

ESTTA Tracking number: **ESTTA441661**

Filing date: **11/17/2011**

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

Proceeding	91185766
Party	Plaintiff C.F.M. Distributing Company, Inc.
Correspondence Address	AMBER L DAVIS BEUSSE WOLTER SANKS MORA MAIRE P.A. 390 NORTH ORANGE AVENUE, SUITE 2500 ORLANDO, FL 32801 UNITED STATES adavis@iplawfl.com, tsanks@iplawfl.com, bmahan@iplawfl.com; suzanne@innesmeehle.com
Submission	Testimony For Plaintiff
Filer's Name	Amber N. Davis
Filer's e-mail	adavis@iplawfl.com, tsanks@iplawfl.com, bmahan@iplawfl.com, suzanne@meehle.com
Signature	/Amber N. Davis/
Date	11/17/2011
Attachments	Notice of Filing Trial Tesimony of Paul Dion.pdf (2 pages)(66097 bytes) Paul Dion (Including Ex and Jurat) (102611).pdf (24 pages)(1126349 bytes)

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

In the Matter of

Application Serial No.: 77402411
Filing Date: February 21, 2008
Mark: MARYLAND FRIED CHICKEN COMPLETE DINNERS TO GO!
Design Mark
Published: July 22, 2008

Application Serial No.: 77497042
Filing Date: June 12, 2008
Mark: Design Mark
Published: November 4, 2008

C.F.M. Distributing Company, Inc.

Opposer.

v.

Theresa Costantine, as Personal Representative
of the Estate of Richard Costantine,

Applicant.

Original Maryland Fried Chicken, LLC ,

Opposer,

v.

Theresa Costantine, as Personal Representative
of the Estate of Richard Costantine,

Applicant.

OPPOSITION # 91185766
(against application Serial No. 77402411)

OPPOSITION No. 91187377
(against application Serial No. 77402411)

OPPOSITION No. 91187378
(against application Serial No. 77497042)

NOTICE OF FILING THE TRIAL TESTIMONY
DEPOSITION OF PAUL DION

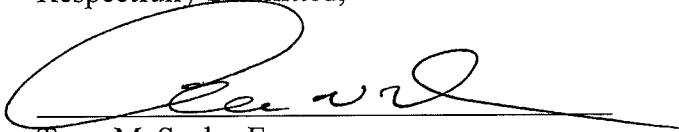
PLEASE TAKE NOTICE that pursuant to 37 C.F.R. §2.123(f), the Opposer's C.F.M. Distributing Company, Inc. and Original Maryland Fried Chicken, LLC hereby serve notice that the trial testimony deposition transcript of PAUL DION along with all exhibits attached thereto

dated October 25, 2011 has been filed with the Trademark Trial and Appeal Board on this date. The trial testimony deposition transcript of PAUL DION along with the exhibits attached thereto has already been served on Applicant's counsel as required under the rules.

Dated this 17th day of November, 2011.

Respectfully Submitted,

By:



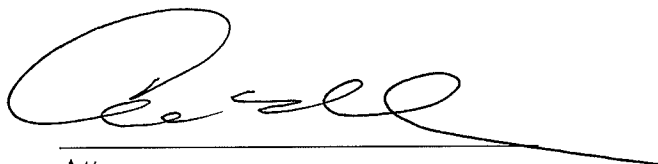
Terry M. Sanks, Esq.
Florida Bar No.: 154430
Amber N. Davis Esq.
Florida Bar No.: 026628
Beusse Wolter Sanks
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adavis@iplawfl.com
tsanks@iplawfl.com

CERTIFICATE OF SERVICE

I certify that one copy of the foregoing transcript has already been sent to Neil A. Saydah at the address listed below and a copy of the foregoing document was mailed to Applicant's authorized representative on November 17, 2011 by first class mail, postage prepaid, at the following address:

Neil A. Saydah
Saydah Law Firm
121 S. Orange Ave.
Suite 1500
Orlando, Florida 32801

Suzanne D. Meehle, Esq.
The Meehle Law Firm
115 Maitland Avenue
Altamonte Springs, Florida 32701



Attorney

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J U R A T

Deposition of PAUL DION

Taken October 26, 2011

BARBARA PERRY AND COMPANY, INC.
1516 Hillcrest Street, Suite 103
Orlando, Florida 32803

Page 1 - 16, inclusive.

