

ESTTA Tracking number: **ESTTA206209**

Filing date: **04/21/2008**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Foodarama, LLC
Granted to Date of previous extension	04/20/2008
Address	11840 Valley View Road Eden Prairie, MN 55344 UNITED STATES
Party who filed Extension of time to oppose	Foodarama Incorporated
Relationship to party who filed Extension of time to oppose	Foodarama, LLC is successor in interest to Foodarama Incorporated with respect to the METRO mark. Foodarama Incorporated was inadvertently listed as the potential Opposer. However, Foodarama, LLC is in privity with Foodarama Incorporated and therefore should be able to receive the benefit of the previously filed extension.

Attorney information	Scott W. Johnston Merchant & Gould P.C. P.O. Box 2910 Minneapolis, MN 55402-0910 UNITED STATES sjohnston@merchantgould.com, slindemeier@merchantgould.com, mborg@merchantgould.com, dockmpls@merchantgould.com Phone:612.332.5300
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Applicant Information

Application No	78632210	Publication date	10/23/2007
Opposition Filing Date	04/21/2008	Opposition Period Ends	04/20/2008
Applicant	MIP METRO Group Intellectual Property GmbH & Co. KG Metro-Strasse 1 40235 Duesseldorf, GERMANY		

Goods/Services Affected by Opposition

Class 035. All goods and services in the class are opposed, namely: Retail store services, wholesale stores and distributorships, all featuring food and general merchandise

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2791341	Application Date	11/25/2002
Registration Date	12/09/2003	Foreign Priority Date	NONE
Word Mark	METRO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2001/02/28 First Use In Commerce: 2001/02/28 Retail grocery store services		

Related Proceedings	Opposition to Serial No. 78/581,586
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Attachments	78188644#TMSN.gif (1 page)(bytes) Notice of Opposition 2USTB.pdf (25 pages)(893925 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/SWJ/
Name	Scott W. Johnston
Date	04/21/2008

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

Foodarama, LLC,)	Opposition No. _____
)	
Opposer,)	Mark: METRO CASH&CARRY
)	
v.)	Serial No.: 78/632,210
)	
MIP Metro Group Intellectual Property)	Filing Date: May 18, 2005
GmbH & Co. KG,)	
Applicant.)	Published: October 23, 2007
_____)	

NOTICE OF OPPOSITION

Foodarama, LLC, a Delaware limited liability company, succesor to Foodarama Incorporated, having its mailing address at 11840 Valley View Road, Eden Prairie, Minnesota 55344 (hereinafter “Opposer”), believes that it will be damaged by the registration of the mark METRO CASH&CARRY shown in application Serial No. 78/632,210, filed May 18, 2005, by MIP Metro Group Intellectual Property GmbH & Co. KG (hereinafter “Applicant”), and hereby opposes registration of the mark pursuant to previously filed extensions of time to oppose. The grounds for opposition are as follows:

1. By the application herein opposed, Applicant is seeking to obtain under the provisions of the Trademark Act of 1946, as amended, registration upon the Principal Register of the mark METRO and Design for “retail store services, wholesale stores and wholesale distributorships, all featuring food and general merchandise,” in International Class 35.
2. Applicant’s mark published for opposition on October 23, 2007. Opposer filed and the Board approved extensions of time to oppose Applicant’s mark until April 20, 2008. Given that April 20, 2008, was a Sunday, this Notice of Opposition is timely filed.

3. Since at least as early as 2001, Opposer has used the mark METRO in connection with retail grocery store services.

4. Opposer also owns Registration No. 2,791,341, issued December 9, 2003, for the mark METRO for “retail grocery store services” in International Class 35. While said registration was recently cancelled as result of a cancellation action filed by Applicant, Opposer has moved to vacate the judgment and reinstate the registration on the grounds that Opposer did not receive notice of the Petition to Cancel and that the Board did not publish the Petition to Cancel when it received returned mail indicating that Opposer was no longer at the address listed in TARR. A copy of the motion as filed is attached hereto as Exhibit A.

5. Opposer has advertised and promoted its METRO mark continuously and extensively. As a result of such continuous use and promotion, Opposer’s METRO mark has developed and represents valuable goodwill inuring to the benefit of Opposer.

