

ESTTA Tracking number: **ESTTA64990**

Filing date: **02/03/2006**

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 | LAPPERT'S, INC. | | |
| Entity | Corporation | Citizenship | HAWAII |
| Address | 1-3555 KAUMUALII HIGHWAY HANAPEPE, HI 96716 UNITED STATES | | |

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|----------------------|--|--|--|
| Attorney information | C. DENNIS LOOMIS JENKENS & GILCHRIST, LLP 12100 WILSHIRE BOULEVARD 15TH FLOOR LOS ANGELES, CA 90025 UNITED STATES cdloomis@jenkens.com Phone:310.820.8800 | | |
|----------------------|--|--|--|

Applicant Information

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|------------------------|---|------------------------|------------|
| Application No | 76624588 | Publication date | 01/24/2006 |
| Opposition Filing Date | 02/03/2006 | Opposition Period Ends | 02/23/2006 |
| Applicant | Lappert's Ice Cream, Inc. 223 Ohio Avenue Richmond, CA 94804 UNITED STATES | | |

Goods/Services Affected by Opposition

Class 030. First Use: 1993/04/00 First Use In Commerce: 1993/04/00
All goods and services in the class are opposed, namely: coffee; ice cream

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|-------------|---|
| Attachments | Opposition to KAUAI PIE.pdf (3 pages) |
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|-----------|--------------------|
| Signature | /C. DENNIS LOOMIS/ |
| Name | C. DENNIS LOOMIS |
| Date | 02/03/2006 |

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

In the Matter of:

Trademark Application No. 76/624,588)
Trademark: KAUAI PIE)
Published in the Official Gazette on 1-4-06)

LAPPERT'S, INC.)

Opposer,)

Opposition No.)

v.)

LAPPERT'S ICE CREAM, INC.)

Applicant.)

ATTN: TRADEMARK TRIAL AND APPEAL BOARD

**Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313**

NOTICE OF OPPOSITION

Lappert's, Inc., a Hawaii corporation with a business address at 1-3555 Kaumualii Highway, Hanapepe, Hawaii, 96716 ("Opposer"), hereby opposes registration of the trademark KAUAI PIE shown in U.S. Trademark Application Serial No. 76/624,588 covering goods and services, specifically coffee and ice cream(the "Application"). The Application is registered in the name of Lappert's Ice Cream, Inc., a California Corporation, with a business address at 223 Ohio Avenue, Richmond, California, 94804 ("Applicant").

Opposer believes that it will be damaged by registration of the mark shown in the Application, and hereby opposes the same. As grounds for this opposition, Opposer alleges as follows:

LIKELIHOOD OF CONFUSION

1. Opposer is engaged in the production, sale and distribution of, among other things, ice cream and coffee.
2. Commencing not later than January 1, 1987, Opposer adopted, and continuously since that time has used in interstate and foreign commerce, the mark KAUIAI PIE to identify and distinguish certain of its ice cream and coffee products.
3. Opposer's products marketed and sold under the mark KAUIAI PIE have been featured in articles, reviews and advertisements appearing in magazines and other publications having regional and national circulation since not later than 1990.
4. Based on Opposer's continuous use of the mark KAUIAI PIE in commerce and its publication in nationally circulated publications, Opposer acquired and owned the exclusive right to use the mark KAUIAI PIE for ice cream and coffee long prior to the claimed date of first use in the Application, namely, April 1993.
5. Applicant's proposed mark is identical to Opposer's mark in sound and appearance. The products of the parties are also identical, namely, ice cream and coffee. Consumers therefore are likely to confuse Applicant's goods and assume that they originate with, are sponsored by or affiliated with Opposer or are in some way related to Opposer when both are sold under the virtually identical mark. Therefore, registration of Applicant's mark will cause mistake, confusion or deception among consumers. Accordingly, Opposer believes that it will be damaged by the registration of Applicant's mark.

DILUTION

6. The allegations of paragraphs 1 through 5 are repeated herein and made a part hereof.
7. Registration of Applicant's mark will dilute the value and reputation of the Opposer's famous KAUAI PIE mark and lessen its capacity to identify and distinguish Opposer's goods and services.
8. Accordingly, Opposer believes it will be damaged by registration of Applicant's mark.

WHEREFORE, Petitioner requests that this opposition be granted and that Serial No. 76/624,588 be refused registration.

Respectfully Submitted,
LAPPERT'S, INC.

Date: February 3, 2006_____

/C. Dennis Loomis/
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