

ESTTA Tracking number: **ESTTA9351**

Filing date: **05/27/2004**

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

Proceeding	91160020
Party	Plaintiff Brach's Confections Holding Inc. Brach's Confections Holding Inc. PO Box 22427 Chattanooga, TN 37422 UNITED STATES
Correspondence Address	Maury M. Tepper, III Womble Carlyle Sandridge & Rice, PLLC PO Box 831 Raleigh, NC 27602 UNITED STATES
Submission	Motion for Default Judgment
Filer's Name	Sarah Anne Keefe
Filer's e-mail	skeefe@wcsr.com
Signature	/Sarah Anne Keefe/
Date	05/27/2004
Attachments	motion for dem bones.pdf (7 pages)

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

**In the Matter of Trademark Application Serial No. 78/252,813
Filed May 21, 2003
For the Mark DEM BONES**

BRACH'S CONFECTIONS HOLDING INC.,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91160020
)	
PRIDGEN, DAVID W.)	
)	
Applicant.)	

MOTION FOR DEFAULT JUDGMENT

Pursuant to TBMP § 508, Opposer Brach's Confections Holding Inc. ("Opposer") moves for default judgment. In support of its Motion, Opposer states as follows:

1. Opposer filed a *Notice of Opposition* in connection with Application Serial No. 78/252,813 on or about April 5, 2004. A copy of the *Notice* is attached as Exhibit A.
2. Following receipt of Opposer's Notice, the Board initiated Opposition No. 91160020, served a copy of the Notice of Opposition upon Applicant and set May 15, 2004 as the due date for Applicant's Answer.
3. Undersigned counsel for Opposer has not been served with an Answer or a Request for Extension of Time to Answer Notice of Opposition. The online docketing records of the Trademark Trial and Appeal Board do not reflect the timely filing of an Answer or an extension request. On information and belief, Applicant did not timely file an Answer or an extension request on or before May 15, 2004.

Given the foregoing, Opposer respectfully requests that default judgment be entered in Opposer's favor and that U.S. Application Serial No. 78/252,813 be abandoned.

This the 27th day of May, 2004.



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Attorneys for Opposer

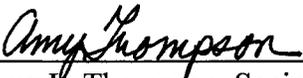
CERTIFICATE OF SERVICE

I do hereby certify that on May 27, 2004, I filed via electronic means (ESTTA) this MOTION FOR DEFAULT JUDGMENT with the:

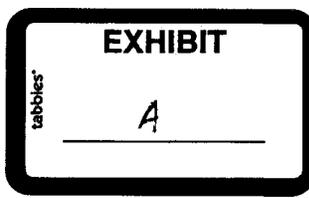
U. S. Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3514

with a copy via First Class Mail to:

David W. Pridgen
3111 Farmtrail Road
York, Pennsylvania 17402



Amy L. Thompson, Senior Paralegal



Trademark Trial and Appeal Board Electronic Filing System. <http://estta.uspto.gov>

ESTTA Tracking number: **ESTTA7230**

Filing date: **04/05/2004**

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

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Name	Brach's Confections Holding Inc.
Granted to Date of previous extension	05/05/2004
Address	Brach's Confections Holding Inc. 19111 N. Dallas Parkway, Suite 200 Dallas, TX 75287 UNITED STATES

Attorney information	Sarah Anne Keefe Womble Carlyle Sandridge & Rice, PLLC PO Box 831 Raleigh, NC 27602 UNITED STATES skeefe@wcsr.com Phone:919-755-2115
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Applicant Information

Application No	78252813	Publication date	01/06/2004
Opposition Filing Date	04/05/2004	Opposition Period Ends	05/05/2004
Applicant	Pridgen, David W		
Address	3111 farmtrail Rd York, PA 17402 UNITED STATES		

Goods/Services Affected by Opposition

Class 029. First Use: First Use In Commerce:

All goods and services in the class are opposed, namely: dairy products, namely, milk, flavored milk, chocolate milk

Signature	/Sarah Anne Keefe/
Name	Sarah Anne Keefe
Date	04/05/2004

Attachments	DEM BONES Opposition.tif (1 page)
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Application Serial No. 78/252,813
Filed May 21, 2003
For the Mark DEM BONES

BRACH'S CONFECTIONS HOLDING, INC.,)	
)	
Opposer,)	
)	
v.)	Opposition No.
)	
DAVID W. PRIDGEN,)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Brach's Confections Holding, Inc. ("Opposer"), a Delaware corporation located and doing business at 19111 N. Dallas Parkway, Suite 200, Dallas, TX 75287, believes that it will be damaged by registration of the mark shown in Serial No. 78/252,813 and hereby opposes the same.

The grounds for opposition are as follows:

1. Applicant filed Application Serial No. 78/252,813 on or about May 21, 2003 to register the mark DEM BONES in connection with "dairy products, namely milk, flavored milk, chocolate milk" (hereinafter "Applicant's Mark").
2. Opposer will be damaged by the registration of Applicant's Mark.
3. Opposer is the owner of the following:
 - (a) U. S. Trademark Registration No. 1,836,318 for the mark "DEM BONES" in connection with candy.

(b) The mark and registration set out in Section 3(a) are hereinafter collectively referred to as “Opposer’s Mark.”

4. Opposer itself, or by and through a related company or licensee, is using Opposer’s Mark in commerce on and in connection with the goods identified in Section 3(a) above.

5. Opposer’s Mark was first used in commerce commenced at least as early as August 6, 1993 and such use has been valid and continuous since its date of first use. Opposer’s Mark has not been abandoned.

6. Opposer’s Mark is valid, distinctive, famous and well-known.

7. Opposer’s Mark is incontestable.

8. Applicant’s Mark so resembles Opposer’s Mark as to be likely to cause confusion or to cause mistake or to deceive.

9. Applicant’s Mark dilutes the distinctive quality of Opposer’s Mark.

WHEREFORE, Opposer prays that said application Serial No. 78/252,813 be rejected, that no registration be issued, and that this Opposition be sustained in favor of Opposer.

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