

mark¹

II. There Are No Relevant Factors Concerning American Deli Plus, Inc.

Counsel for American Deli Plus, Inc., has stated that the Opposer “has used the American Deli Mark since in or about the 1980s and, consequently, owns common law rights to the mark(s) American Deli collectively, the “American Deli Marks”. But has stated nor shown not a single relevant state or federal law decision supporting this instant legal claim whatsoever.

Hence, the Opposer has, in wilful and fraudulent bad faith, advanced their lateral interest in American Deli, has been ongoing since the “1980s”. Again, the inherent problem, as having been clearly shown of this averment, claiming an interest in the instant trade mark since the 1980s is that their corporation was not filed with the Georgia Secretary of State until 2006. See Exhibit “A” as attached Applicant’s initial opposition response.

Therefore, as frivolously claimed by the Opposer that the Opposer has had an “ongoing” [interest] since the 1980s” **why did it take the Opposer obviously over TWENTY (20) YEARS before forming the instant corporation IF the Opposer’s interest was supposedly as great as advanced in the Opposer’s Opposition being in the “1980s” as earlier claimed was thereafter willing to enter into a financial agreement with the Applicant for the use of the instant trade mark?**

Likewise, as **Exhibit “A”** shows there **THREE (3)** other business names with the words “**American Deli**” in the corporate name. None of the three other business names with “American Deli” in their corporate name have been in existence prior to 2006, including the Opposer forming

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1. Applicant has tendered, in response to Opposer’s discovery request, documentation that the Opposer agreed to enter into a financial agreement with Applicant for the use of the instant trade mark, but thereafter started and filed the instant opposition based on Opposer’s attorney’s claims that Applicant’s trade mark application could and would be defeated and the instant opposition came into being and filed.

their corporation in the same year, excluding the original "American Deli" which was formed in 1994, and dissolved thereafter.

Of course, the claims by the Opposer that the Opposer "**used the marks in interstate commerce for more than seven (7) years,**" without providing absolutely any reasonable evidence of the same for the Board's consideration, leaves the question that since the Opposer did not become a business until 2006, how was the Opposer using the same on some type of product during the five (5) years before establishing the Opposer's present business operations?

In light of the fact that the Opposer has wilfully and deliberately advanced obviously false and misleading claims, then Applicant respectfully moves for the Trademark Trial and Appeal Board, to take the unrefutable evidence, as tendered by Applicant into due and valid consideration into total consideration of the Opposers claims and the obvious tendered evidence which shows the same **not to be as valid or legitimate as advanced** and claimed in the Opposer's Notice of Opposition which has been tendered by counsel in behalf of the Opposer!

Likewise, Applicant respectfully moves for the Honorable Board, to take into due and reasonable consideration that the Opposer has not tendered factual or any reasonable evidence of the Opposer's alleged claims other to advance the same and to expect that the Honorable Board will consider the same valid without any such of the same being presented by evidence other than the written claims by the Opposer of the claims being allegedly true.

Likewise, Applicant, out of due consideration of the pending Opposer claims, Applicant checked with the Florida Department of State, Division of Corporations, and there are four (4) companies with the words "American Deli" in the same and the status check of those four (4) companies shows that three (3) of the four are currently inactive. And the Opposer has not registered

with the Florida Division of Corporations, for doing business in the State of Florida, which would obviously invalidate the Opposer's possible interstate usage in the State of Florida. See Exhibit "B" as attached to Applicant's initial opposition brief.

Applicant's check with the State of Alabama, Tennessee and South Carolina, likewise shows no legitimate business activities by the Opposer in those states either. Hence the four (4) states surrounding the State of Georgia shows no legitimate business dealings by the Opposer in any of those states and thus the Opposer's claims of "**interstate commerce for more than seven (7) years**" totally lacks any evidence or other valid considerable evidence whatsoever!!! Nor has the Opposer tendered any such claimed evidence in the instant case to support Opposition's claims of the same being valid or otherwise.

And again, lastly, the Opposer has advanced that "**Opposer has made a substantial investment in advertising and marketing its services under the American Deli Marks.**" Yet, if one go on Google, and does a search of American Deli or even American Deli Plus, and **LOW and BEHOLD**, that the Opposer's claims are of the same fictitious nature as to the Opposers claims of "**interstate commerce for more than seven (7) years**" holds the same **INFLATED CLAIMS!!!!!!** Notwithstanding Applicant's initial response to Opposer's heretofore stated claims, the Opposer **HAS NOT** tendered absolutely any supporting evidence validating any of the instant fictitious claims as advanced in opposition to the instant pending application.

III. Opposers Claims Against Applicant's Application of the instant Trade Mark

The Opposer has advanced certain specific claims against the Applicant's business, to wit:

- A. That Applicant's use of the trade mark will, "when and if used in connection with the good set forth in Applicant's application "is likely to cause confusion, or to cause**

mistake, or to deceive purchasers and potential purchasers.”

