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February 26, 2007

ATTORNEY DOCKET NO.: 60062-1281

VIA FIRST CLASS MAIL
COMMISSIONER FOR TRADEMARKS
P.O. Box 1451
Alexandria, VA 22313-1451

Re: Answer to Petition for Cancellation
Mark: BURGER CHEF and BURGER CHEF and Design
Reg. Nos.: 1,776,896 and 1,832,980
Registrant: Hardee's Food Systems, Inc.

Dear Madam or Sir:

Enclosed is an Answer to Petition for Cancellation filed on behalf of Registrant in connection with Cancellation No. 92046880.

If there are any fees associated with this filing, they should be charged to Deposit Account No. 50-0640. A duplicate copy of this letter is attached for charging purposes, if necessary.

Respectfully submitted,


Kevin J. McDevitt

KJM/alw
Enclosures



03-02-2007

U.S. Patent & TMO/c/TM Mail Rcpt Dt #72

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first-class mail in an envelope addressed to:
Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

on 2/26/07 Kevin J. McDevitt
Date Signature

Kevin J. McDevitt
Typed or printed name of person signing certificate

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

*In re the matter of Trademark Reg. Nos. 1,776,896 and 1,832,980
For the Marks: BURGER CHEF and BURGER CHEF (and Design)
Dates Filed: October 9, 1992 and October 13, 1992
Dates Registered: June 15, 1993 and April 26, 1994*

Attorney Docket No. 60062.1281

River West Brands, LLC,)
)
 Petitioner,) **Cancellation No.: 92046880**
)
 Hardee's Food Systems, Inc.,)
)
 Respondent.)

ANSWER TO PETITION FOR CANCELLATION

Respondent Hardee's Food Systems, Inc. ("Respondent") hereby answers Petitioner River West Brands, LLC's ("Petitioner") Petition for Cancellation as follows:
Respondent denies that it is "a California Corporation" as stated in the case caption of the Petition for Cancellation.

1. Registration No. 1,832,980 is for the mark BURGER CHEF and Design and was filed on October 13, 1992 for restaurant services. The mark registered on April 26, 1994. The current registrant is Hardee's Food Systems, Inc.

ANSWER: Admitted.

2. Registration No. 1,776,896 is for the mark BURGER CHEF and was filed on October 9, 1992 for restaurant services. The mark registered on June 15, 1993. The current registrant is Hardee's Food Systems, Inc.

ANSWER: Admitted.

3. Petitioner filed an intent to use application to register the mark BURGER CHEF, Serial No. 78/839,336, for frozen fish and meat and for restaurant services on March 16, 2006.

ANSWER: Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph No. 3 and, therefore, denies same.

4. On July 13, 2006, Petitioner's application was refused registration on the grounds of a likelihood of confusion with Registration Nos. 1,832,980 and 1,776,896.

ANSWER: Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph No. 4 and, therefore, denies same.

5. On information and belief, Respondent has not used its BURGER CHEF or BURGER CHEF and Design marks in connection with the restaurant services identified in U.S. Registration Nos. 1,832,980 or 1,776,896 for at least the past three years and has no intention to resume use. Accordingly, Petitioner asserts that the marks have become abandoned, such that Registrations Nos. 1,832,980 and 1,776,896 should be cancelled pursuant to 15 U.S.C. § 1064.

ANSWER: Denied.

6. Petitioner's mark and Respondent's marks are nearly identical in appearance and cover identical services. Petitioner will be damaged by the continued registration of Respondent's marks.

ANSWER: The Petition for Cancellation does not define "Petitioner's mark". To the extent that Petitioner's use of the term "Petitioner's mark" is intended to allege that Petitioner owns the mark BURGER CHEF and/or has the right to use the mark BURGER CHEF, Respondent denies such allegations. In addition, the Petition for Cancellation does not define "Respondent's marks". Again, assuming Petitioner's use of "Petitioner's mark" is intended to mean BURGER CHEF and to the extent that "Respondent's marks" is intended to mean Respondent's marks

BURGER CHEF and BURGER CHEF & Design as depicted in Registration Nos. 1,776,896 and 1,832,980, Respondent admits that they are at least “nearly identical” in appearance to what Petitioner alleges to be its mark, namely, BURGER CHEF, and for similar services. Respondent denies the remaining allegations set forth in Paragraph No. 6.

7. Pursuant to 37 C.F.R. § 2.112(b), Petitioner has consolidated and combined this Petition for Cancellation of both trademark registrations because the claims against each involve common questions of law and fact.

ANSWER: Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph No. 7 and, therefore, denies same.


FIRST AFFIRMATIVE DEFENSE

1. Petitioner fails to state a claim upon which relief may be granted.

WHEREFORE, Respondent prays that the “Petition for Cancellation” be denied in its entirety, and that Respondent’s Registration Nos. 1,776,896 and 1,832,980 be kept in force.

Respectfully submitted,
HARDEE’S FOOD SYSTEMS, INC.

Dated: February 26, 2007



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Attorneys for Respondent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 26th day of February, 2007, a copy of the foregoing RESPONDENT HARDEE'S FOOD SYSTEMS, INC'S ANSWER TO PETITION FOR CANCELLATION was served upon counsel for Petitioner by first-class mail, postage pre-paid in an envelope addressed as follows:

Sana Hakim, Esq.
Natalie A. Remien, Esq.
BELL, BOYD & LLOYD
P.O. Box 1135
Chicago, Illinois 60690-1135



One of the Attorneys for Respondent,
Hardee's Food Systems, Inc.