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

Proceeding	94002571
Party	Registrant Nash-Finch Company
Correspondence Address	JOHN A CLIFFORD MERCHANT & GOULD PC PO BOX 2910 MINNEAPOLIS, MN 55402-9944 UNITED STATES jclifford@merchantgould.com, hkliebenstein@merchantgould.com, aavery@merchantgould.com, dockmpls@merchantgould.com
Submission	Answer to Counterclaim
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Signature	/Heather J. Kliebenstein/
Date	11/01/2013
Attachments	2013 11 01 Answer.PDF(139878 bytes)

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

Youth Educational Services, Inc.,	Concurrent Use Proceeding No. 94002571
Applicant,	Reg. No. 2,505,778
v.	Mark: **FAMILY THRIFT CENTER**
Nash-Finch Company,	Serial No. 85/001,182
Registrant.	Mark: **FAMILY THRIFT CENTER**

ANSWER

To The Assistant Commissioner for
Trademarks
ATTN: BOX TTAB
2900 Crystal Drive
Arlington, VA 22202-3513

Dear Sirs:

COMES NOW, the Registrant, Nash-Finch Company ("Nash-Finch" or "Registrant"), to enter its Answer to the Concurrent Use proceeding.

Registrant objects to trademark application 85/001,182 in two important ways. First, the application claims that Applicant, Youth Education Services, Inc. ("Youth Education Services" or "Applicant"), has exclusive rights to use the mark FAMILY THRIFT CENTER everywhere in the United States except "Western South Dakota and Scottsbluff, Nebraska." The area claimed by Applicant is overly inclusive and, if permitted, will inevitably create confusion with Registrant's long established rights. At a minimum, the application should be restricted to the area of the United States where Applicant has perfected its trademark rights through actual, continuous, and ongoing commercial use. Registrant believes this area constitutes essentially the state of Texas only. Applicant has been static in its use, and has failed to geographically expand

its use for many years. It is asserted that Applicant has no concrete and realistic plan to expand the geographic scope and reach of its mark.

Secondly, the application does not include a buffer zone and is therefore over inclusive. Registrant advertises its services with general media, with free standing inserts in newspapers and other periodicals and in other traditional ways. Such advertising invariably reaches beyond the locations where Registrant has physical store locations. Registrant also advertises via the internet and that advertising has an extensive geographic reach. A suitable buffer area should be included and the area of exclusive rights granted to Applicant should be restricted as a result.

Registrant requests that any registration issued to Applicant be limited to only the state of Texas. Registrant believes limiting Applicant's registration, and removing the state of Texas from Registrant's current registration will prevent confusion in the marketplace.

Registrant also objects to the specimen of use filed with the application and believes it is inappropriate and does not meet the minimum requirements as the specimen does not illustrate the alleged use of the mark at the time the application was filed. Specifically, the specimen used with the application was a historical specimen representing use of the mark at least a decade, or more, before the filing date of the application. On information and belief, the scene depicted in the specimen does not illustrate the location shown at the time the application was filed. As such, the specimen does not illustrate current use of the mark, or depict how the mark was being shown in the marketplace at the time of the filing of the application. Based on this, the application is fatally defective and does not meet the requirements of §1(a) of the Trademark Act and §904 of the Trademark Manual of Examining Procedure.

By way of relief in this concurrent use proceeding, Registrant requests modification of Application Serial No. 85/001,182 so that it only awards exclusive claim of ownership to the subject mark within the confines of the state of Texas. Further, Registrant requests that any

resulting registration show the exception of the remaining territory within the United States as belonging to the Registrant. Without such relief, damage to the Registrant and its long established trademark will result.

Please direct all correspondence to the attention of:

John A. Clifford
Merchant & Gould P.C.
P.O. Box 2910
Minneapolis, MN 55402-0910
612-336-4616
Fax: 612-332-9081

Registrant hereby appoints John A. Clifford; Danielle I. Mattessich; Heather Kliebenstein, Brian H. Batzli; Gregory C. Golla; Scott W. Johnston; Andrew S. Ehard; Christopher J. Schulte; and Brent Routman as its attorneys with the full power to represent the Registrant in connection with this proceeding.

Please charge any fees or credit any overpayment to Deposit Account No. 13-2725 of Registrant's counsel noted above.

Respectfully submitted,

Nash-Finch Company,

By its attorneys,

Date: 11-1-2013

John A. Clifford
Heather J. Kliebenstein
MERCHANT & GOULD P.C.
P.O. Box 2910
Minneapolis, MN 55402-0910
612.336.4616

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing ANSWER was served by first class mail, postage prepaid on this 1st day of November 2013 addressed to:

Shannon W. Bates
Remy M. Davis
Darin M Klemchuk
KLUMCHUK KUBASTA LLP
8150 N Central Expressway, 10th Floor
Dallas, TX 75206

Heather Kliebenstein