6. Opposer has priority with respect to the mark at issue in this opposition. Opposer adopted and commenced use of term METRO as a trademark long before Applicant used the METRO CASH&CARRY mark in the United States. Opposer’s usage of the METRO mark commenced at least as early as February 28, 2001, four (4) years prior to the filing date of Applicant’s application for its METRO CASH&CARRY mark.

7. Upon information and belief, Applicant had knowledge of the fact that Opposer used the term METRO as a trademark before it adopted the METRO CASH&CARRY mark.

8. Applicant’s METRO CASH&CARRY mark is confusingly and deceptively similar to Opposer’s previously used and duly registered METRO mark. Specifically, the METRO marks of the parties look the same, sound the same and create the same commercial impression.

9. Applicant's alleged services are identical and/or closely related to Opposer's services marketed by Opposer in connection with its METRO mark. Specifically, Opposer's "retail grocery store services" are closely related to Applicant's "retail store services, wholesale stores and wholesale distributorships, all featuring food and general merchandise" as both involve the retail sale of food products.

10. Due to the similarity between Applicant's claimed mark, METRO CASH&CARRY, and Opposer's previously used and duly registered METRO mark, the closely related nature of the services of the respective parties, customers and potential customers are likely to believe that Applicant's services originate from Opposer, resulting in a likelihood of confusion in the marketplace, and damage to Opposer.

11. The use and registration by Applicant of the mark METRO CASH&CARRY for Applicant's services is likely to cause confusion or to cause mistake or deception in the trade, and among purchasers and potential purchasers, with Opposer's previously used and duly registered METRO marks, again resulting in damage to Opposer.

12. Because of the closely related nature of the services, and the similarity of the marks, use and registration of the term METRO CASH&CARRY by Applicant is likely to cause confusion, mistake, or deception that Applicant's services are those of Opposer, or are otherwise endorsed, sponsored, or approved by Opposer causing further damage to Opposer.

13. Registration of the mark shown in application Serial No. 78/632,210 will result in damage to Opposer under the provisions of Section 2 of the U.S. Trademark Act, 15 U.S.C. Section 1052, pursuant to the allegations stated above.

WHEREFORE, Opposer requests that the registration sought by Applicant in application Serial No. 78/632,210 be refused and that this Notice of Opposition be sustained.

Please direct all correspondence to:

Scott W. Johnston
MERCHANT & GOULD P.C.
P.O. Box 2910
Minneapolis, MN 55402-0910

Opposer herein appoints John A. Clifford, Reg. No. 30,247; Gregory C. Golla; Andrew S. Ehard; Scott W. Johnston, Reg. No. 39,721; Heather J. Kliebenstein; Danielle I. Mattessich; Scott M. Oslick; Christopher J. Schulte; William D. Schultz, and all other attorneys of the firm of Merchant & Gould P.C., its attorneys to transact all business in the U.S. Patent and Trademark Office relating to this matter with full power of substitution.

Respectfully submitted,

FOODARAMA, LLC

By its Attorneys,

Date: 4-21-08




Scott W. Johnston
MERCHANT & GOULD P.C.
80 South Eighth Street, Suite 3200
Minneapolis, Minnesota 55402-2215
(612) 332-5300

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing NOTICE OF OPPOSITION was served upon the following attorney of record for Applicant by First Class Mail, postage prepaid, this 21st day of April, 2008:

Mark Tidman
Arent Fox PLLC
1050 Connecticut Ave NW
Washington, D.C. 20036-5399



Scott W. Johnston

Fed. R. Civ. P. 60(b). A Rule 60(b) motion under subpart 1-3 shall be brought within one year of the judgment. *Id.* Default judgment in this proceeding was entered on May 15, 2007.

Therefore, this motion is being brought within the one year time period provided by the rules. Registrant is bringing this motion promptly upon discovery of the cancellation of its mark and after inquiring of counsel for Petitioner for consent to the motion, which consent was denied.

On or about January 16, 2007, Petitioner brought a Petition to Cancel Registrant's mark based upon alleged abandonment. Johnston Decl. ¶3. Registrant had not at the time of the Petition, and has not now, abandoned its mark as it did then and currently does use the mark. *Id.* at ¶2. The service address for the Petition to Cancel was Foodarama, Inc., 8608 Liberty Road, Randallstown, MD 21133. *Id.* at ¶4. This location was no longer a valid address for Registrant in January of 2007 nor is it a valid address for Registrant currently. *Id.* Although Scott W. Johnston was listed as the attorney of record on TARR, the address for Scott W. Johnston was listed in TARR as the same address listed above. This address has never been an address for Scott W. Johnston, attorney for Registrant. *Id.* at ¶5. Registrant does not know how this change of address occurred.

