

ESTTA Tracking number: **ESTTA275236**

Filing date: **03/31/2009**

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

Proceeding	91161954
Party	Plaintiff PABST BREWING COMPANY
Correspondence Address	WILLIAM B. NASH JACKSON WALKER L.L.P. 112 E. PECAN STREET, SUITE 2100 SAN ANTONIO, TX 78205 UNITED STATES bnash@jw.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	William B. Nash
Filer's e-mail	bnash@jw.com, mfassold@jw.com, llapidario@jw.com, lstuder@jw.com
Signature	/William B. Nash/
Date	03/31/2009
Attachments	2009-03-31 Opposer's Seventh Notice of Reliance.pdf (71 pages)(4972414 bytes)

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

_____	X	
)	
Pabst Brewing Company	)	Opposition No. 91161954
Opposer,	)	Opposition No. 91161955
)	
v.)	
	)	Serial Nos.: 75/883,254 and 75/883,253
Lone Star Steakhouse & Saloon	)	Mark: LONE STAR (and Design)
Applicant.)	
_____	X	

OPPOSER'S SEVENTH NOTICE OF RELIANCE

Opposer, Pabst Brewing Company ("Pabst"), by and through its attorney of record, submits this Seventh Notice of Reliance pursuant to 37 CFR § 2.122(e). Specifically, Opposer relies on Official Records of the U.S. Patent and Trademark Office (TESS database records) evidencing Applicant Lone Star Steakhouse & Saloon, Inc.'s ("Applicant") Trademark Application and Specimens in the file of its pleaded Application Serial No. 75/883,254 filed on December 29, 1999 and published in the *Official Gazette* on March 23, 2004, a copy of which is attached hereto as Exhibit A comprising of the following:

- Specimens filed on 12-29-1999
- Duplicate Drawing filed on 12-29-1999
- Duplicate Application filed on 12-29-1999
- Drawing filed on 12-29-1999
- Application filed on 12-29-1999
- XSearch Summary filed on 06-19-2000
- XSearch Summay.filed on 09-24-2000

Office Action Outgoing filed on 09-26-2000
Response to Office Action filed on 03-26-2001
Unclassified Document filed on 05-05-2001
Unclassified Document filed on 05-08-2001
TRAM Notice filed on 07-22-2001
Suspension Letter filed on 07-24-2001
Office Action Outgoing filed on 06-20-2003
Office Action Outgoing filed on 06-27-2003
Paper Correspondence Incoming filed on 12-24-2003
Specimens filed on 01-09-2004
File Jacket filed on 01-09-2004
Notice of Publication filed on 03-03-2004
TEAS Revoke Appointed Attorney filed on 07-06-2005.

Dated: March 31, 2009

Respectfully submitted,



William B. Nash, Reg. No. 33,743

Jackson Walker, L.L.P.

112 East Pecan St., Suite 2100

San Antonio, Texas 78205

(210) 978-7700

(210) 978-7790 (Fax)

Attorneys For Opposer Pabst Brewing
Company

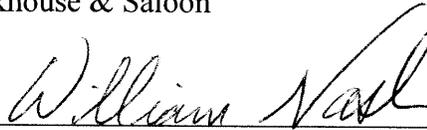
CERTIFICATE OF SERVICE

This is to certify that on this 31st day of March, 2009, a true and correct copy of the foregoing Opposer's Seventh Notice of Reliance was served via electronic mail to the following:

Phillip L. Free, Jr., OBA #15765
Marie S. Johnston, OBA # 19847
Crowe & Dunlevy, P.C.
20 North Broadway, Suite 1800
Oklahoma City, OK 73102-8273

phil.free@crowedunlevy.com

Attorney for Applicant Lone Star Steakhouse & Saloon



William B. Nash
Attorney for Opposer

Exhibit

A

Revocation of Attorney/Domestic Representative and/or Appointment of Attorney/Domestic Representative

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	75883254
LAW OFFICE ASSIGNED	LAW OFFICE 101
MARK SECTION	
MARK	LONE STAR (stylized and/or with design)
ATTORNEY SECTION	
ORIGINAL ADDRESS	JOSEPH J. FERRETTI CROWE DUNLEVY 22863 (21362 20 N BROADWAY, STE 1800 OKLAHOMA CITY, OK 73102-8273
CORRESPONDENCE SECTION	
ORIGINAL ADDRESS	JOSEPH J. FERRETTI CROWE DUNLEVY 22863 (21362 20 N BROADWAY, STE 1800 OKLAHOMA CITY, OK 73102-8273
NEW ATTORNEY ADDRESS	
STATEMENT TEXT	By submission of this request, the undersigned REVOKES the power of attorney currently of record, as listed above, and hereby APPOINTS the following new attorney:
NAME	Phillip L. Free, Jr.
FIRM NAME	Crowe & Dunlevy, P.C.
INTERNAL ADDRESS	Suite 1800
STREET	20 North Broadway
CITY	Oklahoma City

STATE	Oklahoma
COUNTRY	United States
POSTAL/ZIP CODE	73102-8273
PHONE	(405) 235-7700
FAX	(405) 239-6651
EMAIL	IPmail@crowedunlevy.com
ATTORNEY AUTHORIZED TO COMMUNICATE VIA E-MAIL	YES
NEW CORRESPONDENCE ADDRESS	
NAME	Phillip L. Free, Jr.
FIRM NAME	Crowe & Dunlevy, P.C.
INTERNAL ADDRESS	Suite 1800
STREET	20 North Broadway
CITY	Oklahoma City
STATE	Oklahoma
COUNTRY	United States
POSTAL/ZIP CODE	73102-8273
PHONE	(405) 235-7700
FAX	(405) 239-6651
EMAIL	IPmail@crowedunlevy.com
AUTHORIZED TO COMMUNICATE VIA E-MAIL	YES
SIGNATURE SECTION	
SIGNATURE	/Phillip L. Free, Jr./
SIGNATORY NAME	Phillip L. Free, Jr.
SIGNATORY DATE	07/06/2005
SIGNATORY POSITION	Attorney for Applicant
FILING INFORMATION SECTION	
SUBMIT DATE	Wed Jul 06 13:03:54 EDT 2005
	USPTO/RAA-12.147.224.62-2

TEAS STAMP

0050706130354432029-78314
404-250bad17c989e7c464bc1
9d6c2b6e896561-N/A-N/A-20
050706122001834972

PTO Form 2196 (Rev 9/2005)
OMB No. 0651-0056 (Exp 09/30/2011)

Revocation of Attorney/Domestic Representative and/or Appointment of Attorney/Domestic Representative

To the Commissioner for Trademarks:

MARK: LONE STAR (stylized and/or with design)

SERIAL NUMBER: 75883254

The original attorney

JOSEPH J. FERRETTI

CROWE DUNLEVY

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Original Correspondence Address :

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CROWE DUNLEVY

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OKLAHOMA CITY, OK 73102-8273

By submission of this request, the undersigned REVOKES the power of attorney currently of record, as listed above, and hereby APPOINTS the following new attorney:

Newly Appointed Attorney:

Phillip L. Free, Jr.

Crowe & Dunlevy, P.C.

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United States

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The following is to be used as the correspondence address:

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Signature: /Phillip L. Free, Jr./ Date: 07/06/2005
Signatory's Name: Phillip L. Free, Jr.
Signatory's Position: Attorney for Applicant

Serial Number: 75883254
Internet Transmission Date: Wed Jul 06 13:03:54 EDT 2005
TEAS Stamp: USPTO/RAA-12.147.224.62-2005070613035443
2029-78314404-250bad17c989e7c464bc19d6c2
b6e896561-N/A-N/A-20050706122001834972

Commissioner for Trademarks
2900 Crystal Drive
Arlington , VA 22202-3514
www.uspto.gov

Mar 3, 2004

NOTICE OF PUBLICATION UNDER 12(a)

1. Serial No.:
75/883,254
2. Mark:
LONE STAR
and design
3. International Class(es):
25
4. Publication Date:
Mar 23, 2004
5. Applicant:
Lone Star Steakhouse & Saloon, Inc.

The mark of the application identified appears to be entitled to registration. The mark will, in accordance with Section 12(a) of the Trademark Act of 1946, as amended, be published in the Official Gazette on the date indicated above for the purpose of opposition by any person who believes he will be damaged by the registration of the mark. If no opposition is filed within the time specified by Section 13(a) of the Statute or by rules 2.101 or 2.102 of the Trademark Rules, the Commissioner of Patents and Trademarks may issue a certificate of registration.

Copies of the trademark portion of the Official Gazette containing the publication of the mark may be obtained from:

The Superintendent of Documents
U.S. Government Printing Office
PO Box 371954
Pittsburgh, PA 15250-7954
Phone: (202) 512-1800

By direction of the Commissioner.

Correspondence Address:

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20 N BROADWAY AVE STE 1800
OKLAHOMA CITY OK 73102-8273

TMP&I

Trademark

75883254

TRADEMARK
75883254

NEW CASE DELIVERED

JUL 27 2000

LAW OFFICE 109

NEW CASE DELIVERED

AUG 31 2000

LAW OFFICE 109

NEW CASE DELIVERED

NEW CASE DELIVERED

JUN 2 2000

AUG 3 2000

LAW OFFICE 109

PROSECUTION HISTORY

JUN 8 2000

LAW OFFICE 109

Entry

Date

Initials

Entry	Date	Initials
1.	SEP 26	
2. <i>LTR</i>	<i>3-26-01</i>	
3.	JUL 24 2001	
4. <i>SUSPENSION CHECK - REMAIN SUSPENDED</i>	<i>03/13/02</i> JUN 27 2003	<i>RPR</i>
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See inside of file for additional entries.

Page 1 of 1
Express Mail #EJ823466035US Deposited: December 29, 1999
Specimen for Docket #22863
Applicant: LONE STAR STEAKHOUSE & SALOON, INC.
Mark: LONE STAR (and design)
Class: International 25
Attorney: Joseph J. Ferretti, Esquire
Phone: (405) 235-7744



12-29-1999

U.S. Patent & TMO/TM Mail Rpt Dt. #91



SPECIMEN

75883254





CROWE & DUNLEVY
ATTORNEYS AND COUNSELORS AT LAW
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JOSEPH J. FERRETTI
Direct Tel: 405.235.7744
Direct Fax: 405.272.5256

ferrettj@crowedunlevy.com

December 22, 2003

EXPRESS MAIL RECEIPT NO.: EV085807532US

Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3514

Re: United States Trademark Serial No.: 75/883,254
Mark: LONE STAR (AND DESIGN)
Applicant: Lone Star Steakhouse & Saloon, Inc
Filing Date: December 29, 1999
Examining Attorney: Stoides, Katherine
Attorney Docket No.: TM1326US25 (21362-00001)

Dear Commissioner:

Enclosed, please find the following documents for filing:

1. Response to Office Action mailed June 27, 2003 (4 pages);
2. Exhibit A – Consent Agreement effective December 18, 2003;
and
3. An acknowledgment postcard.

