

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

U.S. Patent & TMO/TM Mail Rcpt. Dt. #57



08-13-2002

PIZZA PRO, INC.)
)
 Opposer)
v.))
))
PRO-PROCESS CORPORATION)
))
 Applicant)
))

Opposition No. 152289

ASSISTANT COMMISSIONER FOR TRADEMARKS
Box TTAB-FEE
2900 Crystal Drive
Arlington, VA 22202-3513

Re: Application No. 76/170,524
Mark: PIZZAPRO
Applicant: Pro-Process Corporation
Filed: November 11, 2000
Published For Opposition: December 4, 2001
International Class: 007
For: Baking equipment, namely dough presses

NOTICE OF OPPOSITION

Dear Sir:

Pizza Pro, Inc., a corporation organized and existing under the laws of Wyoming, having its principal place of business at Cabot, Arkansas, by and through its attorneys, hereby states that it will be damaged by registration of the mark "PIZZAPRO" covered by U.S. Application No. 76/170,524 by Pro-Process Corporation ("Applicant"), and hereby opposes registration of same.

As grounds of opposition, it is alleged that:

1. Opposer manufactures and sells pizza and pizza products under the brand name PIZZAPRO. In addition, Opposer is and for many years has been engaged in the franchising and licensing to others the right to manufacture and sell pizza and pizza products under the brand name PIZZAPRO.

2. Opposer and its predecessors in title have used, advertised and promoted in commerce, and continue to use, advertise and promote in commerce, Opposer's PIZZAPRO mark in connection with pizza products and services since July 15, 1979.

3. Opposer has expended substantial resources to advertise and promote the above-described products and services under Opposer's PIZZAPRO mark with products and services manufactured, promoted and sold exclusively by Opposer and its franchisees and licensees.

4. Opposer owns both common law and federally registered marks for PIZZAPRO alone and in combination with other terms and designs for pizza products and services, including the above-described products and services. (Hereafter these various marks are collectively referred to as "Opposer's PIZZAPRO marks.") Opposer currently has an application pending for the mark "PIZZA PRO and Design", which was filed on November 13, 2000, for pizza, pizza dough, pizza sauce and pizza products, namely pizza bread sticks and pizza cheese sticks.

5. Opposer owns the following federally registered mark, which currently is registered on the Supplemental Register and has not been abandoned.

Trademark	Registration No.	Registration Date	Goods and Services
PIZZAPRO	1,231,489	03/15/1983	Restaurant services

6. The registrations set forth in Paragraphs 4-5 are valid and subsisting and in full force and effect. In addition, Registration No. 1,231,489 has achieved incontestable status under 15 U.S.C. §1065. Copies of the application and registration referred to in Paragraphs 4-5 are attached hereto as Exhibits A and B.

7. Notwithstanding Opposer's prior rights in and to Opposer's PIZZAPRO marks, Applicant filed on November 27, 2000, an application for the identical mark 'PIZZAPRO' as an Intent to Use the Mark for baking equipment, namely dough presses, in International Class 7 (Application Serial No. 76/170,524). That application is scheduled to be published for opposition in the Official Gazette (Trademarks) of the United States Patent and Trademark Office on December 4, 2001.

8. Applicant's mark "PIZZAPRO" is confusingly similar to Opposer's PIZZAPRO marks, and Applicant's proposed use and registration of the mark "PIZZAPRO" for the goods set forth in Applicant's application are likely to cause confusion, deception, and/or mistake among purchasers.

9. Applicant's proposed use and registration of the mark "PIZZAPRO" are likely to falsely suggest a connection with Opposer and Opposer's PIZZAPRO marks.

10. Applicant's proposed use and registration of the mark "PIZZAPRO" are likely to dilute the distinctiveness of Opposer's famous PIZZAPRO marks.

11. Applicant's proposed use and registration of the mark "PIZZAPRO" will interfere with Opposer's PIZZAPRO marks and damage Opposer, its business and its goodwill.

WHEREFORE, Opposer believes that it will be damaged by registration of Applicant's proposed mark and prays that Application serial No. 76/170,524 be rejected, and that the mark therein sought for the goods therein specified in International Class 7 be denied and refused.

Opposer hereby gives notice under Rule 2.122(d) of the Rules of Practice that after hearing and in any appeal on this opposition proceeding, it will rely on its registrations which are annexed as exhibits to this Notice of Opposition as evidence in support of this Notice of Opposition.

A duplicate copy of this Notice of Opposition is enclosed herewith. The fee required in §2.6(1) has previously been paid in connection with this matter.

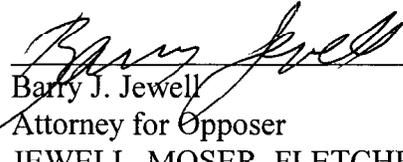
All correspondence relating to this matter should be directed to the undersigned attorneys for Opposer.

Respectfully submitted,

PIZZA PRO, INC.

Dated: August 13, 2002

By:


Barry J. Jewell

Attorney for Opposer

JEWELL, MOSER, FLETCHER &

HOLLEMAN, A Professional Association

111 Center Street, Suite 1250

Little Rock, AR 72201

Telephone: (501) 376-8250

Facsimile: (501) 376-8471

BJJ:dkc:B47906

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
APPLICATION FOR TRADEMARK REGISTRATION

MARK: PIZZA PRO AND DESIGN

CLASS: International 30
U.S. 100

Honorable Commissioner of
Patents and Trademarks
Washington, D.C. 2031

Applicant: Pizza Pro, Inc., a Wyoming corporation

Business Address: P.O. Box 1285
Cabot, Arkansas 72023

Applicant has adopted and is using the above-identified trademark shown in the accompanying drawing for:

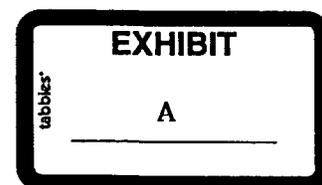
Pizza, Pizza Dough, Pizza Sauce, and Pizza Products

and requests that said mark be registered in the United States Patent and Trademark Office on the Principal Register established by the Trademark Act of July 5, 1946, (15 U.S.C. 1051 et seq., as amended).

