

TRADEMARK

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

MINNESOTA MONTHLY PUBLICATIONS INC)
)
 Petitioner,)
) Registration No. 2,857,927
 v.)
) Cancellation No. _____
 FRESH MARKET COMPANY LLC)
)
 Registrant.)
 _____)

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

PETITION FOR CANCELLATION OF
REGISTRATION NO. 2,857,927

In the matter of U.S. Trademark Registration No. 2,857,927, registered June 29, 2004, by Fresh Market Company LLC, a Colorado corporation, 101 Pearl Street, Boulder, Colorado 80302 (hereinafter referred to as "Registrant") for goods in Class 16;

Minnesota Monthly Publications Inc, a Minnesota corporation having its principal place of business at 600 US Trust Building, 720 Second Avenue South, Minneapolis, Minnesota 55402 (hereinafter referred to as "Petitioner") believes that it is being or will be damaged by said registration and hereby petitions to cancel the registration.

The grounds for cancellation are as follows:

1. Registrant is the owner of U.S. Registration No. 2,857,927 for "REAL FOOD" for "periodical publications and brochures, namely magazines and newsletters that pertain to natural food and natural products" in International Class 16.

2. Petitioner has filed an intent-to-use trademark application, Serial No. 78/556,856 for the mark "REAL FOOD" for "magazines featuring lifestyles and organic foods" in International Class 16.

3. Petitioner has investigated the continued use of the mark "REAL FOOD" by Registrant, and has determined and alleges, upon information and belief, that the mark referred to in Registration No. 2,857,927 is not in use and has been abandoned by Registrant.

4. It is further alleged, upon information and belief, that the mark "REAL FOOD" referred to in Registration No. 2,857,927 has not been in continuous use for more than three years prior to the date of this Petition.

5. Section 45 of the U.S. Trademark Act, 15 U.S.C. §1127, provides that non-use of a mark for three consecutive years shall be prima facie evidence of abandonment. Furthermore, the use of a mark is defined as the bona fide use of that mark in the ordinary course of trade, and not merely the reservation of a right in a mark. Id. Petitioner therefore requests cancellation of Registration No. 2,857,927, under Section 14 of the U.S. Trademark Act, on the grounds of abandonment of the mark by the Registrant.

6. The continued existence of Registration No. 2,857,927 for the mark "REAL FOOD" will damage Petitioner in that it will create legal uncertainty with respect to Petitioner's own intended use of the mark "REAL FOOD". In addition, the continued existence of Registration No. 2,857,927 is likely to prevent Petitioner from obtaining its own U.S. trademark registration for the mark "REAL FOOD" for "magazines featuring lifestyles and organic foods" based upon Petitioner's currently pending intent-to-use application.

WHEREFORE, Petitioner requests the cancellation of said Registration No. 2,857,927.

Please deduct the required filing fee of \$300.00 from our Deposit Account 500996 (MNMO.110TA) for this Petition for Cancellation. Authority is given to charge/credit additional fees/overages to complete this filing.

The undersigned hereby appoints Linda M. Byrne, Reg. No. 32,404; Robert Crawford, Reg. No. 32,122 ; Eric Curtin, Reg. No. 47,511; and Erin Nichols of the law firm of Crawford Maunu PLLC as its attorneys with the full power to represent the Petitioner in connection with this cancellation proceeding.

Please send all correspondence to the undersigned.

Respectfully submitted,

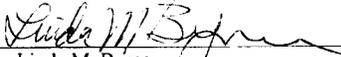
MINNESOTA MONTHLY PUBLICATIONS INC

By its attorneys,


Linda M. Byrne, Reg. No. 32,404
CRAWFORD MAUNU PLLC
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lbyrne@ip-firm.com

(MNMO.110TA)

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this Transmittal Letter and the paper, as described herein, are being deposited in the United States Postal Service, as first class mail, in an envelope addressed to: Trademark Trial and Appeal Board, U.S. Patent and Trademark Office, P.O. Box 1451, Alexandria, VA 22313-1451, on Feb. 1, 2005

By: 
Name: Linda M. Byrne

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By: Lisa Joyce
Name: Lisa Joyce

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Commissioner:

We are transmitting herewith the attached:

- Return postcard.
- Transmittal Sheet containing Certificate Under 37 C.F.R. 1.8
- Petition for Cancellation of Registration No. 2,857,927
- Please charge Deposit Account 50-0996 (MNMO.110TA) \$300.00 in payment of the Filing Fee.** Authority is given to charge/credit additional fees/overages to complete this filing.

CRAWFORD MAUNU PLLC
1270 Northland Drive, Suite 390
St. Paul, MN 55120
(651) 686-6633

By: Linda M. Byrne
Name: Linda M. Byrne
Reg. No. 32,404



02-04-2005