No fee is believed to be associated with this filing. However, in the event of any fee deficiency, you are hereby authorized to charge our deposit account no.: 13-0110. Please reference our docket no.: TM1326US25. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Joseph J. Ferretti
For the Firm

JJF/jkw

Enclosures

cc: Lone Star Steakhouse & Saloon, Inc.



12-24-2003

U.S. Patent & TMO/c/TM Mail RcptDt. #77

1311461.1

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**EXPRESS MAIL RECEIPT NO. EV085807532US
DEPOSITED ON DECEMBER 22, 2003**

**TRADEMARK
TM1326US25**

**UNITED STATES DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE**

Applicant:	Lone Star Steakhouse & Saloon, Inc.)	
		)	Trademark Law Office 110
Serial No.:	75/883,254)	
		)	Examining Attorney
Mark:	LONE STAR	)	Katherine Stoides
)	
Office Action Mailing Date:	6/27/03)	

RESPONSE TO OFFICE ACTION

**Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3514**

Applicant, Lone Star Steakhouse & Saloon, Inc., herein responds to the Office Action dated June 27, 2003, as follows:

A. Introduction

In the Office Action, mailed June 27, 2003, the mark LONE STAR (and design) was refused registration on the principal register under 15 U.S.C. § 1052(d) as causing a likelihood of confusion with U.S. Registration No. 2,589,026. For the reasons stated below, Applicant respectfully submits that registration is proper because there is no likelihood of confusion between Applicant's mark and the registered mark and because the registrant, Junior Volleyball Association of Austin ("JVAA"), entered into a Consent Agreement.

B. Likelihood of Confusion

The Examiner's position for the refusal to register Applicant's LONE STAR mark for clothing is based on the registration for clothing under the mark LONE STAR CLASSIC. However, consumers are not likely to be confused about the source of the goods because Applicant and the JVAA have taken steps to prevent confusion with a Settlement Agreement. Furthermore, confusion is unlikely because (1) the channels of trade are distinct; (2) the goods are purchased by a distinct set

of customers who exercise a high degree of care; (3) there has been no actual confusion; (4) the registrant is unlikely to offer its goods through the same channels of trade as Applicant; and (5) JVAA has signed a Consent Agreement. The absence of a likelihood of confusion is demonstrated by the following discussion of specific *Polaroid* factors. See *Polaroid Corp. v. Polarad Electronics Cor.*, 287 F.2d 492 (2nd Cir. 1961).

i. The Proximity of Products or Services / Channels of Trade

The Examiner submits that the factors most relevant in determining whether there is a likelihood of confusion between Applicant's mark and the registered mark are "similarity of the marks, similarity of the goods, and similarity of trade channels of the goods." (Office Action at p. 2). However, the Examiner did not further discuss the channels of trade of these particular marks. As explained below, the channels of trade for the goods on which Applicant's mark is used and the goods on which the registered mark is used are so dissimilar that there is no likelihood of confusion between the marks.

The registrant of the LONE STAR CLASSIC mark is JVAA, which is a non-profit Texas corporation. The "Lone Star Classic" is a volleyball tournament held in Austin, Texas each year for junior volleyball teams. The goods sold under the LONE STAR CLASSIC mark are sold mainly at the event to participants and spectators, or through sporting goods stores. These purchasers are highly unlikely to confuse the source of the clothing as coming from Applicant, Lone Star Steakhouse & Saloon, Inc.

Similarly, purchasers of the goods bearing the LONE STAR mark are not likely to confuse the mark with JVAA's mark, because the goods bearing Applicant's mark are sold primarily at Lone Star Steakhouse & Saloon restaurants to restaurant customers. Because the channels of trade clearly inform the purchaser of the source of the goods, this factor weighs heavily against finding a likelihood of confusion between the two marks.

ii. The Characteristics of the Prospective Purchasers and the Degree of Care They Exercise

The different classes of prospective purchasers of the goods associated with each mark are likely to exercise a high degree of care. Purchasers of clothing bearing the LONE STAR CLASSIC mark are likely to be volleyball players or spectators who have a particular interest in the "Lone Star Classic" tournament, and are therefore likely to particularly seek out the LONE STAR CLASSIC mark at volleyball events.

Purchasers of clothing bearing the LONE STAR mark are similarly likely to purchase the mark specifically because they have dined at a Lone Star Steakhouse & Saloon restaurant. Therefore, the prospective purchasers of the clothing associated with each mark are likely to be a different class of consumers and exercise a high degree of care.

iii. Evidence of Actual Confusion

Neither JVAA nor Applicant have experienced any actual confusion. In fact, the parties entered into a Settlement Agreement in order to prevent any potential confusion. This lack of actual confusion is strong evidence that no likelihood of confusion exists.

iv. Likelihood that JVAA Will Bridge the Gap

It is unlikely that JVAA will start selling its clothing products in restaurants for two reasons. First, restaurants are unrelated to volleyball tournaments. Second, the JVAA and Applicant entered into a Settlement Agreement on April 23, 2001, in which JVAA agreed “never to use the mark LONE STAR CLASSIC, or any other mark containing or comprising the terms ‘LONE STAR’ or ‘LONESTAR’ on or in connection with clothing that is distributed to or through, or in association with, restaurants, bars, or other establishments associated with the sale of foods or beverages.”

v. JVAA Has Signed a Consent Agreement

JVAA has signed a Consent Agreement, attached as Exhibit A, in which JVAA consents to the federal registration of the LONE STAR mark because of the absence of a likelihood of confusion between JVAA’s and Applicant’s marks. According to T.M.E.P. Section 1207.01(d)(viii),

[t]he Court of Appeals for the Federal Circuit has made it clear that consent agreements should be given great weight, and that the Office should not substitute its judgment concerning likelihood of confusion for the judgment of the real parties in interest without good reason, that is, unless the other factors clearly dictate a finding of likelihood of confusion.

T.M.E.P. § 1207.01(d)(viii) (citations omitted)(emphasis added). As demonstrated above, the other likelihood of confusion factors do not dictate a finding of likelihood of confusion. Furthermore, the Consent Agreement is not a “naked” consent, because it states the reasons for JVAA’s finding that there is no likelihood of confusion between its mark and Applicant’s mark. Therefore, Applicant respectfully requests that the Examiner give the appropriate weight to the consent agreement and find that there is no likelihood of confusion.

C. Conclusion

It is respectfully submitted that the above discussion addressing the specific facts relevant to Applicant’s mark and JVAA’s mark support a finding of no likelihood of confusion and enables the Examining Attorney to withdraw her refusal. It is further urged that because JVAA consents to Applicant’s use of the LONE STAR mark, registration is proper under these facts.

The Examining Attorney is invited to contact the below signed Attorney should any questions arise concerning this Response.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joe J. Ferretti", with a stylized flourish at the end.

Joseph J. Ferretti, O.B.A. #15231

For the Firm

Crowe & Dunlevy
1800 Mid-America Tower
20 North Broadway
Oklahoma City, Oklahoma 73102-8273
Telephone No.: (405) 235-7744
Fax No.: (405) 272-5256

Attorney for Applicant, Lone Star Steakhouse &
Saloon, Inc.

CONSENT AGREEMENT

This Consent Agreement is made on this 18th day of December, 2003, by the Junior Volleyball Association of Austin ("JVAA").

JVAA has a federal trademark registration, Registration No. 2,589,026, for the mark LONE STAR CLASSIC for "Clothing, namely t-shirts, caps shorts, and polo shirts" that was filed on August 6, 1999 and issued on July 2, 2002 (herein the "LONE STAR CLASSIC Mark"). The LONE STAR CLASSIC Mark refers to the "Lone Star Classic" junior volleyball tournament that takes place each year in Texas. Lone Star Steakhouse & Saloon, Inc. ("LSS&S") has filed a federal trademark application, Serial No. 75/883,254, for LONE STAR for "Clothing, namely T-shirts, men's and women's sport shirts, sweat shirts, polo shirts and caps" (herein the "LONE STAR Mark"). LSS&S has used the LONE STAR Mark since at least as early as October 12, 1989 on the above-referenced goods. LSS&S received an office action from the United States Patent and Trademark Office, dated June 27, 2003, in which the examining attorney refused registration of the LONE STAR Mark under 15 U.S.C. Section 1052(d) due to a likelihood of confusion with the LONE STAR CLASSIC Mark.

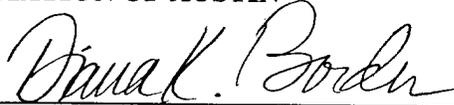
On April 23, 2001, JVAA and LSS&S entered into a Settlement Agreement in order to "avoid any conflict or confusion that might arise from their concurrent use and registration of their respective marks." In the Settlement Agreement, JVAA agreed "never to use the mark LONE STAR CLASSIC, or any other mark containing or comprising the terms 'LONE STAR' or 'LONESTAR' on or in connection with clothing that is distributed to or through, or in association with, restaurants, bars, or other establishments associated with the sale of foods or beverages." In turn, LSS&S agreed "not to use or seek to register any trademark or service mark containing or comprising the words 'LONE STAR' on or in connection with organizing and conducting volleyball games, volleyball competitions, volleyball sporting events, or volleyball tournaments, or selling or offering for sale volleyball-related sporting equipment." The parties have experienced no customer confusion since the signing of the Settlement Agreement.

As demonstrated by the 2001 Settlement Agreement, the LONE STAR CLASSIC and LONE STAR Marks are not likely to lead to customer confusion because they are sold (1) through different channels of trade and (2) to a different customer base. The goods bearing the LONE STAR CLASSIC Mark are sold primarily at the "Lone Star Classic" volleyball tournament or sporting goods stores to volleyball players or spectators. The goods bearing the LONE STAR Mark are sold primarily at "Lone Star Steakhouse and Saloon" restaurants to restaurant customers. Because the goods bearing the Marks are sold primarily at the volleyball event or at a LSS&S restaurant, purchasers of the goods are not likely to be confused.

