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08-06-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #71

Law Office of
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August 1, 2003

Office of the Commissioner For Trademarks
2900 Crystal Drive
Arlington, Virginia 22202

RE: Conchita Foods, Inc., Petitioner v. Fritas
Encanto de Monterrey, S.A. de C.V.,
Registrant
Cancellation No. 32853
Serial No. 2,105,538

Dear Sir/Madam:

Enclosed herewith, please find the following documents regarding the above-referenced matter:

- a. Amended Answer or in the Alternative Motion to Dismiss
- b. Order on Motion to Dismiss

A self-addressed stamped envelope is enclosed for your convenience in returning a file-stamped copy to this office.

Thank you for your assistance.

Sincerely,

RICHARD R. RODRIGUEZ

RRR/rcv

Enclosures

xc: Mr. Jesus Sanchelima, 235 S.W. Le Jeune Rd., Miami, Florida 33134

COMMUNICATIONS SECTION
AUG 1 2003

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

In the Matter of Registration No. 2,105,538
For the Mark: CONCHITAS
For: Corn Chips

Conchita Foods, Inc.
Petitioner,

v.

Cancellation No. 92032853

Fritos Encanto de Monterrey, S.A. de C.V.
Registrant

Amended Answer or in the Alternative Motion to Dismiss

Comes Now Fritos Encanto de Monterrey S.A. de C.V., Registrant in the above mentioned Cause and files his motion to Amend Answer or in the Alternative Motion to Dismiss.

I.

Fritos Encanto de Monterrey S.A. de C.V., moves that the Trademark Trial and Appeal Board dismiss Petitioner's Cancellation proceedings. Petitioner's actions are not permitted by statute since Petitioner did not file timely.

II

Facts

On October 14, 1997, the U.S. Patent and Trademark Office issued a Certificate of Registration for the mark "CONCHITAS". Registration No. is 2,105,538. Petitioner filed their "Petition for Cancellation" on August 8, 2002. Petitioner later paid their filing fee on October 22, 2002. According to statute the new filing date for the Petition for

#1

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

In the Matter of Registration No. 2,105,538
Registration date: October 13, 1997
For the Mark: CONCHITAS
For: corn chips



08-02-2002

U.S. Patent & TMO/TM Mail Rpt Dt. #01

Conchita Foods, Inc.,
Petitioner,

v.

Cancellation No. 32,853

Fritas Encanto de Monterrey, S.A. de C.V.
Registrant.

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TRADEMARK TRIAL AND
APPEAL BOARD

PETITION FOR CANCELLATION

Conchita Foods, Inc., a corporation of Florida, with its principal place of business at 9115 N.W. 105 Way, Medley, Florida 33178, believes that it is, and will be, damaged by the above- identified registration of the mark and hereby petitions to cancel the same.

As grounds for cancellation, it alleges that:

1. Registrant is a Mexican entity.
2. On January 11, 2002, Petitioner filed a trademark application for CONCHITA and design, for food products in international class 29, 30, 32, and 33, serial number 78/101,624.

10/22/2002 ZCARRITH 00000044 190129 2105538

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EXHIBIT
"A"

3. An Office Action was issued on April 18, 2002, refusing registration of Petitioner's mark application under the Trademark Act, Section 2(d), 15 U.S.C. Section 1052(d), because Registrant's mark **CONCHITAS** so resembles the mark in Petitioner's application as to be likely to cause confusion, to cause mistake, or to deceive. TMEP §§1207.01 *et seq.*

4. Petitioner has superior rights to the mark **CONCHITA** based on prior and continuous use in commerce of the mark **CONCHITA** for food products for decades.

5. Registrant's above-identified mark so resembles Petitioner's mark as to be likely, when used in connection with Registrant's goods cited in its registration, to cause confusion, or to cause mistake, or to deceive, as to the source or sponsorship of the goods in question.

6. Registrant has not used the mark **CONCHITAS** in commerce, as regulated by the United States Congress.

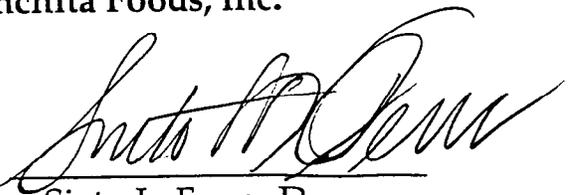
7. Registrant has abandoned all mark rights for **CONCHITAS** it ever had, if any.

8. For the aforesaid reasons, Petitioner is being damaged by the registration of the mark identified above.

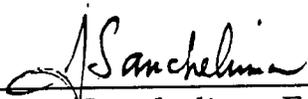
WHEREFORE, Petitioner prays that said Registration No. 2105538 be cancelled.

his I, Sixto L Ferro, hereby state that all statements made herein of her own knowledge are true and all statements made on information and belief are believed to be true; and further, that these were made with the knowledge that willful, false statements and the like so made a punishable by fine or imprisonment or both, under Section 1001 of Title 18 of the United States Code and that such willful, false statements may jeopardize the validity of any registration granted on the above petition.

Conchita Foods, Inc.

By: 
Sixto L. Ferro, Pres.

Attorneys for Petitioner:


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92032853

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

In the Matter of Registration No. 2,105,538
For the Mark: CONCHITAS
For: Corn Chips

Conchita Foods, Inc.
Petitioner,

vi.

Cancellation No. 92032853

Fritos Encanto de Monterrey, S.A. de C.V.
Registrant

ORDER

After considering the record and all of the evidence, the Trademark Trial and Appeal Board hereby orders that the Cancellation Proceedings _____ cease or _____ continue.

JUDGE PRESIDING