

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

In the matter of Application Serial No. 78/755527 for  
AMERICAN DELI  
Published in the Official Gazette on October 2, 2007

_____		)	
American Deli Plus, Inc.,		)	
		)	
<b>Opposer,</b>		)	
		)	
<b>vs.</b>		)	<b>Opposition No.</b>
		)	
Yong Lee and Alexander Lee, d/b/a		)	
Clean Pass of Atlanta,		)	
		)	
<b>Applicant.</b>		)	
		)	
_____		)	

78/755527

**APPLICANT'S SUPPLEMENTAL CROSS  
MOTION FOR SUMMARY JUDGMENT AGAINST  
OPPOSITION'S MOTION FOR SUMMARY JUDGMENT**

COMES NOW YONG LEE and ALEXANDER LEE, d/b/a Clean Pass of Atlanta (hereinafter referred to as "Applicant") and tenders Applicant's Supplemental Cross Motion For Summary Judgment Against Opposition's Motion For Summary Judgment in support of Applicant's Motion to Deny The Opposition to Applicant's Trademark Application as tendered by American Deli Plus, Inc. (here in after referred to as the "Opposer"), and shows the Honorable Board as follows in

03-18-2009

support of Applicants' opposition and rights to approval of the pending trade mark application before the Honorable Board. Applicant tenders additional evidence supporting Applicant's pending case and evidence that the Opposer's opposition is not valid, inaccurate and knowingly falsely advanced in relevant and pertinent details and relevant events as applicable.

### **I. Pertinent Factual Background**

Applicants have applied for the legal trade mark rights to American Deli, based on the purposes of continuing Applicants business operations in which the instant trade mark would be of the most beneficial benefit for Applicants' business plan and plans for future expansion. At one time, the Opposer agreed to enter into a financial agreement with Applicant as to the instant trade mark.

### **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 not 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.

### **III. Submission of Additional Supporting Evidence**

Applicant tenders the following relevant evidence which further supports Applicant's claims of entitlement and that the Opposer has not been totally honest and/or forthright in the instant proceedings.

#### **EXHIBIT A.**

Exhibit A., is an older uspto trademark of American Deli back from 1984. We wanted to use this to show that there has been past interest in American Deli by other owners, far before Mr. Kim and ourselves. But we have followed procedure since we filed for American Deli when there was no live mark for this name... we followed procedures as we have interest in the mark.

#### **EXHIBIT B.**

Exhibit B., is another prior uspto trade mark registration from 2000, filed by a prior person from Georgia. It has been abandoned. Again, to show there has been prior interest in the mark, none of which are by Mr. Kim, therefore his common law rights should disregarded.

### **EXHIBIT C.**

Exhibit C., shows that the Georgia Secretary of State's Office having and/or showing several business entities with American Deli name. This can be used to counter there statement to cause likelihood and confusion where there are already several American deli names registered with Georgia SOS.

### **EXHIBIT D.**

Exhibit D., shows another American Deli registered under GA SOS from 1994 that was abandoned, although abandoned, was registered far before Mr. Kim's American Deli Plus, again to show he was not the original user of American Deli in Georgia.

### **EXHIBITS E, F, G, H, and I:**

Exhibits E., F., G., H., and I., are affidavits claiming Applicant has done business under American Deli name starting in 1999 in Spalding County, Georgia. And there after, have shown a continuing strong interest in using the mark, nor has Applicant given up or lost interest in the instant trademark, as shown and stated in the affidavits.

### **EXHIBIT J:**

Exhibit J., shows a menu from Applicant previous buffalo wing chicken restaurant operated in Pusan, Korea, from 1989. Applicant also have a copy of

exported wing sauce from Applicant's old hot wing sauce business. Also See Exhibit W. and P as attached and relevant to this averment.

**EXHIBIT K and L:**

Exhibit K. and L., is a American Deli Plus mark incorporated with Alabama Secretary of State by Mr. Kim. This was created in 2007, notwithstanding his wilfully advanced false claims he claims that he first used the mark in 2000. Thus showing that said averment is false and fraudulently advanced to wilfully mislead and deceive the instant claims as advance by in this case and proceeding.

The adversary has created this entity after fighting with Applicant to use this as leverage against Applicant and move to ensure that such false claims is not being allowed to be utilized in the instant proceedings.

**EXHIBIT K.**

Exhibit K., is an incorporation of American Deli created in 2000 in Alabama secretary of state, although not a service mark, it is clearly a restaurant business of a Deli-style restaurant, created before Mr. Kim and IS still existing. Likewise, if common law rights are to not be disregarded, then Mr. Kim, i.e., the Opposer clearly he is not the first user of American Deli in Alabama, NOR in Georgia, therefore not reasonable or valid to to grant him the instant common law rights.

Again, this name of American Deli has been used by many in the state of Georgia and across the nation by other individuals and entities, hence the Opposer, Mr. Kim advancement that he was somehow he was the original user of the mark... is not valid nor reasonable under the totality of the facts and evidence as being tendered and used and applicable before the instant board.

