

SECURITIES AND EXCHANGE COMMISSION

FORM POS AM

Post-Effective amendments for registration statement

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FILER

FOODMAKER INC /DE/

CIK: **807882** | IRS No.: **952698708** | State of Incorpor.: **DE** | Fiscal Year End: **1002**
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Mailing Address

*PO BOX 783
SAN DIEGO CA 92112-4126*

Business Address

*9330 BALBOA AVE
SAN DIEGO CA 92123-1516
6195712485*

As filed with the Securities and Exchange Commission on January 21, 1994
Registration No.

33-50934

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

POST-EFFECTIVE AMENDMENT NO. 2

On
FORM S-3
To
Registration Statement
Under
The Securities Act of 1933

FOODMAKER, INC.

(Exact name of registrant as specified in its charter)

DELAWARE	5812	95-2698708
(State or other	(Primary Standard	(I.R.S. Employer
jurisdiction of	Industrial Classification	Identification
incorporation or	Code Number)	Number)
organization		

9330 Balboa Avenue
San Diego, California 92123
(619) 571-2121

(Address, including zip code, and telephone number,
including area code, of registrant's principal executive offices)

WILLIAM E. RULON, Esq.
Senior Vice President and Secretary
9330 Balboa Avenue
San Diego, CA 92123
(619) 571-2121

(Name, address, including zip code, and telephone number,
including area code, of agent for service)

Copies of all communications should be sent to:

RHONDA S. WAGNER, Esq.
Gibson, Dunn & Crutcher
750 B Street, Suite 3300
San Diego, California 92101
(619) 544-8025

If the only securities being registered on this form are being offered pursuant to dividend or interest reinvestment plans, please check the following box. / /

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box. /x/

The Registrant hereby amends the Post-Effective Amendment No. 2 to the Registration Statement on such date or dates as may be necessary to delay its effective date until this Post-Effective Amendment No. 2 to the Registration Statement shall become effective on such date as the Commission, acting pursuant to Section 8(c) of the Securities Act of 1933, may determine.

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FOODMAKER, INC.

CROSS REFERENCE SHEET

Pursuant to Item 501 of Regulation S-K

S-3 Item Number and Heading -----	Location in Prospectus -----
1. Forepart of Registration Statement and Outside Front Cover Page of Prospectus.	Outside Front Cover Page
2. Inside Front and Outside Back Cover Pages of Prospectus	Inside Front Cover Page; Available Information
3. Summary Information, Risk Factors and Ratio of Earnings to Fixed Charges. . .	Certain Investment

	Considerations
4. Use of Proceeds	Use of Proceeds
5. Determination of Offering Price	Determination of Offering Price
6. Dilution	Not Applicable
7. Selling Security Holders	Not Applicable
8. Plan of Distribution	Plan of Distribution
9. Description of Securities to be Registered	Not Applicable
10. Interests of Named Experts and Counsel	Legal Matters; Experts
11. Material Changes	Not Applicable
12. Incorporation of Certain Information by Reference	Incorporation of Documents by Reference
13. Disclosure of Commission Position on Indemnification for Securities Act Liabilities	Not Applicable

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1,584,573 Shares
FOODMAKER, INC.
COMMON STOCK

Foodmaker, Inc., a Delaware corporation ("Foodmaker" or the "Company"), is hereby offering (the "Offering") for sale 1,584,573 shares of its common stock, par value \$.01 per share (the "Common Stock"), reserved for issuance upon the exercise of the Company's outstanding warrants issued (i) to the public under the Warrant Agreement dated as of December 8, 1988 by and among PDV Holding, Inc., a Delaware corporation ("PDV"), Foodmaker, The Fulcrum III Limited Partnership, a Delaware limited partnership ("Fulcrum III"), and State Street Bank and Trust Company, as warrant agent (the "Public Warrants") and (ii) to Drexel Burnham Lambert Incorporated ("Drexel") under the Warrant Agreement dated as of December 8, 1988 by and among PDV, Foodmaker, Fulcrum III and Drexel (the "Drexel Warrants" and, together with the Public Warrants, the "Warrants").

