

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3514

Goodman

Mailed: March 19, 2004

Cancellation No. 92032853

CONCHITA FOODS, INC.

v.

FRITAS ENCANTO DE MONTERREY,
S.A. DE C.V

Before Simms, Cissel and Drost, Administrative Trademark
Judges.

By the Board:

This case now comes up on petitioner's motion for reconsideration, filed February 9, 2004, which requests the Board reconsider the dismissal of the allegation of likelihood of confusion as untimely due to the filing fee being paid after the fifth year anniversary of the registration. Respondent has not filed a response thereto.

In support of its motion, petitioner advises that it faxed a copy of its request to charge its deposit account on September 6, 2002 to cover the filing fee for the petition to cancel, and this was acknowledged by a Board legal assistant. Petitioner has provided proof of receipt by the

Board on September 11, 2002 of its September 6, 2002 facsimile.¹

Inasmuch as the evidence establishes that the fee for the petition to cancel was paid prior to the fifth year anniversary of the involved registration, the striking of petitioner's allegations of likelihood of confusion was in error. In view thereof, petitioner's motion for reconsideration is granted, and the Board order of January 22, 2004 is vacated in part to the extent that the allegation of likelihood of confusion in the petition to cancel is reinstated. Accordingly, the petition to cancel will go forward on both claims for abandonment and likelihood of confusion.

Discovery and trial dates are reset as follows:

DISCOVERY PERIOD TO CLOSE:	May 28, 2004
30-day testimony period for party in position of plaintiff to close:	August 26, 2004
30-day testimony period for party in position of defendant to close:	October 25, 2004
15-day rebuttal testimony period for party in position of plaintiff to close:	December 9, 2004

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served

¹ The deposit account was not charged until October 22, 2002, which was after the fifth year anniversary of the registration (October 14, 2002).

on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.