On January 23, 2008, the Board attempted to serve Foodarama, Incorporated with the Petition to Cancel, which mail was not received by Registrant, because the address listed was Registrant's old address, 8608 Liberty Road, Randallstown, MD 21133. On March 27, 2007, the Board mailed a Notice of Default against Foodarama, which notice was not received by Registrant as Registrant was no longer at that address. *Id.* at ¶6-7. On May 15, 2007, the Board entered default judgment against Foodarama, again such mail not being received. *Id.* at ¶8. The case file does indicate that the Board did in fact receive returned mail as unable to forward on June 25, 2007. *Id.* at ¶9. On July 10, 2007, the Commissioner cancelled the registration of

Registrant. *Id.* at ¶10. No publication of the Petition to Cancel was ever made in the Official Gazette. *Id.* at ¶11.

Pursuant to TBMP section 310.02, if in a cancellation proceeding, mail is returned to the TTAB, the Board is to send an inquiry to the petitioner asking for information relative to the registrant's current address. If the petitioner files a response indicating that the registrant is no longer in business, then notice of the petition to cancel is to be published in the Official Gazette pursuant to 37 CFR §2.118. *Id.* The Board will continue to make reasonable efforts to locate the registrant. *Id.*

In the instant case, Scott W. Johnston is the attorney of record for hundreds of trademark applications and registrations. A simple search of applications and registrations results in hundreds of federal listings in which Scott W. Johnston's correct address at Merchant & Gould is shown. It appears that efforts were not made to locate counsel for Registrant despite the returned mail to the Trademark Office. Additionally, no publication of the Petition to Cancel was ever made in the Official Gazette despite the returned mail to the Trademark Office.

When Registrant finally learned that its registration had been cancelled, Registrant's counsel contacted the attorney who had filed the cancellation action on behalf of Petitioner. Johnston Decl. ¶12. The attorney who had worked on the matter was no longer with the firm. *Id.* Further inquiry revealed that the client had also been transferred to another law firm. *Id.* Registrant's counsel then contacted new counsel and ultimately spoke with Mark Tidman of Arent Fox PLLC. *Id.* at ¶13. Registrant's counsel informed Petitioner's counsel that Registrant continued to use the mark, had not abandoned the mark, had not received notice of the Cancellation action, and asked for Petitioner's consent to re-instate the Registration. *Id.*

Petitioner took some time to respond to the request for consent and ultimately said that Petitioner was not inclined to consent to the motion. *Id.*

The interests of justice require that default judgment be vacated and the cancellation proceeding be reinstated. In particular, the cancellation proceeding was brought based upon alleged abandonment. Registrant in fact had not and has not abandoned its mark. In this regard, the attached answer does in fact indicate this as well. Additionally, registrant is opposing the Petitioner's applications to register the same mark in the United States.

For the foregoing reasons, Registrant, respectfully submits this motion pursuant to Fed. R. Civ. P., Rule 60(b) and TBMP section 544, to vacate the judgment entered against it in this Cancellation Proceeding. Registrant also requests that its answer be accepted and that the trial and discovery dates in this case be reopened and reset.

FOODARAMA, LLC

By its Attorneys,



Scott W. Johnston
MERCHANT & GOULD P.C.
3200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402-2215
Telephone: (612) 371-5395


4-21-08
Date

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing MOTION FOR RELIEF FROM FINAL JUDGMENT AND SUPPORTING DECLARATION OF SCOTT W. JOHNSTON has been served on counsel for Petitioner by first class mail, postage prepaid, this 21st day of April, 2008 as follows:

Katrin Lewertoff
Sidley Austin LLP
787 Seventh Avenue
New York, NY 10019

Mark H. Tidman
Arent Fox LLP
1050 Connecticut Avenue, NW
Washington, DC 20036-5339



Scott W. Johnston

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

MIP METRO Group Intellectual
Property GmbH & Co. KG,

Petitioner,

v.

Foodarama, LLC,

Registrant.