**EXHIBIT M:**

Exhibit M., is evidence that the American Deli Plus registered by Mr. Kim in 2006, over 16 years after his wilfully and fraudulent claims of using the mark since 1980's.

**EXHIBIT N:**

Exhibit N., is evidence and information FAQ from GA secretary of state website... question asks if I incorporate will anyone else be able to use my name? Hence, the answer is clearly NO as stated by GA secretary of state. This evidence should help break there common law rights as it is stated by the state that incorporation of a name does not mean they are the sole owners/users of the name.

**EXHIBIT O:**

Exhibit O., is a service mark registered in 2007 in GA secretary of state by Mr. Kim for American Deli. Again, the mark was created in 2007, 17 years after his claim of using the mark since 1980's. Applicant respectfully advances that Mr. Kim, i.e.,

the Opposer has created this mark to thereafter support his opposition, knowingly being deceitfully done to support his opposition after the fact.

**EXHIBIT P:**

Exhibit P., is the Certificate of Registration for OJ ABC Sales, registered in 1991. The name comes from Applicant's mother, Ok Ja Lee. This business was for hot wing sauce. Also see Exhibits J & W., as relevant to the instant issue.

**EXHIBIT Q:**

Exhibit Q., is Applicant's certified mail request to Tene Harris – General Manager- from The Gallery at South Dekalb Mall. It requests information from when Mr. Kim (when the Opposer supposedly started the American Deli restaurant in that mall. Previously, we spoke with Mrs. McMillian and she told us she knew Mr. Kim and she knew for sure he did not have the business in late 1980's or in 1992 as he claimed. Therefore we have sent a formal request for business records and such to ***PROVE*** the Opposer, i.e., Mr. Kim's claims of the same is wilfully false and advanced to wilfully deceive the instant board in the instant proceedings. Relevant to many exhibits as Applicant is proving Mr. Kim, the Opposer has made false statements of using the mark since late 1980's).

**EXHIBIT R:**

Exhibit R., shows that Applicant has have followed relevant procedures and in

good manner with Applicant's registration with American Deli. Tyson wings sent us a statement that they have "hot wings" as a registered mark, so Applicant corrected Applicant's application and changed hot wings to spicy wings. Again, Applicant, at all relevant times and efforts were followed procedure and have done so throughout the entire process.

**EXHIBIT S:**

Exhibit S., shows several American Deli registered under the State of Florida which, again can supports Applicant case and show that the Opposer has not been totally honest in the instant proceedings, as they have advanced that they are registered and have done interstate commerce in Florida.

**EXHIBIT T:**

Exhibit T., shows that in the State of Georgia, that the Dekalb County Board of Health has a registration for Applicant's American Deli dated in 2008, showing absolute prove Applicant continues to advance and show an ongoing interest in the instant trademark application.

**EXHIBIT U:**

Exhibit U., shows photos of Applicant's mother at a trade show representing Hot Chix buffalo wing sauce. Applicant's mother is now over 60 years old. The pictures were taking in mid 1980's when cameras did not have a automatic dating on

the bottom right corner. Likewise, Applicant advances that Applicant has had interest in chicken wings, wing sauce, and been in the restaurant business for a very long time.

**EXHIBIT V:**

Exhibit V., shows Applicant's application for business tax in Forest Park, GA for another restaurant Applicant owned under the name American Deli and Crawfish King in 2004 through 2006.

**EXHIBIT W:**

Exhibit W., shows a receipt for hot wing sauce sent by Applicant's old business OJ abc sales over seas to Pusan, Korea. Also see Exhibit J & P as relevant to this advancement by Applicant in the instant case.

**EXHIBIT X:**

Exhibit X., the sworn declaration of Mr. Chong C. Kim is untruthful in pertinent part, based on the foregoing Exhibits as heretofore attached which shows that the pertinent statements in his sworn declaration are not truthful, but advanced the same when the heretofore stated exhibits shows the same to be untruthful and false.

Applicant respectfully moves for the foregoing evidence to be tendered and used in relationship to support Applicant's position in the instant trademark

proceedings and to be utilized and used as relevant to the Opposer's opposition to Applicant's trademark application as relevant, pertinent and valid as to Applicant's claims and the Opposer's opposition which have been not totally honest or truthful in the instant proceedings.

Allowing the forgoing evidence, i.e., exhibits, further support Applicant's pending trademark application and laterally presents pertinent and valid evidence that the Opposer's opposition has not been totally truthful or an adequately honest opposition in the instant case under review and in pending consideration.

Respectfully submitted,



Clean Pass of Atlanta  
Yong Lee and Alexander Lee  
Applicant, In Propria Persona  
1228 Christina Crossing  
Lawrenceville, GA 30043

**Certificate of Service**

I hereby certify that I have mailed a copy of Applicants' Applicants' Applicant's Supplemental Cross Motion For Summary Judgment Against Opposition's Motion For Summary Judgment 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 16<sup>st</sup> day of March, 2009.



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Yong Lee. Applicant

1228 Christina Crossing  
Lawrenceville, GA 30043