is nothing like *Fresh & Clean Greens* as noted in the FACG answer filed in the opposition

FACG disputes the “without prejudice” noted on the meeting request letter because the letter is not a genuine attempt to resolve the opposition. FACG does not see a legal basis for the Giorgifred Company Opposition #91208201 and will not discuss any type of settlement during the conference or in any communication preceding the conference. The settlement options put forth for settlement #1-4 in the recent meeting request letter open the door for trademark infringement of other companies that do use “Fresh” or “Clean”. Maybe, this is why Giorgifred Company has not trademarked “Fresh” but is using it the same as their trademarked “Fresh N’ Clean” for the specific category of “mushrooms”. The settlement bullets are illogical. Bullet #1 says for FACG to adopt an alternative to using “Fresh” OR “Clean”, but on bullet #4 FACG must refrain from the use of “Fresh” and “Clean” or variations thereof. Bullet #1 is a variation. Also, if FACG decided to use “Fresh” only, it would then be using the same word as seen in the Giorgio “FRESH” mushrooms exhibits above.

Fresh & Clean Greens is the company name of FACG. FACG denies all accusations made by Buchanan Ingersoll Rooney PC on the behalf of Giorgifred Company. FACG is the product of years of research and development of the company’s brand by its owners, which are very familiar with marketing,

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branding, compliance, federal regulations, copyright law, trademark law and growing. Since there is no possible way for FACG to infringe upon any of the Giorgifred Company registered marks, FACG finds this trademark ordeal obtrusive to its company workflow and overall business. The request of the Giorgifred Company have no legal merit, unless Giorgifred Company has decided that it wants to adopt the name "Fresh & Clean Greens," redress their brand, capitalize on the success of Fresh & Clean Greens Inc. and tap into the microgreens, leafy greens and salad greens marketplace in the future.

FACG believes that the Trademark Appeal Board Team with their expertise will make the decision based on unbiased facts and laws. **To immediately resolve this issue, FACG requests that Giorgifred Company files a withdraw of its opposition and immediately cease unnecessary interference and harassment with the FACG trademark application filing.**

This letter is with prejudice and is filed with the U.S Trademark & Appeal Board Opposition #91208201.

Regards,

A handwritten signature in black ink, appearing to read "April Arfa", written in a cursive style.

April Tomasko-Arfa