

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

Concurrent Use No. 94002078
In the matter of Trademark Registration No. 2,348,945
For the Mark: CAMPO DE FIORI
Date Registered: May 9, 2000

I MATTI RISTORANTE, INC., Petitioner
V.
CAMPO DE FIORI L.L.C., Registrant

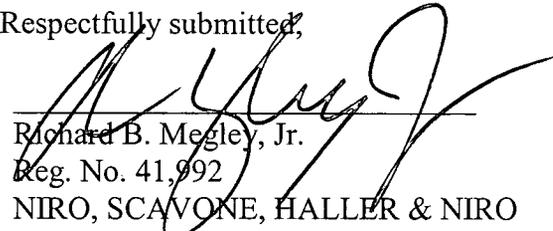
Petitioner: I MATTI RISTORANTE, INC.
205 South Mill Street, #109
Aspen, CO 81611
A Colorado Corporation

Box: TTAB
Honorable Commissioner of Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Sir:

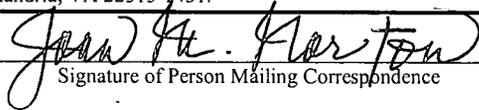
Enclosed herewith via, Express Mail No. EV 712574411 US is Petitioner's MOTION FOR AN ORDER DEEMING ADMITTED ITS REQUESTS FOR ADMISSIONS TO REGISTRANT CAMPO DE FIORI L.L.C. No fee is required for this transmittal. However, authorization is given to charge any insufficiency to Deposit Account No. 14-1131. (A duplicate copy of this letter is enclosed.)

Respectfully submitted,



Richard B. Megley, Jr.
Reg. No. 41,992
NIRO, SCAVONE, HALLER & NIRO
181 W. Madison Street
Chicago, IL 60602
312-236-0733

I certify that this document and enclosed fee is being deposited on January 23, 2006 with the U.S. Postal Express Mail Service under 37 C.F.R. 1.10 and is addressed to box TTAB: Assistant Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.



Signature of Person Mailing Correspondence

JOAN M. NORTON

Printed Name of Person Mailing Correspondence

EV712574411 US

"Express Mail" Label Number



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

Concurrent Use No. 94002078
In the matter of Trademark Registration No. 2,348,945
For the mark: CAMPO DE FIORI
Date Registered: May 9, 2000

I MATTI RISTORANTE, INC.

v.

CAMPO DE FIORI L.L.C.

**APPLICANT I MATTI RISTORANTE'S MOTION FOR AN ORDER
DEEMING ADMITTED ITS REQUESTS FOR ADMISSIONS
TO REGISTRANT CAMPO DE FIORI L.L.C.**

On December 6, 2005, Applicant I Matti Ristorante ("Applicant") served upon Registrant Campo De Fiori L.L.C. ("Registrant") a set of requests for admissions. Under the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, Registrant was required to respond to the requests within thirty (30) days of service, namely, by January 9, 2006. Registrant did not respond within the allotted thirty days, nor has Registrant provided any form of a response to the requests as of the date of this motion. Furthermore, Registrant has never requested an extension from either Applicant or the Board to respond to the requests. In accordance with FED.R.CIV.P. 36(a), Applicant's requests for admissions must be deemed admitted. The present motion requests an order from the Board providing such relief.

Applicant recognizes its obligation to meet and confer with Registrant under FED.R.CIV.P. 37 and 37 C.F.R. § 2.120 prior to involving the Board with a challenge to the sufficiency of a response or objection to a request for admission. In the present case, however, Applicant is not challenging the sufficiency of Registrant's responses to Applicant's requests for admissions. Indeed, there are no responses to challenge as Registrant has never made any attempt to answer the requests.

Under these circumstances, Applicant is under no obligation to meet and confer with Registrant prior to asking the Board for the relief requested herein. In re Heritage Bond Litigation, 220 F.R.D. 624, 626 (C.D. Cal. 2004) ("Here, class plaintiffs have chosen to have the requests for admissions deemed admitted. In such circumstances, the application of Local Rule 37, which requires a pre-filing conference to resolve discovery disputes, would serve no purpose; there is no discovery dispute for the parties to attempt to narrow or settle. Thus, class plaintiffs properly filed this motion without complying with Local Rules 37-1 and 37-2."). It follows that Applicant's motion is properly before the Board.

I. INTRODUCTION

This concurrent use proceeding began over three years ago in November of 2002 upon Applicant's filing of a concurrent use application for the mark CAMPO DE FIORI ("the mark") in the field of restaurant and food services. (Exhibit A, Concurrent Use Application). At the same time, Applicant also filed a Petition to Cancel Registrant's use of the mark based upon Applicant's established prior use of the mark in interstate commerce. (Exhibit B, Petition to Cancel). Applicant then believed (and still does believe) that it is the only entity entitled to use the mark in interstate commerce on a nation-wide basis in the field of restaurant and food services.

Upon being notified of the Petition to Cancel, Registrant on multiple occasions sought extensions from the Board to file a response to the Petition. Even with these extensions being granted by the Board, Registrant never filed any form of a response to the Petition. These dilatory practices forced Applicant to file a Motion for Default Judgment against Registrant in April of 2004. (Exhibit C, Motion for Default Judgment).

Both parties have always expressed a willingness to conduct settlement discussions. In May of 2004, such discussions resulted in an agreement between the parties for the concurrent use of the mark. Applicant's concurrent use application was amended at that time to reflect the concurrent use agreement that had been reached between that parties. (Exhibit D, Amended Concurrent Use Application). In light of the concurrent use agreement which was submitted to the Board, Applicant withdrew its Motion for Default Judgment as well as its Petition to Cancel, assuming that all matters would be resolved by way of Applicant's amended concurrent use application.

In December of 2004, the Board rejected the parties' proposed concurrent use of the mark as a result of several "sub-licensing" provisions suggested by the parties, as well as a lack of advertising restrictions on the parties' use of the mark. (Exhibit E, Board Order of December 2, 2004). At the request of Registrant, multiple extensions of time were requested in order to submit to the Board a revised concurrent use agreement which would correct the deficiencies previously recognized by the Board. In April of 2005, Applicant presented Registrant, for consideration and signature, a revised concurrent use agreement that addressed the Board's concerns. (Exhibit F, email to Registrant's counsel with revised agreement attached). Despite orally agreeing to the revised agreement, Registrant never signed the revised agreement.

In November of 2005, having not received a revised concurrent use agreement from the parties, the Board reinstated the present concurrent use proceeding. (Exhibit G, Board Order of November 17, 2005). In December of 2005, Applicant once again sent the previously revised concurrent use agreement to Registrant. (Exhibit H, email to Registrant's counsel with revised agreement attached). Registrant once again did not sign the agreement.

