

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

In the matter of Trademark Registration No. 1484747  
Registered on: April 12, 1988  
For the Mark "JACK'S OF LOMBARD STREET"

JACK'S FAMILY RESTAURANTS, INC.	)	
	)	
Petitioner,	)	
	)	Cancellation No. _____
v.	)	
	)	
J.F.S., INC.	)	
	)	
Registrant.	)	
	)	

ASSISTANT COMMISSIONER FOR TRADEMARKS  
2900 Crystal Drive  
Arlington, VA 22202-3513

**PETITION FOR CANCELLATION**

Jack's Family Restaurants, Inc. ("Jack's"), an Alabama corporation having its principal place of business at 133 West Oxmoor Road, Suite 215, Homewood, Alabama 35209, by and through its attorneys, believes that it is and will continue to be damaged by the above-identified mark and hereby requests cancellation of the same. Allegations with respect to Jack's are based upon actual knowledge. Allegations with respect to Jack's Food Systems, Inc. and J.F.S., Inc. are based upon information and belief.

As grounds in support of its motion, Jack's asserts as follows:

1. Jack's first started using the trade name and mark JACK'S in connection with restaurant services since at least as early as November 23, 1960.

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2. Since its first use of JACK'S, Jack's has continuously used that name and mark in connection with its restaurants. Jack's has also used its JACK'S name and mark on various food and beverage items, collateral products, and promotional materials.

3. Jack's is the owner of, *inter alia*, Registration No. 793082 for the mark "JACK'S" and Registration No. 1002373 for the mark "JACK'S and Design," both marks registered for restaurant services. These registrations are valid, subsisting, and incontestable.

4. On January 16, 1987, Jack's Food Systems, Inc. filed the mark JACK'S OF LOMBARD STREET for federal trademark protection. The mark was registered on April 12, 1988.

5. Jack's Food Systems, Inc. disclaimed LOMBARD STREET in its registration. Consequently, JACK'S is the only portion of the mark claimed as an indicator of source.

6. The mark JACK'S OF LOMBARD STREET is registered under the following categories of goods and services: delicatessen, catering, restaurant and carry-out food services. These categories exactly or closely match the categories of goods and services used by Jack's for its registered mark JACK'S, which includes restaurant services.

7. Since its first use of its JACK'S name and mark, Jack's has extensively advertised and promoted its name and mark, products, and services.

8. Jack's has established considerable and valuable trademark rights and goodwill in its JACK'S name and mark by virtue of its long use of that name and mark, its substantial promotional and marketing efforts, its expenditure of vast sums in

advertising and promotional activities, the strong sales of products offered in connection with the name and mark, and third-party acclaim and attention.

9. The continued registration of another JACK'S mark in the food service business is likely to cause consumer confusion and also to dilute the distinctive quality of Jack's' marks.

10. Jack's Food Systems, Inc. was incorporated in Maryland on August 6, 1986.

11. Jack's Food Systems Inc.'s resident agent resigned on April 26, 1993.

12. Jack's Food Systems Inc. forfeited proclamation of the department on October 6, 1998 for failure to file a personal property return due on April 15, 1997.

13. The corporate identify of Jack's Food Systems, Inc. has been forfeited.

14. The last listed owner of the JACK'S OF LOMBARD STREET mark is listed as J.F.S., Inc.

15. J.F.S., Inc. was incorporated in Maryland on January 31, 1992.

16. J.F.S., Inc.'s resident agent is The Corporation Trust Incorporated, 300 E. Lombard Street, Baltimore, Maryland 21202.

17. The corporate identity of J.F.S., Inc. has been forfeited.

18. Jack's of Lombard Street, once a restaurant, is no longer in existence.

19. 15 USC § 1065 allows a mark registered more than five years to become incontestable "[e]xcept on a ground for which application to cancel may be filed at any time under . . . 15 USC § 1064(3), (5)."

20. 15 USC § 1064(3) states that "[a] petition to cancel a registration of a mark, stating the grounds relied upon, may . . . be filed . . . by any person who believes

that he is or will be damaged, including as a result of dilution . . . [a]t any time if the registered mark . . . has been abandoned.”

21. The forfeiture of the corporate forms of Jack’s Food Systems, Inc. and J.F.S., Inc. and the closing of Jack’s of Lombard Street constitute abandonment of the mark JACK’S OF LOMBARD STREET.

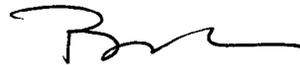
22. The registration at issue so resembles Jack’s’ previously used and registered JACK’S name and mark as to be likely to cause confusion, or to cause mistake, or to deceive under Section 2(d) of the Lanham Act, as amended 15 U.S.C. § 1052(d).

23. For the foregoing reasons, Jack’s is and will continue to be damaged by the maintained registration of JACK’S OF LOMBARD STREET.

WHEREFORE, Jack’s requests that the registration for JACK’S OF LOMBARD STREET be cancelled, and this petition be sustained.

Respectfully submitted,

Jack’s Family Restaurants, Inc.  
by:



Dated: October 28, 2003

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

TRANSMITTAL LETTER (GENERAL)  
(With Certificate of Mailing by Express Mail)

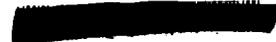
Applicant/Registrant: **Jack's Family Restaurants, Inc.**  
Serial No.:  
Registration No.: **793082**  
Trademark: **JACK'S**

Docket No.  
**jacks 4**

TO THE COMMISSIONER FOR TRADEMARKS:

Transmitted herewith is/are the following document(s):

**Petition for Cancellation (in duplicate)**



10-29-2003

U.S. Patent & TMO's TM Mail Rcpt Dt. #39

- No fee is required.
- Please charge Deposit Account No. \_\_\_\_\_ in the amount of \_\_\_\_\_
- A check in the amount of **\$300.00** is attached.  
Any excess or insufficiency should be credited or debited to Deposit Account No. \_\_\_\_\_

*Signature*

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Dated: 10-28-03

I certify that this document and fee is being deposited on **October 28, 2003** with the U.S. Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. 1.10 and is addressed to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514.

*Signature of Person Mailing Correspondence*

**Donita King**

*Typed or Printed Name of Person Mailing Correspondence*

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