

08/05/2003 TTAB



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07-18-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #73 UNITED STATES DEPARTMENT OF

COMMERCE  
Patent and Trademark Office  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

Mailed: June 30, 2003

Opposition No 91156919  
Serial No. 76209008

MICHAEL D. BRANDT  
LAW OFFICE OF MICHAEL D BRANDT PS  
3513 NE 45TH ST STE 2W  
SEATTLE, WA 98105

SAVORY CONCEPTS, LLC

v.

Pachanga, LLC

08/05/2003  
TTAB

KEVIN G. SMITH  
SUGHRUE MION, PLLC  
2100 PENNSYLVANIA AVE., N.W.  
WASHINGTON, DC 20037

**George Woods, Legal Assistant:**

A notice of opposition to the registration sought in the above-identified application has been filed. A copy of the notice is attached.

**ANSWER IS DUE FORTY DAYS** after the mailing date hereof. (See Patent and Trademark Rule 1.7 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that became effective October 9, 1998. See Notice of Final Rulemaking published in the *Official Gazette* on September 29, 1998 at 1214 TMOG 145. Slight corrections to the rules, resulting in a correction notice, were published in the *Official Gazette* on October 20, 1998 at 1215 TMOG 64.

08/05/2003TTAB

A copy of the recent amendments to the Trademark Rules, as well as the *Trademark Trial and Appeal Board Manual of Procedure* (TBMP), is available at <http://www.uspto.gov>.

**Discovery and testimony periods are set as follows:**

Discovery period to open: July 20, 2003

Discovery period to close: January 16, 2004

30-day testimony period for party  
in position of plaintiff to close: April 15, 2004

30-day testimony period for party  
in position of defendant to close: June 14, 2004

15-day rebuttal testimony period  
for plaintiff to close: July 29, 2004

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

**NOTE:** The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68 (June 20, 2000). A hard copy of the *Official Gazette* containing this notice is available for a fee from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (Telephone (202) 512-1800). The notice is also available at <http://www.uspto.gov>. Interlocutory matters which the Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

08/05/2003TTAB

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

08/05/2003TTAB  
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*L.T.A.B*

Attorney Docket No.: 800731

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

In re Application Serial No. 76/209,008  
Mark: PACHANGA FOODS & Design



06-16-2003

U.S. Patent & TMO/TM Mail Rpt Dt. #39

SAVORY CONCEPTS, LLC

Opposer,

v.

Opposition No. \_\_\_\_\_

PACHANGA, LLC,

Applicant.

TRADEMARK TRIAL AND  
APPEAL BOARD  
03 JUN 27 AM 9: 3

**NOTICE OF OPPOSITION**

Savory Concepts, LLC, a California Limited Liability Corporation, with an address at 227 Larkspur Avenue, Corona Del-Mar, California 92625, believes it will be damaged by registration of the mark PACHANGA FOODS & Design, shown in Serial Number 76/209,008, and hereby opposes same.

As grounds for the opposition, it is alleged that:

1. Opposer has been engaged in the restaurant service industry since at least as early as 1991.
2. Opposer has used the service mark PACHANGA MEXICAN GRILL in association with its restaurant services since at least as early as December 1991.
3. Opposer is the owner of U.S. Trademark Applicant No. 76/473,860 for the mark PACHANGA MEXICAN GRILL for restaurant services, alleging a date of first use at least as early as December 1991.
4. The application herein opposed has been cited by the Examining Attorney in Opposer's application to register its mark as a potential basis for refusal under Trademark Act Section 2(d), 15 U.S.C. § 1052(d).
5. Opposer's use of its mark PACHANGA MEXICAN GRILL long precedes the May 1, 2000 date of first use alleged in Applicant's PACHANGA FOODS & Design application.

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6. Opposer uses its mark in association with restaurant services and the sale of restaurant food items for consumption on and off the premises. Opposer's use of its mark has been continuous since at least as early as December 1991.

7. By virtue of such use, the relevant consuming public has come to recognize that Opposer's mark indicates a single source of restaurant services and the sale of restaurant food items for consumption on and off the premises rendered under Opposer's mark, thus identifying Opposer as the single source for such goods and services.

8. By virtue of Opposer's use of its mark in commerce, Opposer's mark has become distinctive and is known and associated exclusively with Opposer and its goods and services.

9. As a result of Opposer's long and extensive use and promotion of its mark in connection with its restaurant services and food items for consumption on and off the premises, Opposer's mark PACHANGA MEXICAN GRILL has become well-known, renowned, and is an extremely valuable asset of Opposer.

10. The application herein opposed seeks to register the mark PACHANGA FOODS & Design for packaged food products, namely, corn chips and flour chips, in International Class 30.

11. The goods set forth in Application Serial No. 76/209,008 are related to Opposer's goods and services and would be offered to the same or similar customers through the same or similar channels of trade as Opposer's goods and services are offered and promoted under Opposer's mark.

12. The Trademark Office Examining Attorney indicates that registration of Opposer's Application Serial No. 76/473,860 may be refused under Trademark Act Section 2(d), 15 U.S.C. §1052(d) in the event the application herein opposed matures to registration.

13. Upon information and belief, Opposer will be damaged by the refusal of its application to register PACHANGA MEXICAN GRILL as being confusingly similar based on any subsequently issued registration from the application herein opposed.

14. Upon information and belief, the trademark in the opposed application used in connection with the goods set forth in that application is confusingly and deceptively similar to Opposer's previously used mark PACHANGA MEXICAN GRILL.

08/05/2003TTAB

15. Opposer believes and therefore alleges that use and registration of the mark covered by Serial No. 76/209,008 by Applicant will damage Opposer for the following reasons, among others:

- a. that purchasers and potential purchasers of the respective goods will be confused and/or deceived as to the source and origin of Applicant's goods sold under the PACHANGA FOODS & Design mark; and
- b. that purchasers and potential purchasers of the respective goods will assume, contrary to fact, that Applicant's goods are associated with, sponsored by, approved by, emanate from or are otherwise related to or affiliated with Opposer's goods and/or services.

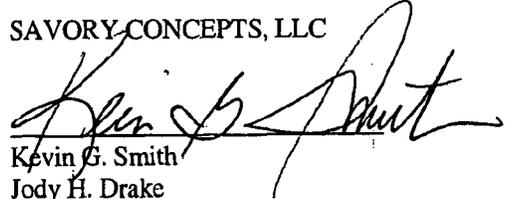
17. Registration of the mark sought by Applicant herein is barred by the provisions of Section 2(d) of the Trademark Act of 1946, as amended, for the reason that it consists of or comprises a mark which so resembles Opposer's previously used trademark as to be likely, when used in connection with the goods of Applicant, to cause confusion, mistake or deception.

WHEREFORE, Opposer respectfully prays that the registration sought by Applicant be refused and that this Opposition be sustained.

A check in the amount of \$300 is attached hereto. If this check becomes disassociated from this filing, or the amount is insufficient, please debit the Deposit Account of the undersigned, No. 19-4880, for any required amount.

Respectfully submitted,

SAVORY CONCEPTS, LLC



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June 13, 2003.

Date:

OF COMMERCE

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