Having failed to receive Registrant's signature of the revised concurrent use agreement after numerous requests (and some 8 months of waiting), Applicant was left with no alternative but to act under the assumption that Registrant would not sign the agreement. As such, Applicant shifted its focus from reaching an agreement with Registrant to obtaining discovery in the pending concurrent use proceeding. On December 6, 2005, Applicant served Registrant with interrogatories, requests for the production of documents, and requests for admissions. Applicant's request for admissions, which are the subject of the present motion, are attached hereto as Exhibit I. Thirty days passed, and Applicant received no response from Registrant with respect to any of this discovery. Indeed, Applicant has yet to receive any such response from Registrant as of the date of the present motion.

II. APPLICANT'S REQUESTS FOR ADMISSIONS MUST BE DEEMED ADMITTED

While Registrant has not provided a response to any of the multiple forms of discovery served by Applicant, it is Applicant's requests for admissions which are the subject of the present motion. With respect to requests for admissions, Federal Rule of Civil Procedure 36(a) states in relevant part:

Each matter of which an admission is requested shall be separately set forth. *The matter is admitted unless, within 30 days after service of the request*, or within such shorter or longer time as the court may allow or as the parties may agree to in writing, subject to Rule 29, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney.

FED.R.CIV.P. 36(a) (emphasis added). As such, the rule provides a mandate for a party's outright failure to respond to requests for admissions – the requests must be deemed admitted. *See, e.g., In re Heritage Bond Litigation*, 220 F.R.D. 624, 626 (C.D. Cal. 2004) ("As an initial matter, defendant responded 12 days late to class plaintiffs' first set of requests for admissions. For this reason alone,

all ten requests for admissions in the first set of requests for admissions should be deemed admitted."); SEC v. Batterman, 2002 U.S. Dist. LEXIS 18556 at *18-20 (S.D.N.Y. 2002) (noting repeated dilatory practices of defendant and holding plaintiff's requests for admissions to be deemed admitted); Citibank (North Dakota) N.A. v. Spatafora, 2002 U.S. Dist. LEXIS 15565 at *8 (N.D. Ill. 2002) (holding that absent "extraordinary circumstances," Rule 36 mandates that unanswered requests be deemed admitted); Burdick v. Koerner, 179 F.R.D. 573, 576 (E.D. Wis. 1998) (holding requests for admissions to be deemed admitted due to complete failure of party to respond to the requests); Equal Employment Opportunity Commission v. Jordan Graphics, Inc., 135 F.R.D. 126, 128 (W.D.N.C. 1991) (noting repeated dilatory practices of plaintiff and holding defendant's requests for admissions to be deemed admitted); United States v. Sopcak, 1990 U.S. Dist. LEXIS 19706 at *5 (E.D. Mich. 1990) (holding plaintiff's requests for admissions to be deemed admitted where defendant failed to respond to the requests in any manner); O'Bryant v. Allstate Insurance Company, 107 F.R.D. 45, 47 (D. Conn. 1985) (holding defendant's requests for admissions to be deemed admitted where plaintiff failed to respond to the requests in any manner).

Applying the mandate of Rule 36(a) to the present circumstances, it is clear that Applicant's requests for admissions must be deemed admitted. Registrant has never attempted to provide any response whatsoever to Applicant's requests. Registrant has asked neither Applicant nor the Board for an extension of time to provide such a response. As evidenced by the previous and continuing dilatory practices of Registrant discussed in this motion, the Board should provide Applicant with the relief that it seeks – an order that Applicant's requests for admissions are deemed admitted.

III. THE BOARD SHOULD NOT GRANT REGISTRANT AN EXTENSION OF TIME

In response to this motion, it is anticipated that Registrant will do what it has always done throughout these proceedings – request an extension of time. To the extent that Registrant does request an extension of time from the Board to respond to Applicant's requests for admissions, such a request should be denied. Applicant has repeatedly consented to Registrant's unending requests for extensions of time in these proceedings. Yet, Registrant continues to participate in these proceedings by the strategy that "Justice delayed is justice denied," taking advantage of Applicant's good will at every turn. Registrant should not now be rewarded for its dilatory practices by receiving an extension of time to respond to Applicant's requests for admissions. *See, e.g., SEC v. Batterman*, 2002 U.S. Dist. LEXIS 18556 at *18-20 (S.D.N.Y. 2002) (noting repeated dilatory practices of defendant and holding plaintiff's requests for admissions to be deemed admitted); *Equal Employment Opportunity Commission v. Jordan Graphics, Inc.*, 135 F.R.D. 126, 128 (W.D.N.C. 1991) (noting repeated dilatory practices of plaintiff and holding defendant's requests for admissions to be deemed admitted).

In a span of ten months dating back to April of 2005, Registrant has not been able to find one single day to sign the revised concurrent use agreement that it orally agreed to. Nor has Registrant found the time to respond to any of Applicant's discovery. Time is up. Registrant should not be permitted an extension of time to respond to Applicant's request for admissions. Applicant's requests for admissions must be deemed admitted in accordance with FED.R.CIV.P. 36(a).

IV. CONCLUSION

For all of the foregoing reasons, Applicant respectfully requests that the Board enter an order deeming admitted Applicant's requests for admissions, which are attached as Exhibit I.

Dated: 1/23/2006

Niro, Scavone, Haller & Niro
181 West Madison Street - Suite 4600
Chicago, Illinois 60602
(312) 236-0733

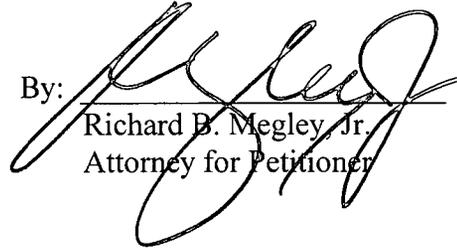
By: 
Richard B. Megley, Jr.
Attorney for Petitioner

EXHIBIT A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

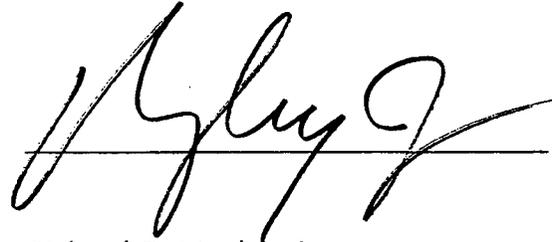
APPLICANT: I Matti Ristorante, Inc.
SERIAL NUMBER: New Service mark Application
FILED: Herewith
STATE OF INCORPORATION: Colorado
MARK: CAMPO DE FIORI
CLASS: International Class 43

Box NEW APP FEE
Assistant Commissioner of Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Dear Sir:

