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May 16, 2005

COMMISSIONER FOR TRADEMARKS
P.O. Box 1451
Alexandria, Virginia 22313-1451

The Fresh Market, Inc. v. Food Circus Super Market, Inc.
Attorney Docket: 07798.0019

Sir:

We enclose the following paper for filing in the U.S. Patent and Trademark Office in connection with this application:

1. Petition to Cancel; and
2. Filing fee of \$300.00.

If the filing fee is found to be insufficient for any reason, please charge the deficiency to Deposit Account No. 06-0916.

Respectfully submitted,



Stacey H. King

DAR/SHK/jd/dmd
Enclosures: As stated



05-16-2005

U.S. Patent & TMOfo/TM Mail RcptDt. #39

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

THE FRESH MARKET, INC.

Petitioner,

v.

FOOD CIRCUS SUPER MARKET, INC.

Registrant.

Cancellation No. _____
Registration No. 2,559,145 - 75447909
Mark: CIRCUS FRESH MARKET
HALL & Design

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

PETITION TO CANCEL

The Fresh Market, Inc. ("Petitioner") through its attorneys, believes that it is being and will be damaged by the continued registration of Food Circus Super Market, Inc.'s ("Food Circus") Registration No. 2,559,145 for the mark CIRCUS FRESH MARKET HALL & Design, and alleges as follows. Allegations with respect to Petitioner are based upon actual knowledge. Allegations with respect to Food Circus are based upon information and belief.

1. Petitioner The Fresh Market, Inc. is a North Carolina corporation with a principal place of business at 628 Green Valley Road, Greensboro, North Carolina 27408.

2. Petitioner owns the following valid and subsisting federal trademark registrations for its THE FRESH MARKET mark:

Registration No. 1,283,775, issued June 26, 1984, for the mark THE FRESH

MARKET for retail grocery store services.

05/19/2005 KGIBBONS 00000144 2559145

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Registration No. 2,329,975, issued March 14, 2000, for the mark THE FRESH MARKET & Design for soup and pimento cheese; pretzels; toasted French bread slices; sauces, excluding cranberry sauce and applesauce; orange juice; retail grocery store services.

3. Petitioner and Food Circus both operate grocery stores.

Food Circus and its Registration

4. Food Circus is a New Jersey corporation with a principal place of business at 853 Highway 35, Middletown, New Jersey 07748.

5. Food Circus owns Registration No. 2,559,145 for the mark C!RCUS FRESH MARKET HALL & Design, covering "retail grocery stores."

Count One
Abandonment, 15 U.S.C. § 1127

6. Petitioner repeats and realleges each and every allegation set forth in paragraphs 1 through 5.

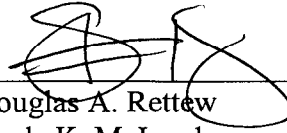
7. Upon information and belief, Food Circus has discontinued use of the C!RCUS FRESH MARKET HALL & Design mark depicted in Registration No. 2,559,145 and has no intent to resume use of the mark. Food Circus has therefore abandoned its mark under Section 45 of the Lanham Act, 15 U.S.C. § 1127.

WHEREFORE, Petitioner is being and will be damaged by the continued registration of Registration No. 2,559,145 for the mark C!RCUS FRESH MARKET HALL & Design, and respectfully requests that the petition to cancel be granted and the registration be cancelled.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: May 16, 2005



Douglas A. Rettew

Linda K. McLeod

Stacey H. King

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