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08-01-2002

U.S. Patent & TMOfo/TM Mail Ropt Dt. #71

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

FAZOLI'S MANAGEMENT, INC.,)	
)	
Opposer)	
)	Serial No. 76/060264
)	TM: PASTA FAZUL'S & Design
v.)	Opposition No. _____
)	
STEVEN SETTIPANI,)	
)	
Applicant)	

NOTICE OF OPPOSITION

Opposer Fazoli's Management, Inc., a Kentucky corporation whose business address is 2470 Palumbo Drive, Lexington, Kentucky 40509 ("Fazoli's"), believes that it will be damaged by registration of the mark PASTA FAZUL'S & Design shown in Application Serial No. 76/060,264 as published in the Official Gazette of July 16, 2002 at TM 946, and hereby opposes the same pursuant to the provisions of 15 U.S.C. §1063 and 37 C.F.R. §§2.101 and 2.104. For grounds of opposition,

Opposer alleges that:

08/05/2002 JHARLEY 00000206 76060264

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300.00 OP

1.

Fazoli's and its licensees and related companies are engaged in the operation of numerous restaurants throughout the United States doing business under the service mark FAZOLI'S and related marks.

2.

Fazoli's is the owner of the following trademarks which incorporate FAZOLI'S (hereinafter, the "FAZOLI'S Marks"):

MARK	REG. NO.	SERVICES	FIRST USE IN COMMERCE
FAZOLI'S	1,801,207	Restaurant services	Feb. 10, 1989
FAZOLI'S & Design	2,537,949	Restaurant services	Oct. 1, 2000
FAZOLI'S EXPRESS	2,507,632	Restaurant services	Oct. 15, 1999
FAZOLI'S ITALIAN FOOD...FAST & Design	1,757,441	Restaurant services	April 28, 1991
FAZOLI'S ITALIAN FOOD...FAST & Design	1,565,210	Restaurant services	Feb. 10, 1989
FAZOLI'S SUB-OVEN	2,568,058	Restaurant services	Aug. 30, 1999

Copies of the referenced registrations are annexed hereto.

3.

The FAZOLI'S Marks have been used in connection with restaurant services since at least as early as 1989. By virtue of its widespread use in connection with hundreds of restaurants, the FAZOLI'S Marks have become well-known and famous. FAZOLI'S restaurants are known for high quality Italian food and are extensively advertised and promoted on television and in print media. As a result, the FAZOLI'S Marks are widely and favorably recognized by consumers throughout the United States.

4.

Applicant Steven Settiani ("Settipani") seeks to register the mark PASTA FAZUL'S & Design shown in Application Serial No. 76/060,264 for "restaurant and

catering services”. Settipani’s mark, PASTA FAZUL’S & Design, is confusingly similar, visually and phonetically, to the FAZOLI’S mark, and the “restaurant services” listed in Settipani’s application are identical to those associated with the FAZOLI’S Marks used by Fazoli’s, its licensees, and related companies.

5.

On information and belief, Settipani adopted and applied to register the PASTA FAZUL’S & Design mark for services closely related to those offered by Fazoli’s long after Fazoli’s registration and use of the FAZOLI’S Marks.

6.

Fazoli’s will be damaged by the registration of Settipani’s mark because said mark so closely resembles the FAZOLI’S Marks previously used and registered in the United States and not abandoned by Fazoli’s, as to be likely to cause confusion, mistake and deception, and registration of Settipani’s mark on the Principal Register would be inconsistent with Fazoli’s rights in its FAZOLI’S Marks.

7.

Two duplicate copies of this Notice of Opposition and the required fee of \$300.00 are enclosed. The Director is authorized to debit KILPATRICK STOCKTON LLP’s Trademark Deposit Account No. 11-0860 for any deficiency in the required fee.

WHEREFORE, Fazoli’s requests that Application Serial No. 76/060,264 be refused and that no registration issue thereon to Settipani and, further that this

Opposition be sustained in favor of Fazoli's.

Respectfully Submitted,

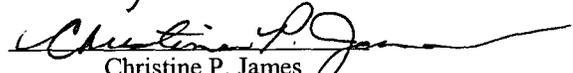

Virginia S. Taylor
Christine P. James

KILPATRICK STOCKTON LLP
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309-4530
(404) 815-6166

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Assistant Commissioner of Trademarks, 2900 Crystal Drive, BOX TTAB-FEE, Arlington, Virginia 22202 on July 29, 2002.

BY:


Christine P. James

Int. Cl.: 42

Prior U.S. Cl.: 100

United States Patent and Trademark Office **Reg. No. 1,801,207**
Registered Oct. 26, 1993

**SERVICE MARK
PRINCIPAL REGISTER**

FAZOLI'S

FAZOLI'S RESTAURANTS, INC. (KENTUCKY
CORPORATION)
836 EUCLID AVENUE
3RD FLOOR, CHEVY CHASE PLAZA
LEXINGTON, KY 40502

FOR: RESTAURANT SERVICES, IN CLASS
42 (U.S. CL. 100).

FIRST USE 2-10-1989; IN COMMERCE
2-10-1989.

OWNER OF U.S. REG. NO. 1,565,210.

SER. NO. 74-287,602, FILED 6-23-1992.

RAUL CORDOVA, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 2,537,949

Registered Feb. 12, 2002

SERVICE MARK
PRINCIPAL REGISTER



FAZOLI'S MANAGEMENT, INC. (KENTUCKY
CORPORATION)
2470 PALUMBO DRIVE
LEXINGTON, KY 405091117

FOR: RESTAURANT SERVICES, IN CLASS 42
(U.S. CLS. 100 AND 101).