Errata Attached: Yes No

SIGNATURE OF DEPONENT



Signed this 16 day of November
2011 in

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

In the Matter of:

Application Serial No.: 77402411
Filing Date: February 21, 2008
Mark: MARYLAND FRIED CHICKEN COMPLETE DINNERS TO GO!
Design Mark
Published: July 22, 2008

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C.F.M. Distributing Company, Inc.,
Opposer,
v.

Opposition No.
91185766
(against
application
Serial No:
77402411)

Theresa Constantine, as Personal
Representative of the Estate of
Richard Constantine,
Applicant.

Original Maryland Fried Chicken, LLC,

Opposer,

v.

Theresa Constantine, as Personal
Representative of the Estate of
Richard Constantine,

Opposition No.
91187377
(against
application
Serial No.
77402411)

Applicant.

Opposition No.
91187378
(against
application
Serial No.
77497042)

October 26, 2011
1:53 o'clock p.m.

The deposition of PAUL DION,
taken pursuant to notice on behalf of the
Opposer, at the offices of Beusse, Wolter,
Sanks, Mora & Maire, P.A., 390 North Orange
Avenue, Suite 2500, Orlando, Florida, before
Barbara G. Perry, Registered Professional
Reporter, Florida Professional Reporter and
Notary Public, in and for the State of Florida
at Large.

APPEARANCES:

AMBER N. DAVIS, ESQUIRE
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115 Maitland Avenue, Third Floor
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407.792.0790

Representing the Opposer.

ALSO PRESENT:

ERIC P. LARUE, Law Student
for the Saydah Law Firm
121 South Orange Avenue, Suite 1500
Orlando, Florida 32801
407.956.1080

For the Applicant.

Bob Constantine

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CERTIFICATE OF OATH

18

CERTIFICATE OF REPORTER

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EXHIBITS

Dion Exhibits For Identification:

No. A Picture of a cup

7

No. B Declaration of Paul Dion

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S T I P U L A T I O N S

It is hereby stipulated and agreed by and between counsel present for the respective parties and the deponent that the reading and signing of the deposition is expressly reserved.

(End of stipulation)

REPORTER'S KEY TO PUNCTUATION:

-- At end of question or answer references an interruption.

... References a trail-off by the speaker.
No testimony omitted.

"uh-huh" References an affirmative sound.

"unh-unh" References a negative sound.

P R O C E E D I N G S

PAUL DION,

HAVING BEEN FIRST DULY SWORN BY THE REPORTER,
THEREUPON TESTIFIED UPON HIS OATH AS FOLLOWS:

D I R E C T E X A M I N A T I O N

BY MS. DAVIS:

Q. Would you please state your name for the
record?

A. Paul Jackson Dion.

Q. Mr. Dion, where are you currently employed?

A. Maryland Fried Chicken in Winter Garden,
Florida.

Q. What's the address of that restaurant?

A. 13675 West Colonial Drive.

Q. What's your position at that Maryland Fried
Chicken restaurant?

A. Owner.

Q. Is there anybody else that owns the
restaurant with you?

A. No.

Q. When did you first start operating or when
did you become the owner of that Maryland Fried
Chicken restaurant?

A. 1980.

Q. And prior to 1980, did someone else own the

1 restaurant before you?

2 A. Yes, they did.

3 Q. And who was that?

4 A. Doug Bartolo (ph).

5 Q. Did you purchase the restaurant from Doug
6 Bartolo?

7 A. Yes, I did.

8 Q. And do you know how long Doug Bartolo owned
9 the Maryland Fried Chicken restaurant before you?

10 A. 14 years. 1966, he opened up in June of
11 1966.

12 Q. How do you know that?

13 A. That's what he told me.

14 Q. Okay.

15 A. I started, he hired me in '75 and I bought
16 it in '80.

17 Q. So you worked there previously as an employee?

18 A. Manager.

19 Q. As Manager?

20 A. Yes.

21 Q. Do you have any relation to Theresa or
22 Richard Constantine?

23 A. No.

24 Q. Since you've begun operating your store, has
25 Richard or Theresa Constantine ever told you what

1 type of products you can sell?

2 A. No.

3 Q. Have they ever told you where you need to
4 purchase your products from?

5 A. No.

6 Q. Have they ever told you that you can or
7 cannot use the words "Maryland Fried Chicken"?

8 A. No.

9 Q. Have they ever told you that you can or
10 cannot use the Maryland Fried Chicken logo?

11 A. No.

12 (The document was marked for identification as
13 Dion Exhibit No. A.)

14 BY MS. DAVIS:

15 Q. And when I say "logo," I'm going to show you
16 what's been previously marked as Exhibit "A" for
17 identification purposes. Are you familiar with this
18 photograph?