Therefore, because of the absence of a likelihood of confusion between the LONE STAR CLASSIC and LONE STAR Marks, JVAA consents to the federal registration of the LONE STAR Mark.

The undersigned is attorney for Junior Volleyball Association of Austin and has been authorized to sign on its behalf.

**JUNIOR VOLLEYBALL
ASSOCIATION OF AUSTIN**

By: 
Name: Diana K. Borden
Title: Attorney-In-Fact
Date: December 18, 2003

Incoming Correspondence Routing Sheet

To: TMO LAW OFFICE 110 - AWAITING RESPONSE DOCKET

Word Mark: LONE STAR

Serial No: 75883254



Mail Date: 12242003



Doc. Type: Responses to Office Actions



No Fee

RAM Mail Date: 122403





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ATTORNEYS AND COUNSELORS AT LAW
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TMEQ
LAW OFFICE 110
2004 JAN 15 10 15
ferretti@crowedunlevy.com

December 22, 2003

RECEIVED

EXPRESS MAIL RECEIPT NO.: EV085807532US

Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3514

Re: United States Trademark Serial No.: 75/883,254
Mark: LONE STAR (AND DESIGN)
Applicant: Lone Star Steakhouse & Saloon, Inc
Filing Date: December 29, 1999
Examining Attorney: Stoides, Katherine
Attorney Docket No.: TM1326US25 (21362-00001)

Dear Commissioner:

Enclosed, please find the following documents for filing:

1. Response to Office Action mailed June 27, 2003 (4 pages);
2. Exhibit A – Consent Agreement effective December 18, 2003;
and
3. An acknowledgment postcard.

No fee is believed to be associated with this filing. However, in the event of any fee deficiency, you are hereby authorized to charge our deposit account no.: 13-0110. Please reference our docket no.: TM1326US25. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Joseph J. Ferretti
For the Firm

JJF/jkw

Enclosures

cc: Lone Star Steakhouse & Saloon, Inc.

1311461.1



12-24-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #77

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**EXPRESS MAIL RECEIPT NO. EV085807532US
DEPOSITED ON DECEMBER 22, 2003**

**TRADEMARK
TM1326US25**

**UNITED STATES DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE**

Applicant:	Lone Star Steakhouse & Saloon, Inc.)	
		)	Trademark Law Office 110
Serial No.:	75/883,254)	
		)	Examining Attorney
Mark:	LONE STAR	)	Katherine Stoides
)	
Office Action Mailing Date:	6/27/03)	

RESPONSE TO OFFICE ACTION

**Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3514**

Applicant, Lone Star Steakhouse & Saloon, Inc., herein responds to the Office Action dated June 27, 2003, as follows:

A. Introduction

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B. Likelihood of Confusion

The Examiner's position for the refusal to register Applicant's LONE STAR mark for clothing is based on the registration for clothing under the mark LONE STAR CLASSIC. However, consumers are not likely to be confused about the source of the goods because Applicant and the JVAA have taken steps to prevent confusion with a Settlement Agreement. Furthermore, confusion is unlikely because (1) the channels of trade are distinct; (2) the goods are purchased by a distinct set

of customers who exercise a high degree of care; (3) there has been no actual confusion; (4) the registrant is unlikely to offer its goods through the same channels of trade as Applicant; and (5) JVAA has signed a Consent Agreement. The absence of a likelihood of confusion is demonstrated by the following discussion of specific *Polaroid* factors. See *Polaroid Corp. v. Polarad Electronics Cor.*, 287 F.2d 492 (2nd Cir. 1961).

i. The Proximity of Products or Services / Channels of Trade

The Examiner submits that the factors most relevant in determining whether there is a likelihood of confusion between Applicant's mark and the registered mark are "similarity of the marks, similarity of the goods, and similarity of trade channels of the goods." (Office Action at p. 2). However, the Examiner did not further discuss the channels of trade of these particular marks. As explained below, the channels of trade for the goods on which Applicant's mark is used and the goods on which the registered mark is used are so dissimilar that there is no likelihood of confusion between the marks.

The registrant of the LONE STAR CLASSIC mark is JVAA, which is a non-profit Texas corporation. The "Lone Star Classic" is a volleyball tournament held in Austin, Texas each year for junior volleyball teams. The goods sold under the LONE STAR CLASSIC mark are sold mainly at the event to participants and spectators, or through sporting goods stores. These purchasers are highly unlikely to confuse the source of the clothing as coming from Applicant, Lone Star Steakhouse & Saloon, Inc.

Similarly, purchasers of the goods bearing the LONE STAR mark are not likely to confuse the mark with JVAA's mark, because the goods bearing Applicant's mark are sold primarily at Lone Star Steakhouse & Saloon restaurants to restaurant customers. Because the channels of trade clearly inform the purchaser of the source of the goods, this factor weighs heavily against finding a likelihood of confusion between the two marks.

ii. The Characteristics of the Prospective Purchasers and the Degree of Care They Exercise

The different classes of prospective purchasers of the goods associated with each mark are likely to exercise a high degree of care. Purchasers of clothing bearing the LONE STAR CLASSIC mark are likely to be volleyball players or spectators who have a particular interest in the "Lone Star Classic" tournament, and are therefore likely to particularly seek out the LONE STAR CLASSIC mark at volleyball events.

Purchasers of clothing bearing the LONE STAR mark are similarly likely to purchase the mark specifically because they have dined at a Lone Star Steakhouse & Saloon restaurant. Therefore, the prospective purchasers of the clothing associated with each mark are likely to be a different class of consumers and exercise a high degree of care.

iii. Evidence of Actual Confusion

Neither JVAA nor Applicant have experienced any actual confusion. In fact, the parties entered into a Settlement Agreement in order to prevent any potential confusion. This lack of actual confusion is strong evidence that no likelihood of confusion exists.

iv. Likelihood that JVAA Will Bridge the Gap

It is unlikely that JVAA will start selling its clothing products in restaurants for two reasons. First, restaurants are unrelated to volleyball tournaments. Second, the JVAA and Applicant entered into a Settlement Agreement on April 23, 2001, in which JVAA agreed "never to use the mark LONE STAR CLASSIC, or any other mark containing or comprising the terms 'LONE STAR' or 'LONESTAR' on or in connection with clothing that is distributed to or through, or in association with, restaurants, bars, or other establishments associated with the sale of foods or beverages."

v. JVAA Has Signed a Consent Agreement

JVAA has signed a Consent Agreement, attached as Exhibit A, in which JVAA consents to the federal registration of the LONE STAR mark because of the absence of a likelihood of confusion between JVAA's and Applicant's marks. According to T.M.E.P. Section 1207.01(d)(viii),

[t]he Court of Appeals for the Federal Circuit has made it clear that consent agreements should be given great weight, and that the Office should not substitute its judgment concerning likelihood of confusion for the judgment of the real parties in interest without good reason, that is, unless the other factors clearly dictate a finding of likelihood of confusion.

T.M.E.P. § 1207.01(d)(viii) (citations omitted)(emphasis added). As demonstrated above, the other likelihood of confusion factors do not dictate a finding of likelihood of confusion. Furthermore, the Consent Agreement is not a "naked" consent, because it states the reasons for JVAA's finding that there is no likelihood of confusion between its mark and Applicant's mark. Therefore, Applicant respectfully requests that the Examiner give the appropriate weight to the consent agreement and find that there is no likelihood of confusion.

C. Conclusion

It is respectfully submitted that the above discussion addressing the specific facts relevant to Applicant's mark and JVAA's mark support a finding of no likelihood of confusion and enables the Examining Attorney to withdraw her refusal. It is further urged that because JVAA consents to Applicant's use of the LONE STAR mark, registration is proper under these facts.

The Examining Attorney is invited to contact the below signed Attorney should any questions arise concerning this Response.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joe J. Ferretti". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Joseph J. Ferretti, O.B.A. #15231

For the Firm

Crowe & Dunlevy
1800 Mid-America Tower
20 North Broadway
Oklahoma City, Oklahoma 73102-8273
Telephone No.: (405) 235-7744
Fax No.: (405) 272-5256

Attorney for Applicant, Lone Star Steakhouse &
Saloon, Inc.

CONSENT AGREEMENT

This Consent Agreement is made on this 18th day of December, 2003, by the Junior Volleyball Association of Austin ("JVAA").

JVAA has a federal trademark registration, Registration No. 2,589,026, for the mark LONE STAR CLASSIC for "Clothing, namely t-shirts, caps shorts, and polo shirts" that was filed on August 6, 1999 and issued on July 2, 2002 (herein the "LONE STAR CLASSIC Mark"). The LONE STAR CLASSIC Mark refers to the "Lone Star Classic" junior volleyball tournament that takes place each year in Texas. Lone Star Steakhouse & Saloon, Inc. ("LSS&S") has filed a federal trademark application, Serial No. 75/883,254, for LONE STAR for "Clothing, namely T-shirts, men's and women's sport shirts, sweat shirts, polo shirts and caps" (herein the "LONE STAR Mark"). LSS&S has used the LONE STAR Mark since at least as early as October 12, 1989 on the above-referenced goods. LSS&S received an office action from the United States Patent and Trademark Office, dated June 27, 2003, in which the examining attorney refused registration of the LONE STAR Mark under 15 U.S.C. Section 1052(d) due to a likelihood of confusion with the LONE STAR CLASSIC Mark.

On April 23, 2001, JVAA and LSS&S entered into a Settlement Agreement in order to "avoid any conflict or confusion that might arise from their concurrent use and registration of their respective marks." In the Settlement Agreement, JVAA agreed "never to use the mark LONE STAR CLASSIC, or any other mark containing or comprising the terms 'LONE STAR' or 'LONESTAR' on or in connection with clothing that is distributed to or through, or in association with, restaurants, bars, or other establishments associated with the sale of foods or beverages." In turn, LSS&S agreed "not to use or seek to register any trademark or service mark containing or comprising the words 'LONE STAR' on or in connection with organizing and conducting volleyball games, volleyball competitions, volleyball sporting events, or volleyball tournaments, or selling or offering for sale volleyball-related sporting equipment." The parties have experienced no customer confusion since the signing of the Settlement Agreement.