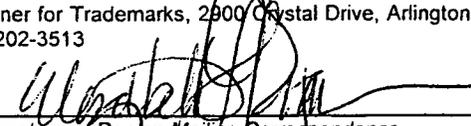
Enclosed herewith via **Express Mail No. EL707153739US** is a "concurrent use" service mark application including specimens showing use for filing in the United States Patent and Trademark Office. Authorization is given to charge Deposit Account No. 14-1131 the amount of \$325.00 (Three Hundred Twenty-Five and 00/100) to cover the filing fee. **Please charge any additional fees to our Deposit Account No. 14-1131.**

Respectfully submitted,



Richard B. Megley, Jr.
Reg. No. 41,992
NIRO, SCAVONE, HALLER & NIRO
181 West Madison Street, Suite 4600
Chicago, Illinois 60602
(312) 236-0733

I certify that this application and enclosed fee is being deposited on November 26, 2002 with the U.S. Postal Express Mail Service under 37 C.F.R. 1.10 and is addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513


Signature of Person Mailing Correspondence

Elizabeth L. Ryan

Printed Name of Person Mailing Correspondence

EL707153739US

"Express Mail" Label Number

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: I Matti Ristorante, Inc.
DBA - Campo de Fiori
205 South Mill Street, #109
Aspen, CO 81611

SERIAL NUMBER: New Trademark Application

FILED: Herewith

STATE OF INCORPORATION: Colorado

MARK: **CAMPO DE FIORI**

CLASS: International Class 43

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Dear Sir:

The above-identified applicant has adopted, has used and is using, in commerce, the trademark shown in the accompanying drawing for restaurant services in International Class 43 and requests concurrent registration of said mark in the United States Patent and Trademark Office pursuant to Trademark Rule 2.73, 37 C.F.R. Section 2.73. Pursuant to Trademark Rule 2.42, 37 C.F.R. Section 2.42, Applicant requests to seek registration under the following conditions:

Geographic area Applicant seeks: Entire United States, except Massachusetts, New Hampshire, Maine, Vermont and Rhode Island

Services for which Applicant uses its Mark: restaurant services, food services

Mode of Applicant's use of the Mark: menus, advertising, signs, matches, national magazines and publications, promotional materials associated with the services, including those posted on its website, and in other ways customary to the trade

Date of First Use In Commerce: October 14, 1994

Attorney
Docket No.: TM1939

Further pursuant to Trademark Rule 2.42, applicant states that it is aware of the following concurrent user of the above mark:

Name and address of Concurrent User: CAMPO DE FIORI LLC
C/o Pavia & Harcourt
600 Madison Avenue
New York, NY 10022

Registrations and applications for mark owned or filed by Concurrent User:

Registrations: CAMPO DE FIORI
Registration No. 2,348,945
Registered May 9, 2000
Filed as Intent-to-Use on June 20, 1997

Geographic Area of Concurrent User's Use: Cambridge, Massachusetts

Goods for which Concurrent User uses its Mark: restaurant, catering and take out restaurant services

Mode of Concurrent User's use of the Mark: Name of restaurant, menus

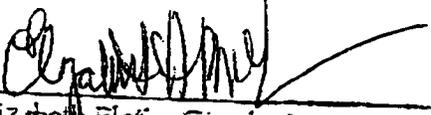
Date of First Use of Concurrent User: June 15, 1998

Applicant used its mark in commerce beginning in October, 1994, which is prior to the earliest filing date for Registration No. 2,348,945. Thus, applicant seeks a concurrent use registration based on its use in commerce prior to the earliest filing date or any registration pursuant to 15 U.S.C. §1052(d)(1). Applicant has also filed a Petition To Cancel registration number 2,348,945 in the United States Patent and Trademark Office before the Trademark Trial and Appeal Board.

The undersigned hereby appoints NIRO, SCAVONE, HALLER & NIRO, a professional corporation, located at 181 West Madison Street, Suite 4600, Chicago, Illinois 60602, which has associated with it Raymond P. Niro, Dean D. Niro, and Richard B. Megley, Jr., attorneys admitted to practice before the Supreme Court of the State of Illinois, as principal attorneys to prosecute this application for registration, with full power of substitution and revocation, to transact all business in the Patent and Trademark Office in connection therewith, and to receive the Registration Certificate if one should issue.

I Matti Ristorante, Inc.

Date: 11-26-02

By: 

Elizabeth Florke-Giordani
Vice-President

Attorney
Docket No.: TM1939

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: I Matti Ristorante, Inc.
DBA - Campo de Fiori
205 South Mill Street, #109
Aspen, CO 81611

STATE OF INCORPORATION: Colorado

SERVICES: restaurant services, food services

DATE OF FIRST
USE ANYWHERE: At least as early as October 14, 1994

DATE OF FIRST
USE IN COMMERCE: October 14, 1994

CLASS: International Class 43

CAMPO DE FIORI

prepared by:
Raymond P. Niro
Reg. No. 24,131
NIRO, SCAVONE, HALLER & NIRO
181 W. Madison St. - Suite 4600
Chicago, Illinois 60602
Tel: (312) 236-0733
Fax: (312) 236-3137

Attorney
Docket No.: T441929**DECLARATION**

The undersigned, being duly warned that willful false statements and the like so made are punishable by fine or imprisonment or both under 18 U.S.C. Section 1001 and that such willful false statements may jeopardize the validity of the application or any registration resulting therefrom of the above-referenced trademark; declares that she is properly authorized to execute this application on behalf of the applicant; she believes the applicant to be the owner of the service mark sought to be registered, that to the best of her knowledge and belief no other person, firm, corporation, or association has the right to use this mark in commerce, either in the identical form or in such near resemblance thereto as may be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive with the exception of CAMPO DE FIORI L.L.C ("User") which has used the mark CAMPO DE FIORI since approximately June 15, 1998 in connection with a take out restaurant service in Cambridge, Massachusetts; that Applicant seeks registration to use its mark in the following areas: the entire United States except Massachusetts, New Hampshire, Maine, Vermont and Rhode Island; that the accompanying specimens show the mark as used in commerce in connection with Applicant's goods or services; that all statements made herein of her own knowledge are true and that all statements made on information and belief are believed to be true.

I Matti Ristorante, Inc.

Date: 11-26-02

By:

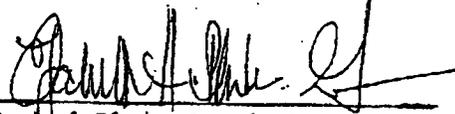

Elizabeth Pirouke-Giordani
Vice-President

EXHIBIT B

Attorney
Docket No. TM1939

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

In the matter of Trademark Registration No. 2,348,945
For the Mark: CAMPO DE FIORI
Date Registered: May 9, 2000

I Matti Ristorante, Inc.
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Campo de Fiori L.L.C.

