



known SUPER SMOKERS family of marks in various forms on and in connection with advertising, marketing, providing, and selling food and beverages, restaurant services, catering services, food services, café and cafeteria services, in interstate commerce. In addition to operating traditional restaurants and providing home and event catering under the well known SUPER SMOKERS marks, Super Smokers provides SUPER SMOKERS brand products and services at other venues, such as café and cafeteria style venues at grocery stores, stadiums, arena, and other catered venues.

3. For the past seven years, Super Smokers has expended, and continues to expend, a substantial amount of time, money, and effort promoting, marketing, and advertising its SUPER SMOKERS brand products and services.
4. The SUPER SMOKERS family of marks have become famous among consumers and within the restaurant and food industry. For example, when President George W. Bush visited St. Louis in March 2001, the White House sought out SUPER SMOKERS catering to provide the renowned SUPER SMOKERS barbecue for the White House staff, secret service, and national press corps. SUPER SMOKER brand products, services and advertisements have won numerous awards and accolades in the food and restaurant industry, including the following: Memphis in May International World BBQ Championship (award winner 1994, 1996, 1998, 1999, 2000); "Spirit of Barbecue Award" National Barbecue News (2002 Restaurant Organization of the Year); Award of Excellence National Barbecue Association; Illinois State Barbecue Championship (awards winner 1998, 2001, 2002); Springfield, Missouri Rock N Ribs BBQ Fest (award winner 2003); Pocahontas Arkansas BBQ

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Contest (award winner 1999); Pinckneyville Illinois Harvest Moon Roast (award winner 1998, 2000); National Pork Producers Council (1997 --Top Ten, Restaurant of the Year); *St. Louis Business Journal* (1999 -- Best Barbecue In St. Louis); SCOVIE International Awards For Hot Sauces (award winner 1999, 2000, 2001); Arkansas State Barbecue Championship (award winner 1989, 1990); and Advertising Federation of America (award winning web site 2000).

5. Super Smokers is the exclusive owner of all right, title and interest in and to the following United States trademark and service mark registrations and applications for its SUPER SMOKERS family of marks on or for the Principal Register of the United States Patent and Trademark Office, and any and all goodwill relating thereto:

<b>Mark</b>	<b>Reg./Ser. No.</b>	<b>Filing Date</b>	<b>Reg. Date</b>	<b>Goods/Services</b>
SUPER SMOKERS®	2,153,746	04/21/1997	04/28/1998	restaurant and catering services
SUPER SMOKERS BBQ (and Design)	76/364,239	01/29/2002	N/A	barbeque sauce
SUPER SMOKERS BBQ (and Design)	76/364,965	01/30/2002	N/A	restaurant and catering services

6. U.S. Service Mark Registration No. 2,153,746 for the mark SUPER SMOKERS is in full force and effect, valid, subsisting, and incontestable pursuant to Section 15 of the Trademark Act, 15 U.S.C. § 1065.
7. Super Smokers' use of the SUPER SMOKERS marks, since at least as early as May 25, 1996, and application to register the mark filed April 21, 1997, which issued as U.S. Registration No. 2,153,746, on April 28, 1998, pre-date Applicant's September

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12, 2000, claimed priority date. Opposer is, therefore, the senior user of the SUPER SMOKERS mark and family of marks.

8. The above-referenced applications for registration of SUPER SMOKERS (and Design) Ser. No. 76/364,239 and Ser. No. 76/364,965, filed by Opposer in January 2002, have been suspended pending the disposition of Applicant's application Serial No. 76/223,274. Opposer's applications were suspended based upon the examining attorney's determination that there may be a likelihood of confusion between the two marks under Trademark Act Section 2(d), 15 U.S.C. § 1052(d).
9. Issuance of a registration for Applicant's mark will damage Opposer in that Applicant's mark consists of and comprises matter which creates a likelihood of confusion with Opposer and its family of SUPER SMOKERS marks, falsely suggests that Applicant is associated, affiliated, sponsored by, or in some manner connected with Opposer, and will cause dilution of the distinctive quality of Opposer's famous SUPER SMOKERS mark.

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WHEREFORE, Opposer Super Smokers Bar-B-Que U.S.A., Inc., prays that Applicant's application serial number 76/223,274 be rejected, that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

Respectfully Submitted,

BRYAN CAVE LLP

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**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Assistant Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

on 7/14/03  
(Date)

*Lori O. Mitchell*  
(Signature)

LORI O. MITCHELL  
(Typed or Printed Name)

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U.S. Patent & TMO/c/TM Mail Rpt. Dt. #40

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July 14, 2003

Assistant Commissioner of Trademarks  
2900 Crystal Drive  
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RE: In re application Serial No. 76/223,274  
Mark: SMOKERS  
Filed: 03/12/2001  
Published for Opposition: 05/13/2003  
Our Reference Number: 090975

Sir:

We are enclosing papers on behalf of Super Smokers BAR-B-Que, Inc., in connection with the above-referenced application. The papers are:

1. Notice of Opposition (5 pages); and,
2. Return postcard.

Please charge the filing fee of \$300.00 and any additional fees to Deposit Account No. 02-4467.

Kindly date stamp and return the enclosed, self-addressed, stamped postcard.

Respectfully submitted,

Christopher J. Hayes

CJH/lcm  
Enclosures

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