Cancellation No. 92046932

ANSWER

Foodarama, LLC, successor in interest to Foodarama Incorporated (“Registrant”), with an address of 11840 Valley View Road, Eden Prairie, MN, 55344, for its answer to the Notice of Cancellation of MIP Metro Group Intellectual Property GMBH & Co. KG, states as follows:

With regard to the preamble, Registrant lacks information as to Petitioner, and therefore denies the same.

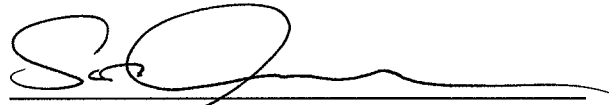
1. Registrant denies that it has abandoned the mark and affirmatively states that its mark is in fact in use in commerce. Registrant lacks information regarding the remaining allegations in Paragraph 1, and therefore denies the same.
2. Registrant lacks information regarding the allegations in Paragraph 2, and therefore denies the same. Registrant specifically states that it is in fact using the mark METRO in commerce and has used the mark in commerce continuously since February of 2001 and used the designation METRO as a mark since at least as early as 1992.

3. Registrant also notes that it has filed Notices of Opposition against Petitioner's Application Serial Nos. 78/581,586 and 78/632, 210 for the marks METRO and Design and METRO CASH & CARRY.

In view of the foregoing, Registrant respectfully requests that the Petition for Cancellation be denied with prejudice.

FOODARAMA, LLC

By its Attorneys,



Scott W. Johnston
MERCHANT & GOULD P.C.
3200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402-2215
Telephone: (612) 371-5395

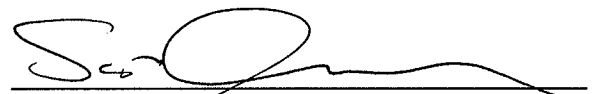
4-21-08
Date

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing MOTION FOR RELIEF FROM FINAL JUDGMENT has been served on counsel for Petitioner by first class mail, postage prepaid, this 21st day of April, 2008 as follows:

Katrin Lewertoff
Sidley Austin LLP
787 Seventh Avenue
New York, NY 10019

Mark H. Tidman
Arent Fox LLP
1050 Connecticut Avenue, NW
Washington, DC 20036-5339



Scott W. Johnston

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

MIP METRO Group Intellectual
Property GmbH & Co. KG,

Petitioner,

v.

Foodarama, LLC,

Registrant.

Cancellation No. 92046932

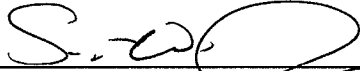
DECLARATION OF SCOTT W. JOHNSTON

I, Scott W. Johnston, declare and say as follows:

1. I am an attorney for Foodarama, LLC successor in interest to Foodarama Incorporated (“Registrant”), and submit this declaration in support of Registrant’s Motion to Vacate the Judgment entered against it in this Cancellation Proceeding.
2. Registrant had not at the time of the Petition and has not now abandoned its mark as it did then and currently does use the mark.
3. On or about January 16, 2007, Petitioner brought a Petition to Cancel Registrant’s mark based upon alleged abandonment, a copy of which is attached as Exhibit A.
4. The service address for the Petition to Cancel was Foodarama, Incorporated, 8608 Liberty Road, Randallstown, MD 21133. This location was no longer a valid address for Registrant in January of 2007 nor is it a valid address for Registrant currently.
5. 8608 Liberty Road, Randallstown, MD 21133 has never been an address for Scott W. Johnston, attorney for Registrant.

6. On January 23, 2008, the Board attempted to serve Foodarama, with the Petition to Cancel, which mail was not received by Registrant, because the address listed was Registrant's old address, a copy of which is attached as Exhibit B.
7. On March 27, 2007, the Board mailed a Notice of Default against Foodarama, which notice was not received by Registrant as Registrant was no longer at that address, a copy of which is attached as Exhibit C.
8. On May 15, 2007, the Board entered default judgment against Foodarama, again such mail not being received, a copy of which is attached as Exhibit D.
9. Returned mail received by the Board was received by the Board on June 25, 2007, a copy of which is attached as Exhibit E.
10. On July 10, 2007, the Commissioner cancelled the registration of Registrant, a copy of which is attached as Exhibit F.
11. No publication of the Petition to Cancel was ever made in the Official Gazette.
12. When Registrant finally learned that its registration had been cancelled, I contacted the attorney who had filed the cancellation action on behalf of Petitioner. The attorney who had worked on the matter was no longer with the firm. Further inquiry revealed that the client had also been transferred to another law firm.
13. I then contacted new counsel and ultimately spoke with Mark H. Tidman of Arent Fox PLLC. I informed Mark H. Tidman that Registrant continued to use the mark, had not abandoned the mark, had not received notice of the Cancellation action, and asked for Petitioner's consent to re-instate the Registration. Petitioner's counsel took some time to respond to the request for consent and ultimately said that Petitioner was not inclined to consent to the motion.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.