Petitioner: I Matti Ristorante, Inc.
DBA - Campo de Fiori
205 South Mill Street, #109
Aspen, CO 81611
A Colorado Corporation

Box: TTAB FEE

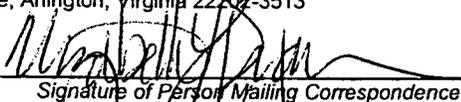
Honorable Commissioner of Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Dear Sir:

Enclosed herewith via **Express Mail No. EL707153835US** is an original and one copy of Petitioner's Petition to Cancel. The amount of \$300.00 (One Hundred and 00/100), the fee for filing this petition, should be charged to Deposit Account No. 14-1131. Any insufficiency should be debited to Deposit Account No. 14-1131. (A duplicate copy of this letter is enclosed.)

Respectfully submitted,

I certify that this document and enclosed fee is being deposited on November 26, 2002 with the U.S. Postal Express Mail Service under 37 C.F.R. 1.10 and is addressed to box TTAB FEE: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513

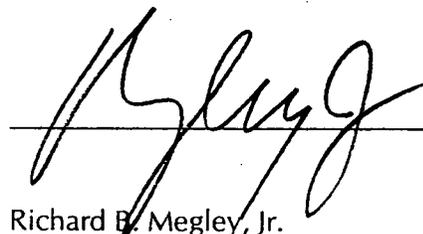

Signature of Person Mailing Correspondence

Elizabeth L. Ryan

Printed Name of Person Mailing Correspondence

EL707153835US

"Express Mail" Label Number



Richard B. Megley, Jr.

Reg. No. 41,992

NIRO, SCAVONE, HALLER & NIRO, LTD.

181 West Madison Street, Suite 4600

Chicago, Illinois 60602

(312) 236-0733

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

In the matter of Trademark Registration No. 2,348,945

For the mark: CAMPO DE FIORI

Date Registered: May 9, 2000

I Matti Ristorante, Inc.

v.

Campo de Fiori L.L.C.

PETITION TO CANCEL

Petitioner:

I Matti Ristorante, Inc.
DBA - Campo de Fiori
205 South Mill Street, #109
Aspen, CO 81611
A Colorado Corporation

To the best of the petitioner's knowledge, the name and address of the current owner of the registration is Campo De Fiori L.L.C c/o Pavia & Harcourt, 600 Madison Avenue, New York, NY 10022. The current owner operates a take-out food service restaurant in Cambridge, Massachusetts.

The above identified petitioner believes that it will be damaged by the above-identified registration, and hereby petitions to cancel the same.

The grounds for cancellation are as follows:

1. Petitioner and two related corporations with the same owners own and operate three nationally known restaurants under the name "Campo de Fiori." Petitioner offers both traditional sit down restaurant services as well as take out and catering services at its restaurants.
2. Petitioner began using the mark "Campo de Fiori" as the name of its restaurants and food services on or about October 14, 1994, which is approximately four (4) years before registrant began using the same mark for its restaurant services.

3. Petitioner is damaged by the registration in that it has a real interest in the case because Petitioner used the identical mark in the same field of use years before registrant began its use.

4. Petitioner therefore seeks cancellation of the registration based on its prior use of the registered mark in the same field of use as set forth more fully below.

5. On or about October 14, 1994, Petitioner began using the mark, "Campo de Fiori" in interstate commerce. Petitioner used the mark as the name of its restaurant and food services business that it opened in Aspen, Colorado on or about October 14, 1994. Petitioner used the mark on advertising, signs, menus and in magazines and publications and in other ways customary in the restaurant and food services trade.

6. Shortly after Petitioner opened its restaurant in Aspen, the mark began receiving national attention in numerous national magazines and publications in association with Petitioner's business. A list of the national attention is set forth below.

7. Attached as Exhibit A is a copy of an article from the December 28, 1994 issue of USA TODAY, a daily newspaper that is distributed throughout the United States, that touts Petitioner's Campo de Fiori restaurant as a "Hot Aspen eater[y]."

8. Attached as Exhibit B is a copy of an article from the Spring, 1995 issue of Aspen Magazine promoting Petitioner's Campo de Fiori restaurant, including the design and appearance of the restaurant.

9. Attached as Exhibit C is an advertisement for Campo de Fiori appearing in the April 29 and 30, 1995 edition of The Aspen Times, which promotes Petitioner's mark in connection with its restaurant business.

10. Attached as Exhibit D is a promotional article for Campo de Fiori appearing in the Summer, 1995 edition of Aspen Magazine.

11. Attached as Exhibit E is an article appearing in the November, 1995 edition of Esquire Magazine, a magazine that is distributed and sold throughout the United States. The article describes the restaurant and food services associated with Petitioner's Campo de Fiori mark. Esquire Magazine touted Campo de Fiori as one of the best new restaurants in America.

12. Attached as Exhibit F is an article appearing in the October 18, 1995 edition of Rocky Mountain News which confirms that Esquire Magazine named Petitioner's Campo de Fiori one of the "Best New Restaurants in America."

13. Attached as Exhibit G is another article from the national newspaper USA Today that promotes Petitioner's Campo de Fiori as one of the best restaurants in America. That article appeared in the October 20, 1995 edition of USA Today.

14. Attached as Exhibit H is an article from the Sunday, November 19, 1995 edition of the New York Times describing the restaurant and food services associated with Petitioner's Campo de Fiori mark. The New York Times is distributed and sold throughout the United States.

15. Attached as Exhibit I is article appearing in the January, 1996 edition of Esquire Magazine recommending Petitioner's Campo de Fiori restaurant and food services.

16. Attached as Exhibit J is an article promoting Petitioner's Campo de Fiori restaurant appearing in the March, 1996 edition of Food & Wine, a national publication.

17. Attached as Exhibit K is an article promoting Petitioner's Campo de Fiori restaurant and food services that appeared in the March, 1996 edition of Philadelphia magazine.

18. Attached as Exhibit L is an advertisement for Petitioner's Campo de Fiori appearing in the May 24, 1996 edition of The Aspen Times.

19. Attached as Exhibit M is a promotional article for Petitioner's Campo de Fiori restaurant and food services appearing in the December, 1996 edition of Travel & Leisure, a magazine that is distributed and sold nationally.

20. Attached as Exhibit N is a copy of an article promoting Petitioner's Campo de Fiori restaurants appearing in the Spanish magazine KENA.

21. Attached as Exhibit O is a promotional article for Petitioner's Campo de Fiori restaurant and food services that appeared in the January, 1997 edition of the nationally distributed Glamour magazine.

