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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 B.C. Dunne  
B. C. Dunne

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

Registration: No. 2,093,922  
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**

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. 2,093,922 ("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.

**FILE COPY**

1 4. On January 11, 1991, FRESNO filed U.S. Application Serial No. 74/129,796  
2 for a composite mark containing LA TAPATIA and ancillary language and a design feature  
3 for use on tortillas and tortilla chips.

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

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

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

17 8. Since FRESNO is not the owner of the mark LA TAPATIA in the Territory,  
18 Registration No. 2,092,361, which includes NORCAL's Territory, is invalid.

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

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

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

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

28

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

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

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


11 WHEREFORE, Petitioner requests that Registration No. 2,093,922 be canceled and  
12 this Petition for Cancellation be sustained in favor of NORCAL.

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

15  
16 Dated: August 23, 2002

Respectfully submitted,

OWEN, WICKERSHAM & ERICKSON, P.C.

17  
18  
19 By   
20 R. Dennis Claessens

21 455 Market Street, 19th Floor  
22 San Francisco, California 94105  
23 (415) 882-3200

Attorneys for Petitioner, La Tapatia Norcal, Inc.

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Owen, Wickersham & Erickson, P.C.

Intellectual Property Law Since 1933

455 Market Street, 19th Floor ~ San Francisco, California 94105

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DRAFT

Date: October 1, 2002

Pages: 4, including this cover sheet

To: Tina Craven  
TTAB

Fax: 703 746 7121

From: R. Dennis Claessens

Our Ref: LATAP 60001-04

Re: Petition to Cancel Registration No. 2,093,922

Tina,

Per our telephone conversation of October 1, attached is a copy of the missing cancellation petition. Please initiate the cancellation proceedings. Thanks for your help.



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**CONFIDENTIAL FAX TRANSMISSION — FOR ADDRESSEE ONLY**  
*If received by any party other than addressee, please advise sender immediately to arrange for return at our expense.*