FIRST USE 5-1-2000; IN COMMERCE 10-1-2000.

OWNER OF U.S. REG. NOS. 1,565,210, 1,757,441
AND OTHERS.

THE DRAWING IS LINED FOR THE COLORS
RED AND GREEN.

SER. NO. 76-138,165, FILED 9-28-2000.

BRENDAN MCCAULEY, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 2,507,632

Registered Nov. 13, 2001

**SERVICE MARK
PRINCIPAL REGISTER**

FAZOLI'S EXPRESS

FAZOLI'S MANAGEMENT, INC. (KENTUCKY
CORPORATION)
2470 PALUMBO DRIVE
LEXINGTON, KY 405091117

FOR: RESTAURANT SERVICES, IN CLASS 42
(U.S. CLS. 100 AND 101).

FIRST USE 10-15-1999; IN COMMERCE 10-15-1999.

OWNER OF U.S. REG. NOS. 1,565,210, 1,801,207,
AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "EXPRESS", APART FROM THE
MARK AS SHOWN.

SN 75-688,654, FILED 4-21-1999.

NORA BUCHANAN WILL, EXAMINING ATTOR-
NEY

Int. Cl.: 42

Prior U.S. Cl.: 100

United States Patent and Trademark Office

Reg. No. 1,757,441

Registered Mar. 9, 1993

SERVICE MARK
PRINCIPAL REGISTER



FAZOLI'S RESTAURANTS, INC. (KENTUCKY
CORPORATION)
836 EUCLID AVENUE, 3RD FLOOR
CHEVY CHASE PLAZA
LEXINGTON, KY 40502

FOR: RESTAURANT SERVICES, IN CLASS
42 (U.S. CL. 100).
FIRST USE 4-28-1991; IN COMMERCE
4-28-1991.

OWNER OF U.S. REG. NO. 1,565,210.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "ITALIAN FOOD...FAST",
APART FROM THE MARK AS SHOWN.

SER. NO. 74-287,460, FILED 6-23-1992.

ODETTE BONNET, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 2,568,058

Registered May 7, 2002

SERVICE MARK
PRINCIPAL REGISTER

FAZOLI'S SUB-OVEN

FAZOLI'S MANAGEMENT, INC. (KENTUCKY
CORPORATION)
2470 PALUMBO DRIVE
LEXINGTON, KY 405091117

FOR: RESTAURANT SERVICES, IN CLASS 42
(U.S. CLS. 100 AND 101).

FIRST USE 8-30-1999; IN COMMERCE 8-30-1999.

OWNER OF U.S. REG. NOS. 1,565,210, 1,757,441,
AND 1,801,207.

SN 75-853,364, FILED 11-18-1999.

MONIQUE MILLER, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cl.: 100

United States Patent and Trademark Office
New Cert.

Reg. No. 1,565,210

Registered Nov. 7, 1989

OG Date Apr. 9, 1991

SERVICE MARK
PRINCIPAL REGISTER
REGISTRATION ASSIGNED

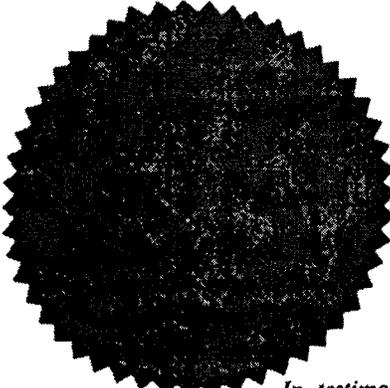


FAZOLI'S RESTAURANTS, INC. (KENTUCKY CORPORATION)
SUITE 13B
121 PROSPEROUS PLACE
LEXINGTON, KY 40509, ASSIGNEE BY
ASSIGNMENT AND CHANGE OF
NAME JERRICO, INC. (KENTUCKY
CORPORATION) LEXINGTON, KY

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ITALIAN FOOD ... FAST", APART FROM THE MARK AS SHOWN.

FOR: RESTAURANT SERVICES, IN CLASS 42 (U.S. CL. 100).
FIRST USE 2-10-1989; IN COMMERCE 2-10-1989.

SER. NO. 73-780,643, FILED 2-13-1989.



In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Apr. 9, 1991.

Harry F. Manbeck, Jr.

COMMISSIONER OF PATENTS AND TRADEMARKS



**KILPATRICK
STOCKTON LLP**

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July 29, 2002

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VIA FIRST CLASS MAIL

Assistant Commissioner for Trademarks
2900 Crystal Drive
Box TTAB Fee
Arlington, Virginia 22202-3513



08-01-2002

U.S. Patent & TMO/TM Mail Rcpt D: 47

02 AUG - 7 AM 8:44
TRADEMARK TRIAL AND
APPEAL BOARD

Re: Opposer: Fazoli's Management, Inc.
Applicant: Steven Settiani
Trademark: PASTA FAZUL'S & Design
Serial No.: 76/060,264
Our Ref.: F1780/247745

Dear Sir or Madam:

Enclosed please find an original and two copies of a Notice of Opposition against the referenced application, along with the official filing fee. The Director of Trademarks is authorized to charge Kilpatrick Stockton's Trademark Deposit Account, No. 11-0860, *if there is a deficiency in the required fee.*

Please acknowledge receipt of the enclosures by initialing and dating the enclosed postcard and returning it to me.

Thank you for your assistance.

Sincerely,

Christine P. James

CPJ

Enclosures

cc: Virginia S. Taylor, Esq.