

76/428415

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

In the matter of Registration No. 2,709,225
For the mark "FRINGS"
Date registered on Principal Register April 22, 2003

TTAB

_____)
CHEEBURGER, CHEEBURGER OF AMERICA,))
INC., a Florida corporation,))
))
Petitioner,))
))
vs.)	Cancellation No.
))
RUNZA NATIONAL, INC.,))
a Nebraska corporation,))
))
Registrant.))
_____)



05-04-2006

U.S. Patent & TMOfo/TM Mail RcptDt. #72

PETITION TO CANCEL

COMES NOW the Petitioner, Cheeburger, Cheeburger of America, Inc. (or "Petitioner"), a Florida corporation having an address of 2413 Periwinkle Way, Sanibel Island, Florida 33957, and petitions to cancel Registration No. 2,709,225, owned by Runza National, Inc., a Nebraska corporation having an address of 5931 South 58th Street, Lincoln , Nebraska 68506 (or "Registrant"). Petitioner believes that it is or will be damaged by Registration No. 2,709,225, and alleges the following to petition for cancellation of the same:

05/11/2006 HP/HAM1 00000121 2709225.

LIKELIHOOD OF CONFUSION

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1. The alleged trademark sought to be cancelled is Registration No. 2,709,225, for the alleged mark "FRINGS" for use in connection with "french fries and onion rings for consumption on or off the premises", filed July 9, 2002, with a registration date

of April 22, 2003.

2. Since long prior to any date upon which Registrant may rely, Petitioner, and/or its predecessors, adopted and used the inherently distinctive designation and trademark "FRINGS" for and in connection with prepared food for consumption on or off the premises.

3. The mark has been adopted and used in commerce by Petitioner and/or its predecessors since at least as early as 1998, an example of which is attached hereto as Exhibit A. Such adoption and use of the mark was in interstate commerce, and since that time, the mark has been in continuous use in interstate commerce.

4. Petitioner has filed its own application, Serial No. 78/585,143, with the United States Patent and Trademark Office to register its mark "FRINGS" for and in connection with prepared French fries and onion rings for consumption on or off the premises. Such registration has been preliminarily objected to by the Examining Attorney, who has cited Registration No. 2,709,225, despite the long prior use of "FRINGS" by Petitioner, thereby conferring standing on Petitioner in this matter by further damaging Petitioner.

5. The Registrant's trademark is identical to Petitioner's trademark.

6. The goods identified in Registrant's Registration No. 2,709,225 are identical or substantially similar and related to

Petitioner's goods.

7. Registrant's goods would be sold to the same consumers as Petitioner's goods.

8. There is a likelihood of confusion between Petitioner's trademark for its goods and services and Registrant's trademark for its goods and services as set forth in Registration No. 2,709,225.

9. If Registrant is permitted to keep its registration for the mark "FRINGS" for and in connection with Registrant's goods and services, there will be a continued likelihood of confusion, mistake, and deception among the consuming public and the trade, all in violation of §2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

WHEREFORE, Petitioner prays that this Petition to Cancel be granted and that the aforesaid Registration No. 2,709,225 be cancelled.

A duplicate copy of this Petition to Cancel and the fee required in § 2.6(a)(16) are enclosed herewith.

Dated: May 4, 2006

Respectfully submitted,
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CERTIFICATE OF EXPRESS MAILING

I HEREBY CERTIFY that an original and one true and correct copy of the foregoing document are being deposited by United States Express Mail, Label No. EV 783519413 US, in an envelope addressed to: United States Patent and Trademark Office, Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, Virginia, 22313-1451, this 4 day of May, 2006.

Respectfully submitted,

By: 
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EXHIBIT A

Famous Fries, Rings & Frings™

Our Famous Fries: We turned Idaho upside down to find the biggest and best potatoes. We leave the skins on because we're lazy, cook them to order in cholesterol-free peanut oil then sprinkle on our no-secret seasoning.
Small (serves 1-2) . . . \$ 2.25 Medium (serves 2-3) . . . \$ 3.25 Large (serves 4-5) . . . \$ 4.25

Our Famous Onion Rings: Surprise! They're made from fresh, colossal onions, dipped in a secret batter and cooked in cholesterol-free peanut oil right here. You can't get 'em any fresher, you can't get 'em any better!

Small (serves 1-2) .. \$ 2.95 Med (serves 2-3) .. \$ 3.95 Large (serves 4-5) .. \$ 4.95

Frings Basket: The best of both worlds! A combination of our famous fries and rings.
Half . . . \$ 3.95 Regular . . . \$ 4.95

Cheese Sauce: "You can never get enough cheese!" \$ 1.25

Dipping Sauce: A creamy mayonnaise based dipping sauce with an added kick of delicious spices. "You just can't stop dipping!" \$ 1.25

Please note: All fries and rings cooked in cholesterol-free peanut oil.



Beverages

Cheeburger

Cheeburger Cheeburger Cheeburger