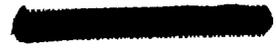


Hob



10-10-2002

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

U.S. Patent & TMO/TM Mail Rcpt Dt. #80

In the matter of trademark application Serial No. SN78-077,636
Filed August 6, 2001
For the mark "Bob's Burgers Home of the Ranchero Burger"
Published in the Official Gazette on September 17, 2002

BIG BOY RESTAURANTS)
INTERNATIONAL LLC,)

Opposer,)

v.)

CLIFFORD SALAS,)

Applicant)

Opposition No. _____)

10/18/2002 ZCARRITH 00000005 78077636

01 FC:6402

300.00 OP

TRADEMARK TRIAL AND
APPEAL BOARD
02 OCT 24 PM 9:47

NOTICE OF OPPOSITION TO PROPOSED USE OF TRADEMARK

Big Boy Restaurants International LLC ("Opposer"), pursuant to U.S.C.A., Title 15 §1063, stated the following in support of its Opposition to Proposed Use:

1. Opposer is a Michigan limited liability company, located at 4199 Marcy, Warren, Michigan 48091.

2. Clifford Salas ("Applicant") has applied for the registration and use of the trademark "BOB'S BURGERS HOME OF THE RANCHERO BURGER" listed as Item No. SN78-077636, page TM 869, of the Official Gazette of the United States Patent and Trademark Office, dated September 17, 2002 (see attached **Exhibit A**).

3. Applicant has filed for registration in Int. Cl. 43, Services for Providing Food and Drink; Temporary Accommodation, purporting to use the mark in connection with restaurant services featuring New Mexico red-chile and green-chile fast food product, including taco

burgers, ranchero burgers, namely, red-chile and/or green-chile based burgers, red-chile burgers, green-chile burgers, rolled taquitos, frito pie, and chile cheese fries containing red or green chile.

4. Applicant's proposed use of the "BOB'S BURGERS HOME OF THE RANCHERO BURGER" trademark is confusingly similar to or likely to be confused with Opposer's numerous "BOB'S" trademarks.

5. Opposer filed Affidavits of Current Use and Incontestability pursuant to §8 of the Trademark Statute and 37 C.F.R. §§2.161-2-166 and §15 of the Trademark Statute and 37 C.F.R. §§2016702.168 respectively, which were acknowledged according to the attached **Exhibit B**. Opposer will file its renewal for all Registrations listed in **Exhibit B** on a timely basis.

6. Since its first use in 1937, the "BOB'S" trademarks have been prevalent and continuous and their ubiquitous use has made them well-known to the public.

7. In connection with Opposer's operation and promotion of its restaurant business, both in the United States and internationally, Opposer employs one or more of its federally-registered "BOB'S" trademarks. For Opposer, the "BOB'S" trademark is its single most identifying mark as to the quality and origin of goods and services it offers to the consuming public.

8. Opposer presently has two similar marks: "Bob's," Registration number 1,230,137, Classes 25, 28 and 42 for clothing, toys and restaurant services; and "Bob's," Registration number #1,300,991, Class 42 for restaurant services; and uses said marks.

9. If Applicant is allowed to register and use the "BOB'S BURGERS HOME OF THE RANCHERO BURGER" name as proposed, Opposer will be damaged by Applicant's use of this confusingly similar trademark in connection with restaurant services.

10. The consuming public will likely be confused or deceived by Applicant's use of "BOB'S BURGERS HOME OF THE RANCHERO BURGER" since Opposer promotes its "BOB'S" services, in the same region of the United States as the Applicant.

11. Applicant will achieve an unfair competitive advantage by appropriating the goodwill established by Opposer's use of the "BOB'S" mark.

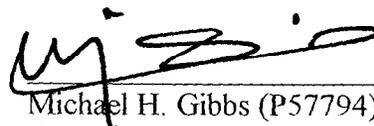
12. Opposer, having used its "BOB'S" trademarks in commerce as early as 1937, does not wish to mislead the consuming public that Opposer is part of the restaurant services which are used in connection with Applicant, nor does Opposer wish to be adversely affected by any loss of goodwill which may incur as a result of Applicant's use of the "BOB'S" trademark.

13. Applicant's use of the trademark "BOB'S BURGERS HOME OF THE RANCHERO BURGER" infringes upon Opposer's first use of its "BOB'S" trademarks and upon the goodwill associated with those trademarks, to the latter's damages.

14. Opposer has never abandoned use of the "BOB'S" trademarks.

Accordingly, Opposer requests that this Office refuse Applicant's proposed use and registration of the trademark "BOB'S BURGERS HOME OF THE RANCHERO BURGER."

Respectfully submitted,



Michael H. Gibbs (P57794), Opposer
General Counsel for Big Boy Restaurants
International LLC
4199 Marcy
Warren, MI 48091
(586) 755-8583

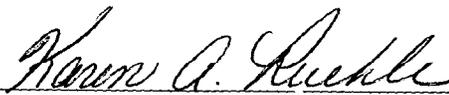
Dated: September 27, 2002

CERTIFICATE OF MAILING

I hereby certify that this correspondence, including two copies of Opposer's Notice of Opposition to proposed Use of trademark, with attached Exhibits, and the prescribed Opposition fee, are being deposited with sufficient postage as first class mail in an envelope addressed to:

Box TTAB FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

on Oct. 3, 2002



Karen A. Ruehle

CLASS 43—(Continued).

SN 76-376,994. RESORT INNS OF AMERICA, INC., DBA TRADEWINDS ISLAND RESORTS, ST. PETE BEACH, FL. FILED 3-1-2002.

JUST LET GO

FOR RESORT HOTELS (U.S. CLS. 100 AND 101).
FIRST USE 1-21-2002; IN COMMERCE 1-21-2002.