22. On or about July 25, 1997, Petitioner opened a second restaurant in Vail, Colorado. Attached as Exhibit P is a press release, dated July 23, 1997, announcing the opening of Petitioner's second Campo de Fiori restaurant in Vail.

23. On or about January 5, 2001, Petitioner opened a third restaurant under the Campo de Fiori mark in Denver, Colorado.

24. Attached as Exhibit Q is an article appearing in the July, 31, 1997 edition of national publication, Wine Spectator. The two (2) page article promotes Petitioner's Campo de Fiori restaurant and food service as one of the best in the United States.

25. Attached as Exhibit R is an article appearing in the August 13, 1997 edition of Vail Daily promoting Petitioner's second Campo de Fiori restaurant located in Vail, Colorado.

26. Attached as Exhibit S is another article promoting Petitioner's Campo de Fiori Aspen restaurant from the national, daily newspaper, USA Today. The article appeared in the November 7, 1997 edition of USA Today.

27. Attached as Exhibit T is an article from the April, 1998 edition of Town & Country magazine that recommends Petitioner's Campo de Fiori restaurant.

28. Attached as Exhibit U is another article from the New York Times promoting Petitioner's Campo de Fiori restaurant. The article appeared in the Sunday, June 14, 1998 edition of the New York Times.

29. Attached as Exhibit V is the Statement of Use Under 37 CFR 2.88 With Declaration submitted by the registrant in support of its application to register the mark Campo De Fiori, Application Serial No. 75/312,127. In that statement of use, the registrant represented that its first date of use of the mark anywhere was June 15, 1998.

30. The above-listed articles and promotional material establish that Petitioner had used the identical mark before the registrant, and that Petitioner's Campo de Fiori mark had gained national recognition for its restaurant and food services business before the registrant began using the mark.

31. Attached as Exhibit W is the January 21, 2000 Response To Office Action submitted by the registrant in support of its application. In that office action response, the registrant limited its field of use to restaurant, catering and take out restaurant services. That is the field of use for which registrant received a registered trademark.

32. The above-listed articles and promotional material establish that Petitioner has used the mark in the identical field of use, namely, restaurant, catering and take out services, and has used the mark in the United States years before the registrant.

33. Attached as Exhibit X are additional samples of Petitioner's use of the mark, Campo de Fiori, in connection with its restaurant and food service business, including use on menus, signs, napkins, advertisements and its web site.

34. Registrant's trademark registration should be cancelled pursuant to 15 U.S.C. § 1052 (d) because it is identical to Petitioner's mark that was previously used in the United States in the identical field of use by Petitioner and; therefore, the registration causes confusion, mistakes and/or deception. Accordingly, registrant's trademark registration should be cancelled because the Petitioner has priority of use.

35. This petition to cancel is timely because it was filed within five (5) years from the date of registration, which was May 9, 2000.

36. A duplicate Copy of this Petition to Cancel is enclosed. Authorization is given to charge Deposit Account No. 14-1131 the appropriate fees for this Petition.

37. In addition to this Petition To Cancel, Petitioner is simultaneously filing a concurrent use trademark application in the United States Patent and Trademark Office, a copy of which is attached as Exhibit Y.

WHEREFORE, Petitioner requests that registrant's trademark registration number 2,348,945 for the mark, CAMPO DE FIORI, be cancelled.

Dated: 11/26/02

Niro, Scavone, Haller & Niro
181 West Madison Street - Suite 4600
Chicago, Illinois 60602
(312) 236-0733

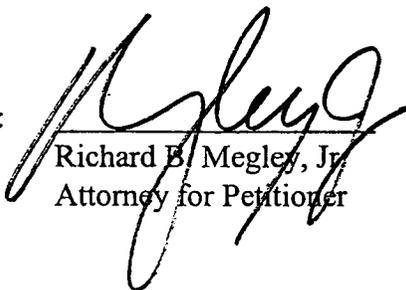
By: 
Richard B. Megley, Jr.
Attorney for Petitioner

EXHIBIT C

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

Cancellation No. 92041388
In the matter of Trademark Registration No. 2,348,945
For the Mark: CAMPO DE FIORI
Date Registered: May 9, 2000

I MATTI RISTORANTE, INC., Petitioner
v.
CAMPO DE FIORI L.L.C., Registrant

Petitioner: I MATTI RISTORANTE, INC.
205 South Mill Street, #109
Aspen, CO 81611

Box: TTAB
Honorable Commissioner of Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Dear Sir:

Enclosed herewith via **Express Mail No. EL 960813925 US** is Petitioner's Combined Motion And Supporting Memorandum For Entry Of Default Judgment. No fee is required for this transmittal. However, authorization is given to charge any insufficiency to Deposit Account No. 14-1131. (A duplicate copy of this letter is enclosed.)

Respectfully submitted,

I certify that this document and enclosed fee is being deposited on April 27, 2004 with the U.S. Postal Express Mail Service under 37 C.F.R. 1.10 and is addressed to box TTAB: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513



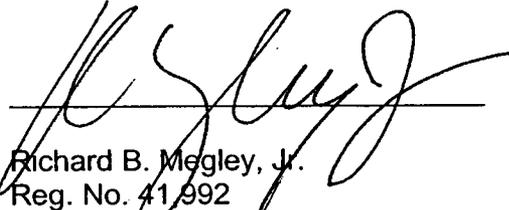
Signature of Person Mailing Correspondence

Liz Wells

Printed Name of Person Mailing Correspondence

EL 960813925 US

"Express Mail" Label Number



Richard B. Megley, Jr.
Reg. No. 41,992
NIRO, SCAVONE, HALLER & NIRO, LTD.
181 West Madison Street, Suite 4600
Chicago, Illinois 60602
(312) 236-0733

EL 960813925US

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

Cancellation No. 92041388

In the matter of Trademark Registration No. 2,348,945

For the mark: CAMPO DE FIORI

Date Registered: May 9, 2000

I Matti Ristorante, Inc.

v.

Campo de Fiori L.L.C.

**PETITIONER'S COMBINED MOTION AND
SUPPORTING MEMORANDUM FOR ENTRY OF DEFAULT JUDGMENT**

Petitioner I Matti Ristorante, Inc. ("Petitioner"), hereby moves the Trademark Trial and Appeal Board ("Board") to enter default judgment in favor of Petitioner against Registrant Campo de Fiori L.L.C. ("Registrant"), pursuant to 37 C.F.R. § 2.114 and Federal Rule of Civil Procedure 55, on the grounds that Registrant has failed to timely answer, plead or defend the Petition to Cancel submitted to the Board by Petitioner.

