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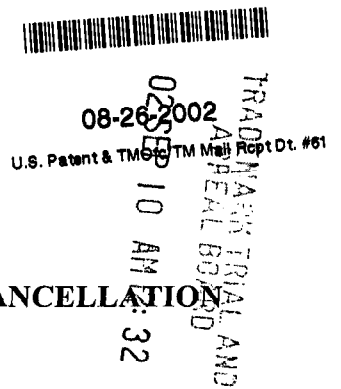
CERTIFICATE OF SERVICE

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as First Class Mail in an envelope addressed to BOX TTAB, FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513 on August 23, 2002. Signed BCD

B.C. Dunne

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

Registration: No. 2,093,923  
Date of Issue: September 9, 1997  
Mark: LA TAPATIA and Miscellaneous Package Design



LA TAPATIA NORCAL, INC., )  
 )  
 ) Petitioner, )  
 )  
 ) vs. )  
 )  
 ) LA TAPATIA TORTILLERIA, INC. )  
 )  
 ) Registrant. )  
 )  
 ) \_\_\_\_\_ )

**PETITION FOR CANCELLATION**

08/28/2002 KGI BBONS 01000319 2093923  
01 FC:376

Petitioner, LA TAPATIA NORCAL, INC., a California corporation having its 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. 2,093,923 ("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.
4. Prior to 1993, both NORCAL and FRESNO used the packaging design

1 depicted in Registration No. 2,093,923 ("Trade Dress") on tortillas and other Mexican food  
2 products.

3 5. On January 11, 1991, FRESNO filed U.S. Application erial No. 74/129,797 for  
4 a mark containing LA TAPATIA and the Trade Dress for use on tortillas and tortilla chips.

5 6. In or about May, 1993, pursuant to an order of the Superior Court of Fresno  
6 County, California dividing marital property pursuant to a divorce proceeding, NORCAL  
7 became an independent company, and the ownership rights to (i) the mark LA TAPATIA and  
8 (ii) the Trade Dress depicted in Registration No. 2,093,023, in a specific geographic territory  
9 within the state of California, were assigned by FRESNO to NORCAL.

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

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

18 9. Since FRESNO is not the owner of the mark LA TAPATIA in the Territory,  
19 Registration No. 2,093,923, which includes NORCAL's Territory, is invalid.

20 10. Since FRESNO does not own the Trade Dress in the Territory, Registration  
21 No. 2,093,923, which includes NORCAL's Territory, is invalid.

22 11. NORCAL has continuously used the mark LA TAPATIA and the Trade Dress  
23 on tortillas and other Mexican food products in its Territory since a date prior to January 11,  
24 1991.

25 12. The mark LA TAPATIA owned and used by NORCAL in its Territory is  
26 virtually identical in sight, sound and meaning to the mark LA TAPATIA which is contained  
27 in the Registration owned by FRESNO.

1 . 13. The Trade Dress owned and used by NORCAL in its Territory and the design  
2 feature contained in Registration No. 2, 093,923 owned by FRESNO are virtually identical,  
3 each consisting of a young woman kneading flour and the colors red, orange and yellow.

4 14. The goods upon which NORCAL and FRESNO use their respective marks and  
5 the Trade Dress are identical and/or closely related.

6 15. The goods sold by FRESNO and NORCAL under their respective marks and  
7 the Trade Dress are sold to the same class of customers.

8 16. The goods sold by FRESNO AND NORCAL under their respective marks and  
9 the Trade Dress are sold through the same channels of trade.

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

15 18. NORCAL has been and will continue to be damaged further by the existence of  
16 the Registration complained of in this Petition because NORCAL, and not FRESNO, is the  
17 owner of the mark LA TAPATIA and the Trade Dress in the Territory.

18 WHEREFORE, Petitioner requests that Registration No. 2,093,923 be canceled and  
19 this Petition for Cancellation be sustained in favor of NORCAL.

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

Dated: August 23, 2002

Respectfully submitted,

OWEN, WICKERSHAM & ERICKSON, P.C.

By   
R. Dennis Claessens

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Attorneys for Petitioner, La Tapatia Norcal, Inc.

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