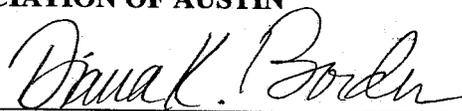
As demonstrated by the 2001 Settlement Agreement, the LONE STAR CLASSIC and LONE STAR Marks are not likely to lead to customer confusion because they are sold (1) through different channels of trade and (2) to a different customer base. The goods bearing the LONE STAR CLASSIC Mark are sold primarily at the "Lone Star Classic" volleyball tournament or sporting goods stores to volleyball players or spectators. The goods bearing the LONE STAR Mark are sold primarily at "Lone Star Steakhouse and Saloon" restaurants to restaurant customers. Because the goods bearing the Marks are sold primarily at the volleyball event or at a LSS&S restaurant, purchasers of the goods are not likely to be confused.

Therefore, because of the absence of a likelihood of confusion between the LONE STAR CLASSIC and LONE STAR Marks, JVAA consents to the federal registration of the LONE STAR Mark.

The undersigned is attorney for Junior Volleyball Association of Austin and has been authorized to sign on its behalf.

**JUNIOR VOLLEYBALL
ASSOCIATION OF AUSTIN**

By: _____



Name: Diana K. Borden

Title: Attorney-In-Fact

Date: December 18, 2003

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 75/883254

APPLICANT: Lone Star Steakhouse & Saloon, Inc.

CORRESPONDENT ADDRESS:

JOSEPH J. FERRETTI
CROWE DUNLEVY
1800 MID-AMERICA TOWER
20 N BROADWAY AVE STE 1800
OKLAHOMA CITY OK 73102-8273

JUN 27 2003
RETURN ADDRESS:
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514
ecom109@uspto.gov

MARK: LONE STAR

CORRESPONDENT'S REFERENCE/DOCKET NO: 22863 (21362)

CORRESPONDENT EMAIL ADDRESS:

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

OFFICE ACTION

TO AVOID ABANDONMENT, WE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF OUR MAILING OR E-MAILING DATE.

RE: Serial Number 75/883254

The Office has reassigned this application to the undersigned examining attorney.

On 24 July 2001, action on this application was suspended pending the disposition of Application Serial No. 75-775808. The referenced application has matured into a registration. Therefore, registration is refused as follows.

SECTION 2(d) REFUSAL -- Likelihood Of Confusion

The examining attorney refuses registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d), because the applicant's mark, when used on the identified goods, is likely to be confused with the registered mark in U.S. Registration No. 2589026. TMEP section 1207. See the enclosed registration.

The examining attorney must analyze each case in two steps to determine whether there is a likelihood of confusion. First, the examining attorney must look at the marks themselves for similarities in appearance, sound, connotation and commercial impression. In re E. I. DuPont de

Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Second, the examining attorney must compare the goods or services to determine if they are related or if the activities surrounding their marketing are such that confusion as to origin is likely. In re August Storck KG, 218 USPQ 823 (TTAB 1983); In re International Telephone and Telegraph Corp., 197 USPQ 910 (TTAB 1978); Guardian Products Co., v. Scott Paper Co., 200 USPQ 738 (TTAB 1978).

The examining attorney has determined that contemporaneous use of the marks LONE STAR (and design) and LONE STAR CLASSIC, as applied to clothing, would be likely to cause confusion for the following reasons.

The Court in In re E. I. DuPont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973), listed the principal factors to be considered in determining whether there is a likelihood of confusion under Section 2(d). Any one of the factors listed may be dominant in any given case, depending upon the evidence of record. In this case, the following factors are the most relevant: similarity of the marks, similarity of the goods, and similarity of trade channels of the goods.

A. The Marks

The examining attorney must look at the marks in their entireties under Section 2(d). Nevertheless, one feature of a mark may be recognized as more significant in creating a commercial impression. Greater weight is given to that dominant feature in determining whether there is a likelihood of confusion. In re National Data Corp., 224 USPQ 749 (Fed. Cir. 1985); Tektronix, Inc. v. Daktronics, Inc., 534 F.2d 915, 189 USPQ 693 (CCPA 1976). In re J.M. Originals Inc., 6 USPQ2d 1393 (TTAB 1988).

The addition of the design element to the applicant's mark does not obviate the similarity between the marks. Coca-Cola Bottling Co. v. Joseph E. Seagram & Sons, Inc., 526 F.2d 556, 188 USPQ 105 (CCPA 1975). When a mark consists of a word portion and a design portion, the word portion is more likely to be impressed upon a purchaser's memory and to be used in calling for the goods or services. In re Appetito Provisions Co., 3 USPQ2d 1553 (TTAB 1987); Amoco Oil Co. v. Amerco, Inc., 192 USPQ 729 (TTAB 1976).

While the examining attorney cannot ignore a disclaimed portion of a mark and must view marks in their entireties, one feature of a mark may be more significant in creating a commercial impression. Tektronix, Inc. v. Daktronics, Inc., 534 F.2d 915, 189 USPQ 693 (C.C.P.A. 1976); In re El Torito Restaurants Inc., 9 USPQ2d 2002 (TTAB 1988); In re Equitable Bancorporation, 229 USPQ 709 (TTAB 1986). Disclaimed matter is typically less significant or less dominant.

Application of the above standards clearly indicates that the dominant feature of the marks is the same terminology LONE STAR. When the applicant's mark is compared to a registered mark, "the points of similarity are of greater importance than the points of difference." Esso Standard Oil Co. v. Sun Oil Co., 229 F.2d 37, 108 USPQ 161 (D.C. Cir.), cert. denied, 351 U.S. 973, 109 USPQ 517 (1956). The test of likelihood of confusion is not whether the marks can be distinguished when subjected to a side-by-side comparison. The issue is whether the marks create the same overall

impression. *Visual Information Institute, Inc. v. Vicon Industries Inc.*, 209 USPQ 179 (TTAB 1980). The focus is on the recollection of the average purchaser who normally retains a general rather than specific impression of trademarks. *Chemetron Corp. v. Morris Coupling & Clamp Co.*, 203 USPQ 537 (TTAB 1979); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975); TMEP section 1207.01(b).

If the goods or services of the respective parties are closely related, the degree of similarity between marks required to support a finding of likelihood of confusion is not as great as would apply with diverse goods or services. *ECI Division of E Systems, Inc. v. Environmental Communications Inc.*, 207 USPQ 443 (TTAB 1980). TMEP §1207.01(b).

B. The Goods

Both parties identify clothing. The applicant is advised that the goods of the parties need not be identical or directly competitive to find a likelihood of confusion. They need only be related in some manner, or the conditions surrounding their marketing be such, that they could be encountered by the same purchasers under circumstances that could give rise to the mistaken belief that the goods come from a common source. *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985); *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984); *Guardian Products Co., Inc. v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); *In re International Telephone & Telegraph Corp.*, 197 USPQ 910 (TTAB 1978).

C. Conclusion

For the foregoing reasons, the applicant's LONE STAR (and design) is refused registration under Section 2(d) of the Trademark Act.

Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

If the applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.

/Katherine Stoides/
Examining Attorney
Law Office 110
(703) 308-9110 ext.166

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Print: Jun 17, 2003

75775808

LONE STAR CLASSIC

Serial Number

75775808

Status

REGISTERED

Word Mark

LONE STAR CLASSIC

Registration Number

2589026

Date Registered

2002/07/02

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

Junior Volleyball Association of Austin NON-PROFIT CORPORATION TEXAS
2026 Guadalupe Street, Suite 302 Austin TEXAS 78705

Goods/Services

Class Status -- ACTIVE. IC 025. US 022 039. G & S: Clothing,
namely t-shirts, caps shorts, and polo shirts. First Use: 1992/04/01.
First Use In Commerce: 1992/04/01.

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CLASSIC" APART FROM
THE MARK AS SHOWN.

Section 2f Statement

2(F) ENTIRE MARK

Filing Date

1999/08/06

Print: Jun 17, 2003

75775808

Examining Attorney
STOIDES, KATHERINE

Attorney of Record
Diana K. Borden

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 75/883254

APPLICANT: Lone Star Steakhouse & Saloon, Inc.

CORRESPONDENT ADDRESS:

JOSEPH J. FERRETTI
CROWE DUNLEVY
1800 MID-AMERICA TOWER
20 N BROADWAY AVE STE 1800
OKLAHOMA CITY OK 73102-8273

RETURN ADDRESS:

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514
ecom109@uspto.gov

MARK: LONE STAR

CORRESPONDENT'S REFERENCE/DOCKET NO: 22863 (21362)

Please provide in all correspondence:

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C. Conclusion

For the foregoing reasons, the applicant's LONE STAR (and design) is refused registration under Section 2(d) of the Trademark Act.

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If the applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.

/Katherine Stoides/
Examining Attorney
Law Office 110
(703) 308-9110 ext.166

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FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY.

LONE STAR CLASSIC

Serial Number

75775808

Status

REGISTERED

Word Mark

LONE STAR CLASSIC

Registration Number

2589026

Date Registered

2002/07/02

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

Junior Volleyball Association of Austin NON-PROFIT CORPORATION TEXAS
2026 Guadalupe Street, Suite 302 Austin TEXAS 78705

Goods/Services

Class Status -- ACTIVE. IC 025. US 022 039. G & S: Clothing,
namely t-shirts, caps shorts, and polo shirts. First Use: 1992/04/01.
First Use In Commerce: 1992/04/01.

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NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CLASSIC" APART FROM
THE MARK AS SHOWN.