The exercise price and the number of shares of Common Stock issuable upon the exercise of the Public Warrants set forth on the face of such warrants

were adjusted as a result of the Merger (the "Merger") of PDV with and into the Company on March 10, 1992 in accordance with the terms of the agreement governing the Public Warrants. See "The Company--History." Of the 228,191 Public Warrants that were originally issued, 135,177 had been exercised as of January 21, 1994. Each of the outstanding Public Warrants currently entitles its registered holder to purchase 3 shares of Common Stock for \$.926667 per share, subject to further adjustment under certain circumstances. The Public Warrants expire on November 30, 1998.

The exercise price and the number of shares of Common Stock issuable upon the exercise of the Drexel Warrants set forth on the face of such warrants were adjusted as a result of the Merger in accordance with the terms of the agreement governing the Drexel Warrants. See "The Company--History." Each of the Drexel Warrants entitled its registered holder to purchase 1.5 shares of Common Stock for \$.926667 per share. All of the Drexel Warrants had been exercised before their expiration on November 2, 1993.

The Company's Common Stock is listed on the New York Stock Exchange under the symbol "FM."

SEE "CERTAIN INVESTMENT CONSIDERATIONS" FOR INFORMATION THAT SHOULD BE CONSIDERED BY PROSPECTIVE INVESTORS.

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION NOR HAS THE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

	Price to Public	Underwriting discounts and commissions	Proceeds to the Company(1)
	-----	-----	-----
Warrants - Per share	\$.926667	\$-0-	\$.926667
- Total	\$1,468,371	\$-0-	\$1,468,371

(1) Does not reflect the deduction of expenses of this offering estimated to be \$54,000.

The date of this Prospectus is January 21, 1994

No person is authorized in connection with any offering made hereby to give any information or to make any representation not contained in this

Prospectus, and, if given or made, such information or representation must not be relied upon as having been authorized by the Company. This Prospectus does not constitute an offer to sell or a solicitation of an offer to buy by any person in any jurisdiction in which it is unlawful to make such an offer or solicitation to such person. Neither the delivery of this Prospectus nor any sale made hereunder shall under any circumstance create any implication that the information contained herein is correct as of any date subsequent to the date hereof.

AVAILABLE INFORMATION

The Company is subject to the information requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and in accordance therewith files reports and other information with the Securities and Exchange Commission (the "Commission"). Reports, proxy statements, information statements and other information filed by the Company with the Commission can be inspected and copied at the public reference facilities maintained by the Commission at Judiciary Plaza, Room 1024, 450 Fifth Street, N.W., Washington, D.C. 20549, and at the Regional Offices of the Commission at Room 1400, 75 Park Place, New York, New York 10007 and Northwestern Atrium Center, 500 West Madison Street, Suite 1400, Chicago, Illinois 60661. Copies of such material also can be obtained from the Public Reference Section of the Commission, Washington, D.C. 20549 at prescribed rates.

The Company has filed with the Commission a Registration Statement under the Securities Act of 1933, as amended (the "Securities Act"), with respect to the securities offered hereby. This Prospectus does not contain all of the information set forth in the Registration Statement, certain portions of which are omitted as permitted by the rules and regulations of the Commission. Such additional information may be obtained from the Commission's principal office in Washington, D.C. Reference is made to the copy of each document filed as an exhibit to the Registration Statement.

The Company's Common Stock is listed on the New York Stock Exchange under the symbol "FM." Reports, proxy statements, information statements and other information concerning the Registrant can be inspected at the offices of the New York Stock Exchange, 20 Broad Street, New York, New York 10005.

INCORPORATION OF DOCUMENTS BY REFERENCE

The following documents are incorporated herein by reference and made a part hereof:

- (1) The Company's Annual Report on Form 10-K for the fiscal year ended October 3, 1993; and
- (2) The description of the Company's Common Stock contained in the

Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Prospectus to the extent that a statement contained herein modifies or replaces such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Prospectus.

Any documents filed by the Company pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this Prospectus and prior to the termination of the offering of the Common Stock shall be deemed to be incorporated by reference into the Prospectus and to be part hereof.

The Company will provide without charge to each person, including any beneficial owner, to whom this Prospectus is delivered, upon the written or oral request of such person, a copy of any or all of the foregoing documents incorporated herein by reference (other than exhibits to such documents unless such exhibits are specifically incorporated by reference to the foregoing documents). Written or telephone requests should be directed to: Foodmaker, Inc., Attn: Corporate Communications, P.O. Box 783, San Diego, California 92112.

