

ESTTA Tracking number: **ESTTA140773**

Filing date: **05/15/2007**

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	Cake Divas		
Entity	Partnership	Citizenship	CA
Composed Of:	Joan Leslie Spittler: US Citizen Leigh Beth Grode: US Citizen		
Address	1027 Elkgrove Avenue #2 Venice, CA 90291 UNITED STATES		

Attorney information	Elizabeth Swanson Swanson & Associates 9454 Wilshire Blvd. Suite 500 Beverly Hills, CA 90212 UNITED STATES elswanson@gmail.com Phone:310/860-0880
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Applicant Information

Application No	76529077	Publication date	05/08/2007
Opposition Filing Date	05/15/2007	Opposition Period Ends	06/07/2007
Applicant	Jones, Charmaine V. 1309 5th Avenue Suite 27F New York, NY 10029 UNITED STATES		

Goods/Services Affected by Opposition

Class 030. First Use: 1993/06/15 First Use In Commerce: 1993/06/15 All goods and services in the class are opposed, namely: Cakes, namely, wedding cakes, bridal shower cakes, party cakes, novelty cakes and cakes for all occasions; edible cake sculptures of all shapes and sizes made primarily of sugar; cookies of all shapes and sizes; edible sugar sculptures in the form of flowers, inanimate objects, human images; and edible decorations made of sugar for cakes and cookies

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Lack of use by Applicant in interstate commerce prior to Opposer's interstate commerce use.

Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	76538360	Application Date	08/06/2003
Registration Date	NONE	Foreign Priority	NONE

		Date	
Word Mark	CAKE DIVAS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 040. First use: First Use: 1998/10/15 First Use In Commerce: 1998/10/15 Custom cake making, baking, designing and decorating services for edible and faux cakes		

Attachments	76538360#TMSN.gif (1 page)(bytes) Notice of Opposition of CAKEDIVA.pdf (1 page)(17152 bytes)
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Signature	/Elizabeth Swanson/
Name	Elizabeth Swanson
Date	05/15/2007

1. Opposer has expended considerable effort and expense in promoting its trademark CAKE DIVAS, as well as the goods and services sold under such mark with the result that the purchasing public has come to know, rely upon, and recognize the products and services of Opposer by such mark. Opposer has an exceedingly valuable goodwill established in its mark.

2. If Applicant does begin use of the mark CAKEDIVA in the United States, purchasers in this country are likely to consider the services of the Applicant sold under that mark as emanating from Opposer, and purchase such services as those of the Opposer, resulting in loss of actual sales to Opposer.

3. If Applicant does begin use of its mark in the United States, concurrent use of the mark by the Applicant and Opposer may result in irreparable damage to Opposer's reputation and goodwill, if the services sold by the Applicant are inferior, since purchasers are likely to attribute the source of the Applicant's services to the Opposer.

4. Applicant's mark is so similar to the Opposer's mark that if the Applicant expands its services into geographical areas where Opposer was first to use its mark, confusion and deception as to the origin of Applicant's services bearing the Applicant's mark would occur, all to the damage and detriment of the Opposer. Confusion in trade resulting in damage and injury to the Opposer would be caused or would result by reason of the similarity between the Applicant's mark and the Opposer's mark. Many persons familiar with Opposer's mark would be likely to buy Applicant's services as and for a service rendered, sold by, or associated with the Opposer. Any such confusion in trade might result in loss of sales to the Opposer.

5. If the Applicant were granted the registration herein opposed, it would thereby obtain at least a *prima facie* exclusive right to the use of its mark. Such registration would be a source of damage and injury to the Opposer.

WHEREFORE, the Opposer prays that the application Serial No. 76/529,077 be rejected, and that the mark therein sought for the goods herein specified in International Class 30 be denied and refused.