Section 2f Statement

2(F) ENTIRE MARK

Filing Date

1999/08/06

Print: Jun 17, 2003

75775808

Examining Attorney
STOIDES, KATHERINE

Attorney of Record
Diana K. Borden

UNITED STATES PATENT AND TRADEMARK OFFICE

<table style="width: 100%;"> <tr> <td style="width: 30%;">SERIAL NO. 75/883254</td> <td style="width: 70%;">APPLICANT Lone Star Steakhouse & Saloon, Inc.</td> </tr> <tr> <td colspan="2">MARK LONE STAR AND DESIGN</td> </tr> <tr> <td colspan="2">ADDRESS JOSEPH J. FERRETTI CROWE DUNLEVY 1800 MID-AMERICA TOWER 20 N BROADWAY AVE STE 1800 OKLAHOMA CITY OK 73102-8273</td> </tr> <tr> <td colspan="2">ACTION NO. 02</td> </tr> <tr> <td colspan="2">MAILING DATE 07/24/01</td> </tr> <tr> <td colspan="2">REF NO. 22863 (21362)</td> </tr> </table>	SERIAL NO. 75/883254	APPLICANT Lone Star Steakhouse & Saloon, Inc.	MARK LONE STAR AND DESIGN		ADDRESS JOSEPH J. FERRETTI CROWE DUNLEVY 1800 MID-AMERICA TOWER 20 N BROADWAY AVE STE 1800 OKLAHOMA CITY OK 73102-8273		ACTION NO. 02		MAILING DATE 07/24/01		REF NO. 22863 (21362)		PAPER NO. Commissioner for Trademarks 2900 Crystal Drive Arlington, VA 22202-3513 www.uspto.gov If no fees are enclosed, the address should include the words "Box Responses - No Fee." Please provide in all correspondence: 1. Filing Date, serial number, mark and Applicant's name. 2. Mailing date of this action. 3. Examining Attorney's name and Law Office number. 4. Your telephone number and ZIP code.
SERIAL NO. 75/883254	APPLICANT Lone Star Steakhouse & Saloon, Inc.												
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FORM PTO-1525 (5-80) U.S. DEPT. OF COMM. & TM OFFICE													

RE: Serial Number: 75/883254

The examining attorney has searched the Office records and has found no similar registered mark which would bar registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d). TMEP section 1105.01.

1. Action on this application is suspended pending the disposition of:

- Cancellation No(s).
- Opposition No(s).
- Civil Action No(s).
- Concurrent Use No(s).

If the applicant is a party to the above proceeding, the applicant should advise the Examining Attorney of the outcome of the proceeding when it is terminated.

Application Serial No(s). ^{key - pending 03/13/02} 75/775808. Please note that Serial No. 75/273718 has been abandoned.

Since applicant's effective filing date is subsequent to the effective filing date of the above-identified application(s), the latter, if and when it registers, may be cited against this application. See 37 C.F.R. §2.83. A copy of information relevant to this pending application(s) is attached was sent previously.

The applicant may request that the application be removed from suspension by presenting arguments related to the potential conflict between the relevant applications or other arguments related to the ground for suspension. The applicant's election to present or not to present arguments at this time will not affect the applicant's right to present arguments later.

2. Action on this application is suspended pending receipt of a certification or certified copy of the registration in the country of origin of applicant.

If the registration is in a foreign language, an English translation must be submitted. The certification or certified copy of the registration should be forwarded to the Examining Attorney as soon as possible. If the foreign application is abandoned, the Examining Attorney should be advised.

3. It is noted that an assignment involving this application is presently pending before the Office. Action is suspended on this application pending recordation of the assignment. This application will be removed from suspended status upon recordation of the assignment. Notification of recordation is normally done through Office channels. However, upon receipt of the reel and frame number of the assignment, applicant should advise the Examining Attorney. See 37 C.F.R. Part 3.

4. Action on this application is suspended for ^ months until the Examining Attorney can determine whether the cited registration will be canceled under §8 or expire under §9. 37 C.F.R. 2.67.

5. The Following refusals/requirements are continued.

Please note that the Section 2(e)(2) and 2(e)(3) refusals are withdrawn.

Radhika Raju
 EXAMINING ATTORNEY NAME

 EXAMINING ATTORNEY SIGNATURE

109
 LAW OFFICE

(703) 308-9109 ext. 196
 PHONE



TRAMII GENERAL QUERY AS OF: 07/22/01 11:17:58

SERIAL NUMBER: 75273718 FILING DATE: 04/14/1997
REG. NUMBER: 0000000 REG. DATE:
REGISTER: PRINCIPAL MARK TYPE: TRADEMARK
FILED USE: NO CURRENTLY USE: NO
FILED ITU: YES CURRENTLY ITU: YES
FILED 44D: NO CURRENTLY 44D: NO
FILED 44E: NO CURRENTLY 44E: NO

EXAMINER: 74781-LEE, DOUGLAS
LO ASSIGNED: 108
LOCATION: 900-FILE REPOSITORY (FRANCONIA)
DATE IN LOC: 04/12/2001
CHRG TO LOC: NONE
CHRG TO: NONE
STATUS: 606 - ABANDONED - NO STATEMENT OF USE FILED
STATUS DATE: 08/02/2000
A/R EXAMINER: NO A/R EXAMINER ASSIGNED

EXMR LO: 108

PUB DATE: 11/09/1999 DATE ABANDONED: 08/02/2000 DATE CANCELLED:
SECTION 8: NO SECTION 15: NO ASSIGNMENT: NO
RENEWAL FILED: NO RENEWAL DATE: DATE AMENDED REG:
CLASSES ACTIVE: 01

MARK: LONE STAR UNIFORMS

CURRENT OWNER INFORMATION

PARTY TYPE: 20-OWNER AT PUBLICATION - FIRST NAME
NAME: Blauer Manufacturing Company, Inc.
ADDRESS: 20 Aberdeen Street
BOSTON MASSACHUSETTS 02215
ENTITY: 03-CORPORATION
CITIZENSHIP: MASSACHUSETTS

GOODS AND SERVICES

FOR: clothing, namely, uniforms
INT. CLASS 025 (U.S. CLASSES 022 AND 039)
FIRST USE USE IN COMMERCE

MISCELLANEOUS INFORMATION / STATEMENTS

SECTION 2F: NO SECTION 2F IN PART: NO
DISCLAIMER WITH PREDETERMINED TEXT:
"UNIFORMS"

LINING AND STIPPLING STATEMENT:
The mark is lined for the color gray.

LAST AUTOMATIC ADDRESS UPDATE: 03/29/1999

PROSECUTION HISTORY

DATE	ENT CD	ENT TYPE	DESCRIPTION	ENT NUM	PRCD NUM
08/02/00	ABN6	S	ABANDONMENT - NO USE STATEMENT FILED	013	000000
02/01/00	NOAM	O	NOTICE OF ALLOWANCE-MAILED	012	000000
11/09/99	PUBO	A	PUBLISHED FOR OPPOSITION	011	000000
10/08/99	NPUB	O	NOTICE OF PUBLICATION	010	000000
07/16/99	CNSA	P	APPROVED FOR PUB - PRINCIPAL REGISTER	009	000000
07/12/99	CNEA	F	EXAMINERS AMENDMENT MAILED	008	000000
07/09/99	DOCK	D	ASSIGNED TO EXAMINER	007	074781
01/06/99	CNSL	F	LETTER OF SUSPENSION MAILED	006	000000
11/09/98	CRFA	I	COMMUNICATION RECEIVED FROM APPLICANT	005	000000
06/02/98	CNRT	F	NON-FINAL ACTION MAILED	004	000000
03/30/98	CRFA	I	COMMUNICATION RECEIVED FROM APPLICANT	003	000000
09/30/97	CNRT	F	NON-FINAL ACTION MAILED	002	000000
09/16/97	DOCK	D	ASSIGNED TO EXAMINER	001	066593

CORRESPONDENCE

ATTORNEY: GERALD ALTMAN
 ATTORNEY DOCKET NUMBER: BLAUM.39560
 CORRESPONDENCE ADDRESS: GERALD ALTMAN
 MORSE & ALTMAN
 85 E INDIA ROW STE 5F
 BOSTON MA 02110

OTHER INFORMATION

MARK DRAWING CD: 3-AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/
 LETTER(S)/NUMBER(S)

PSEUDOMARK: LONE STAR UNIFORMS
 DESIGN SEARCH CDS: 01.01.05 24.03.25 27.03.05

SECTION 8 IN PART: NO
 REPUB SEC 12C: NO PUB DATE 12C:
 CHANGE IN REGISTRATION: NO
 TTAB DECISION: NO
 LOST CASE: NO

PRIOR OWNER INFORMATION

PARTY TYPE: 10-ORIGINAL APPLICANT - FIRST NAME
 NAME: Blauer Manufacturing Company, Inc.
 ADDRESS: 20 Aberdeen Street
 BOSTON MASSACHUSETTS 02215
 ENTITY: 03-CORPORATION
 CITIZENSHIP: MASSACHUSETTS

TRAMII GENERAL QUERY AS OF: 07/22/01 11:18:19

SERIAL NUMBER: 75775808 FILING DATE: 08/06/1999
 REG. NUMBER: 0000000 REG. DATE:
 REGISTER: PRINCIPAL MARK TYPE: TRADEMARK
 FILED USE: NO CURRENTLY USE: NO
 FILED ITU: YES CURRENTLY ITU: YES
 FILED 44D: NO CURRENTLY 44D: NO
 FILED 44E: NO CURRENTLY 44E: NO

EXAMINER: 75572-RAJU, RADHIKA
 LO ASSIGNED: 109
 LOCATION: 710-DIVISIONAL UNIT
 DATE IN LOC: 07/19/2001
 CHRG TO LOC: NONE
 CHRG TO: NONE
 STATUS: 688 - NOTICE OF ALLOWANCE - ISSUED
 STATUS DATE: 07/17/2001
 A/R EXAMINER: NO A/R EXAMINER ASSIGNED

EXMR LO: 109

PUB DATE: 11/07/2000 DATE ABANDONED:
 SECTION 8: NO SECTION 15: NO
 RENEWAL FILED: NO RENEWAL DATE:
 CLASSES ACTIVE: 01 DATE CANCELLED:
 ASSIGNMENT: NO
 DATE AMENDED REG:

MARK: LONE STAR CLASSIC

CURRENT OWNER INFORMATION

PARTY TYPE: 20-OWNER AT PUBLICATION - FIRST NAME
 NAME: Junior Volleyball Association of Austin
 ADDRESS: 2026 Guadalupe Street, Suite 302
 AUSTIN TEXAS 78705
 ENTITY: 99-NON-PROFIT CORPORATION
 CITIZENSHIP: TEXAS

GOODS AND SERVICES

FOR: Clothing, namely t-shirts, caps shorts, and polo shirts
 INT. CLASS 025 (U.S. CLASSES 022 AND 039)
 FIRST USE 04/01/1992 USE IN COMMERCE 04/01/1992

MISCELLANEOUS INFORMATION / STATEMENTS

SECTION 2F: YES SECTION 2F IN PART: NO
 DISCLAIMER WITH PREDETERMINED TEXT:
 "CLASSIC"