Scott W. Johnston

ESTTA Tracking number: **ESTTA119803**

Filing date: **01/16/2007**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	MIP METRO Group Intellectual Property GmbH & Co. KG		
Entity	GmbH & Co. KG	Citizenship	Germany
Address	Metro-Strasse 1 40235 Duesseldorf, GERMANY		

Attorney information	Katrin Lewertoff Sidley Austin LLP 787 Seventh Avenue New York, NY 10019 UNITED STATES klewertoff@sidley.com Phone:2128397366		
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Registration Subject to Cancellation

Registration No	2791341	Registration date	12/09/2003
Registrant	Foodarama Incorporated 8608 Liberty Road Randallstown, MD 21133 UNITED STATES		
Goods/Services Subject to Cancellation	Class 035. First Use: 2001/02/28 , First Use In Commerce: 2001/02/28 Goods/Services: Retail grocery store services		

Attachments	DT-7390 METRO notice of cancellation.pdf (2 pages)(43388 bytes)
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Signature	/Katrin Lewertoff/
Name	Katrin Lewertoff
Date	01/16/2007



1. Petitioner petitions to cancel Certificate of Registration No. 2,791,341 owned by Foodarama Incorporated ("Respondent") on the grounds that the mark described in that Certificate of Registration has been abandoned by Respondent and is no longer in use. Petitioner is being damaged by said Registration because said Registration is preventing Petitioner from registering its own trademarks under Trademark Application Serial Nos. 78/632,210 and 78/581,586.

2. Petitioner has not been able to find prove of any use of Respondent's mark and thus assumes that Respondent has abandoned its mark.

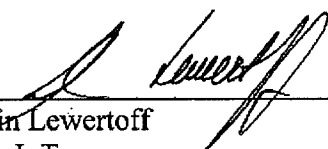
WHEREFORE, Petitioner requests that this cancellation be granted and that U.S. Trademark Registration No. 2791341 be cancelled.

Please charge the filing fee in connection with this Notice of Cancellation to the undersigned's firm's Deposit Account No. 50-0955.

Petitioner herein appoints Peter J. Toren and Katrin Lewertoff as its attorneys, to transact all business in the U.S. Patent and Trademark Office relating to this matter with full power of substitution.

Respectfully submitted,
MIP METRO Group Intellectual Property GmbH & Co KG
By its attorneys,

Dated: January 16, 2007

By: 
Katrin Lewertoff
Peter J. Toren
SIDLEY AUSTIN LLP
787 Seventh Avenue
New York, New York 10019
(212) 839 7366

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: January 23, 2007

Foodarama Incorporated
8608 Liberty Road,
Randallstown, MD 21133
UNITED STATES

Cancellation No. 92046932
Reg. No. 2791341

Katrin Lewertoff
Sidley Austin LLP
787 Seventh Avenue,
New York, NY 10019

MIP METRO GROUP INTELLECTUAL
PROPERTY GMBH & CO. KG

V.

FOODARAMA INCORPORATED

Tina Craven, Paralegal Specialist:

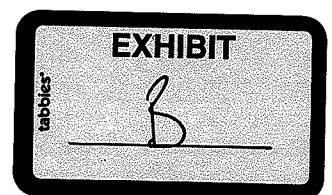
A petition, a copy of which is attached, has been filed to cancel the above-identified registration.

Proceedings will be conducted in accordance with the Trademark Rules of Practice.

ANSWER IS DUE FORTY DAYS after the mailing date hereof. (See Trademark Rule 2.196 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that affect the rules of practice before the TTAB. See Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003); Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12, 2003). Notices concerning the rules changes, as well as the *Trademark Trial and Appeal Board Manual of Procedure* (TBMP), are available at www.uspto.gov/web/offices/dcom/ttab/.

The parties are particularly referred to Trademark Rule 2.126 pertaining to the form of submissions. Paper submissions, including but not limited to exhibits and depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.