Federal Rule of Civil Procedure 55 states that when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, the party entitled to judgment by default shall apply to the Court for such relief. With respect to trademark cancellation proceedings before the Board, 37 C.F.R. § 2.114(a) states that if no answer to a petition to cancel is filed within the time set by the Board, the petition may be decided as in case of default.

I. REGISTRANT IS IN DEFAULT

Petitioner filed a Petition to Cancel Registrant's trademark registration number 2,348,945 for the mark, CAMPO DE FIORI, with the Board on November 26, 2002. Notice was provided by the Board to Petitioner and Registrant on January 11, 2003, providing that Registrant shall answer

the Petition to Cancel within forty (40) days from the date of notice. Registrant requested and received an extension of time to file its answer, thereby moving its answer date to April 21, 2003, more than a year ago. Thereafter, Registrant filed a second motion to extend its time to answer, pushing its answer date back even further. Petitioner and Registrant then entered into settlement discussions because Registrant led Petitioner to believe that it was interested in amicably resolving the matter.

On March 1, 2004, the Board notified both Petitioner and Registrant that the cancellation proceedings were resumed. Registrant was allowed thirty (30) days from March 1, 2004, to file an answer to the Petition to Cancel. Registrant failed to provide an answer to the Petition to Cancel by the due date established by the Board and to date, Registrant still has not filed an answer. As such, Petitioner is entitled to an entry of default judgment on its Petition to Cancel.

**II. DEFAULT JUDGMENT SHOULD BE ENTERED
BECAUSE REGISTRANT HAS NO MERITORIOUS DEFENSE**

The standard for determining whether default judgment should be entered against Registrant for its failure to file a timely answer to the Petition to Cancel is set forth in Rule 55(c) of the Federal Rules of Civil Procedure. It requires that a Registrant must show good cause why default judgment should not be entered against it. To establish good cause, Registrant must show (1) that the delay in filing an answer was not the result of willful conduct or gross neglect, (2) that the Petitioner will not be substantially prejudiced by the delay, and (3) that Registrant has a meritorious defense to the action. Paolo's Associates Limited Partnership v. Paulo Bodo, 21 USPQ2d 1899, 1903, n. 2 (Dec. Comm'r Pat. 1990). Registrant is incapable of establishing good cause, there is prejudice and default judgment should be entered against it.

A. Failure To Answer

Registrant's failure to timely answer the Petition to Cancel was willful or grossly negligent at the very least as evidenced by its prior conduct. Registrant has never filed an answer in this case. Registrant is represented by counsel who has received actual notice of every order issued by the Board, including the Order requiring an Answer by March 31, 2004. (Exhibit 1, March 1, 2004 Order). Indeed, Registrant's attorney has already filed two separate motions to extend after receiving prior orders from the Board. Thus, Registrant has received actual notice of everything that has transpired in this case. It was grossly negligent at the very least because Registrant simply ignored the Order requiring it to answer by March 31, 2004.

B. Petitioner Is Substantially Prejudiced By The Delay

Petitioner filed its Petition To Cancel nearly a year and a half ago. Registrant has requested and received multiple extensions to file an answer and registrant still has not filed an answer 18 months after the Petition was filed. Registrant also feigned interest in settlement simply to further delay this case. In short, Registrant's strategy has been to exploit the long-standing proverb, "Justice delayed is justice denied."

Petitioner has been substantially prejudiced by Registrant's "delay" strategy. Petitioner is the owner of several restaurants that have received national attention for their fine quality food and services. Petitioner hopes to expand its restaurant business into several cities in several states but has been required to delay that expansion effort, in part, because of the uncertainty over the status of the "Campo de Fiori" mark. Thus, Registrant's delay has substantially prejudiced Petitioner's business. Also, Petitioner has also filed a concurrent use trademark application to have the "Campo de Fiori" mark registered in its name for certain defined regions of the United States. That

application has been put on hold pending the outcome of this Petition To Cancel. Petitioner has been further prejudiced by Registrant's failure to answer because it has been denied a concurrent use mark.

C. Registrant Has No Meritorious Defense

Registrant's strategy has been to delay this case because it has no meritorious defense as shown in the Petition To Cancel. Registrant's admitted first use of the mark was not until June 15, 1998, four years after Petitioner began promoting its mark nationwide. June 15, 1998 was the date of first use Registrant identified in its Statement of Use submitted in support of its trademark application. (Exhibit 2, Statement of Use, Application Serial No. 75/312,127). Restaurant services was the field of use identified in that statement – the same field of use that Petitioner began using the mark four years before. The Petition to Cancel was timely filed within five (5) years from the date of Registrant's registration, which was May 9, 2000.

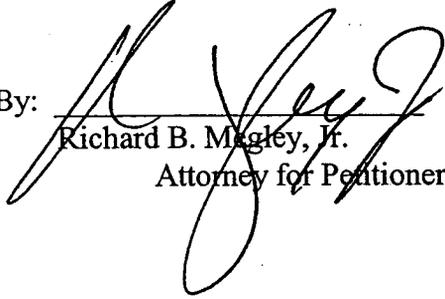
In its Petition to Cancel, Petitioner outlined its extensive use of the "Campo de Fiori" mark on a nationwide scale to advertise and promote its restaurant services. (Exhibit 3, Petition To Cancel). Petitioner attached twenty-one articles that advertise and/or promote the "Campo de Fiori" mark in connection with Petitioner's restaurant services, all of which pre-date Registrant's admitted date of first use. The promotions and advertising are from nationally recognized and distributed publications such as USA TODAY®, Esquire Magazine® and The New York Times®. The articles recount the nationwide recognition Petitioner had achieved for the "Campo de Fiori" mark in connection with its outstanding restaurant services.

The evidence is insurmountable that Petitioner's nationwide use of the "Campo de Fiori" mark predates any use by Respondent. Its registration should be cancelled and Respondents know this. That is why it failed to answer, and it has dragged its feet in this case.

WHEREFORE, Petitioner requests entry of default judgment in its favor and against Registrant, thereby canceling Registrant's trademark registration number 2,348,945 for the mark, CAMPO DE FIORI.

Dated: April 27, 2004

Niro, Scavone, Haller & Niro
181 West Madison Street - Suite 4600
Chicago, Illinois 60602
(312) 236-0733

By: 

Richard B. Magley, Jr.
Attorney for Petitioner

EXHIBIT D

Trademark Law Office 115
Examiner Ira Goodsaid
Serial Number: 76/471175
Mark: CAMPO DE FIORI

Attorney
Docket No.: TM1939

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: I Matti Ristorante, Inc.
SERIAL NUMBER: 76/471175
FILED: November 29, 2002
MARK: CAMPO DE FIORI

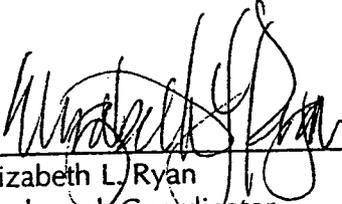
Trademark Law Office 115
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Dear Sir:

Enclosed herewith via Express Mail No. EL 960813267 US is "Applicant's Motion on Consent to Amend Applicant's Concurrent Use Application" for filing. No fee is required for this filing however, authorization is given to charge any insufficiency to our Deposit Account No. 14-1131.

