

ESTTA Tracking number: **ESTTA248150**

Filing date: **11/11/2008**

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

| | |
|---------------------------|--|
| Proceeding | 91182259 |
| Party | Plaintiff Foodhandler, Inc. |
| Correspondence Address | Alexa L. Lewis Mitchell, Silberberg & Knupp LLP 11377 W. Olympic Boulevard Los Angeles, CA 90064 UNITED STATES all@msk.com, kls@msk.com |
| Submission | Motion to Amend Pleading/Amended Pleading |
| Filer's Name | Alexa L. Lewis |
| Filer's e-mail | all@msk.com, kls@msk.com |
| Signature | /s/ Alexa L. Lewis |
| Date | 11/11/2008 |
| Attachments | Stipulated Motion to Accept Amended Notice of Opposition (2023925).PDF (7 pages)(1580833 bytes) |

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

In the matter of Application Serial No. 77/207,747
Published for Opposition in the OFFICIAL GAZETTE on January 22, 2008

FOODHANDLER, INC.,

Opposition No.: 91182259

Opposer

v.

DANIELLE DUTREIX-MOOMAU

Applicant

STIPULATED MOTION TO ACCEPT AMENDED NOTICE OF OPPOSITION

This Stipulation is entered into by and between Foodhandler, Inc. (“Opposer”) and Danielle Dutreix-Moomau (“Applicant”).

IT IS HEREBY STIPULATED by and between the parties through their respective attorneys of record that Opposer may file the Amended Notice of Opposition attached hereto as Exhibit 1, which adds Opposer’s common law use of its FOODHANDLER &

Design mark in connection with training services in the field of food safety to the grounds for
Opposer's opposition.

Respectfully submitted,

Dated: 11/9/08



Alexa L. Lewis, Esq.
Mitchell, Silberberg & Knupp, LLP
11377 W. Olympic Boulevard
Los Angeles, CA 90064
310-312-3253
Attorneys for Opposer

Dated: 11/01/2008



Erik M. Pelton
Erik M. Pelton & Associates PLLC
PO Box 100637
Arlington, Virginia 22210
TEL: (703) 525-8009
FAX: (703 525-8089
Attorneys for Applicant

Exhibit 1

Exhibit 1

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

In the matter of Application Serial No. 77/207,747
Published for Opposition in the OFFICIAL GAZETTE on January 22, 2008

FOODHANDLER, INC., A NEW YORK
CORPORATION

Opposition No.: 91182259

Opposer

v.

DANIELLE DUTREIX-MOOMAU

Applicant

AMENDED NOTICE OF OPPOSITION

Foodhandler, Inc., (“Opposer”), a New York corporation, having its principal place of business at 2301 Robb Drive, Reno, Nevada 89523, believes it would be damaged by the registration of the mark MY SAFE FOODHANDLER & Design as shown in Application Serial No. 77/207,747 filed by Danielle Dutreix-Moomau (“Applicant”) and hereby opposes same.

As grounds for this opposition it is alleged:

1. On or before June 15, 2007, Applicant filed an application with the United States Patent & Trademark Office to register the mark MY SAFE FOODHANDLER & Design for “training services in the field of food safety” in International Class 41.

2. Opposer is the owner of United States Registration No. 2141694 for the mark FOODHANDLER, which was registered on March 10, 1998. In addition, Opposer is the owner of common law rights for the mark FOODHANDLER & Design in connection with training services in the field of food safety. That mark is:



3. Applicant alleges a first use date of May 1, 2007 in its federal trademark application Serial No. 77/207,747 for the mark MY SAFE FOODHANDLER & Design.

4. Opposer's FOODHANDLER mark, United States Registration No. 2141694 registered prior to any use by Applicant of the MY SAFE FOODHANDLER & Design in connection with "training services in the field of food safety." In addition, prior to Applicant's filing of the application for the mark MY SAFE FOODHANDLER & Design and/or any alleged use of said mark, Opposer made substantial and continuous use of the FOODHANDLER & Design mark in interstate commerce on and in connection with the advertising, promotion, and sale of training services in the field of food safety.

5. The goods and services on which Opposer uses its FOODHANDLER and FOODHANDLER & Design marks, and the services for which Applicant uses the MY SAFE FOODHANDLER & Design mark are closely related, and are sold and/or offered through the same channels of trade and to the same class of purchasers.

6. Furthermore, Opposer's FOODHANDLER and FOODHANDLER & Design marks and Applicant's mark MY SAFE FOODHANDLER & Design are highly similar.

7. Use by Applicant of the mark MY SAFE FOODHANDLER & Design will be likely to cause confusion, mistake, or deception with Opposer's aforesaid FOODHANDLER and FOODHANDLER & Design trademarks and result in the belief that Applicant or its services are in some way legitimately connected with, sponsored by, or approved by Opposer.

8. Any use Applicant has made or may make of the mark MY SAFE FOODHANDLER & Design in connection with the "training services in the field of food safety" in International Class 41 is and will be without Opposer's consent or permission.

WHEREFORE, registration by Applicant of the aforesaid trademark for the aforesaid services will be damaging to the Opposer, and Opposer therefore requests that the Opposition be sustained.

Dated: 11/11/08

Respectfully submitted,



Alexa L. Lewis, Esq.
Mitchell, Silberberg & Knupp, LLP
11377 W. Olympic Boulevard
Los Angeles, CA 90064
310-312-3253
Attorneys for Opposer

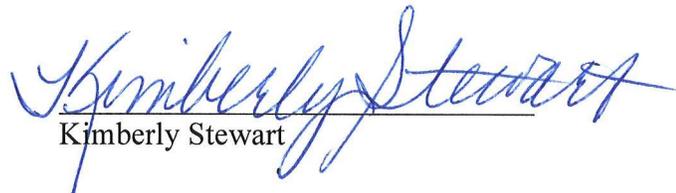
CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that this correspondence is being transmitted electronically through ESTTA pursuant to 37 C.F.R. §2.195(a) on November 11, 2008.


Kimberly Stewart

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing STIPULATED MOTION TO ACCEPT AMENDED NOTICE OF OPPOSITION was served by First Class Mail on Erik M. Pelton, Erik M. Pelton & Associates, PLLC, P.O. Box 100637, Arlington, VA 22210, Te.: 703-525-8009; Fax: 703-997-5349, Attorney for Applicant, on the 11th day of November, 2008.


Kimberly Stewart