

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

In the Matter of trademark application Serial No.: 76326769

Filed: October 18, 2001

For the mark: L&B SPUMONI GARDENS

Published in the Official Gazette May 21, 2002.



09-27-2002

U.S. Patent & TMO/c/TM Mail RcptDt. #58

_____ X
LBSG, LLC :
 Opposer, : Notice of Opposition No.: 91152521
LB Gardens, Inc. :
 Applicants. :
_____ X

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

**OPPOSER'S RESPONSE TO APPLICANT'S MOTION TO SUSPEND
PROCEEDINGS or TO EXTEND TIME TO RESPOND**

LBSG, LLC, Opposer in this Opposition Proceeding submits this Response to Applicant's Motion apparently mailed on September 25, 2002, to Suspend Proceedings or to Extent Time to Respond to this Opposition to the application of **L&B SPUMONI GARDENS**. Applicant's Motion should be DENIED for the following reasons:

1. The only reason Applicant is calling its mark as SPUMONI GARDENS is to deceive and mislead the Court. The ONLY Application filed for and the ONLY trademark that Applicant allegedly uses is "**L&B SPUMONI GARDENS**".

Any reference to Applicant's mark other than "**L&B SPUMONI GARDENS**" should be immediately stopped and should be recognized as a false and misleading mischaracterization of the mark.

2. The Applicant's request to suspend or delay these proceedings should be **DENIED**. The TTAB has the expertise and jurisdiction in matters concerning trademark registrations. This Motion for Suspension is nothing but a tactic by the Applicants so as not to get a final ruling from the TTAB granting this Opposition and therefore denying the application for registration of "**L&B SPUMONI GARDENS**."

3. In fact to further mislead the TTAB, the Applicant has attached a copy of the Complaint filed in the United States District Court Eastern District of New York. What the Applicant failed to inform the TTAB and to include is that the **TEMPORARY RESTRAINING ORDER** in this action for infringement was **DENIED by Chief Judge Korman** (Attached as Exhibit 1 is the page with Chief Judge Korman's written opinion denying the Applicant's (plaintiff's) temporary restraining order.)

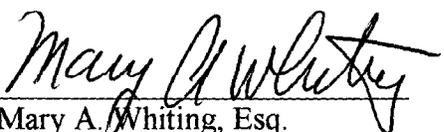
4. Applicant does not use SPUMONI GARDENS as its mark. The Applicant has have never used SPUMONI GARDENS as a trademark in commerce as required for a trademark . In fact the Applicant's application required a **DISCLAIMER** the word "**SPUMONI**" from their mark. The Opposer's application also requires a **DISCLAIMER** the words "**SPUMONI**" in their trademark "**SPUMONI GARDENS EXPRESS**". SPUMONI GARDENS is made up of two common generic words and is

not used as a mark by the Applicants. Therefore - There is no mark SPUMONI GARDENS that the Applicant's own and use. Any reference to this name is solely for the purpose to mislead and confuse both the TTAB and the United States District Court.

5. This Applicant's Motion for Suspension is being made for the purpose of needless delay. Rather, in order to produce a consistent, efficient result this Opposition proceeding should continue so as to grant the Opposition and thereby deny the Applicant's application for registration - which would end not only the Opposition proceeding before this Board but also the proceeding in U.S. District Court -Eastern District New York.

WHEREFORE, Opposer believes and avers that it will be damaged by registration of the "L&B SPUMONI GARDENS" mark as aforesaid, and respectfully prays that this Motion for Suspension or Extension be DENIED and that the opposition be sustained and that the application for registration be denied.

LBSG, LLC

By: 
Mary A. Whiting, Esq.
Registered Patent Attorney 30, 601
Attorney for the Opposer

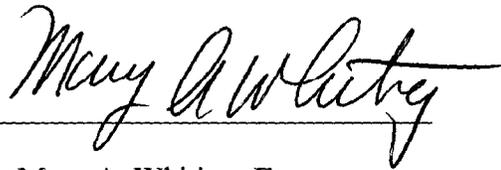
Dated: September 26, 2002

CERTIFICATE OF MAILING

I hereby certify that the **NOTICE OF OPPOSITION** with **DECLARATION** is being deposited by Federal Express Routing Number 824311455697 on this 26th day of September 2002, addressed to :

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

Dated: September 26, 2002

A handwritten signature in cursive script, reading "Mary A. Whiting", written over a horizontal line.

Mary A. Whiting, Esq.
Reg. Patent Attorney No. 30,601
Attorney for Opposer

Leonard Isaacson (LI-9451)
Larry B. Miller (LM-8323)
Feder, Kaszovitz, Isaacson, Weber, Skala,
Bass & Rhine LLP
750 Lexington Avenue
New York, NY 10022
(212) 888-8200
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

-----X
L & B GARDENS, INC.,

Plaintiff,

-against-

LBSG, LLC

-----X
Defendant.

2002 AUG 23 P 9:17

Order

The motion for
a TRO is denied. The
motion for a preliminary
injunction is referred
to the U.S. Mag. Judge

02 Civ. 4040 (ERK) (MDG)

[Signature]

[Signature]
UNIT

NOTICE OF MOTION
FOR PRELIMINARY
INJUNCTION AND
TEMPORARY

RESTRAINING ORDER

Note -

schedule to be determined
by Mag. Co.

PLEASE TAKE NOTICE that upon the declarations of Ludovico Barbati
affirmed on the 24th day of July, 2002, and the declarations of Lindsey Leibowitz
and Larry Miller affirmed on July 29th and July 30th, 2002, respectively; the
exhibits annexed thereto, the complaint, and all papers and proceedings previously
had herein, plaintiff will move this Court on at Room _____, United States
Courthouse, 225 Cadman Plaza, Brooklyn, New York, on August ____, 2002, at ____
____ o'clock in the ____ noon thereof, or as soon thereafter as counsel may

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TTAB

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VIA FEDERAL EXPRESS 824311455697

09-27-2002
U.S. Patent & TMO
0807-1-1112-43
TRADEMARK AND
APPEAL DIVISION
U.S. Patent & TMO
Form #58

September 26, 2002

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

RE: Opposition Proceeding 915252111
LBSG, LLC v. LB GARDENS, INC. a.k.a L&B GARDENS INC.

Dear Sirs:

I enclose Opposer's Opposition for Applicant's Motion for Suspension or Extension of the Time to Response.

A copy of this Opposition Response has been served on Applicants by regular mail and fax today Sept. 26, 2002.

If you need to contact me, please contact me at the above telephone number.

Very truly yours,

Mary A. Whiting, Esq.
Attorney for the Opposer
Registered Patent Attorney
Reg. No.: 30, 601

cc: Larry B. Miller, Esq (Attorney for the Applicant)

Enc: 3 ORIGINALS COPIES (1 original)