I certify that this document and enclosed fee is being deposited on May 14, 2004 with the U.S. Postal Express Mail Service under 37 C.F.R. 1.10 and is addressed to the Commissioner for Trademarks, Box POST REG FEE, 2900 Crystal Drive, Arlington, Virginia 22202-3513.

Respectfully submitted,


Elizabeth L. Ryan
Trademark Coordinator
NIRO, SCAVONE, HALLER & NIRO, LTD.
181 West Madison Street, Suite 4600
Chicago, Illinois 60602
(312) 236-0733

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: I Matti Ristorante, Inc.
Application Serial No. 76/471175
For the mark: CAMPO DE FIORI
Filing Date: November 29, 2002
Examining Attorney: Ira Goodsaid
Law Office 115

**APPLICANT'S MOTION ON CONSENT TO AMEND
APPLICANT'S CONCURRENT USE APPLICATION**

Pursuant to 37 C.F.R. § 2.133(a), Applicant I Matti Ristorante, Inc. ("Applicant"), with the consent of Registrant Campo de Fiori L.L.C. ("Registrant"), hereby moves the Trademark Trial and Appeal Board ("Board") to amend Applicant's Concurrent Use Application. With respect to concurrent use proceedings before the Board, 37 C.F.R. § 2.133(a) states that an application involved in a proceeding may not be amended in substance except with the consent of the other party and the approval of the Board. Pursuant to a Settlement Agreement executed by Applicant and Registrant, attached hereto as Exhibit A, the parties have agreed to terms for concurrent registration of the mark, CAMPO DE FIORI. Through the execution of the attached agreement, Registrant has consented to Applicant's motion to amend the Concurrent Use Application. Therefore, in accordance with the terms of the attached Settlement Agreement, Applicant, with the consent of Registrant, moves the Board to amend the Concurrent Use Application as follows:

Geographic area which Applicant seeks:

Please delete: Entire United States, except Massachusetts, New Hampshire, Maine, Vermont, and Rhode Island

Please add: The State of Texas, the State of Illinois, and Regions of the United States located in the Mountain, Pacific, Alaska, Hawaii-Aleutian, and Samoa standard time zones.

Applicant further requests the Board to acknowledge, as stated in the attached Settlement Agreement between Applicant and Registrant, that Registrant shall have the right to a sub-license from Applicant for use of the mark, CAMPO DE FIORI, in the State of Illinois, while Applicant shall have the right to a sub-license from Registrant for use of the mark, CAMPO DE FIORI, in the State of Florida. In addition, the Settlement Agreement requires that Registrant's right to use the mark CAMPO DE FIORI shall be limited to the regions of the United States located in the Atlantic, Eastern, and Central standard time zones, except for the State of Texas.

Finally, this application had been stayed pending Applicant's Petition To Cancel pending before the Trademark Trial and Appeal Board. In view of the Settlement Agreement, Applicant voluntarily withdrew its Petition to Cancel. A copy of the Petition to Withdraw is attached as Exhibit B. In view of the Settlement Agreement and the withdrawal of the Petition to Cancel, Applicant respectfully requests that Applicant's concurrent use application be registered consistent with this Amendment.

Dated: May 14, 2004

Niro, Scavone, Haller & Niro
181 West Madison Street - Suite 4600
Chicago, Illinois 60602
(312) 236-0733
meglevjr@nshn.com

By: 
Richard B. Megley, Jr.
Attorney for Petitioner

CONCURRENT USE AGREEMENT

This Concurrent Use Agreement ("Agreement") made this ____ day of February 2004, between I MATTI RISTORANTE, INC. ("Matti"), a corporation incorporated under the laws of the State of Colorado and CAMPO DE FIORI L.L.C. ("Fiori"), a limited liability company under the laws of the State of New York.

RECITALS:

WHEREAS, Fiori is the owner of registered trademark number 2,348,945 for the trademark CAMPO DE FIORI (the "Mark");

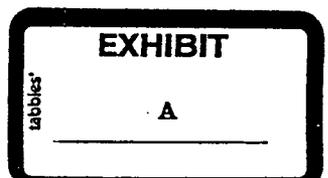
WHEREAS, Matti has been continuously using the trademark CAMPO DE FIORI since October 14, 1994 to identify its restaurants and food preparation services; and

WHEREAS, Matti and Fiori have reached an agreement which would allow use of the Mark by Matti and Fiori in limited geographic areas pursuant to this agreement.

NOW, THEREFORE, it is mutually agreed as follows:

1. Matti hereby agrees that Fiori shall have the exclusive right to use the Mark in association with its restaurant business or businesses located or to be located in:
 - a. the Atlantic standard time zone,
 - b. the Eastern standard time zone, except the State of Florida as provided in Paragraph 3 below, and
 - c. the Central standard time zone, except; (i) the State of Texas; and (ii) the State of Illinois as provided in Paragraph 4, below.

in accordance with, and provided Fiori is not in breach of, the terms and conditions of this Agreement.



2. Fiori hereby agrees that Matti shall have the exclusive right to use the Mark in association with its restaurant business or businesses located in or to be located in:

- a. the Mountain standard time zone,
- b. the Pacific standard time zone,
- c. the Alaska standard time zone,
- d. the Hawaii-Aleutian standard time zone,
- e. the Samoa standard time zone,
- f. the State of Illinois as provided in Section 4 below, and
- g. the State of Texas,

in accordance with, and provided Matti is not in breach of, the terms and conditions of this Agreement.

3. Matti hereby agrees that Fiori shall have the exclusive right to use the Mark in association with its restaurant business or businesses in the State of Florida. However, upon written request by Matti, Fiori shall sub-license use of the Mark to Matti for use in the State of Florida in association with Matti's restaurant businesses located at a future date in the State of Florida.

4. Fiori hereby agrees that Matti shall have the exclusive right to use the Mark in association with its restaurant and/or food preparation services business or businesses in the State of Illinois. However, upon written request by Fiori, Matti shall sub-license use of the Mark to Fiori for use in the State of Illinois in association with Fiori's restaurant businesses located at a future date in the State of Illinois.

