

ESTTA Tracking number: **ESTTA8493**

Filing date: **05/07/2004**

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

Notice of Opposition

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

Opposer Information

Name	Jersey Mike's Franchise Systems, Inc.
Granted to Date of previous extension	06/06/2004
Address	Jersey Mike's Franchise Systems, Inc. 2251 Landmark Place Manasquan, NJ 08736 UNITED STATES

Attorney information	Kathleen T. Gallagher-Duff Covington & Burling 1201 Pennsylvania Avenue, N.W. Washington, DC 20004-2401 UNITED STATES trademarks@cov.com Phone:202-668-5188
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Applicant Information

Application No	76433515	Publication date	12/09/2003
Opposition Filing Date	05/07/2004	Opposition Period Ends	06/06/2004
Applicant	MIKES RESTAURANTS INC. LES RESTAURANTS MIKES INC.		

Goods/Services Affected by Opposition

Class 029. First Use: First Use In Commerce:
All goods and services in the class are opposed, namely: Pepperoni

Class 030. First Use: First Use In Commerce:
All goods and services in the class are opposed, namely: Frozen pizza and tomato paste

Class 039. First Use: First Use In Commerce:
All goods and services in the class are opposed, namely: Meal delivery services

Class 043. First Use: First Use In Commerce:
All goods and services in the class are opposed, namely: Restaurant services and take out restaurant services

Attachments	Jersey Mike's Notice of Opposition.pdf (5 pages) Jersey Mike's Exhibit A.pdf (4 pages)
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Signature	/kathleen t. gallagher-duff/
Name	Kathleen T. Gallagher-Duff
Date	05/07/2004

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

In the Matter of: Serial No. 76/433,515
Date of Filing: July 22, 2002
Mark: RESTAURANT MIKES
RESTAURANT & Design
Date of
Publication: December 9, 2003

Jersey Mike's Franchise Systems, Inc.,

Opposer,

v.

Mikes Restaurants Inc. Les Restaurants
Mikes Inc.,

Applicant.

Serial No. 76/433,515

NOTICE OF OPPOSITION

Opposer Jersey Mike's Franchise Systems, Inc. ("Jersey Mike's"), a New Jersey corporation located and doing business at 2251 Landmark Place, Manasquan, New Jersey 08736, believes that it will be damaged by registration of the mark RESTAURANT MIKE'S RESTAURANT & Design, shown in Serial No. 76/433,515, for "pepperoni," in Class 29; "frozen pizza and tomato paste," in Class 30; "meal

delivery services,” in Class 39; and “restaurant services and take out restaurant services,” in Class 43, and hereby opposes the same.

The grounds for opposition are as follows:

1. By the application herein opposed, Applicant seeks to obtain registration on the Principal Register of the United States Patent and Trademark Office (“PTO”) of the mark RESTAURANT MIKE’S RESTAURANT & Design for “pepperoni,” in Class 29; “frozen pizza and tomato paste,” in Class 30; “meal delivery services,” in Class 39; and “restaurant services and take out restaurant services,” in Class 43.

2. The application herein opposed was filed on July 22, 2002, and was published for opposition on December 9, 2003. The time for filing a Notice of Opposition was set to expire on January 8, 2004. On January 8, 2004, February 4, 2004 and April 7, 2004, Jersey Mike’s timely filed with the Trademark Trial and Appeal Board (“TTAB”) requests for extensions of time to file a Notice of Opposition, extending the deadline to file such Notice of Opposition to May 7, 2004. Accordingly, this Notice of Opposition is timely.

3. Jersey Mike’s is the owner of the mark MIKE’S and Design, which obtained registration on the Principal Register of the U.S. Patent and Trademark Office on August 13, 1996 for restaurant services, in Class 42. The registration is valid and subsisting, and therefore, is prima facie evidence of Jersey’s Mike’s exclusive right to use its MIKE’S and Design mark in commerce in connection with

the services specified in the registration. A copy of the registration certificate and the current status of such registration are attached hereto as Exhibit A.

4. Jersey Mike's has advertised and promoted its goods and services extensively under its MIKE'S and Design mark since its adoption and first use of such mark on August 16, 1978. As a result of regular and extensive use for over 25 years, Jersey Mike's MIKE'S and Design mark has become well known to the public as a mark associated with Jersey Mike's, and Jersey Mike's has acquired significant goodwill associated with such mark.

5. By adopting and using its MIKE'S and Design mark since August 16, 1978, Jersey Mike's has acquired exclusive rights in such mark which are superior to those of Applicant in the subject mark RESTAURANT MIKES RESTAURANT and Design.

6. The mark RESTAURANT MIKES RESTAURANT and Design is confusingly similar to Jersey Mike's MIKE'S and Design mark.

7. Applicant's services and Jersey Mike's services are identical or closely related. Both parties provide restaurant services under their respective marks, and Applicant provides goods under its respective mark, namely pepperoni and frozen pizza, that are closely associated with restaurant services.

