

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



FAZOLI'S MANAGEMENT, INC. )  
)  
Opposer )  
)  
STEVEN SETTIPANI )  
)  
Applicant )

01-24-2003

U.S. Patent & TMO/c/TM Mail Rcpt D

Serial No.: 76/060264  
TM: PASTA FAZUL'S & DESIGN

**MOTION TO VACATE DEFAULT AND FOR OTHER RELIEF**

COMES NOW, the Applicant, STEVEN SETTIPANI, by and through the undersigned Counsel and files this his Motion to Vacate Default and for Other Relief and as grounds would states as follows:

1. Applicant, STEVEN SETTIPANI sought to register the Mark PASTA FAZUL'S & DESIGN as set forth in Application Serial Number 76/060,264 for restaurant and catering services.
2. That on or about August 8, 2002 a Notice of Opposition was filed by Opposer, FAZOLI'S MANAGEMENT, INC..
3. FAZOLI'S takes the position that the Mark PASTA FAZUL'S & DESIGN is confusingly similar, visually and phonetically to the FAZOLI'S Mark and has to be likely to cause confusion, mistake and deception amongst the general population.
4. Applicant would allege that the Marks are graphically different in that the PASTA FAZUL'S logo is a soup pot with steam directly associated with the name of the restaurant while the logo of FAZOLI'S is a tomato. The Marks do not remotely resemble each other and could not in any conceivable fashion cause confusion among the general public.
5. Additionally, PASTA FAZUL'S is gourmet style restaurant which does not cater to or compete with the logo of the Opposer.
6. That Applicant inadvertently failed to respond to the Complaint due to excusable neglect in that he has relocated his premises and has difficulty with having all mail forwarded to his attention in a

timely fashion.

7. Additionally, Applicant would allege that no prejudice would enure to either party should the Court vacate the Default filed herein.

8. In fact, immediately upon being notified by the Court of the Default Applicant immediately retained Counsel to file its Appearance and contest this action. Applicant stands ready willing and able to contest the issues raised by opposing party in this action.

9. That Applicant has meant the burden set forth in the matter of U.S. vs. Timbers Reserve, 99 F.2d 452, 454 to vacate the Default.

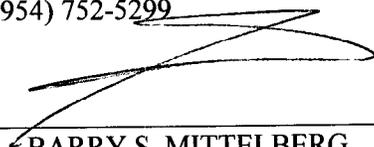
10. That attached hereto and fully incorporated by reference is Exhibit "A" and is a true and correct copy of the Answer and Defenses to be filed in this regard.

WHEREFORE, Applicant prays this Honorable Court Vacate the Default, deem the Answer filed herein and for any and all further relief the Court deems just and appropriate in premises.

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was mailed via United States Postal Service, 1<sup>st</sup> Class on this 23<sup>rd</sup> day of January, 2003 to: **Christine P. James, Esquire**, KILPATRICK STOCTON, LLP, 1100 Peachtree Street, Suite 2800, Atlanta, Georgia 30309 and the original to Assistant Commissioner of Trademarks, 2900 Crystal Drive, BOX TTAB-NO FEE, Arlington, VA. 22202

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Tel: (954) 752-1213  
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By: \_\_\_\_\_

  
BARRY S. MITTELBERG  
Florida Bar No.396567

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Serial No.: 76/060264  
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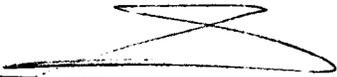
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**NOTICE OF APPEARANCE**

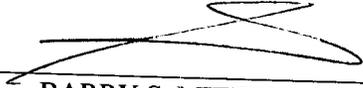
COMES NOW, the law offices of MITTELBERG & NICOSIA, files this their appearance in this matter for Applicant, STEVEN SETTIPANI P.A., and requests all future Pleadings and Correspondence be forwarded to the undersigned.