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THE COMPANY

The Company owns, operates and franchises the Jack In The Box and Chi-Chi's restaurant concepts. Jack In The Box is a chain of fast food restaurants located principally in the western and southwestern United States.

Chi-Chi's is a chain of full-service, casual Mexican restaurants located primarily in the midwestern and midatlantic United States. The Company's principal executive offices are located at 9330 Balboa Avenue, San Diego, California 92123; telephone number (619)571-2121.

History. The Company was incorporated in Delaware in 1971. The Company is the successor to a business that was formed more than 40 years ago when the first Jack In The Box opened in 1950. In April 1988, the Company acquired Chi-Chi's, Inc., a Delaware corporation ("Chi-Chi's"), which opened its first restaurants in 1978. In December 1988, all outstanding shares of the Company were acquired (the "Acquisition") by a holding company organized at the direction of Gibbons, Green, van Amerongen ("Gibbons Green"), predecessor to Gibbons, Goodwin, van Amerongen ("GGvA"). This holding company was merged with and into the Company in March 1992 as part of a recapitalization plan that included the retiring of a portion of the Company's then existing debt with

the net proceeds from the sale of Common Stock and new debt securities of the Company to the public. As a result of the Merger, the exercise price and the number of shares of Common Stock issuable upon the exercise of the Warrants were adjusted in accordance with the terms of the agreements governing the Warrants (the "Warrant Agreements").

CERTAIN INVESTMENT CONSIDERATIONS

Purchasers of the Common Stock offered hereby should consider the specific factors set forth below as well as the other information set forth in this Prospectus.

Leverage and Restrictions Imposed by Lenders

The Company is highly leveraged. At October 3, 1993, the Company had total indebtedness of approximately \$533.6 million and a ratio of consolidated debt to stockholders' equity of approximately 3.8 to 1.

The Company's credit facilities impose significant operating and financial restrictions on the Company. Such restrictions affect, and in many respects significantly limit or prohibit, among other things, the ability of the Company to incur additional indebtedness, pay dividends, issue preferred stock of subsidiaries, repay indebtedness prior to its stated maturity, create liens, sell assets or engage in mergers or acquisitions, make certain capital expenditures and make investments in unrestricted subsidiaries. A failure by the Company to comply with these restrictions could lead to a default under the terms of one or more of its credit facilities. In the event of such default, the holders of such indebtedness could elect to declare all of the funds borrowed pursuant thereto to be due and payable together with accrued and unpaid interest. These restrictions could limit the ability of the Company to effect future financing or otherwise may restrict corporate activities.

The substantial indebtedness of the Company may limit the Company's ability to respond to changing business and economic conditions, insofar as they may affect the financial condition and financing requirements of the Company. The Company believes, however, that, based on current levels of operations and anticipated growth, its cash flow from operations, together with its other available sources of liquidity, will be adequate to make required payments of principal and interest on its debt, to permit anticipated capital expenditures and to fund working capital requirements. If the Company is unable to generate sufficient cash flow from operations in the future, it may be required to refinance all or a portion of its existing debt or to obtain additional financing. There can be no assurance that any such refinancing would be possible or that any additional financing could be obtained on terms that are favorable or acceptable to the Company.

Control by Principal Stockholders

At December 15, 1993, approximately 45.7% and 8.7%, respectively, of the outstanding shares of Common Stock of the Company was held by (i) two investment partnerships of which GGvA is the general partner, The Fulcrum III Limited Partnership and The Second Fulcrum III Limited Partnership (collectively, "Fulcrum III"), and (ii) certain key managers of the Company (the "Management Investors"). Consequently, Fulcrum III may have sufficient voting power, voting in conjunction with the Management Investors, to elect the entire Board of Directors of the Company and, in general, to determine (without the consent of the Company's other stockholders) the outcome of any corporate transaction or other matter submitted to the stockholders for approval, including any merger, consolidation, sale of all or substantially all of the Company's assets or "going private" transaction, and to prevent or cause a change in control of the Company. GGvA renders consulting and financial services to the Company for which it receives annual consulting fees.

