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TTAB

Deborah K. Squiers
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April 24, 2006

Via Express Mail

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

Attention: Karon E. Seldon, Legal Assistant

Re: Applicant – Kelman International Ltd
Serial No. 78386082
Filed 3/7/02
Mark: NOLA CAFÉ

Dear Ms. Seldon:

We represent Emeril's Food of Love Productions, LLC. We enclose an additional copy of our client's Response to Board Notice Dated March 24, 2006 for filing. The enclosed



04-24-2006

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

"Express Mail" Mailing Label Number

EV 606060 573 US

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post office to Addressee" service under 37 C.F.R. 1.10 on the date indicated above and is addressed to the Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451 on

April 24, 2006
(Date of Deposit)

Deborah K. Squiers
(Print name)

Deborah K. Squiers
(Signature)

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23224/000/746095.1

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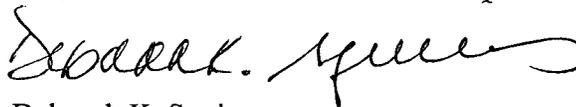
Commissioner for Trademarks

April 24, 2006

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response was sent by Express Mail to the TTAB on April 3, 2006 (as set forth on the certificate of mailing). However, TTAB Vue does not show it as having been received by the TTAB.¹

Respectfully submitted,



Deborah K. Squiers

¹ The US Postal Service indicates that the enclosed response was received by the TTAB on April 4, 2006 to Trademark 1451 (signed for by D. Barfield).

Docket No. 23224.000

TRADEMARK

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

In the Matter of Application Serial No. 78/386,082
Published in the Official Gazette of November 1, 2005

ED722208899US

-----X	:	
EMERIL'S FOOD OF LOVE	:	
PRODUCTIONS, LLC,	:	
	:	
Opposer,	:	Opposition No.
	:	
v.	:	
	:	
KELMAN INTERNATIONAL LTD,	:	
	:	
Applicant.	:	
-----X		

RESPONSE TO BOARD NOTICE DATED MARCH 24, 2006

On March 24, 2006, the Board issued a notice to Emeril's Food of Love Productions, LLC ("Opposer") requiring an explanation of the relationship between Opposer and NOLA Partnership, which filed and was granted an extension of time to oppose the above-referenced application. Opposer and NOLA Partnership are in privity because NOLA Partnership has assigned to Opposer the mark NOLA, alone and with a swirl design, which marks Opposer is relying on in the opposition to Kelman International Ltd.'s application for NOLA CAFE and Design. See Exhibit A (Copy of assignment of NOLA Marks from NOLA Partnership to Emeril's Food of Love Productions, LLC).

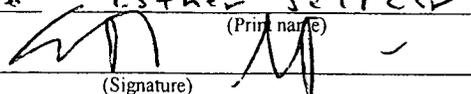
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April 3, 2006 Esther Seltzer

(Date of Deposit)

(Print name)



(Signature)

Trademark Rule 2.102(b) provides that the Board will accept an opposition "if the opposition is filed in the name of a person in privity with the person who requested and was granted the extension of time." TBMP Rule 206.02 further provides that "the concept of privity generally includes, *inter alia*, the relationship of successive ownership of a mark (e.g. assignor, assignee)." *See Int'l Nutrition Co. v. Horphag Research, Ltd.*, 55 U.S.P.Q.2d 1492 (Fed. Cir. 2000) (holding that parties who hold successive interests in property, including trademarks, are in privity).

For the foregoing reasons, Opposer requests that the Board formally institute the Notice of Opposition.

Dated: New York, New York
April 3, 2006

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposer

By: Deborah K. Squiers
Lynn S. Fruchter
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(212) 790-9200

EXHIBIT A

CONFIRMATORY TRADEMARK ASSIGNMENT

This Trademark Assignment is a confirmation of the assignment made the 13th day of January 2006 between NOLA PARTNERSHIP, a Louisiana Partnership located at 534 St. Louis Street, New Orleans, LA 70130 ("Assignor"), and EMERIL'S FOOD OF LOVE PRODUCTIONS, LLC, a Louisiana limited liability company located at 829 St. Charles Avenue, New Orleans, LA 70130 ("Assignee").

WHEREAS, Assignor transferred all its right, title and interest in and to its trademarks, including the marks NOLA and NOLA and Swirl Design (the "Marks") and the goodwill pertaining to the Marks, to Assignee; and

NOW, THEREFORE, for good and valuable consideration, already received and hereby acknowledged, Assignor does confirm that it has assigned and hereby does assign to Assignee, its successors and assigns, absolutely and forever, its entire right, title and interest, whether statutory or at common law, in and to the Marks together with the goodwill of the business symbolized by them, including all causes of action for any and all previously occurring infringements of the rights being assigned and the right to receive and retain the proceeds relating to those infringements.

IN WITNESS WHEREOF, Assignor has executed this Confirmatory Trademark Assignment on March 15, 2006.

NOLA PARTNERSHIP

By:


Name: Emeril J. Lagasse III
Title: President