

the registration and made with a deliberate intent to defraud.”). Specifically, the Firehouse Plaintiffs argue that there is no evidence in the record, let alone clear and convincing evidence, to support two critical elements of the Calli Baker’s Defendant’s cancellation due to fraud claim: (1) intent to deceive and (2) materiality of the misrepresentation.

*1. Intent to Deceive*

According to the Firehouse Plaintiffs, the Calli Baker’s Defendants “presented no evidence at trial to establish, under any standard, that FRG knowingly withheld information from the USPTO with a specific intent to deceive. [Thus,] Defendants, as a matter of law, could not and did not meet their burden.” Doc. #226-1, p.6. However, the Calli Baker’s Defendants argue that there was sufficient evidence in the record to support the conclusion that FRG intended to deceive the USPTO, and the Court agrees with the Calli Baker’s Defendants.

In seeking cancellation of the FIREHOUSE word mark due to fraud on the USPTO, the Calli Baker’s Defendants claimed that FRG

submitted its oath [to the USPTO], pursuant to 18 U.S.C. § 1001, that to the best of its knowledge and belief no other person, firm, corporation or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in commerce with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive . . . [despite the fact that] FRG knew that there were many other pre-existing food and beverage businesses with the name FIREHOUSE or some substantially similar variation thereof.

Second Amended Compl. ¶¶45 & 47, Doc. #46. Firehouse Grill & Pub, which has been registered and doing business in Tampa, Florida, since October 4, 1990, was one of the alleged pre-existing businesses using the FIREHOUSE word mark at issue in this case. Sorensen testified both in his deposition and during trial that he first learned about Firehouse Grill & Pub in or around August 2002, which was approximately six months prior to FRG’s filing its application for the FIREHOUSE word mark