PROSECUTION HISTORY

DATE	ENT CD	ENT TYPE	DESCRIPTION	ENT NUM	PRCD NUM
07/17/01	NOAM	O	NOTICE OF ALLOWANCE-MAILED	009	000000
12/08/00	ETOF	T	EXTENSION OF TIME TO OPPOSE FILED	008	000000
11/07/00	PUBO	A	PUBLISHED FOR OPPOSITION	007	000000
10/06/00	NPUB	O	NOTICE OF PUBLICATION	006	000000
08/28/00	CNSA	P	APPROVED FOR PUB - PRINCIPAL REGISTER	005	000000

06/15/00	CRFA	I	COMMUNICATION RECEIVED FROM APPLICANT	004	000000
12/15/99	CNRT	F	NON-FINAL ACTION MAILED	003	000000
12/08/99	DOCK	D	ASSIGNED TO EXAMINER	002	075572
12/06/99	DOCK	D	ASSIGNED TO EXAMINER	001	073712

CORRESPONDENCE

ATTORNEY: Diana K. Borden
ATTORNEY DOCKET NUMBER: A14344.2.2
CORRESPONDENCE ADDRESS: DIANA K. BORDEN
GRAVES, DOUGHERTY, HEARON & MOODY
515 CONGRESS AVENUE, SUITE 2300
AUSTIN, TEXAS 75701

OTHER INFORMATION

MARK DRAWING CD: 1-TYPESET WORD(S)/LETTER(S)/NUMBER(S)
SECTION 8 IN PART: NO
REPUBLIC SEC 12C: NO PUB DATE 12C:
CHANGE IN REGISTRATION: NO
TTAB DECISION: NO
LOST CASE: NO

PRIOR OWNER INFORMATION

PARTY TYPE: 10-ORIGINAL APPLICANT - FIRST NAME
NAME: Junior Volleyball Association of Austin
ADDRESS: 2026 Guadalupe Street, Suite 302
AUSTIN TEXAS 78705
ENTITY: 99-NON-PROFIT CORPORATION
CITIZENSHIP: TEXAS

REGISTRATION REVIEW REPORT

SN: 75/883254

DATE OF REPORT: May 8, 2001

PAGE: 1

APPROVED BY: RAJU, RADHIKA
LAW OFFICE 109

FILING DATE: DEC.29,1999

FILED Sec 1(b): NO
FILED Sec 1(a): YES
FILED Sec 44(d): NO
FILED Sec 44(e): NO
FILED No Basis: NO

CURRENTLY Sec 1(b): NO
CURRENTLY Sec 1(a): YES
CURRENTLY Sec 44(d): NO
CURRENTLY Sec 44(e): NO
CURRENTLY No Basis: NO

MARK TYPE: Trademark
REGISTER: Principal
MARK: LONE STAR

Color Drawing Currently: NO

OWNER: Lone Star Steakhouse & Saloon, Inc.
(DELAWARE, CORPORATION)
224 E. Douglas, Suite 700
Wichita, KANSAS 67202

FOR: Clothing, namely T-shirts, men's and women's
sport shirts, sweat shirts, polo shirts and
caps
INT. CLASS 025 (U.S. CLASS 022 AND 039)
FIRST USE OCT.12,1989 USE IN COMMERCE OCT.12,1989

OTHER INFORMATION TO BE PRINTED ON CERTIFICATE:

OWNER OF U.S. REG. NOS. 1155907 ,1731247 ,2229771
AND OTHERS

TRADEMARK EXAMINATION WORKSHEET

 AMENDMENT STAGE

 NO CHANGE

 PUBLICATION/REGISTRATION STAGE

 Name: Kathleen Minnehan L.O. 109 Date 05-05-01

 Serial No. 75-883284

INSTRUCTIONS: Place a check mark in the appropriate column and/or box to indicate which data elements have been amended/coded.

Legal Instrument Examiner (LIE)

	Amended		Data Element
Class Data	<input type="checkbox"/>	<input type="checkbox"/> Prime/International Class	<input type="checkbox"/> Goods and Services
	<input type="checkbox"/>	<input type="checkbox"/> First Use Date	<input type="checkbox"/> First Use in Commerce Date
	<input type="checkbox"/>	<input type="checkbox"/> In Another Form	<input type="checkbox"/> Certification
	<input type="checkbox"/>	<input type="checkbox"/> 1b	
Mark Data	<input type="checkbox"/>	<input type="checkbox"/> Word Mark	<input type="checkbox"/> Pseudo Mark
	<input type="checkbox"/>	<input type="checkbox"/> Mark Drawing Code	<input type="checkbox"/> Design Search Code
	<input type="checkbox"/>	<input type="checkbox"/> Sizing/Lining Code	
Misc. Mark Data	<input type="checkbox"/>	<input type="checkbox"/> Mark Description	<input type="checkbox"/> Disclaimer
	<input type="checkbox"/>	<input type="checkbox"/> Lining/Stippling	<input type="checkbox"/> Name/Portrait/Consent
	<input type="checkbox"/>	<input type="checkbox"/> Translation	
Section 2(f)	<input type="checkbox"/>	<input type="checkbox"/> Section 2(f) Entire Mark	
	<input type="checkbox"/>	<input type="checkbox"/> Section 2(f) Limitation Statement	<input type="checkbox"/> Section 2(f) in Part
	<input type="checkbox"/>	<input type="checkbox"/> Amended Register	<input type="checkbox"/> Amended Register Date
Foreign Reg. Data	<input type="checkbox"/>	<input type="checkbox"/> Foreign Country	<input type="checkbox"/> 44(d)
	<input type="checkbox"/>	<input type="checkbox"/> Foreign Application Number	<input type="checkbox"/> Foreign Application Filing Date
	<input type="checkbox"/>	<input type="checkbox"/> Foreign Registration Number	<input type="checkbox"/> Foreign Registration Date
	<input type="checkbox"/>	<input type="checkbox"/> Foreign Registration Expiration Date	<input type="checkbox"/> Foreign Renewal Reg. Number
	<input type="checkbox"/>	<input type="checkbox"/> Foreign Reg. Renewal Expiration Date	<input type="checkbox"/> Foreign Renewal Reg. Date
Owner Data	<input type="checkbox"/>	<input type="checkbox"/> Owner Name	<input type="checkbox"/> DBA/AKA/TA
	<input type="checkbox"/>	<input type="checkbox"/> Address 1	<input type="checkbox"/> Address 2
	<input type="checkbox"/>	<input type="checkbox"/> City	<input type="checkbox"/> State
	<input type="checkbox"/>	<input type="checkbox"/> Zip Code	
	<input type="checkbox"/>	<input type="checkbox"/> Citizenship	<input type="checkbox"/> Entity
	<input type="checkbox"/>	<input type="checkbox"/> Entity Statement	<input type="checkbox"/> Composed of
	<input type="checkbox"/>	<input type="checkbox"/> Assignment(s)/Name Change	
	<input type="checkbox"/>	<input type="checkbox"/> Amendment/Renewal	<input type="checkbox"/> Correction
	<input type="checkbox"/>	<input type="checkbox"/> Concurrent Use	<input type="checkbox"/> Restriction
	<input type="checkbox"/>	<input type="checkbox"/> Interference Statement	
Prior U.S. Reg.	<input type="checkbox"/>	<input type="checkbox"/> Prior Registration	
Correspondence	<input type="checkbox"/>	<input type="checkbox"/> Attorney	<input type="checkbox"/> Domestic Representative
	<input type="checkbox"/>	<input type="checkbox"/> Attorney Docket Number	
	<input type="checkbox"/>	<input type="checkbox"/> Correspondence Firm Name/Address	

I certify that all corrections have been entered in accordance with text editing guidelines.

LIE

05-05-01

DATE

Other: _____

EXPRESS MAIL RECEIPT NO. EL638304881US
Deposited on March 26, 2001

TRADEMARK
22863

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

2

Applicant: LONE STAR STEAKHOUSE)
& SALOON, INC.)
) Examining Attorney Radhika Raju
) Law Office: 109
Serial No.: 75/883254)
) **Response to Office Action**
Filed: December 29, 1999) Mailed: 09/26/00
)
Mark: LONE STAR AND DESIGN)

BOX RESPONSES - NO FEE
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513



**APPLICANT'S RESPONSE TO
OFFICE ACTION MAILED SEPTEMBER 26, 2000**

Applicant, Lone Star Steakhouse & Saloon, Inc., herein responds to the Office Action dated September 26, 2000. Applicant respectfully submits that Applicant's Mark is entitled to registration because the PTO has failed to demonstrate that Applicant's Mark is either primarily geographically deceptively misdescriptive or geographically descriptive.

I. Applicant's Mark Is Not Primarily Geographically Deceptively Misdescriptive.

Applicant respectfully submits that the Examiner has not presented a *prima facie* case establishing that Applicant's Mark is primarily geographically deceptively misdescriptive.

To establish a *prima facie* case for refusal to register a Mark as primarily geographically deceptively misdescriptive under §2(e)(3), the Examining must establish the following:

- (1) the primary significance of the Mark is geographic;
- (2) purchasers would be likely to think that the goods originate in the geographic place identified in the Mark, *i.e.*, purchasers would make a *goods/place association*; **and**
- (3) the goods do not originate in the place identified in the Mark.

TMEP §1210.06. Further, to satisfy its *prima facie* burden for refusing to register the Mark, all three elements must be met.

With regard to the first element, Applicant respectfully submits that the Examiner has not established that the "primarily" significance of the proposed Mark, LONE STAR, is that of geographic location. Although dictionary definitions may be useful to glean the "primary" significance of a Mark, the Examiner did not provide the dictionary definition of "LONE STAR." Rather, the Examiner cited to the definition of "TEXAS" which simply states as follows:

"*Nickname: Lone Star State.*"

See attachment to 9/26/00 Office Action.

Reliance upon the above definition fails to satisfy the Examiner's burden for two reasons. One, this definition does not establish that the *primary* significance of LONE STAR is that of geographic location. Rather, this definition simply notes – *under the definition of TEXAS* – that "LONE STAR STATE" is a nickname for Texas. Because this is not the definition for LONE STAR, one cannot determine whether the primary, the secondary or even the tertiary significance of "LONE STAR" is that of geographic location; one can only determine that *one of the significances* (of LONE STAR STATE) relates to TEXAS.

