

*Hub*

BSSO 7 00013

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

In the Matter of Serial No. 78/164,521  
For the Mark XOCOLATE  
Applicant: Randy Judd  
Our Docket No. BSSO 7 00013

_____	X
SONAFI S.A.	)
	)
Opposer,	)
	)
v.	)
	)
RANDY JUDD	)
	)
Applicant.	)
_____	X

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



02-23-2004

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

**NOTICE OF OPPOSITION**

SONAFI S.A. (hereinafter "Opposer"), a French Corporation, with offices at 42 rue Rieussec 78220 VIROFLAY FRANCE, believes it will be damaged by registration of the mark shown in Application S.N. 78/164,521 and hereby opposes registration of said mark.

1. Upon information and belief, Randy Judd, an individual of the United States (hereinafter "Applicant"), filed an intent to use application to register **XOCOLATE**, Application S.N. 78/164,521, for confections, namely, candies, chocolate and chocolate truffles, in International Class 30 on September 16, 2002.

02/26/2004 SWILSON1 00000004 78164521

01 FC:6402

300.00 OP

2. Upon information and belief, Applicant did not use **XOCOLATE** for the goods recited in application S.N. 78/164,521 prior to September 16, 2002.

3. Opposer filed an application to register **XOCO**, Application S.N. 76/414,192 for Cocoa, pastry and candy, chocolate, chocolate food beverages not being dairy based or vegetable

I hereby certify that this correspondence is being deposited  
with the United States Postal Service as first class mail in  
an envelope addressed to Commissioner for Trademarks,  
2800 Crystal Drive, Arlington, VA 22202-3514  
on 02-19-04

*Nancy M. Grams*  
(6) NATURE  
NANCY M. GRAMS

based, chocolate based fillings for pies and cakes, and chocolate based ready to eat food bars, in International Class 30 on June 5, 2002.

4. Applicant's **XOCOLATE** application consists of or comprises a phrase which, if used, would so resemble Opposer's **XOCO** trademark, as to be likely, when used on or in connection with the goods sought to be registered by Applicant, to cause confusion, or to cause mistake, or to deceive in violation of 15 U.S.C. §1052(d).

5. **XOCOLATE**, as intended for use by Applicant, is confusingly similar to the **XOCO** trademark of Opposer's application, and registration of **XOCOLATE** to Applicant is therefore likely to cause confusion, or to cause mistake, or to deceive and would damage Opposer.

6. Applicant seeks registration of **XOCOLATE** on goods to be sold in direct competition with goods sold by Opposer. Such sale of goods by Applicant is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Applicant with Opposer or as to the origin, sponsorship or approval of Applicant's goods by Opposer.

7. Opposer, therefore, believes it will be damaged by the registration of S.N. 78/164,521 to Applicant.

**PRAYER FOR RELIEF**

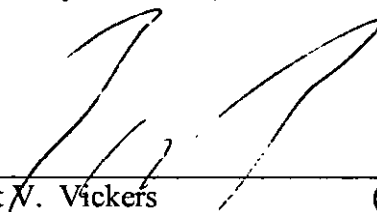
WHEREFORE, Opposer prays that Application S.N. 78/164,521 be denied, that Applicant be enjoined from obtaining registration of S.N. 78/164,521, that no registration be issued to Applicant and that this opposition be sustained.

**BSSO 7 00013**

A check for the filing fee of \$300.00 is presented herewith. It is requested that any additional fee be charged to Deposit Account No. 06-0308. It is further requested all correspondence in this matter be addressed to:

ROBERT V. VICKERS  
Fay, Sharpe, Fagan, Minnich & McKee, LLP  
1100 Superior Avenue - Seventh Floor  
Cleveland, Ohio 44114-2579.

Respectfully submitted,



Robert V. Vickers (Reg. No. 9,504)

Attorney for Applicant

FAY, SHARPE, FAGAN, MINNICH & McKEE  
1100 Superior Avenue, Seventh Floor  
Cleveland, Ohio 44114-2579

Phone: (216) 861-5582

Facsimile: (216) 241-1666

L:\GSV\Drafts\BSSO513474.XOCOLATE.NOO.wpd