The trademark was first used in connection with the goods at least as early as July 12, 1985; was first used in connection with the goods in interstate commerce at least as early as July 12, 1985; and is now in use in such commerce. The mark is used by applying it to signage, advertising, menus, flyers and containers.

Applicant disclaims the word "Pizza" apart from the mark as shown.

The mark is lined for the colors red and green.



DECLARATION

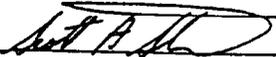
The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he is an officer of the applicant and is properly authorized to execute this application on behalf of the applicant; he believes the applicant to be the owner of the trademark sought to be registered; to the best of his knowledge and belief no other person, firm, corporation, or association has the right to use the above identified mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; that the applicant is the owner of U.S. Trademark Registration No. 1,231,489 for the mark "PIZZAPRO"; and that all statements made of his own knowledge are true and all statements made on information and belief are believed to be true.

POWER OF ATTORNEY

The undersigned hereby appoints the following individual as its attorney with full power of substitution, association and revocation, to prosecute this application, to transact all business in the United States Patent and Trademark Office and to receive the Certificate of Registration: Barry J. Jewell, member of the Bar of the State of Arkansas, whose mailing address is Jewell, Moser, Fletcher & Holleman, A Professional Association, 111 Center Street, Suite 1250, Little Rock, Arkansas 72201.

Pizza Pro, Inc.

By:



Scott A. Stevens, President

11-10-2000
Date

BJJ:dkc:B41659

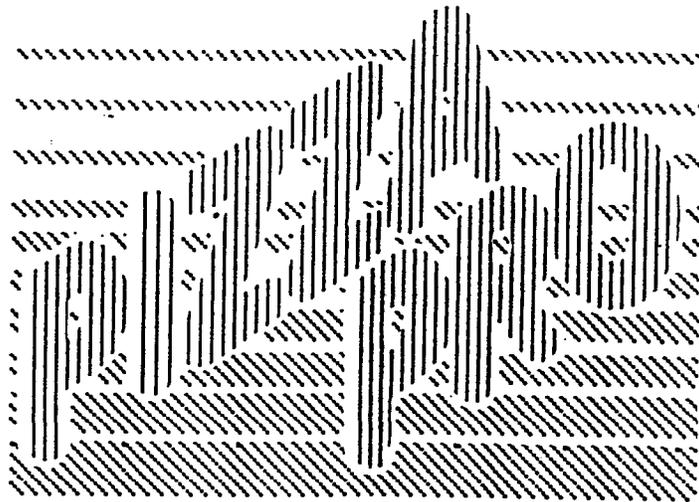
Applicant: Pizza Pro, Inc.
Business Address: P.O. Box 1285
Cabot, Arkansas 72023

First Use: July 12, 1985

In Commerce: July 12, 1985

Goods: Pizza, pizza dough, pizza sauce,
pizza products.

Mark: The mark consists of the words
Pizza Pro and design



Int. Cl.: 42

Prior U.S. Cl.: 100

United States Patent and Trademark Office

Reg. No. 1,231,489
Registered Mar. 15, 1983

SERVICE MARK
Principal Register

PIZZAPRO

Pizza Pro Inc. (Florida corporation)
3491-5 Thomasville Rd.
Tallahassee, Fla. 32308

For: RESTAURANT SERVICES, in CLASS 42
(U.S. Cl. 100).
First use Jul. 15, 1979; in commerce Jul. 15, 1979.

Ser. No. 338,848, filed Nov. 25, 1981.

EDWARD NELSON, Examining Attorney

EXHIBIT

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J M F H

Jewell, Moser, Fletcher & Holleman

A T T O R N E Y S A T L A W

A Professional Association

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BARRY J. JEWELL ◊▲
KEITH MOSER ◊◆▲
SCOTT D. FLETCHER ▲●
JOHN T. HOLLEMAN, IV ■▲●
SHARROCK DERMOTT □▲△

- ◊ ARKANSAS BOARD RECOGNIZED SPECIALIST IN TAX LAW
- ◆ CERTIFIED PUBLIC ACCOUNTANT
- MASTER OF LAWS IN ENVIRONMENTAL LAW
- MASTER OF LAWS IN TAXATION
- ▲ ALSO LICENSED IN TEXAS
- ALSO LICENSED IN TENNESSEE
- △ ALSO LICENSED IN MISSOURI

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<http://www.JMFH.com>

August 13, 2002

Assistant Commissioner of Trademarks
Box TTAB FEE
2900 Crystal Drive
Arlington, Virginia 22202-3513

Re: Trademark Application
Serial No. 76/170,524

Dear Sir:

Enclosed are the following:

1. Notice of Opposition by Pizza Pro, Inc., to Application Serial No. 76/170,524
2. Express Mail Certificate.
3. Receipt for payment of \$300.00 filing fee.

Sincerely,

JEWELL, MOSER, FLETCHER & HOLLEMAN
A Professional Association

Barry Jewell
Barry J. Jewell

BJJ:dkc:B47904
Enclosures

cc: Pizza Pro, Inc.