Two, the dictionary indicates that the nickname for TEXAS is the "LONE STAR STATE." Applicant's Mark, however, is not "LONE STAR STATE." Rather, Applicant's Mark is simply "LONE STAR." Were Applicant using LONE STAR STATE as its Mark, there may be grounds for concluding a geographic significance, i.e. Texas, as the dictionary suggests. However, Applicant is simply using the Mark LONE STAR, *without the geographic reference to "STATE."* Thus, on its face the cited dictionary reference does not support a finding that the significance (which must be "primary") of Applicant's Mark is that of geographic location. For these two reasons, Applicant respectfully submits that the first element has not been satisfied.

With regard to the second element – the establishment of a goods/place association – the record is bare of any such evidence. A refusal under §2(e)(3) requires the Examiner to submit evidence establishing a goods/place association, such that the public is likely to believe that the goods originate in the place identified in the Mark. TMEP§1210.04. Because no goods/place association has been made, the *prima facie* case has not been established and there can be no finding that Applicant's Mark is primarily geographically deceptively misdescriptive. *See, In re Nantucket, Inc.*, 677 F.2d 95, 213 USPQ 889 (C.C.P.A. 1982) (NANTUCKET held not primarily geographically deceptively misdescriptive of men's shirts originating in North Carolina because of no persuasive evidence of a goods/place association).

Thus, while the PTO must establish all three elements to satisfy its *prima facie* case to refuse registration, Applicant respectfully submits that two of the three elements are lacking. The first element has not been satisfied as there has been no showing of "primary" significance. The second element is lacking because there is no evidence in the record supporting a goods/place association.

II The Mark is Not Geographically Descriptive.

To establish a *prima facie* case for refusal to register a Mark as geographically descriptive under §2(e)(2), the Examining must establish each the following elements:

- (1) the primary significance of the Mark is geographic;
- (2) purchasers would be likely to think that the goods originate in the geographic place identified in the Mark, *i.e.*, purchasers would make a *goods/place association*; **and**
- (3) the Mark identifies the geographic origin of the goods.

TMEP §1210.05.

Applicant respectfully submits that the Examiner has similarly failed to establish its *prima facie* case that Applicant's Mark is geographically descriptive. For the same reasons identified above, Applicant submits that the first two elements have not been established.

First, there has been no showing that 'a' significance of the Mark LONE STAR is geographic - the test, however, requires "primary" significance. While 'a' showing has been made concerning LONE STAR STATE, this is not Applicant's Mark - Applicant does not include the geographic reference to "STATE" in its Mark. Second, there is no evidence in the record establishing a goods/place association. TMEP §1210.04. *See also, In re Handler Fenton Westerns, Inc.*, 214 USPQ 848, 849-850 (TTAB 1982) (goods/place association must be established by examiner if there is question as to whether the primary significance is geographic).

Thus, Applicant's Mark is not geographically descriptive, and therefore, registration is proper.

CONCLUSION

Thus, based on the above, Applicant respectfully submits that registration of Applicant's Mark is proper.

Respectfully submitted,



Joseph J. Ferretti
CROWE & DUNLEVY, P.C.
1800 Mid-America Tower
20 N. Broadway
Oklahoma City, Oklahoma 73102-8273
Telephone No.: (405) 235-7744
Fax No.: (405) 272-5256
Attorney for Applicant

109

Crowe & Dunlevy

A PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELORS AT LAW
1800 MID-AMERICA TOWER
20 NORTH BROADWAY
OKLAHOMA CITY, OKLAHOMA 73102-8273
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TULSA
500 KENNEDY BUILDING
321 SOUTH BOSTON AVENUE
TULSA, OKLAHOMA 74103-3313
(918) 592-9800
FAX (918) 592-9801

NORMAN
THE HIPOINT OFFICE BUILDING
2500 SOUTH MCGEE, SUITE 140
NORMAN, OKLAHOMA 73072-6705
(405) 321-7317
FAX (405) 360-4002

JOSEPH J. FERRETTI
DIRECT LINE (405) 235-7744
DIRECT FAX (405) 272-5256

E-MAIL ferrettj@crowedunlevy.com

March 26, 2001

Via Express Mail EL638304881US

Box RESPONSES - NO FEE
Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Re: Response to the Office Action Mailed September 26, 2000
Applicant: Lone Star Steakhouse & Saloon, Inc.
Serial No. 75/883254
Trademark: LONE STAR AND DESIGN
Filed: December 29, 1999



Dear Commissioner:

Enclosed please find the following documents relating to the referenced Mark:

- ▶ Response to the Office Action Mailed September 26, 2000; and
- ▶ an acknowledgment postcard.

Please acknowledge your receipt of these documents by placing your receipt stamp on the enclosed postcard and returning it to us. The above documents are being send by Express Mail Receipt No. EL638304881US.

It is believed that no fees are required in connection with this Response; however, should fees be required, you are hereby authorized to charge same to Deposit Account No. 13-0110.

Sincerely,

Joseph J. Ferretti
For the Firm

JJF:kay
Enclosures

cc: Gerald Aaron

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO. 75/883254 Lone Star Steakhouse & Saloon, Inc.		APPLICANT Lone Star Steakhouse & Saloon, Inc.		PAPER NO.	
MARK LONE STAR AND DESIGN				ADDRESS: Commissioner for Trademarks 2900 Crystal Drive Arlington, VA 22202-3513 www.uspto.gov	
ADDRESS JOSEPH J. FERRETTI CROWE & DUNLEVY 1800 MID-AMERICA TOWER 20 NORTH BROADWAY, SUITE 1800 OKLAHOMA CITY, OK 73102-6273			ACTION NO. 01	If no fees are enclosed, the address should include the words "Box Responses - No Fee."	
			MAILING DATE 09/25/00		
			REF. NO. 22863 (21362)	Please provide in all correspondence:	
FORM PTO-1525 (5-90)		U.S. DEPT. OF COMM. PAT. & TM OFFICE		1. Filing Date, serial number, mark and Applicant's name. 2. Mailing date of this Office action. 3. Examining Attorney's name and Law Office number. 4. Your telephone number and ZIP code.	

A PROPER RESPONSE TO THIS OFFICE ACTION MUST BE RECEIVED WITHIN 6 MONTHS FROM THE DATE OF THIS ACTION IN ORDER TO AVOID ABANDONMENT. For your convenience and to ensure proper handling of your response, a label has been enclosed. Please attach it to the upper right corner of your response. If the label is not enclosed, print or type the Trademark Law Office No., Serial No., and Mark in the upper right corner of your response.

RE: Serial Number: 75/883254

The assigned examining attorney has reviewed the referenced application and determined the following.

Search Clause

The examining attorney has searched the Office records and has found no similar registered mark which bars registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d). TMEP section 1105.01. Please note that the examining attorney has found potentially conflicting pending applications.

The examining attorney encloses information regarding pending Application Serial Nos. 75/273718 and 75/775808. The filing dates of the referenced applications precede the applicant's filing date. There may be a likelihood of confusion between the applicant's mark and the referenced marks under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d). If one or more of the referenced applications matures into a registration, the examining attorney may refuse registration in this case under Section 2(d). 37 C.F.R. Section 2.83; TMEP section 1208.01.

Refusal-Geographically Deceptively Misdescriptive

The applicant has applied to register the mark LONE STAR for various items of clothing. The applicant is located in KANSAS. The examining attorney refuses registration on the Principal Register because the mark is primarily geographically deceptively Misdescriptive. Trademark Act Section 2(e)(3), 15 U.S.C. Section 1052(e)(3); TMEP section 1210.06.

The primary significance of the term LONE STAR is geographic. LONE STAR State is the nickname of Texas. See the attached excerpt from the Merriam Webster's Geographical Dictionary. The applicant's services do not originate from this place. The mark is geographically deceptively misdescriptive because the public would believe that applicant's goods come from TEXAS. *In re Loew's Theatres, Inc.*, 769 F.2d 764, 226 USPQ 865 (Fed. Cir. 1985).

NOTE: A mark which, when used on or in connection with the applicant's goods or services, is primarily geographically deceptively misdescriptive of them, is registrable upon a showing of acquired distinctiveness under Trademark Act Section 2(f), 15 U.S.C. Section 1052(f), **only if it became distinctive of the goods or services in commerce before December 8, 1993**, the date of the enactment of the North American Free Trade Agreement Implementation Act, Public Law 103-182, 107 Stat. 2057. Similarly, such a mark, capable of distinguishing the applicant's goods or services, may be registered on the Supplemental Register **only if it has been in lawful use in commerce by the owner since before December 8, 1993**.

The applicant should also note the following additional ground for refusal.

Geographically Descriptive

If the applicant's goods come from Texas, the examining attorney refuses registration on the Principal Register because the mark is primarily geographically descriptive of the applicant's goods. Trademark Act Section 2(e)(2), 15 U.S.C. Section 1052(e)(2); TMEP section 1210.05.

The primary significance of the term "LONE STAR" is geographic (see discussion above), and applicant's goods come from the geographical place named in the mark. Therefore, a public association of the goods with the place is presumed. *In re California Pizza Kitchen*, 10 USPQ2d 1704 (TTAB 1989); *In re Handler Fenton Westerns, Inc.*, 214 USPQ 848 (TTAB 1982).

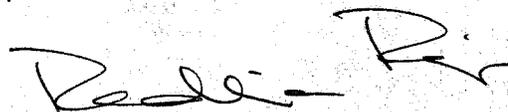
The examining attorney has determined that the primary significance of the term "LONE STAR" is geographic. The fact that a term may have other meanings does not necessarily negate the basis for refusal. *In re Opryland USA Inc.*, 1 USPQ2d 1409 (TTAB 1986); *In re Cookie Kitchen, Inc.*, 228 USPQ 873 (TTAB 1986).

Response

Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

Closing

If the applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.



Radhika Raju
Trademark Attorney
Law Office 109
(703) 308-9109 ext. 196
radhika.raju@uspto.gov

LONE STAR CLASSIC

Mark
LONE STAR CLASSIC

Goods and Services
IC 025. US 022 039. G & S: Clothing, namely t-shirts, caps shorts, and polo shirts. FIRST USE: 19920401. FIRST USE IN COMMERCE: 19920401

Mark Drawing Code
(1) TYPED DRAWING

Serial Number
75775808

Filing Date
August 6, 1999

Filed ITU
FILED AS ITU

Owner Name and Address
(APPLICANT) Junior Volleyball Association of Austin NON-PROFIT CORPORATION TEXAS 2026 Guadalupe Street. Suite 302 Austin TEXAS 78705

Disclaimer Statement
NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CLASSIC" APART FROM THE MARK AS SHOWN

Type of Mark
TRADEMARK

Register
PRINCIPAL-2 (F)

Live Dead Indicator
LIVE

Attorney of Record
Diana K. Borden



Mark

LONE STAR UNIFORMS

Pseudo Mark

LONE STAR UNIFORMS

Goods and Services

IC 025. US 022 039. G & S: clothing, namely, uniforms

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Code

010105 240325 270305

Serial Number

75273718

Filing Date

April 14, 1997

Filed ITU

FILED AS ITU

Publication for Opposition Date

November 9, 1999

Owner Name and Address

*** User: rraju *** Serial Number: 75273718 ***

(APPLICANT) Blauer Manufacturing Company, Inc. CORPORATION MASSACHUSETTS
20 Aberdeen Street Boston MASSACHUSETTS 02215

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "UNIFORMS" APART FROM THE
MARK AS SHOWN

Description of Mark

The mark is lined for the color gray.

