

TTAB

CERTIFICATE OF SERVICE

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Signed B.C. Dunne
B.C. Dunne

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

Registration: No. 2,092,391
Date of Issue: September 2, 1997
Mark: LA TAPATIA



08-26-2002
U.S. Patent & TMO/TM Mail Rcpt Dt. #61

LA TAPATIA NORCAL, INC.,)
)
 Petitioner,)
)
 vs.)
)
 LA TAPATIA TORTILLERIA, INC.)
)
 0000135 2092391)
 Registrant.)
 300.00 OP)

PETITION FOR CANCELLATION

08/28/2002 KBEACH
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TRADEMARK TRIAL AND APPEAL BOARD

Petitioner, LA TAPATIA NORCAL, INC., a California corporation having principal place of business at 23423 Cabot Boulevard, Hayward, California 94545 ("NORCAL"), believes that it is, and will continue to be, damaged by Registration No. 2,092,391 ("Registration") and petitions to cancel such Registration.

As grounds for this petition, it is alleged that:

1. Upon information and belief, LA TAPATIA TORTILLERIA, INC. ("FRESNO") is a California corporation with its principal place of business located in Fresno, California.
2. Prior to 1993, NORCAL was a division or subsidiary of FRESNO.
3. Prior to 1993, both NORCAL and FRESNO were using the mark LA TAPATIA on tortillas and other Mexican food products.

1 4. In or about May, 1993, pursuant to an order of the Superior Court of Fresno
2 County, California dividing marital property pursuant to a divorce proceeding, NORCAL
3 became an independent company, and the ownership rights to the mark LA TAPATIA, in a
4 specific geographic territory within the state of California, were assigned by FRESNO to
5 NORCAL.

6 5. The geographic territory which was the subject of the assignment described in
7 Paragraph 4 of this Petition is that part of the state of California north of a line beginning at
8 the California/Nevada state line and running west through the city of Turlock, California to
9 Highway Interstate 5, south along Interstate 5 and then west through Julia Pfeiffer Burns State
10 Park to the Pacific Ocean ("Territory").

11 6. On March 21, 1994, without the knowledge or permission of NORCAL,
12 FRESNO filed Application Serial No. 74/502,436 for the mark LA TAPATIA for use on
13 tortillas and other Mexican food products, which application did not exclude the Territory in
14 which NORCAL has owned the mark LA TAPATIA since May, 1993.

15 7. At no time did FRESNO notify the U.S. Trademark Office that ownership
16 rights to the mark LA TAPATIA in the Territory had been assigned to NORCAL in May,
17 1993.

18 8. Since FRESNO is not the owner of the mark LA TAPATIA in the Territory,
19 Registration No. 2,092,391, which includes NORCAL's Territory, is invalid.

20 9. NORCAL has continuously used the mark LA TAPATIA on tortillas and other
21 Mexican food products in its Territory since a date prior to January 11, 1991.

22 10. The mark LA TAPATIA owned and used by NORCAL in its Territory is
23 virtually identical in sight, sound and meaning to the mark LA TAPATIA which is contained
24 in the Registration owned by FRESNO.

25 11. The goods upon which NORCAL and FRESNO use their respective marks are
26 identical and/or closely related.

27 12. The goods sold by FRESNO and NORCAL under their respective marks are
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1 sold to the same class of customers.

2 . 13. The goods sold by FRESNO AND NORCAL under their respective marks are
3 sold through the same channels of trade.

4 14. NORCAL has been and will continue to be damaged by the existence of the
5 Registration complained of in this Petition in that confusion in trade and confusion as to
6 source will result because purchasers or potential purchasers of the goods of FRESNO are
7 likely to believe that FRESNO's goods originate with NORCAL or that there is some
8 affiliation between FRESNO and NORCAL.

9 15. NORCAL has been and will continue to be damaged further by the existence of
10 the Registration complained of in this Petition because NORCAL, and not FRESNO, is the
11 owner of the mark LA TAPATIA in the Territory.

12 WHEREFORE, Petitioner requests that Registration No. 2,092,391 be canceled and
13 this Petition for Cancellation be sustained in favor of NORCAL.

14 A duplicate copy of this Petition and the filing fee in the amount of \$300.00
15 are enclosed.

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17 Dated: August 23, 2002

Respectfully submitted,

OWEN, WICKERSHAM & ERICKSON, P.C.

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20 By



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