Discovery and testimony periods are set as follows:

Discovery period to open:	2/12/07
Discovery period to close:	8/11/07
30-day testimony period for party in position of plaintiff to close:	11/9/07
30-day testimony period for party in position of defendant to close:	1/8/08
15-day rebuttal testimony period for plaintiff to close:	2/22/08

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NOTE: The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68 (June 20, 2000). The notice is available at <http://www.uspto.gov>. Interlocutory matters which the Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

New Developments at the Trademark Trial and Appeal Board

TTAB forms for electronic filing of extensions of time to oppose, notices of opposition, and inter partes filings are now available at <http://estta.uspto.gov>. Images of TTAB proceeding files can be viewed using TTABVue at <http://ttabvue.uspto.gov>.

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

tdc

Mailed: March 27, 2007

Cancellation No. 92046932

MIP METRO Group Intellectual
Property GmbH & Co. KG

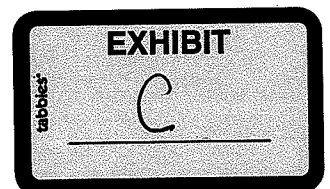
v.

Foodarama Incorporated

Tyrone Craven, Paralegal:

Answer was due in this case on March 4, 2007. Inasmuch as it appears that no answer has been filed, nor has respondent filed a motion to extend its time to answer, notice of default is hereby entered against respondent under Fed. R. Civ. P. 55(a).

Respondent is allowed until thirty days from the mailing date of this order to show cause why judgment by default should not be entered against respondent in accordance with Fed. R. Civ. P. 55(b).



UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

tdc

Mailed: May 15, 2007

Cancellation No. 92046932

MIP METRO Group Intellectual
Property GmbH & Co. KG

v.

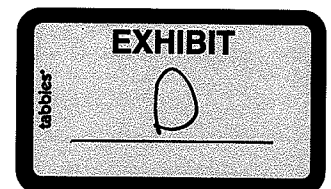
Foodarama Incorporated

On March 27, 2007, the Board sent a notice of default to respondent because no answer had been filed.

The record shows no response thereto.

Accordingly, judgment by default is hereby entered against respondent, the petition to cancel is granted, and Registration No. 2791341 will be cancelled in due course. See Fed. R. Civ. P. 55, and Trademark Rule 2.114(a).

*By the Trademark Trial
and Appeal Board*



TTAB

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

tdc

Mailed: May 15, 2007

Cancellation No. 92046932

78188644

MIP METRO Group Intellectual
Property GmbH & Co. KG

v.

Foodarama Incorporated

On March 27, 2007, the Board sent a notice of default to respondent because no answer had been filed.

The record shows no response thereto.

Accordingly, judgment by default is hereby entered against respondent, the petition to cancel is granted, and Registration No. 2791341 will be cancelled in due course. See Fed. R. Civ. P. 55, and Trademark Rule 2.114(a).

*By the Trademark Trial
and Appeal Board*

06-25-2007

U.S. Patent & TMO/TM Mail Rcpt Dt. #72

EXHIBIT

tabbles

Σ

92046932 211332007 IN 26 05/31/07
AN EQUAL OPPORTUNITY EMPLOYER



United States Patent and Trademark Office
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
If Undeliverable Return in Ten Days

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, \$300

92046932
FOODARAMA INCORPORATED
8608 LIBERTY ROAD
RANDALLSTOWN, MD 21133

FOOD608 211332007 IN 26 05/31/07
UNABLE TO FORWARD

NO FORWARD ORDER ON FILE
RETURN TO POSTMASTER
OF ADDRESSEE FOR REVIEW



TDC

U. S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

MIP METRO Group Intellectual Property GmbH & Co. KG

v.

Foodarama Incorporated

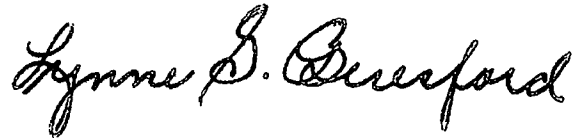
Cancellation No. 92046932

Katrin Lewertoff of Sidley Austin LLP for MIP METRO Group
Intellectual Property GmbH & Co. KG.

Foodarama Incorporated, pro se.

The petition of MIP METRO Group Intellectual Property
GmbH & Co. KG having been granted on May 15, 2007,
Registration No. 2791341 is hereby cancelled.

JUL 10 2007



Lynne G. Beresford
Commissioner for Trademarks