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live Dead Indicator

LIVE

Attorney of Record

GERALD ALTMAN

*** User: rraju ***

#	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/ Search Duration	Search
01	1701	N/A	0	0	0:01	*lone*[bi,ti]
02	430	190	240	240	0:01	1 and "025"[cc]
03	19021	N/A	0	0	0:01	*star*[bi,ti]
04	4604	N/A	0	0	0:02	3 and "025"[cc]
05	1102	N/A	0	0	0:02	3 and "025"[ic]
06	10300	N/A	0	0	0:02	star[bi,ti] or ztar[bi,ti]
07	2409	N/A	0	0	0:02	6 and "025"[cc]
08	626	337	289	289	0:01	6 and "025"[ic]
09	41580	N/A	0	0	0:04	*l{v}n{v}* [bi,ti]
10	67969	N/A	0	0	0:02	*st{v}r* [bi,ti] or *zt{v}r* [bi,ti]
11	908	N/A	0	0	0:01	9 and 10
12	296	119	177	177	0:01	11 and "025"[cc]
13	18143	N/A	0	0	0:01	"010103"[dc]
14	7493	N/A	0	0	0:02	13 and "025"[cc]
15	2618	N/A	0	0	0:01	13 and "025"[ic]
16	1108	N/A	0	0	0:01	"240325"[dc]
17	512	201	311	311	0:01	16 and "025"[cc]
18	139	67	72	72	0:01	13 and 16

Session started 9/24/00 1:50:52 PM
Session finished 9/24/00 2:07:05 PM
Total search duration 0:27 minutes
Session Duration 16:13 minutes

Default NEAR limit= 1 ADJ limit= 1

RECEIVED FILE THROUGH CO-PENDING POLICY

*** User: RCrowe ***

#	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/ Search Duration	Search
01	17567	N/A	0	0	0:01	010103[DC]
02	68	33	22	35	0:01	(*lone*) [bi,ti] and 1
03	144	73	71	71	0:01	(*lone*) [bi,ti] and (*star*) [bi,ti] not 2
04	72	36	36	36	0:01	(*take* and *way*) [bi,ti]

Session started 6/19/00 1:06:00 PM

Session finished 6/19/00 3:12:36 PM

Total search duration 0:04 minutes

Session Duration 6:36 minutes

Default NEAR limit= 1 ADJ limit= 1

APPLICANT: Lone Star Steakhouse & Saloon, Inc.,
a Delaware Corporation

ADDRESS: 224 E. Douglas, Suite 700, Wichita, KS 67202

DATE OF FIRST
USE: October 12, 1989

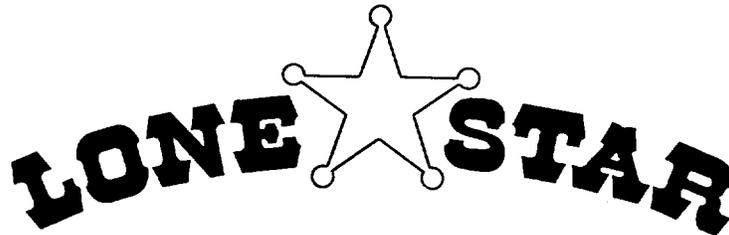
DATE OF FIRST
USE IN COMMERCE: October 12, 1989

GOODS: Clothing, namely T-shirts, men's and women's sport shirts, sweat
shirts, polo shirts and caps.



12-29-1999

U.S. Patent & TMOs/TM Mail Rcpt Dt. #31



TRADEMARK



75883254

TRADEMARK APPLICATION SERIAL NO. **75883254**

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE
FEE RECORD SHEET

01/06/2000 EWINSTON 00000084 75883254

01 FC:361 245.00 OP

Crowe & Dunlevy

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INTERNET ferrettj@crowedunlevy.com
X.400 /C=us/A=attmail/O=attmail/DDA ID
=crowedun1ferrettj

December 29, 1999

BOX NEW APP FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Re: Application for Actual Use Trademark Registration
Applicant: Lone Star Steakhouse & Saloon, Inc.
Mark: LONE STAR (and design)
Docket: 22863 (21362-00001)

Dear Assistant Commissioner:

Enclosed herewith for filing is an APPLICATION FOR ACTUAL USE TRADEMARK REGISTRATION with its signed Declaration, Power of Attorney, Drawing and Specimen attached. Also enclosed is our check covering the filing fee in the amount of \$245.00 and an acknowledgment postcard.

Should additional fees be required, you are hereby authorized to charge same to Deposit Account 13-0110.

The enclosed papers are being forwarded by Express Mail Receipt No. EJ823466035US on December 29, 1999.

Please advise if you require anything further.

Yours very truly,



Joseph J. Ferretti
For the Firm

JJF/BSC/bc
Enclosures

cc: Gerald T. Aaron

EXPRESS MAIL RECEIPT NO. EJ823466035US
DEPOSITED ON DECEMBER 29, 1999

TRADEMARK- DESIGN
Dkt. 22863

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
APPLICATION FOR ACTUAL USE TRADEMARK REGISTRATION**

Mark: LONE STAR (and design)
Class: International 25
Applicant: Lone Star Steakhouse & Saloon, Inc.,
a Delaware Corporation
Applicant's Address: 224 E. Douglas, Suite 700, Wichita, KS 67202

BOX NEW APP FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

The above-identified Applicant hereby requests that the mark shown in the accompanying drawing be registered in the United States Patent and Trademark office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. § 1051 *et seq.*, as amended) for the following goods:

Clothing, namely T-shirts, men's and women's sport shirts, sweat shirts, polo shirts and caps in International Class 25.

Applicant is using the mark in commerce on or in connection with the identified goods.

The mark was first used on the services at least as early as October 12, 1989, was first so used in interstate commerce at least as early as October 12, 1989, and is now in use in such commerce (15 U.S.C. §1051(a), as amended).

Applicant is also the owner of the following Marks:

Reg. Nos: 2,229,771 2,226,931 1,731,247 1,155,907

The mark is used on and in connection with Applicant's clothing, such as by placing it on the goods, in advertising and promotional materials, and other means common in the trade. One (1) specimen showing the mark as actually used in commerce is presented herewith.

DECLARATION

I, Gerald T. Aaron, declare that I am Senior Vice President of applicant corporation, Lone Star Steakhouse & Saloon, Inc., and am authorized to make this declaration on behalf of said corporation; that I believe said corporation to be the owner of the trademark sought to be registered; that to the best of my knowledge and belief no other person, firm, corporation or association has the right to use said mark in commerce, either in identical form or in such near resemblance thereto as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive; that all statements made herein of my own knowledge are true; that all statements made herein on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application and any registration resulting therefrom.

Signed this 17 day of December, 1999.

LONE STAR STEAKHOUSE & SALOON, INC.,
a Delaware corporation, Applicant,

By Gerald T. Aaron
Gerald T. Aaron, Senior Vice President

POWER OF ATTORNEY

Lone Star Steakhouse & Saloon, Inc., Applicant, hereby appoints Joseph J. Ferretti, Bill D. McCarthy, Registration No. 26,772, Phillip L. Free, Jr., Registration No. 38,143, Randall K. McCarthy, Registration No. 39,297, and Daniel S. Hodgins, Registration No. 31,026, all of Crowe & Dunlevy, 1800 Mid-America Tower, 20 North Broadway, Suite 1800, Oklahoma City, OK 73102-8273, to prosecute the application to register, to transact this business in the United States Patent and Trademark Office in connection therewith, and to receive the Certificate of Registration.

Please address all correspondence and telephone calls to:

Joseph J. Ferretti, Esq.
Crowe & Dunlevy
1800 Mid-America Tower
20 North Broadway, Suite 1800
Oklahoma City, OK 73102-8273
Telephone: (405) 235-7744
FAX: (405) 272-5256

Respectfully submitted,

By 
Gerald T. Aaron, Senior Vice President

APPLICANT: Lone Star Steakhouse & Saloon, Inc.,
a Delaware Corporation

ADDRESS: 224 E. Douglas, Suite 700, Wichita, KS 67202

DATE OF FIRST
USE: October 12, 1989

DATE OF FIRST
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GOODS: Clothing, namely T-shirts, men's and women's sport shirts, sweat
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12-29-1999

U.S. Patent & TMOs/TM Mail Rcpt Dt. #31

LONE STAR

The logo features the words "LONE" and "STAR" in a bold, black, sans-serif font, arched over a central five-pointed star. The star is a simple outline with small circles at the ends of its points.

TRADEMARK



75883254

EXPRESS MAIL RECEIPT NO. EJ823466035US
DEPOSITED ON DECEMBER 29, 1999

TRADEMARK- DESIGN
Dkt. 22863

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Class: International 25
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Respectfully submitted,

By Gerald T. Aaron
Gerald T. Aaron, Senior Vice President

Crowe & Dunlevy

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=crowedun!ferrettj

December 29, 1999

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Dear Assistant Commissioner:

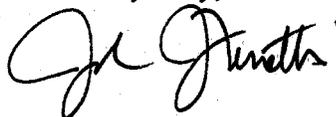
Enclosed herewith for filing is an APPLICATION FOR ACTUAL USE TRADEMARK REGISTRATION with its signed Declaration, Power of Attorney, Drawing and Specimen attached. Also enclosed is our check covering the filing fee in the amount of \$245.00 and an acknowledgment postcard.

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Please advise if you require anything further.

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Enclosures

cc: Gerald T. Aaron

TRADEMARK APPLICATION SERIAL NO. _____

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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE
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01 FC:361

245.00 0P

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LONE STAR

TRADEMARK



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