Respectfully Submitted,

  
\_\_\_\_\_  
Barry S. Mittelberg

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was mailed via United States Postal Service, 1<sup>st</sup> Class on this 23<sup>rd</sup> day of January, 2003 to: **Christine P. James, Esquire**, KILPATRICK STOCTON, LLP, 1100 Peachtree Street, Suite 2800, Atlanta, Georgia 30309 and the original to Assistant Commissioner of Trademarks, 2900 Crystal Drive, BOX TTAB-NO FEE, Arlington, VA. 22202

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REPLY TO:  
FORT LAUDERDALE OFFICE



01-24-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #77

January 23, 2003

**VIA FEDERAL EXPRESS**

Assistant Commissioner of Trademarks  
Box TTAB-No Fee  
2900 Crystal Drive  
Arlington, VA. 22202-3513

**Re: *Fazoli's Management, Inc. and Steven Settiani***  
***Serial No.: 76/060,264***

Dear Assistant Commissioner of Trademarks:

Enclosed are the following original documents to be filed with this Court in the above referenced matter.

1. Notice of Appearance
2. Motion to Vacate and for Other Relief
3. Answer and Affirmative Defenses.

Should you have any questions please feel free to contact me.

Very truly yours,

BARRY S. MITTELBERG

BSM:eac

enc.

cc: Christine P. James, Esq.

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FEDERAL EXPRESS  
COMMERCIAL SERVICE

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**ANSWER**

COMES NOW, the Applicant, STEVEN SETTIPANI, by and through the undersigned Counsel and files this his Answer and Defenses and as grounds would states as follows:

1. The Applicant, STEVEN SETTIPANI admits the allegations contained in paragraph 1 on the Opposer's Notice of Opposition.
2. Applicant is without knowledge as to the allegations in contained paragraph 2 of the Notice of Opposition and accordingly demands strict proof thereof.
3. Applicant would admit that FAZOLI'S Marks have used in connection with the restaurant services. However, the remaining of the allegations contained in paragraph 3 are denied and the Applicant would demand strict proof thereof.
4. Applicant admits that it seeks to register the Mark PAST FAZUL'S AND DESIGN as set forth in application serial number 76/060,264 for restaurant and catering services. The remaining allegations contained in paragraph 4 are denied and Applicant demands strict proof thereof.
5. Applicant denies the allegations contained in paragraph 5 and demands strict proof thereof.
6. Applicant denies that the allegations contacted in paragraph 6 and demands strict proof thereof.
7. Applicant is without knowledge as to the allegations contained in paragraph 7 and would

demand strict proof thereof.

**AFFIRMATIVE DEFENSES**

8. As in for a first affirmative defense, the Applicant would allege that the Mark of PASTA FAZUL'S design is separate and distinct from that of Opposer so as to not cause any confusion by consumer's throughout the United States.

9. As in for a second affirmative defense, the Applicant would allege that it does not compete in the market of Opposer thereby alleviating any confusion that may exist between the Marks.

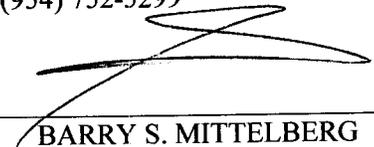
10. As in for a third affirmative defense, the Applicant would allege that the Marks are separate and distinct in that the Mark for Applicant is of a soup pot with steam. While the logo of FAZOLI'S is a tomato thereby rendering them dissimilar both visually and phonetically and not confusing to the public.

WHEREFORE, having fully Answered Notice of Opposition, PAST FAZUL'S would request that its Mark be granted and for any and all further relief the Court deems just and proper in the premises.

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was mailed via United States Postal Service, 1<sup>st</sup> Class on this 23<sup>rd</sup> day of January, 2003 to: **Christine P. James, Esquire**, KILPATRICK STOCTON, LLP, 1100 Peachtree Street, Suite 2800, Atlanta, Georgia 30309 and the original to Assistant Commissioner of Trademarks, 2900 Crystal Drive, BOX TTAB-NOFEE, Arlington, VA. 22202-3513

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