

TTAB

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

IN RE: Trademark Application Serial No. 78/077,636
Registration No. 2,707,103

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

FILED: August 6, 2001

PUBLISHED: September 17, 2002



09-22-2003

U.S. Patent & TMO/TM Mail Rept Dt. #79

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

vs.)

Opposition No. **91154340**

CLIFFORD SALAS)
(Applicant))

**REQUEST FOR ENTRY OF DOCUMENTS INTO RECORD OF OPPOSITION
PROCEEDING**

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

Dear Sir or Madam:

The following documents are enclosed herewith in connection with the above-referenced opposition proceeding:

1. Letter to Michael T. Raggio, dated Sept. 17, 2003
2. Letter from Michael T. Raggio to Kermit Lopez dated Sept. 9, 2003

The letter to Michael T. Raggio dated Sept. 17, 2003 was written in response to the letter to Kermit Lopez dated Sept. 9, 2003. Applicant requests that these documents be entered into the record of the above-referenced opposition proceeding.

Respectfully submitted this 17th day of September, 2003.

By: *Kermit Lopez*
Kermit Lopez
ORTIZ & LOPEZ, PLLC
P.O. Box 4484
Albuquerque, NM 87196-4484

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September 17, 2003

Michael T. Raggio
Dinnin and Dunn, P.C.
2701 Cambridge Court
Suite 500
Auburn Hills, Michigan 48326

**VIA FACSIMILE and
REGULAR MAIL**

Re: Big Boy Restaurants International vs Clifford Salas
Opposition No. 91154340
Mark: BOB'S BURGERS HOME OF THE RANCHERO BURGER
Our Ref. No: 1000-1026; Your Ref. No. 0225-40001

Dear Mr. Raggio:

In response to your letter dated September 9, 2003, we deny your allegations of fraud with respect to the procurement of the above-referenced trademark application. As explained to you previously, Clifford Salas was granted verbal permission by the owners of "Bob's Burgers" (i.e., his parents) to apply for the above-referenced trademark application on their behalf. Mr. Salas's trademark application was therefore submitted in good faith.

Verbal permission by the owners (i.e., his parents) to file for trademark applications on their behalf is considered *per se*, a legal modification to any pre-existing agreements. Your allegations of fraud are moot in light of these facts and the good faith belief by Mr. Salas that he was authorized to apply for the trademark applications. Any errors with respect to the ownership of the trademark "Bob's Burgers Home of the Ranchero Burger" are merely minor and inadvertent in nature, and are not fraudulent as you allege, and can be corrected by either amendment or re-filing of the trademark application.

Therefore, regarding ownership issues, we can amend the "Bob's Burgers Home of the Ranchero Burger" application to correct any inadvertent errors thereof. As you noted in your letter of September 9, 2003, "...the Trademark Office is in the process of correcting the improper registration of the mark at issue". If this is so, then we can now amend the pending application. You are well aware that if an applicant is incorrectly or erroneously designated in a trademark application, such mistakes can be corrected by amendment. If we are not successful in these amending efforts, however, we can simply abandon the trademark application, and immediately file a new application

for "Bob's Burgers Home of the Ranchero Burger" listing the ownership in the name of Mr. Salas's parents name or whichever entity is appropriate, in which case the above-referenced trademark opposition filed by Big Boy Restaurants International will also be moot.

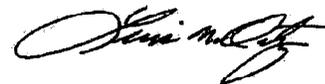
We believe that your allegations of fraud and threats to file motions thereof for sanctions would be an abuse of the discovery process, because the record clearly demonstrates that the application was not fraudulent, but at a minimum, may have included an inadvertent mistake in the identification of the ownership thereof. A finding of fraud can not be based on speculation, inference or surmise. It must be proven by clear and convincing evidence. The evidence provided to you, including our recent correspondence to you dated September 8, 2003, does not support your allegations of fraud. By improperly alleging fraud and threatening to seek motions to amend the complaint and seek sanctions as indicated in your letter of September 9, 2003 in order to intimidate our client into abandoning its trademark application, you are effectively abusing the discovery process. If the TTAB believes that the discovery process is being abused, it can take such measures as are available to it, including deciding the case against the offending party (i.e., Big Boy Restaurants International).

It is clear that "Bob's Burgers" has established legal rights to its various trademarks through many years of continuous, successful and open use thereof in commerce. It is also clear that your allegations of fraud are baseless. It is additionally clear from the record that your client's "Bob's" marks are very weak. We advise you to keep in mind that if you continue with this opposition proceeding, your client runs the risk of a full or at least partial cancellation of its "Bob's" trademarks.

Regarding the scheduling of depositions during the weeks of October 13 and 20, our client must first check his schedule to determine if he is available for such a deposition. Our client will be out of town for the next several days, but will return next week. We will get back to you regarding the question of depositions after his return.

We also note have yet received any reply to our letter of September 8, 2003.

Sincerely,



Luis M. Ortiz
ORTIZ & LOPEZ, PLLC

cc: Clifford Salas
Trademark Trial & Appeal Board
Michael Gibbs, Esq.

DINNIN & DUNN, P.C.

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SPECIALIZING IN
INTELLECTUAL PROPERTY LAW;
PATENT, TRADEMARK, COPYRIGHT,
AND TECHNOLOGY RELATED CAUSES



09-22-2003

U.S. Patent & TMO/TM Mail Rpt Dt. #79

September 9, 2003

**VIA FACSIMILE and
REGULAR MAIL**

Mr. Kermit Lopez, Esq.
Ortiz & Lopez, PLLC
P.O. Box 4484
Albuquerque, New Mexico 87196-4484

Re: Big Boy Restaurants International, LLC. vs Clifford Salas
Opposition No. 91154340
Mark: BOB'S BURGERS HOME OF THE RANCHERO BURGER
Our Ref. No: 0225-40001

Dear Mr. Lopez:

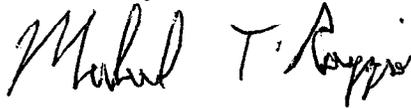
Upon reviewing the few documents you have produced, it appears that Clifford Salas is not the owner of the trademark applied for. To the extent he has any rights to the mark, it is based upon a license agreement not provided to us and not disclosed in the application as required by 37 CFR §2.38. Thus, it is clear that his declaration of use and ownership in the application is fraudulent and thus subject to penalties under 37 CFR 2.20 and 18 USC 1001. Thus, we request you abandon this application immediately. Alternatively, consider this our request for a motion to amend the complaint to allege violation of 37 CFR §2.33(b)(1) and §2.34(a)(1), and for sanctions for bringing the motion.

Please also be advised that the Trademark Office is in the process of correcting the improper registration of the mark at issue. To avoid any issue of timeliness, we would like to schedule the testimony deposition of Clifford Salas for one day during the week of October 13, 2003 in your office, and the testimony deposition of Mike Gibbs for Big Boy Restaurants International, LLC on October 20, 2003 in our office. Please indicate if you or your client has a conflict with these dates so we can work out alternatives.

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September 9, 2003

We have not yet received any reply to our request for a more complete production of documents. Again, we request your cooperation in resolving such minor issues without resorting to the TTAB.

Sincerely,

A handwritten signature in black ink that reads "Michael T. Raggio". The signature is written in a cursive style with a large initial "M" and a distinct "Raggio" ending.

Michael T. Raggio

MTR/mk

cc: Mr. Michael Gibbs, Esq.
Mr. Robert A. Dunn, Esq.