

TTAB

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

IN RE: Trademark Application Serial No. 78/077,636

MARK: "BOB'S BURGERS HOME OF THE RANCHERO BURGER"

FILED: August 6, 2001

PUBLISHED: September 17, 2002



03-18-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

BIG BOY RESTAURANTS)
INTERNATIONAL, LLC)
(Opposer))

vs.)

CLIFFORD SALAS)
(Applicant))

Opposition No. 91154340

BOX TTAB – NO FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

03 MAR 27 AM 9:30
TRADEMARK TRIAL AND
APPEAL BOARD

**OPPOSER'S ANSWER TO APPLICANT'S AFFIRMATIVE DEFENSES AND
COUNTERCLAIMS**

Opposer Big Boy Restaurants International LLC, responds to the Affirmative Defenses and Counterclaims of Applicant Clifford Salas as follows:

- 15. Denied.
- 16. Denied.
- 17. Denied.
- 18. Denied.
- 19. Denied. Further, Opposer objects to the allegation regarding the claims of secondary meaning in Applicant's mark as irrelevant.

17. (second occurrence) Denied. Further, Opposer objects to the allegation regarding the claims of secondary meaning in Applicant's mark as irrelevant.

17. (third occurrence) Denied. Further, Opposer objects to the suggestion that Applicants mark has developed any association in the mind of the consuming public as irrelevant.

17. (fourth occurrence) Denied.

18. (second occurrence) Denied.

19. (second occurrence) To the extent understood, denied.

20. Denied. Further, Opposer objects to the references to “the New Mexico geographical region” as irrelevant to this proceeding.

21. Denied.

22. Admitted that Applicant’s registered marks Reg. 1,230,137 and 1,300,991 were not registered in International Class 43. However, each was registered in then International Class 42 (Miscellaneous Services) and alleged use as “Restaurant Services”, and would be reclassified in International Class 043, created on January 1, 2002. Any remaining allegations are denied.

23. Denied.

24. Denied. Further, Opposer objects to the allegation regarding the claims of secondary meaning in Applicant’s mark as irrelevant.

25. Denied.

26. Denied.

27. Denied.

APPLICANT COUNTERCLAIMS

I. Opposer objects to this counter claim as improper and irrelevant under 37 C.F.R. § 2.106(b)(2)(i). To the extent understood, the allegations are denied.

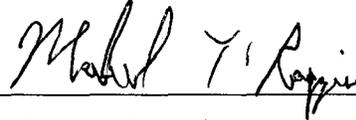
II. Opposer objects to this counter claim as improper and irrelevant under 37 C.F.R. § 2.106(b)(2)(i). To the extent understood, the allegations are denied.

III. Opposer objects to this counterclaim for the following reasons:

- 1) The count does not allege proper basis for cancellation (37 C.F.R. 2.112(a)), (territorial restriction is not an appropriate ground for partial cancellation).

- 2) The pleading was not accompanied by the fee required by 37 C.F.R. §
2.111(c)(1)

To the extent understood, Opposer denies the allegation of the third counterclaim.



Robert A. Dunn (Reg. No. 30,556)
Michael T. Raggio (Reg. No. 36,645)
Dinnin & Dunn, P.C.
2701 Cambridge Court
Suite 500
Auburn Hills, MI 48326
(248) 364-2100

ATTORNEYS FOR OPPOSER

Michael H. Gibbs, Esq.
Big Boy Restaurants International LLC
4199 Marcy
Warren, MI 48091
(586) 755-8112

GENERAL COUNSEL

ATTORNEY FOR OPPOSER

Date: 3-18-03

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

IN RE: Trademark Application Serial No. 78/077,636

MARK: "BOB'S BURGERS HOME OF THE RANCHERO BURGER"

FILED: August 6, 2001

PUBLISHED: September 17, 2002



03-18-2003

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #22

BIG BOY RESTAURANTS)
INTERNATIONAL, LLC)
(Opposer))

vs.)

CLIFFORD SALAS)
(Applicant))

Opposition No. 91154340

BOX TTAB – NO FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

APPEARANCE

Please enter the appearance of Robert A. Dunn, (Reg. No. 30,556) and Michael T. Raggio, (Reg. No. 36,645) and the firm of Dinnin & Dunn, P.C. 2701 Cambridge Court, Suite 500, Auburn Hills, Michigan 48326 as counsel for Opposer in the above identified opposition action.

Respectfully submitted,

Dinnin & Dunn, P.C.

By: Michael T. Raggio

Robert A. Dunn (Reg. No. 30,556)
Michael T. Raggio (Reg. No. 36,645)
Dinnin & Dunn, P.C.
2701 Cambridge Court
Suite 500
Auburn Hills, MI 48326
(248) 364-2100

ATTORNEYS FOR OPPOSER

Michael H. Gibbs, Esq.
Big Boy Restaurants International LLC
4199 Marcy
Warren, MI 48091
(586) 755-8112

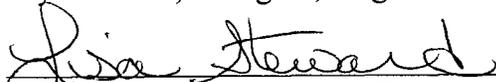
GENERAL COUNSEL

ATTORNEY FOR OPPOSER

Dated: 3-18-03

CERTIFICATE OF MAILING BY EXPRESS MAIL

I certify that this document and fee is being deposited on March 18, 2003 with the U.S. Postal Service as Express Mail (EV 220549358 US) under 37 C.F.R. 1.8 and is addressed to BOX TTAB – NO FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513.



Signature of Person Mailing Correspondence

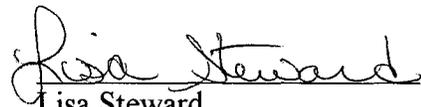
Lisa Steward

Typed or Printed Name of Person Mailing Correspondence

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of March, 2003, I mailed, via Express Mail (EV 220549358 US), postage prepaid, a true and correct copy of the foregoing OPPOSER'S ANSWER TO APPLICANT'S AFFIRMATIVE DEFENSES AND COUNTERCLAIMS to:

Kermit D. Lopez
Patent Attorney
Ortiz & Lopez, PLLC
P.O. Box 7720
Dallas, TX 75209-0720



Lisa Steward
Executive Assistant
Dinnin & Dunn, P.C.
2701 Cambridge Court
Suite 500
Auburn Hills, MI 48326