

TTAB

GOOSE 10.2A-001

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

TIFFANY (NJ) INC.,	:	
	:	Mark: TIFFANY'S RESTAURANTS
Opposer,	:	
	:	Serial No.: 76/520,262
v.	:	
	:	Opposition No. 91160913
ANTHONY SIRAGUSA and MICHAEL	:	
ROMANELLI,	:	
	:	
Applicants.	:	
	:	X

ANSWER TO NOTICE OF OPPOSITION

Applicant, Anthony Siragusa and Michael Romanelli (collectively "Applicants"), for their answer to the Notice of Opposition, allege as follows:

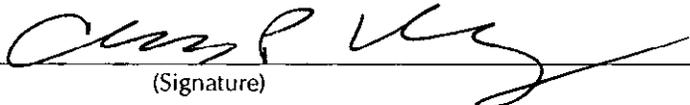
1. Applicants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1 and therefore deny them.
2. Applicants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2 and therefore deny them.
3. Applicants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3 and therefore deny them.



07-30-2004

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #64

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 Commissioner for Trademarks, Trademark Trial & Appeal Board, 2900 Crystal Drive, Arlington, VA 22202-3514 on July 27, 2004.



 (Signature)

Charles P. Kennedy

 (Typed or Printed Name of Person Signing Certificate)

4. Applicants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4 and therefore deny them.

5. Applicants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5 and therefore deny them.

6. Applicants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6 and therefore deny them.

7. Applicants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7 and therefore deny them.

8. Applicants admit the allegations of paragraph 8.

9. Applicants admit the allegations of the first sentence of paragraph 9, but deny the allegations of the second sentence of paragraph 9.

10. Applicants admit the allegations of the first sentence of paragraph 10; applicants are without knowledge or information sufficient to form a belief as to the truth of the allegations of the second and third sentences of paragraph 10 and therefore deny them.

11. Applicants admit that they believed that the opposer used the TIFFANY mark for jewelry and retail store services for the sale of jewelry; applicants deny having any actual knowledge of opposer having rights in the TIFFANY mark beyond its use for jewelry, retail store services for jewelry, and closely related goods and services; applicants deny that they have any constructive notice of opposer's rights in the TIFFANY mark beyond the particular goods and services set forth in the registrations, in particular jewelry and retail store services for jewelry and closely related products; applicants deny all other allegations of paragraph 11 which are not specifically admitted by applicants' averments in this paragraph.

12. Applicants admit that they disclaimed exclusive rights to the word RESTAURANTS apart from the entire mark as shown for Application Serial No. 76/520,262, but deny that it is proper to remove the disclaimed portion from the full mark TIFFANY'S RESTAURANTS to determine similarity to another mark in sound, meaning, appearance and commercial impression, and deny all other allegations of paragraph 12.

13. Applicants are without knowledge or information to form a belief as to the truth of the allegations of the first sentence of paragraph 13 and therefore deny them; applicants deny the allegations of the second sentence of paragraph 13.

14. Applicants aver that their application covers "food restaurant services," but are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 14 and therefore deny them.

15. Applicants deny the allegations of paragraph 15.

16. Applicants repeat and reallege each and every allegation in response to paragraphs 1-15, as if fully set forth herein.

17. Applicants deny the allegations of paragraph 17.

18. Applicants deny that a likelihood of confusion may be considered by comparing only that portion of applicants' mark that has not been disclaimed to opposer's mark, and deny all other allegations of paragraph 18.

19. Applicants deny the allegations of paragraph 19; applicants note that the citation of a decision from the Federal Supplement requires no response.

20. Applicants deny the allegations of paragraph 20.

21. Applicants repeat and reallege each and every allegation in response to paragraphs 1-20, as if fully set forth herein.

22. Applicants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 22 and therefore deny them.

23. Applicants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 23 and therefore deny them.

24. Applicants deny the allegations of paragraph 24.

25. Applicants specifically deny the allegation that Section 2(f) of the Lanham Act, 15 U.S.C. § 1052(f), and 15 U.S.C. § 1125(c) provides a basis for refusing registration of a mark on the ground that it is "likely to dilute" a registered famous mark, and deny all other allegations of paragraph 25.

26. Applicants deny the allegations of paragraph 26.

FIRST AFFIRMATIVE DEFENSE

27. The Notice of Opposition fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

28. Applicants have made substantial use of their mark TIFFANY'S RESTAURANTS for nearly 24 years for food restaurant services, contemporaneous with opposer's alleged use of the mark TIFFANY for jewelry and closely related products and for retail store services for jewelry and related products. The absence of confusion between applicants' mark and opposer's mark over this time demonstrates that applicants' mark is not likely to cause confusion, or to cause mistake or to deceive.

THIRD AFFIRMATIVE DEFENSE

29. Upon information and belief, opposer's mark TIFFANY has become well known only in association with jewelry, perfumes, watches, clocks, bowls, vases, candlesticks and other closely related, extremely expensive jewelry items.

30. Applicants' mark TIFFANY'S RESTAURANTS has been used for food restaurant services and is associated with such services. The RESTAURANTS portion of applicants' mark serves to emphasize the services with which the mark has become associated.

31. Upon information and belief, for the many years that opposer has used the mark TIFFANY for retail jewelry store services, opposer has never opened a restaurant in its retail stores, because having restaurant services in the same retail location as the display and sales of jewelry would be inconsistent with the high fashion jewelry store services provided by and associated with opposer's TIFFANY mark.

32. Due to the significant dissimilarity between the marks, TIFFANY'S RESTAURANTS and TIFFANY, particular with regard to the RESTAURANT portion which identifies applicants' services; the great differences between applicants' services and opposer's goods and services; the low likelihood of opposer bridging the gap; the lack of overlap between consumers of applicants' services and opposer's goods and services; the sophistication and knowledge of applicants' and opposer's customers; and the absence of actual confusion, registration of applicants' mark TIFFANY'S RESTAURANT will not cause dilution of any distinctive quality of opposer's TIFFANY mark.

FOURTH AFFIRMATIVE DEFENSE

33. Upon information and belief, opposer had knowledge of applicants' extensive use of its TIFFANY'S RESTAURANTS mark, yet opposer inexcusably delayed in taking any action with respect to such use.

34. Applicants would now be prejudiced if opposer is permitted inequitably to assert rights now to bar registration of applicants' mark, so that opposer's assertion of its rights at this time is barred by laches.

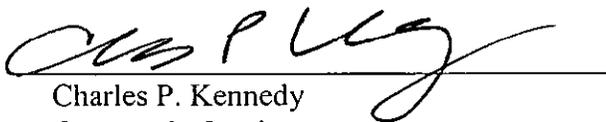
WHEREFORE, applicants request that Notice of Opposition be dismissed and that applicants' Serial No. 76/520,262 be allowed.

Respectfully submitted,

LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK, LLP

Dated: July 27, 2004

By:



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the within ANSWER TO NOTICE OF OPPOSITION was served upon the following counsel of record this 27th day of July 2004, as follows:

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