In light of the various business using the word “American Deli” already doing business in the State of Georgia, obviously makes this averment totally frivolous and is being advanced as an open attempt of preying upon the expected ignorance of the Trademark Trial and Appeal Board as to the instant frivolous allegations, as advanced pursuant to this frivolous and obvious wilful bad faith averment, i.e., claim by the Opposer.

However, the Opposer has not tendered absolutely any specific evidence supporting any of the foregoing frivolous claims of the same whatsoever and the Honorable Board should take the same into due consideration as to the validity of the instant opposition.

B. Opposer’s branded services are widely recognized and known and associated with restaurants in other states.

Again, based on the un-refutable evidence of the other business using and incorporating American Deli, in part or pertinent part, is frivolous. Likewise, as heretofore advanced, the search of the internet clearly shows that the Opposer’s claims are and have been advanced upon the planned ignorance of the Honorable Trademark Trial and Appeal Board accepting the Opposer’s averments as truthful versus being advanced in bad faith. Taking into due consideration the fact that there are businesses in Florida, Alabama as well as South Carolina, which are using American Deli in part for their businesses, further shows that the Opposers claims have been advanced in wilful bad faith opposition. The Opposer HAS NOT tendered any supporting evidence or proof of such claims, as advanced by the Opposer, but merely advanced to distract the factuality and/or cause undue delay in the approval of Applicant’s pending trade mark application so that the Opposer may not have to abide by the granting of Applicant’s trade mark rights and the obvious financial costs, which initially

agreed to, but thereafter caused the obvious bad faith filing of the instant opposition.

Assuming that the Opposers claims, in some parts are or were true, which the Opposer has not proven the same with absolutely any valid evidence. taking into due consideration the frivolous claims of “interstate commerce for more than seven (7) years” then, again why haven’t the Opposer advanced said trademark application “years” ago versus their now frivolous opposition claims being advanced in willful bad faith and/or harassment of Applicant’s pending application for said trademark.

It should also noted that the Applicants have previously had the formal name of American Deli & Crawfish King, in the State of Georgia, in the City of Forest Park, Georgia and requested the use of that name for several years as to that business adventure which was located at 4700 Jonesboro Road, Forest Park, Georgia. See Exhibit “C” as attached to Applicant’s initial Opposition response.

IV. Applicant’s TradeMark Application Meritorious and Should Be Granted

Again, taking the foregoing into totality of the lack of valid evidence tendered or even offered by the Opposition and the lack of thereof being tendered for the Honorable Board’s consider, it is Applicant’s position, once again, that the instant opposition has been advanced solely for the purposes of not having to change their name and/or lateral conduct if Applicant’s Application is approved and honoring the original agreement for the use of the instant trade name, as applied for by Applicant and recognized by the Opposer, prior to the instant frivolous and unsupported opposition, filled with false and frivolous claims as to the instant trade mark and its falsely alleged use by the Opposer .

Applicant respectfully advances to the Honorable Board, once again, had the Opposer been of such serious concern, then the Opposer would have filed for the instant trademark application

instead of this Applicant. Since the Opposer obviously failed to take such conduct into due consideration then it is Applicant's position that the instant opposition, under the totality of the facts and lack of factual evidence not having been tendered by the Opposer, that the Opposer's opposition to the Applicant's trade mark application as tendered should be denied and Applicant's application being approved.

The Opposer has basically taken almost a year and had not tendered any factual or reliable evidence in support of the Opposer's claims, as advanced in the instant opposition and therefore, taking the same into reasonable consideration bogus claims, which are not supported by any factual evidence other than the illusions, as advanced by the Opposer to avoid the obvious liability to the Applicant if the instant trade mark is granted under the reasonable and factual evidence as before the Honorable Board.

The Opposer's claims under "common law" as advanced are frivolous and taking into the totality of the evidence, facts and that the instant trade mark name application has numerous users of the same, of which not a single other business enterprise has claims or advanced any opposition to the same shows that the "common law" claims, as advanced are frivolous and not legally valid under the totality of the facts and evidence before the Honorable Board.

Applicants respectfully moves for the denial of the instant opposition upon taking into due consideration all of the foregoing **evidence and facts which supports a denial of said opposition.**

Respectfully submitted,

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Certificate of Service

I hereby certify that I have mailed a copy of Applicants' Secondary Response to Opposition to Paul T. Kim, Locke Lord Bissell & Liddell, LLP, The Proscenium, Suite 1900, 1170 Peachtree Street, N.E., Atlanta, GA 30309, by placing a copy of the same into an envelope as heretofore address and placed into the United States Mail this 30th day of ~~December~~ ^{January} 2008.



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