SN 76-384,140. RESTAURANTE CESARIA INC., DORCHESTER, MA. FILED 3-14-2002.

RESTAURANTE CESARIA

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

THE ENGLISH TRANSLATION OF "RESTAURANTE CESARIA" IS "CESARIA RESTAURANT".

FOR RESTAURANT SERVICES (U.S. CLS. 100 AND 101).

SN 76-386,914. GRILLSMITH RESTAURANT GROUP INC., TAMPA, FL. FILED 3-26-2002.

GRILLSMITH

FOR RESTAURANT SERVICES (U.S. CLS. 100 AND 101).

SN 78-077,636. SALAS, CLIFFORD, ALBUQUERQUE, NM. FILED 8-6-2001.



NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "HOME OF THE RANCHO BURGER" AND "BURGERS", APART FROM THE MARK AS SHOWN.

FOR RESTAURANT SERVICES FEATURING NEW MEXICO RED-CHILE AND GREEN-CHILE FAST FOOD PRODUCTS, INCLUDING TACO BURGERS, RANCHO BURGERS, NAMELY, RED-CHILE AND/OR GREEN-CHILE BASED BURGERS, RED-CHILE BURGERS, GREEN CHILE BURGERS, ROLLED TAQUITOS, FRITO PIE, AND CHILE CHEESE FRIES CONTAINING RED OR GREEN CHILE (U.S. CLS. 100 AND 101).
FIRST USE 0-0-1989; IN COMMERCE 0-0-1989.

CLASS 43—(Continued).

SN 78-092,356. BENASILLO, PATRICK J., STATEN ISLAND, NY. FILED 11-8-2001.



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

THE MARK CONSISTS OF A FLUORESCENT GREEN OUTER RING WITH A PURPLE BODY AND WHITE AND GREEN TEXT.

FOR RESTAURANT SERVICES FEATURING MENU CONTENT DESIGNED AND ENGINEERED SPECIALLY FOR CHILDREN (U.S. CLS. 100 AND 101).

SN 78-095,900. HAYWARD, RUSSELL JOHN, DALLAS, TX. AND RING, ROYCE ALLAN, DALLAS, TX. FILED 11-30-2001.

CLUB NIKITA

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

FOR RESTAURANT, BAR AND CATERING SERVICES (U.S. CLS. 100 AND 101).

SN 78-102,024. SIMON'S COFFEE BARS, INC., NEW YORK, NY. FILED 1-10-2002.

SIMON SIPS

FOR RESTAURANT SERVICES FEATURING COFFEE AND OTHER HOT AND COLD BEVERAGES AND PASTRIES, CATERING SERVICES (U.S. CLS. 100 AND 101).
FIRST USE 4-1-1994; IN COMMERCE 4-1-1994.

EXHIBIT A

**UNITED STATES
TRADEMARKS REGISTERED**

NAME	REG. NO.	USE CLASSIFICATION
Running "Big Boy"	1,806,061	Int. Cl. 16 Int. Cl. 42
Running "Big Boy"	1,753,878	Int. Cl. 16 Int. Cl. 42
Running "Big Boy"	1,871,436	Int. Cl. 28
Running "Big Boy" (Design only)	1,818,909	Int. Cl. 16 Int. Cl. 29 Int. Cl. 30 Int. Cl. 32 Int. Cl. 42
Standing "Big Boy"	910,758	Int. Cl. 42
"Big Boy" (words only)	1,823,393	Int. Cl. 42
"Big Boy"	913,601	Int. Cl. 16 Int. Cl. 29 Int. Cl. 30 Int. Cl. 35 Int. Cl. 42
Running "Big Boy" w/burger design	935,453	Int. Cl. 29 Int. Cl. 30 Int. Cl. 32
"Big Boy"	944,155	Int. Cl. 32
"Big Boy Diner"	2,059,156	Int. Cl. 42
Running Big Boy with Burger	2,090,105	Int. Cl. 42
Original Big Boy	2,145,671	Int. Cl. 25 Int. Cl. 28 Int. Cl. 42
"Big Boy Restaurant and Market"	2,442,108	Int. Cl. 16 Int. Cl. 42
Standing "Big Boy"	1,166,686	Int. Cl. 29
"Bob's Big Boy"	1,230,170	Int. Cl. 30 Int. Cl. 42
"Bob's Big Boy Family Restaurants" (and design)	1,230,569	Int. Cl. 42
"Bob's Big Boy Restaurants" (and design)	1,230,570	Int. Cl. 42
"Bob's"	1,230,137	Int. Cl. 29 Int. Cl. 30 Int. Cl. 42
"Bob's"	1,300,991	Int. Cl. 42

(kruehle -H:\trademark\Charts\uslist-opp.doc)

EXHIBIT 



4199 MARCY
WARREN, MI 48091-1799
(586) 759-6000

Direct Dial: (586) 755-8583
Facsimile: (586) 757-4737

October 3, 2002

VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED

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

**Re: Notice of Opposition to Proposed Use of Trademark, SN 78-077,636
Class 43, "BOB'S BURGERS HOME OF THE RANCHERO BURGER"**

02 OCT 24 AM 9:47
TRADEMARKS INTERNATIONAL AND
APPELLATE BOARD

Dear Assistant Commissioner:

Enclosed please find the following:

1. Two signed originals of the above referenced Notice of Opposition to Proposed Use of trademark (with attached exhibits);
2. Certificate of Mailing; and
3. A check in the amount of \$300 in payment of the fee.

Please process these materials in the usual manner.

Very truly yours,

BIG BOY RESTAURANTS INTERNATIONAL LLC

MICHAEL H. GIBBS
General Counsel

Enclosure

(H:\trademark\opposition\Salas\TTAB-Int-ltr.doc)