Competition

The restaurant industry is highly competitive with respect to price, service, location and food quality, and there are many well-established competitors. Moreover, the restaurant business is often affected by changes in consumer tastes, local, regional and national economic conditions, demographic trends and traffic patterns. In addition, factors such as increases in food, labor and benefits costs and decreases in the availability of experienced management and hourly employees may adversely affect the restaurant industry in general and the Company's restaurants in particular. Any changes in these factors could adversely affect the profitability of the Company.

USE OF PROCEEDS

The approximate net proceeds to the Company from the sale of the Common Stock being offered hereby, assuming all of the Warrants are exercised, is estimated to be \$1,414,371. The Company has no current specific plans for the proceeds. This Offering is being undertaken to satisfy the Company's obligation to the holders of the Warrants to register the Common Stock issuable upon exercise of the Warrants; this Offering is not being made to raise funds.

The proceeds have been and the Company anticipates the remaining proceeds will be used for general corporate purposes. However, the Company's Board of Directors may determine that the proceeds may be used for some other purpose if, in its sole discretion, the Board determines such use will be in the Company's best interest.

DETERMINATION OF OFFERING PRICE

The offering price of \$.926667 per share of Common Stock upon the exercise of the Warrants is the price at which the registered holders of the Warrants are entitled to purchase shares of the Company's Common Stock under the terms of the Warrant Agreements.

PLAN OF DISTRIBUTION

The 1,584,573 shares of Common Stock being offered hereby, of which 1,305,531 had been issued as of January 21, 1994, will be issued by or on behalf of the Company directly to, or pursuant to appropriate instruction from, the registered holders of the Warrants upon the exercise of the Warrants by such holders.

As adjusted for the Merger, each of the 228,191 Public Warrants issued, of which 135,177 had been exercised as of January 21, 1994, entitles its registered holder to purchase 3 shares of Common Stock for \$.926667 per share, subject to further adjustment under certain circumstances. The Public Warrants

may be exercised upon surrender, in person or by mail, to the Company at State Street Bank and Trust Company c/o Boston Financial Data Services, 2 Heritage Drive, 4th Floor, North Quincy, Massachusetts 02171, Attention: Corporate Trust

Department, of the certificate or certificates evidencing the Public Warrants to be exercised with the form of election to purchase on the reverse thereof duly filled in and signed, which signature must be guaranteed by a bank or trust company having an office or correspondent in the United States or a broker or dealer which is a member of a registered securities exchange or the National Association of Securities Dealers, Inc., and upon payment of the exercise price of \$.926667 per share of Common Stock to be issued upon the exercise of the warrants(s) evidenced by such

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certificate(s). Payment of such exercise price must be made in cash, by certified check or official bank check, by wire transfer, or by any combination of the foregoing.

The effectiveness of this Registration Statement is required to be continuously maintained by the Company until the earlier of (i) two years following the initial effective date of this Registration Statement (August 28, 1992) and (ii) 30 days subsequent to the date on which the Company sends written notice to the registered holders of the Public Warrants that less than five percent of the originally issued Public Warrants remain unexercised, and, that as a result, the effectiveness of this Registration Statement will terminate 30 days following such notice.

LEGAL MATTERS

Gibson, Dunn & Crutcher, San Diego, California, counsel to the Company, has rendered an opinion to the effect that the Common Stock offered hereby is duly and validly issued, fully paid and nonassessable.

EXPERTS

The consolidated financial statements and schedules of the Company for and as of the fifty-two weeks ended September 29, 1991 and September 27, 1992, and the fifty-three weeks ended October 3, 1993, incorporated by reference into this Prospectus and the Registration Statement of which this Prospectus is a part, have been incorporated by reference herein and in the Registration Statement in reliance upon the report of KPMG Peat Marwick, independent certified public accountants, upon the authority of said firm as experts in accounting and auditing.

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PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 14. Other Expenses of Issuance and Distribution.