5. Matti acknowledges that Fiori has an interest in assuring that its goodwill and reputation associated with its name and trademark are maintained. Therefore, Matti agrees that at all times during the term of this Agreement, Matti shall ensure that the products produced and services rendered by all of Matti's restaurants, businesses, and other operations bearing the Mark shall be consistent with the quality of its products produced and services rendered bearing the Mark as of the date of this Agreement. Fiori acknowledges that the quality of the products produced and services rendered by Matti bearing the Mark as of the date of this Agreement is satisfactory.

6. Fiori acknowledges that Matti has an interest in assuring that its goodwill and reputation associated with its name are maintained. Therefore, Fiori agrees that at all times during the term of this Agreement, Fiori shall ensure that the products produced and services rendered by all of its restaurants, businesses, and other operations bearing the Mark shall be consistent with the quality of Fiori's products produced and services rendered bearing the Mark as of the date of this Agreement. Matti acknowledges that the quality of the products produced and services rendered by Fiori bearing the Mark as of the date of this Agreement is satisfactory.

7. Upon the request of Fiori, Matti shall allow Fiori, or its duly authorized representatives, to sample the products produced and services rendered by Matti's businesses bearing the Mark for the purpose of ascertaining or determining compliance with the quality standards set forth in Paragraph 5, provided that such sampling occurs at the location of one of Matti's businesses bearing the Mark or another agreed upon location.

8. Upon the request of Fiori, Matti shall submit to Fiori, or its duly authorized representatives, samples of any advertising and promotional materials bearing the Mark for the

purpose of ascertaining or determining compliance with the quality standards set forth in Paragraph 5.

9. Upon the request of Matti, Fiori shall allow Matti, or its duly authorized representatives, to sample the products produced and services rendered by Fiori's businesses bearing the Mark for the purpose of ascertaining or determining compliance with the quality standards set forth in Paragraph 6, provided that such sampling occurs at the location of one of Fiori's businesses bearing the Mark or another agreed upon location.

10. Upon the request of Matti, Fiori shall submit to Matti, or its duly authorized representatives, samples of any advertising and promotional materials bearing the Mark for the purpose of ascertaining or determining compliance with the quality standards set forth in Paragraph 6.

11. Fiori assumes no liability with respect to the products produced or services rendered by Matti in association with the Mark and Matti shall indemnify and save Fiori for all claims of third persons arising out of Matti's products or services associated with the Mark.

12. Matti assumes no liability with respect to the products produced or services rendered by Fiori in association with the Mark and Fiori shall indemnify and save Fiori for all claims of third persons arising out of Fiori's products or services associated with the Mark.

13. The obligations of Fiori and Matti set forth in this Agreement shall exist for only so long as either Fiori or Matti continue to use the Mark in their respective businesses. Should either Fiori or Matti discontinue use of the Mark for a continuous period of 2 years, both Fiori and Matti shall be relieved of all obligations set forth in this Agreement.

14. Matti acknowledges Fiori's right, title, and interest in and to its name and the Mark for the locations identified in Paragraph 1, and Fiori acknowledges Matti's right, title, and

interest in and to its name and the Mark for the locations identified in Paragraph 2, and neither party will at any time do or cause any act or thing contesting or in any way impairing or tending to impair any part of the right, title, and interest of the other.

15. Any notices required or permitted to be given under this Agreement shall be deemed sufficiently given if sent by prepaid courier or sent by facsimile to the party to be notified at its address below, or to such other address as may be furnished in writing by such party to the notifying party:

a. In the case of Fiori: Anthony S. Cannatella
Pavia & Harcourt LLP
600 Madison Avenue
New York, NY 10022
Facsimile: (212)980-3135

b. In the case of Matti: Raymond P. Niro
Niro, Scavone, Haller & Niro, Ltd.
181 West Madison Street, Suite 4600
Chicago, IL 60602
Facsimile: (312)236-3137

16. Because it is a central location for the parties, this Agreement shall be interpreted in accordance with the laws of the State of Illinois, irrespective of its rules concerning conflicts of laws. The parties agree to submit themselves to the jurisdiction of the United States District Court for the Northern District of Illinois to resolve any conflict relating to the subject matter of this Agreement.

17. Any changes or alterations to this Agreement must be provided in writing and agreed upon by both Fiori and Matti in writing.

18. This is the entire agreement between the parties concerning its subject matter and ~~supersedes~~ all prior negotiations and agreements, oral or written. There are no other contemporaneous agreements between the parties relating to this subject matter hereof.

19. This Agreement is not assignable by either party without the consent of the other party.

20. This Agreement may be executed by the parties in separate counterparts and exchanged by facsimile, with the same effect as if all parties had signed the same instrument.

WHEREFORE, the parties hereby acknowledge their agreement and consent to the terms and conditions set forth above through their respective signatures as contained below:

IMATTI RISTORANTE, INC.

CAMPO DE FIORI L.L.C.

By: Giuseppe H. Pitaro, Jr. V.P.
Its: [Signature]

By: BRUNO GALARDI ESTE
Its: [Signature] Managing MEMBER



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

Cancellation No. 92041388
In the matter of Trademark Registration No. 2,348,945
For the mark: CAMPO DE FIORI
Date Registered: May 9, 2000

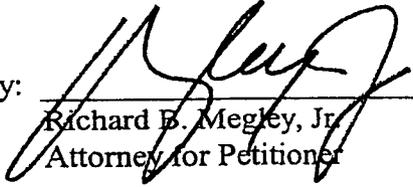
I Matti Ristorante, Inc.
v.
Campo de Fiori L.L.C.

PETITIONER'S WITHDRAWAL OF PETITION TO CANCEL

Pursuant to 37 C.F.R. § 2.114(c), Petitioner I Matti Ristorante, Inc. ("Petitioner"), hereby withdraws its Petition to Cancel Registration No. 2,348,945 owned by Registrant Campo de Fiori L.L.C. ("Registrant"). With respect to trademark cancellation proceedings before the Trademark Trial and Appeal Board ("Board"), 37 C.F.R. § 2.114(c) states that a petition for cancellation may be withdrawn without prejudice before the answer is filed. As Registrant has not filed an answer to the Petition to Cancel, Petitioner requests that withdrawal of the Petition to Cancel be granted by the Board without prejudice to Petitioner. Petitioner's voluntary withdrawal of its Petition to Cancel is made pursuant to a settlement agreement executed by Petitioner and Registrant providing for concurrent registration of the mark, CAMPO DE FIORI.

Dated: May 14, 2004

Niro, Scavone, Haller & Niro
181 West Madison Street - Suite 4600
Chicago, Illinois 60602
(312) 236-0733

By: 

Richard B. Megley, Jr.
Attorney for Petitioner

