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

Proceeding	92044531
Party	Defendant Food Circus Super Market, Inc. Food Circus Super Market, Inc. 853 Highway 35 Middletown, NJ 07748
Correspondence Address	Food Circus Super Market, Inc. 853 Highway 35 Middletown, NJ 07748
Submission	Answer
Filer's Name	LEWIS F. GOULD, JR.
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Signature	/s/
Date	06/30/2005
Attachments	FOODCIRCUS.pdf (3 pages)

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

In the Matter of U.S. Registration No. 2,559,145

For the Mark: CIRCUS FRESH MARKET HALL & Design

THE FRESH MARKET, INC.,	:	
	:	
Petitioner,	:	Cancellation No. 92044531
	:	
v.	:	
	:	
FOOD CIRCUS SUPER MARKET, INC.,	:	
	:	
Registrant.	:	

ANSWER TO PETITION TO CANCEL, WITH AFFIRMATIVE DEFENSE

Food Circus Super Market, Inc. (“Registrant”), by its undersigned attorneys, hereby answers the Petition to Cancel submitted by The Fresh Market, Inc. (“Petitioner”) in the above-referenced matter as follows:

1. Admitted.
2. Registrant admits that Petitioner is listed in the Tess database as the registrant of Registration No. 1,283,775, issued June 26, 1984, for the mark THE FRESH MARKET in connection with “retail grocery store services.” Registrant further admits that Petitioner is listed in the Tess database as the registrant of 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”; and “retail grocery store services.” Registrant has no knowledge or information to admit or deny the rest of Petitioner’s averments of Paragraph 2, and therefore denies the same.

3. Registrant admits that it operates grocery stores. Registrant has no sufficient knowledge or information to admit or deny the remainder of Petitioner’s averments of Paragraph 1, and therefore denies the same.

Food Circus and its Registration

4. Admitted.

5. Admitted.

Count One

Abandonment, 15 U.S.C. § 1127

6. Registrant repeats and realleges each and every answer set forth in paragraphs 1 through 5.

7. Denied.

AFFIRMATIVE DEFENSES

First Affirmative Defense

1. Registrant owns a federal registration of its CIRCUS FRESH MARKET HALL & Design mark on the Principal Register, with the filing application date as of March 10, 1998, and the registration date as of April 9, 2002 . A federal registration on the Principal Register constitutes *prima facie* evidence of the validity of the registered mark, of the registrant’s ownership of the mark, and of the registrant’s exclusive right to use the mark in the entire United States.

Second Affirmative Defense

2. Petitioner's claim is barred on the basis of laches.

CONCLUSION

WHEREFORE, Registrant respectfully requests that the Petition to Cancel in this matter be dismissed, and that the Board enter judgment in favor of Registrant.

Respectfully submitted,

FOOD CIRCUS SUPER MARKET, INC.

By its attorney,

Dated: June 30, 2005

Lewis F. Gould, Jr.
Attorney for Registrant

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