19 A. Very much.

20 Q. What is this a photograph of?

21 A. A cup with the Maryland Fried Chicken logo.

22 Q. Do you use this logo currently at your store?

23 A. Yes, I do.

24 Q. Where do you use that logo?

25 A. It's on the front of my store, on a big sign

1 outside. Inside.

2 Q. How long have you been using the logo?

3 A. It's the same logo that was put up there in
4 1966.

5 Q. Do you purchase any products from C.F.M.
6 that bear this logo?

7 A. Yes.

8 Q. Which products are those?

9 A. I use their cups sometimes. Breeding.
10 Marination. Boxes. Carry packs like -- they used to
11 be called buckets, now they're called carry packs for
12 more than 6 or 8 pieces of chicken, 9 pieces of
13 chicken and they're in a larger container. And all
14 of those have logos on them.

15 Q. Is there anything else that you can think of
16 at the store where you're using the words Maryland
17 Fried Chicken or the logo?

18 A. No.

19 Q. How about uniforms; what type of uniforms do
20 your employers wear?

21 A. I buy my uniforms from them. It's a T-shirt
22 with Maryland Fried Chicken on them. Also hats.

23 Q. Where do you purchase those from?

24 A. C.F.M.

25 Q. Did you get permission from Richard or

1 Theresa Constantine to use these logos on the shirts
2 and the hats?

3 A. (Shakes head from side-to-side)

4 Q. Could you say that for the court reporter?

5 A. No.

6 Q. Has Richard or Theresa Constantine ever
7 controlled the quality of the food that you provide
8 to your customers?

9 A. No.

10 Q. Have they ever controlled the uniforms that
11 your --

12 A. No.

13 Q. -- employees wear? Do they control what
14 your menus look like?

15 A. No. And the logo is on the menu. Pardon
16 me, there is a logo there.

17 Q. What types of foods do you sell at your
18 Maryland Fried Chicken restaurant?

19 A. Fried chicken.

20 Q. Anything else?

21 A. We have different sides, 6 or 8 different
22 side items. I make all of those, so we buy them, and
23 then we make them.

24 Q. Have you ever visited any of the other
25 Maryland Fried Chicken restaurants?

1 A. Sure.

2 Q. Which ones?

3 A. I've been in the one in Leesburg many years
4 ago. Melbourne. Haines City. Those are the only
5 ones I can remember right now.

6 Q. Do each of those restaurants look the same?

7 A. All buildings are different.

8 Q. What about the decor inside the restaurant,
9 do they all look the same?

10 A. They are all different.

11 Q. How about the menus?

12 A. That varies according to the place, because
13 what sells in some places for side items don't sell
14 very well in others, so they don't sell it.

15 Q. Were you aware that there are certain
16 Maryland Fried Chicken restaurants that sell Chinese
17 food and Greek foods?

18 A. I had heard that. Not Greek; Chinese, yes.

19 Q. Have you ever had a license or a franchise
20 agreement with Richard or Theresa Constantine?

21 A. No.

22 Q. Do you know if your previous owner -- I'm
23 sorry, say that name again?

24 A. Doug Bartolo.

25 Q. Do you know if Doug Bartolo ever had a

1 license or a franchise agreement with Richard or
2 Theresa Constantine?

3 A. Not to my knowledge. The only one I knew he
4 dealt with was Albert Constantine, and it was a
5 handshake deal. Back in those days, that's what
6 everything was.

7 Q. Have you ever provided your accounting
8 records or sales records to Richard or Theresa
9 Constantine?

10 A. No.

11 Q. Why not?

12 A. It's none of their business. In fact, I've
13 never met them.

14 Q. Have you ever met Theresa Constantine?

15 A. I think I saw both of them one time, and
16 that was the last deposition we had.

17 THE WITNESS: (To Mr. Constantine) Which
18 was last year?

19 MR. CONSTANTINE: Yes, I believe it was last
20 year.

21 BY MS. DAVIS:

22 Q. If you wanted to come up with your own
23 Maryland Fried Chicken logo, could you?

24 A. I thought about that in case they wanted to
25 take royalties or something like that if this thing

1 went out-of-whack, and I would probably change the
2 name. I might be able to change the face of the sign.

3 I would change a little something so then I
4 wouldn't have to deal legally with them. I could
5 keep the same structure, but change the face of it.