8. To the best of Jersey Mike's knowledge, Applicant's services will be distributed in the same channels of trade as those identified by Jersey Mike's MIKE'S and Design mark.

9. The adoption and use by Applicant of the mark RESTAURANT MIKES RESTAURANT & Design on and in connection with the goods and services in Applicant's application is likely to cause confusion with Jersey Mike's use of its MIKE'S and Design mark, and is likely to cause consumers to assume erroneously that Applicant's goods and services originated with, are endorsed, sponsored or approved by, or somehow are associated with, Jersey Mike's. Jersey Mike's valuable goodwill in its MIKE'S and Design mark will be jeopardized thereby.

10. Jersey Mike's will be damaged by registration of the mark RESTAURANT MIKES RESTAURANT & Design for the goods and services covered in Applicant's subject application because such registration will assist and support Applicant in the confusing and misleading use of the mark RESTAURANT MIKES RESTAURANT & Design, and will create statutory rights in Applicant in violation and derogation of the prior and superior rights of Jersey Mike's.

Please charge the fee required in 37 C.F.R. § 2.6(a)(17), and any other fees required in connection with this Petition, to the Deposit Account of Covington & Burling, Deposit Account No. 03-3412.

WHEREFORE, Jersey Mike's prays that this opposition be sustained
and that registration of Application Serial No. 76/433,515 be denied.

By: Kathleen T. Gallagher-Duff 04.

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Attorneys for Opposer
Jersey Mike's Franchise Systems, Inc.

Dated: 5/7/04

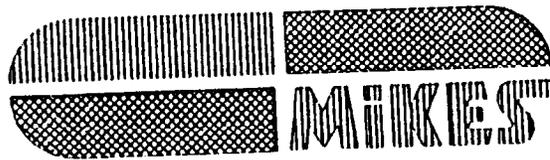
Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 1,993,658

United States Patent and Trademark Office Registered Aug. 13, 1996

**SERVICE MARK
PRINCIPAL REGISTER**



JERSEY MIKE'S FRANCHISE SYSTEMS, INC.
(NEW JERSEY CORPORATION)
2517 HIGHWAY 35 - H102
MANASQUAN, NJ 087361917

FOR: RESTAURANT SERVICES, IN CLASS
42 (U.S. CLS. 100 AND 101).
FIRST USE 8-16-1978; IN COMMERCE
11-11-1980.

OWNER OF U.S. REG. NO. 1,234,970.
THE DRAWING IS LINED FOR THE
COLORS ORANGE AND RED.

SER. NO. 75-002,271, FILED 10-6-1995.

PRISCILLA MILTON, EXAMINING ATTOR-
NEY

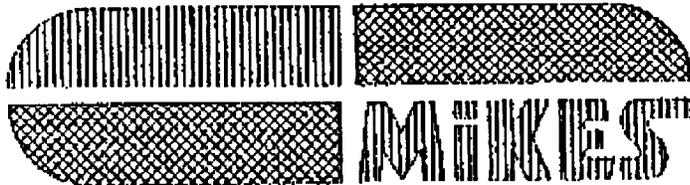
Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2004-05-03 11:04:54 ET

Serial Number: 75002271

Registration Number: 1993658

Mark



(words only): MIKES

Standard Character claim: No

Current Status: Section 8 and 15 affidavits have been accepted and acknowledged.

Date of Status: 2002-10-08

Filing Date: 1995-10-06

Transformed into a National Application: No

Registration Date: 1996-08-13

Register: Principal

Law Office Assigned: TMEG Law Office 107

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -Warehouse (Newington)

Date In Location: 2002-10-08

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. JERSEY MIKE'S FRANCHISE SYSTEMS, INC.

Address:
JERSEY MIKE'S FRANCHISE SYSTEMS, INC.
1973 HIGHWAY 34 - UNIT E-21

WALL, NJ 07719
United States
Legal Entity Type: Corporation
State or Country of Incorporation: New Jersey

GOODS AND/OR SERVICES

restaurant services
International Class: 042
First Use Date: 1978-08-16
First Use in Commerce Date: 1980-11-11

Basis: 1(a)

ADDITIONAL INFORMATION

Lining and Stippling: The drawing is lined for the colors orange and red.

Prior Registration Number(s):
1234970

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2002-10-08 - Section 8 (6-year) accepted & Section 15 acknowledged
2002-08-12 - Section 8 (6-year) and Section 15 Filed
2002-08-12 - PAPER RECEIVED
1996-08-13 - Registered - Principal Register
1996-05-21 - Published for opposition
1996-04-19 - Notice of publication
1996-03-22 - Approved for Pub - Principal Register (Initial exam)
1996-03-19 - Examiner's amendment mailed
1996-03-15 - Case file assigned to examining attorney
1996-03-12 - Case file assigned to examining attorney

CONTACT INFORMATION

Correspondent (Owner)

Bingham B. Leverich (Attorney of record)

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