SEC Registration Fee	\$ 5,014
Legal Fees and Expenses*	30,000
Accountants' Fees and Expenses*	15,000
Blue Sky Fees and Expenses*	2,000
Transfer Agent's Fees*	1,000
Miscellaneous*	986

	\$54,000
	=====

- - - - -
*Estimated

Item 15. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law makes provision for the indemnification of officers and directors in terms sufficiently broad to indemnify officers and directors of the Company under certain circumstances from liabilities (including reimbursement for expenses incurred) arising under the Securities Act of 1933. The Certificate of Incorporation and Bylaws of the Company provide for indemnification of officers and directors against costs and expenses incurred in connection with any action or suit to which such person is a party to the full extent permitted by the Delaware General Corporation Law.

Item 16. Exhibits

Number Description
- - - - -

- 3.1 Restated Certificate of Incorporation (1)
 - 3.2 Restated Bylaws (1)
 - 4.1 Warrant Agreement dated as of December 8, 1988, by and among PDV Holding, Inc., Foodmaker, Inc., Fulcrum III Limited Partnership and State Street Bank and Trust Company (2)
 - 4.2 Warrant Agreement dated as of December 8, 1988, by and among PDV Holding, Inc., Foodmaker, Inc., Fulcrum III Limited Partnership and Drexel Burnham Lambert Incorporated (2)
 - 5 Opinion of Gibson, Dunn & Crutcher (3)
 - 23.1 Consent of Gibson, Dunn & Crutcher (included in Exhibit 5) (3)
 - 23.2 Consent of KPMG Peat Marwick
 - 24 Power of Attorney (3)
- - - - -

(1) Previously filed and incorporated herein by reference from Amendment No. 1

to Registrant's Registration Statement on Form S-1 (No. 33-44198) filed February 3, 1992.

(2) Previously filed and incorporated herein by reference from Post Effective Amendment No. 2 to Registrant's Registration Statement on Form S-1 (No. 33-27670) filed June 30, 1989.

(3) Previously filed as an exhibit to this Registration Statement.

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Item 17. Undertakings.

The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made,
a post-effective amendment to this Registration Statement;

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate,
represent a fundamental change in the information set forth in the Registration Statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

Provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the Registration Statement is on Form S-3 and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the Registrant pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to section 13(a) or section 15(d) of the Securities Act of 1934 that is incorporated by reference in this Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the offering of the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction

the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1993, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing a Form S-3 and has duly caused this Post-Effective Amendment No. 2 to the Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Diego, State of California, on the 21st of January, 1994.

FOODMAKER, INC.

By: /S/ CHARLES W. DUDDLES

 Charles W. Duddles
 Executive Vice President,
 Chief Administrative Officer,
 Chief Financial Officer

Pursuant to the requirements of the Securities Act of 1933, this Post-Effective Amendment No. 2 to the Registration Statement has been signed below by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
-----	-----	-----
/S/ JACK W. GOODALL* ----- Jack W. Goodall	Chairman of the Board, Chief Executive Officer and President (Principal Executive Officer)	January 21, 1994
/S/ CHARLES W. DUDDLES ----- Charles W. Duddles	Executive Vice President, Chief Administrative Officer, Chief Financial Officer and Director (Principal Financial Officer)	January 21, 1994
/S/ ROBERT L. SUTTIE* ----- Robert L. Suttie	Vice President, Controller and Chief Accounting Officer (Principal Accounting Officer)	January 21, 1994
/S/ ROBERT J. NUGENT* ----- Robert J. Nugent	Executive Vice President, President of Jack In The Box Division and Director	January 21, 1994

Director

Leonard I. Green

/S/ EDWARD GIBBONS* Director

January 21, 1994

Edward Gibbons

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/S/ L. ROBERT PAYNE* Director

January 21, 1994

L. Robert Payne

/S/ CHRISTOPHER V. WALKER* Director

January 21, 1994

Christopher V. Walker

/S/ PAUL T. CARTER* Director

January 21, 1994

Paul T. Carter

/S/ MICHAEL E. ALPERT* Director

January 21, 1994

Michael E. Alpert

*By: /S/ CHARLES W. DUDDLES

Charles W. Duddles
Attorney-in-Fact

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The Board of Directors
Foodmaker, Inc.

We consent to the use of our reports incorporated herein by reference and to the reference to our firm under the heading "Experts" in the prospectus.

KPMG PEAT MARWICK

San Diego, California
January 21, 1994