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JEFFREY J. SIMON

(Typed or Printed Name of Person Signing Certificate)

Jeffrey J. Simon

(Signature)

February 14, 2003

(Date)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Before the Trademark Trial and Appeal Board

In the matter of trademark application Serial No. 76/296,291
For the mark D E ANNO 1753 and Design in Class 11
Published in the Official Gazette of October 1, 2002

PUMPERNICKEL ASSOCIATES, LLC	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No.
	)	
SARA LEE DE/N.V.	)	
	)	
Applicant.	)	

NOTICE OF OPPOSITION

Pumpernickel Associates, LLC, a Delaware limited liability company,
6710 Clayton Road, Richmond Heights, Missouri 63117

The above-identified Opposer believes that it will be damaged by registration of the mark shown in trademark application Serial No. 76/296,291, and hereby opposes the same. Opposer has been granted extensions of time within which to file a Notice of Opposition, and the term within which to file an Opposition is set to expire February 28, 2003.

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Description of Applicant's Application:
Serial No. 76/296,291
Filed on August 7, 2001
Published in the *Official Gazette* of October 1, 2002
Mark D E ANNO 1753 and Design

Class and Goods: 011/Electric apparatus for the preparation and distribution of hot and cold beverages, namely, coffee, tea and cocoa brewing and dispensing machines, and hot and cold water dispensing machines

The grounds for opposition are as follows:

1. Opposer is the owner of U.S. Registration No. 2,341,776 for the mark MISCELLANEOUS DESIGN ("Mother Bread")

For "Coffee mugs and plastic drinking cups" in Class 21; "T-shirts" in Class 25; "Soups, cream cheese, vegetable and garden salads" in Class 29; "Bakery goods, coffee drinks and sandwiches" in Class 30; and "Restaurant and catering services" in Class 42, which was registered on the Principal Register on April 11, 2000. Said registration is based on an application filed in the U.S. Patent and Trademark Office on December 24, 1997.

2. Opposer is also the owner of the following U.S. Registrations, each of which is a composite mark comprising the "Mother Bread" logo illustrated above:

a) No. 2,354,029, for the mark PANERA BREAD and Mother Bread Logo

For "Coffee mugs and plastic drinking cups" in Class 21; and "Clothing, namely, caps, shirts, sweatshirts, and hats" in Class 25, which was registered on the Principal Register on May 30, 2000. Said registration is based on an application filed in the U.S. Patent and Trademark Office on January 9, 1998.

b) No. 2,574,024 for the mark PANERA BREAD and Mother Bread Logo

For "Coffee mugs and plastic drinking cups" in Class 21; "Clothing, namely, caps, shirts, sweatshirts, and hats" in Class 25; and "Bakery goods, coffee drinks and sandwiches" in Class 30, which was registered on the Principal Register on May 28, 2002. Said registration is based on an application filed in the U.S. Patent and Trademark Office on January 9, 1998.

c) No. 2,288,314 for the mark PANERA BREAD and Mother Bread Logo

For "Cream cheese" in Class 29; and "Restaurant and catering services" in Class 42, which was registered on the Principal Register on October 19, 1999. Said registration is based on an application filed in the U.S. Patent and Trademark Office on January 9, 1998

d) No. 2,299,040 for PANERA BREAD and Mother Bread Logo

For "Jellies, jams, edible vegetable oils, soups, cream cheese, vegetable and garden salads" in Class 29; "Bakery goods, coffee drinks and sandwiches" in Class 30; and "Restaurant and catering services" in Class 42, which was registered on the Principal Register on December 7, 1999. Said registration is based on an application filed in the U.S. Patent and Trademark Office on January 9, 1998

3. The dates of each of the Opposer's applications are prior to the date of filing of Applicant's application. Said registered marks of Opposer are valid and subsisting and are *prima facie* evidence of Opposer's exclusive right to use said marks in commerce on the goods and services specified in said registrations. Due to the similarity between Applicant's mark and Opposer's marks, and the related nature of the goods and services of the respective parties, Applicant's proposed mark so resembles Opposer's registered marks as to be likely to cause confusion, or to cause mistake or to deceive.

4. Opposer, since as early as October 1996, has been, and is now, using the "Mother Bread" logo in connection with the sale of coffee mugs and plastic drinking cups, briefcases, watches, golf tees and markers, golf balls, business card cases, key holders, pens, pencils, duffel bags, tote bags, blankets, and notebooks; clothing, namely, T-shirts, caps, shirts, sweatshirts, hats, jackets and vests; soups, cream cheese, vegetable and garden salads, salad dressings, bakery goods, coffee drinks and sandwiches, and restaurant and catering services. Said use has been valid and continuous since said date of first use and has not been abandoned. Said mark of Opposer is symbolic of extensive good will and consumer recognition built up by Opposer through substantial amounts of time and effort in advertising and promotion. Due to the similarity between Applicant's mark and Opposer's marks, and the related nature of the goods and services of the respective parties, Applicant's proposed mark so resembles Opposer's mark previously used in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake, or to deceive.

5. Opposer, since as early as October, 1997, has been, and is now, operating its business under its "Mother Bread Logo" in the area of restaurant and catering services, in general, and specifically in connection with the sale of coffee mugs and plastic drinking cups, briefcases, watches, golf tees and markers, golf balls, business card cases, key holders, pens, pencils, duffel bags, tote bags, blankets, and notebooks; clothing, namely, T-shirts, caps, shirts, sweatshirts, hats, jackets and vests; soups, cream cheese, vegetable and garden salads, salad dressings, bakery goods, coffee drinks and sandwiches. Said use has been valid and continuous since said date of first use and the relevant class of the public has come to associate Opposer with said designation. Due to the similarity between Applicant's mark and Opposer's marks, and in view of the related nature of the uses thereof, Applicant's mark consists of and comprises matter that may disparage and falsely suggest a connection with Opposer.

WHEREFORE, Opposer prays that Applicant's trademark application Serial No. 76/296,291 be rejected; that no registration be issued thereon to applicant; and that this Opposition be sustained in favor of Opposer.

PUMPERNICKEL ASSOCIATES, LLC

2/14/03
Date of Signature

By _____

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