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U.S. Patent & TMO/TM Mail Rcpt Dt. #73

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

**IN THE MATTER OF APPLICATION SERIAL NO. 75/903,965  
PUBLISHED IN THE OFFICIAL GAZETTE ON JULY 16, 2002**

**MCKENNA'S BLUES, BOOZE  
& BBQ, INC.,** )

OPPOSITION NO.:

Opposer, )

v. )

**MARK. A. BERRY,** )

Applicant. )

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**NOTICE OF OPPOSITION**

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

McKenna's Blues, Booze & BBQ, Inc., a corporation organized and existing under the laws of the State of Nebraska, with offices located at 7425 Pacific Street, Omaha, Nebraska 68114 believes that it will be damaged by registration of the mark shown in Serial No. 75/903,965 and hereby opposes the same.

As grounds for opposition, it is alleged that:

1. Pursuant to trademark application Serial No. 75/903,965 filed January 27, 2000, Applicant seeks to register the mark BLUES BBQ as a trademark for "prepared meals and entrees consisting mainly of meat, fish, poultry or vegetables" in International Class 29 and "sandwiches" in International Class 30, claiming a bona fide intent to use the mark, as is evidenced by the publication of said mark in the Official Gazette on page TM 66 of the July 16, 2002 issue.

2. Opposer is the owner of U.S. Trademark Registration No. 2,246,977, issued May 25, 1999, for the service mark MCKENNA'S BLUES BOOZE & BBQ (Stylized) as used on

“entertainment services, namely, providing live musical entertainment” in International Class 41 and “restaurant and bar services, including catering and providing carry-out food” in International Class 42. Opposer has used the trademark since at least as early as December 16, 1991, and continues to use the trademark in interstate commerce throughout the United States.

3. Opposer is the owner of U.S. Trademark Registration No. 2,503,005, issued October 30, 2001, for the trademark MCKENNA’S BLUES BOOZE & BBQ (Stylized) as used on “caps, t-shirts and sweatshirts” in International Class 25 and “sauces and seasonings” in International Class 30. Opposer has used the trademark since at least as early as May 16, 2001, and continues to use the trademark in interstate commerce throughout the United States.

4. Opposer has made common law use of the mark BLUES BOOZE & BBQ in interstate commerce in connection with entertainment, restaurant, bar and catering services, as well as food products related to and arising out of such services.

5. Opposer’s restaurant and catering services, offered under the MCKENNA’S BLUES BOOZE & BBQ and BLUES BOOZE & BBQ marks, include the sale of prepared meals and entrees consisting mainly of meat, fish, poultry or vegetables, and sandwiches (the goods covered by Applicant’s trademark application).

6. Applicant has used the marks MCKENNA’S BLUES BOOZE & BBQ and BLUES BOOZE & BBQ in interstate commerce, and continues to use such marks in interstate commerce.

7. Upon information and belief, Applicant intends to sell the goods covered under the BLUES BBQ trademark application through a restaurant, bar and/or other establishment providing live musical entertainment.

8. There is no issue as to priority. Opposer first made use of the marks MCKENNA'S BLUES BOOZE & BBQ and BLUES BOOZE & BBQ prior to the filing date of Applicant's intent to use application and Opposer's service mark registration was issued prior to the filing date of Applicant's intent to use application.

9. By virtue of its efforts and the expenditure of considerable sums for promotional activities and by virtue of the excellence of its goods and services Opposer has gained a valuable reputation for the trademark.

10. The trademark proposed for registration by Applicant is substantially identical to Opposer's trademark so that when the mark is applied to goods similar to those sold by Opposer, it so nearly resembles Opposer's mark as to be likely to be confused therewith and mistaken therefor. Applicant's mark is deceptively similar to Opposer's mark so as to cause confusion and lead to deception as to the origin of Applicant's goods bearing Applicant's mark.

11. If Applicant is permitted to use and register the BLUES BBQ mark for its goods as specified in the subject application, such use and registration is likely to cause confusion and lead to deception as to the source, origin and/or sponsorship of the goods bearing Applicant's trademark, causing damage and injury to Opposer.

12. If Applicant is permitted to use and register the BLUES BBQ trademark on the goods specified in the subject application, such use and registration is likely to dilute and/or damage the value, reputation and/or goodwill associated with Opposer's MCKENNA'S BLUES BOOZE & BBQ and BLUES BOOZE & BBQ marks, causing damage and injury to Opposer.

13. If Applicant is granted the registration herein opposed, Applicant would thereby obtain at least a prima facie exclusive right to use the mark, causing damage and injury to Opposer.

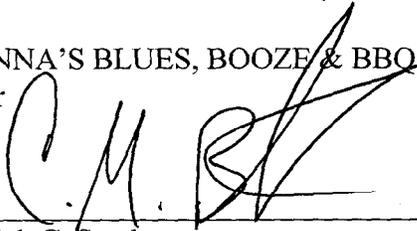
WHEREFORE, Opposer prays that trademark application Serial No. 75/903,965 be rejected, and that the mark therein sought for the goods therein specified be denied and refused.

A duplicate copy of this Notice of Opposition and the fee required in Section 2.6(1) are enclosed herewith.

RESPECTFULLY SUBMITTED,

MCKENNA'S BLUES, BOOZE & BBQ, INC.

Opposer

By: 

Patrick C. Stephenson

Christopher M. Bikus

**McGRATH NORTH MULLIN  
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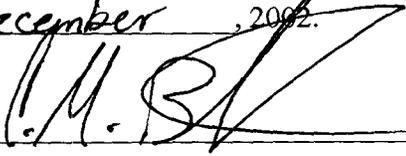
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ATTORNEYS FOR OPPOSER

Dated: December 13, 2002

**CERTIFICATE OF EXPRESS MAIL**

I, Christopher Bikus, do hereby certify that the foregoing document is being deposited with the United States Postal Service as Express Mail, postage prepaid, in an envelope addressed to: BOX TTAB FEE, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513, on this 13<sup>th</sup> day of December, 2002.



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December 13, 2002  
Date of Deposit