6 But I couldn't use Maryland Fried Chicken,
7 if it went that far.

8 Q. You're saying if they were to get the
9 trademark and require you to pay license fees?

10 A. They wouldn't get it, because I would stop
11 buying.

12 Q. You would stop buying from?

13 A. I would stop buying Maryland Fried Chicken
14 products altogether.

15 Q. Right. Do you remember signing an Affidavit
16 attesting to a number of the items that we just
17 discussed?

18 A. Do you mean the side items?

19 Q. No, no, no. Attesting to the number of
20 items that we just discussed, meaning --

21 A. Oh, yes, yes, yes.

22 (The document was marked for identification as
23 Dion Exhibit No. B.)

24 BY MS. DAVIS:

25 Q. I'm going to show you for identification

1 purposes Exhibit "B". Can you tell me what this is?

2 A. Yes, I filled this out.

3 Q. Is that your signature on page 2?

4 A. Yes, it is.

5 Q. And are all of the statements in this
6 Affidavit true and correct?

7 A. Yes.

8 MS. DAVIS: I would like to move the
9 Affidavit into evidence.

10 Could we take a quick break?

11 THE WITNESS: Sure.

12 (A recess was taken from 2:02 p.m. to 2:05 p.m.)

13 BY MS. DAVIS:

14 Q. Just a couple more questions. Mr. Dion,
15 earlier I asked you if you had any license or
16 franchise agreements with Richard or Theresa
17 Constantine. Do you remember that?

18 A. Yes.

19 Q. And your answer was no. Correct?

20 A. Correct.

21 Q. Do you have any license or franchise
22 agreements with anyone?

23 A. No.

24 Q. Have you ever?

25 A. No.

1 Q. Do you know if the previous owner ever had a
2 written license or a franchise agreement with anyone?

3 A. Not to my knowledge.

4 Q. Is your restaurant independently owned by
5 you?

6 A. Yes.

7 Q. Are you able to set whatever menu you want
8 as far as what type of products you're going to be
9 providing to your customers?

10 A. Yes.

11 Q. And are you able to use the Maryland Fried
12 Chicken words and logo in any format that you want?

13 A. Yes. There has never been any control, any
14 central control over any of the Maryland Fried
15 Chickens since I've been there. Ever been.

16 Like I said, it was just a good old buddy
17 system back then. We shook hands. I'll help you
18 open your store, this is what I'll do, and you're on
19 your own. Just buy his products, that's all he
20 wanted.

21 Q. One other question. Have you ever looked
22 into opening up another restaurant besides the one
23 that you currently operate?

24 A. We leased the one in Mount Dora, that's the
25 one I forgot about, years and years ago. But we

1 weren't able to make a go of it. We had it about two
2 years.

3 Q. And so when was that, if you recall?

4 A. Oh, gosh. '85, maybe.

5 Q. At the time you opened that store, did you
6 contact anyone to get permission to open the store?

7 A. No. It was owned by -- it was, just like I
8 said, all of the stores were independent, they could
9 sell to whomever they pleased. They didn't have to
10 get permission from anybody to do anything, not to my
11 knowledge, or to lease, to lease it out.

12 Q. I have no further questions. Thank you very
13 much for coming. We appreciate it.

14 A. All right.

15 Q. You have the opportunity to read your
16 deposition and sign it. And actually, for the TTAB,
17 since Theresa's attorney is not present, I need you
18 to read and sign it for me.

19 A. Okay.

20 Q. Is that okay? Do you have an email address
21 that I can email it to you?

22 A. No.

23 Q. A fax?

24 MR. CONSTANTINE: We're old school.

25 Q. My client doesn't have an email. That's

1 strange to me.

2 A. We're still living in the cave.

3 Q. How would you like me to send it; do you
4 want me to mail it to you?

5 A. Yes, mail it to the store. And I can get my
6 daughter to fax it back to you, but I don't have the
7 fax number with me, because I only use the fax once
8 every blue moon.

9 Q. I will mail it to the store and then I'll
10 put a cover letter asking you to read it. If there's
11 anything that you need to correct, correct it, and
12 then sign it and then just send it back to me. Okay?

13 A. Okay.

14 Q. Thank you.

15 A. You're welcome.

16 (The deposition was concluded at 2:06 p.m.)

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J U R A T

Deposition of PAUL DION

Taken October 26, 2011

BARBARA PERRY AND COMPANY, INC.
1516 Hillcrest Street, Suite 103
Orlando, Florida 32803

Page 1 - 16, inclusive.

Errata Attached: Yes No

SIGNATURE OF DEPONENT

Signed this day of
2011 in

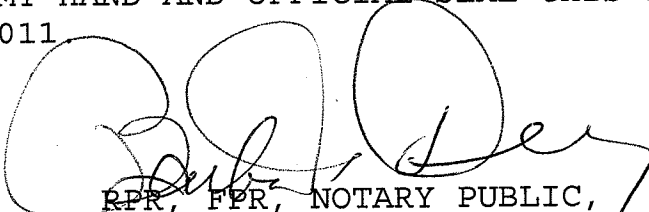
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CERTIFICATE OF OATH

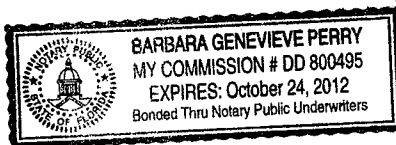
STATE OF FLORIDA:
COUNTY OF ORANGE:

I, Barbara G. Perry, do hereby certify that I placed under oath the Deponent, PAUL DION, at the time and place herein designated.

WITNESS MY HAND AND OFFICIAL SEAL this 1st day of November 2011.



RPR, FPR, NOTARY PUBLIC,
STATE OF FLORIDA AT LARGE.



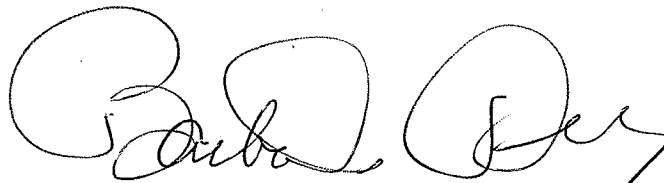
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1 CERTIFICATE OF REPORTER

2 I, Barbara G. Perry, Certified Shorthand
3 Reporter and Registered Professional Reporter,
4 certify that I was authorized to and did
5 stenographically report the foregoing proceedings at
6 the time and place herein designated; and that the
7 foregoing pages 5 through 16, inclusive, constitute a
8 true, complete and accurate transcription of my said
9 stenotype notes.

10 I further certify that I am not of counsel for,
11 related to, or employed by any party hereto or
12 attorney involved herein, nor am I financially
13 interested in the outcome of this action.

14 Witness my hand this 1st day of November 2011.

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17 

18 BARBARA G. PERRY, RPR, FPR
19 REGISTERED PROFESSIONAL REPORTER
20 FLORIDA PROFESSIONAL REPORTER
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P. Dixon
EXHIBIT NO. A
10/26/11
B. Perry

DECLARATION OF Paul J. Dion

1. Paul J. Dion, hereby declare and state as follows:

1. I am the owner of the Maryland Fried Chicken restaurant located at

13675 WEST COLONIAL DR. WINTER GARDEN, FL.

2. I have owned the restaurant since 1980 and have been using the

Maryland Fried Chicken trademark in association with restaurant services since that date.

3. Prior to my purchase, another entity owned and operated this Maryland Fried Chicken restaurant at this same location since at least as early as ^{June} 1966.

4. At my restaurant we sell the following types of food and beverages:

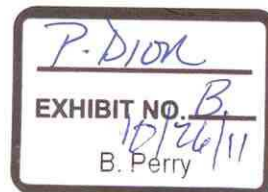
ed CHICKEN (MFC), Fake Products, CS, BAKE BEANS, GREEN BEANS, MASHED POTATOES, RICE, GRavy, Red Beans + Rice, Fried OKRA, MUSHROOMS + CORN NUGGETS.

5. I have signage at my restaurant indicating that the restaurant is a Maryland Fried Chicken restaurant.

6. Since the early 1970's, I have been purchasing my paper products, coleslaw and breading mix from C.F.M. Distributing Co., Inc.

7. The paper products, coleslaw and breading mix that I purchase from C.F.M. Distributing Co., Inc. has both the Maryland Fried Chicken trademark affixed to the goods as well as the C.F.M. Distributing Co., Inc. tradename and has had such trademarks and trade names affixed to the goods since the early 1970's.

8. Richard and/or Theresa Costantine have no relationship to my Maryland Fried Chicken restaurant



00073
CFM

9. At no time has Richard or Theresa Costantine disputed my use of the Maryland Fried Chicken trademark.

10. At no time has Richard or Theresa Costantine controlled my use of the Maryland Fried Chicken trademark or the type or quality of goods sold under the trademark.

11. The only entity that has controlled the use of the Maryland Fried Chicken trademark is C.F.M. Distributing Co., Inc. by informing those that are interested in opening a Maryland Fried Chicken restaurant to contact the closest restaurant to get permission.

12. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 7-16-10

By: Paul J. DiDon

Name Paul J. DiDon

Title: OWNER