

ESTTA Tracking number: **ESTTA293110**

Filing date: **07/02/2009**

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	Center Cut Hospitality, Inc.
Granted to Date of previous extension	08/02/2009
Address	125 N. Market, Suite 1300 Wichita, KS 67202 UNITED STATES

Correspondence information	Phillip L. Free, Jr. Director Crowe & Dunlevy, PC 20 North Broadway, Suite 1800 Oklahoma City, OK 73102 UNITED STATES phil.free@crowedunlevy.com, drew.palmer@crowedunlevy.com, lindsey.brown@crowedunlevy.com, ipmail@crowedunlevy.com Phone:4052357700
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Applicant Information

Application No	77570821	Publication date	02/03/2009
Opposition Filing Date	07/02/2009	Opposition Period Ends	08/02/2009
Applicant	Undisputed International LLC 4200 Cathedral Ave. NW # 711 Washington, DC 20016 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. All goods and services in the class are opposed, namely: Hats; T-shirts

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
The mark is primarily merely a surname	Trademark Act section 2(e)(4)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2062637	Application Date	09/15/1995
Registration Date	05/20/1997	Foreign Priority Date	NONE

Word Mark	SULLIVAN'S STEAKHOUSE
Design Mark	
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1996/05/10 First Use In Commerce: 1996/05/10 clothing, namely, T-shirts, shirts, coats, sweaters, sweatshirts, pants, shorts, jackets, neckwear, bandanas, scarves and headwear

U.S. Registration No.	2256909	Application Date	03/19/1998
Registration Date	06/29/1999	Foreign Priority Date	NONE

Word Mark	RINGSIDE AT SULLIVAN'S		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1997/06/19 First Use In Commerce: 1997/10/30 General restuarant and bar services		

U.S. Registration No.	2249440	Application Date	03/19/1998
Registration Date	06/01/1999	Foreign Priority Date	NONE

Word Mark	RINGSIDE AT SULLIVAN'S		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1997/06/19 First Use In Commerce: 1997/10/30 General restuarant and bar services		

U.S. Registration No.	2529991	Application Date	05/10/2001
Registration Date	01/15/2002	Foreign Priority Date	NONE

Word Mark	SULLIVAN'S STEAKHOUSE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1996/05/10 First Use In Commerce: 1996/05/10 general restaurant and bar services		

U.S. Registration No.	2853848	Application Date	06/26/2003
Registration Date	06/15/2004	Foreign Priority Date	NONE
Word Mark	SWINGIN' AT SULLIVAN'S		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 2003/01/15 First Use In Commerce: 2003/01/15 Restaurant and bar services		

U.S. Registration No.	3264502	Application Date	02/13/2006
Registration Date	07/17/2007	Foreign Priority Date	NONE
Word Mark	SULLIVAN'S STEAKHOUSE		
Design Mark			
Description of Mark	The mark consists of the words SULLIVAN'S STEAKHOUSE in stylized letters with a design of a martini glass with an olive in the background.		
Goods/Services	Class 043. First use: First Use: 1996/05/10 First Use In Commerce: 1996/05/10 Restaurant and bar services		

Attachments	75453367#TMSN.gif (1 page)(bytes) 78813458#TMSN.jpeg (1 page)(bytes) NotOpp.PDF (6 pages)(200841 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Drew T. Palmer/
Name	Center Cut Hospitality, Inc.
Date	07/02/2009

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

In the matter of trademark application Serial No. 77/570,821
For the mark: JOHN L. SULLIVAN
Published in the Official Gazette on: February 3, 2009

Center Cut Hospitality, Inc.)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	
Undisputed International LLC)	
)	
Applicant.)	

Commissioner for Trademarks
P.O. Box 1450
Alexandria, VA 22313-1450

NOTICE OF OPPOSITION

Center Cut Hospitality, Inc., a Delaware corporation, with a principal place of business at 125 N. Market, Suite 1300, Wichita, Kansas 67202, and (collectively, the “Opposers”), oppose registration of the mark JOHN L. SULLIVAN, Serial No. 77/570,821, published in the Official Gazette of February 3, 2009.

The grounds for opposition are as follows:

1. Applicant filed an application to register the mark JOHN L. SULLIVAN on September 16, 2008, which was assigned Serial No. 77/570,821 for “Hats; T-shirts” in class 025 on the Principal Register (“**Applicant’s Mark**”).
2. Opposer, prior to Applicant’s filing date, and Applicant’s date of first use, adopted and has continuously used the marks SULLIVAN'S STEAKHOUSE, RINGSIDE AT

SULLIVAN'S and SWINGIN' AT SULLIVAN'S as trademarks for various goods/services including but not limited to restaurant and bar services as well as clothing, including T-shirts, shirts, coats, sweaters, sweatshirts, pants, shorts, jackets, neckwear, bandanas, scarves and headwear.

3. Opposers are the owners of the following federal registrations (collectively the "Opposer's Marks"):

<u>Reg. No. or Serial No.</u>	<u>Mark</u>	<u>Class</u>	<u>Goods/Services</u>
2,0626,37	SULLIVAN'S STEAKHOUSE	25	Clothing, namely, T-shirts, shirts, coats, sweaters, sweatshirts, pants, shorts, jackets, neckwear, bandanas, scarves and headwear.
2,256,909		42	General restaurant and bar services
2,249,440	RINGSIDE AT SULLIVAN'S	42	General restaurant and bar services

<u>Reg. No. or Serial No.</u>	<u>Mark</u>	<u>Class</u>	<u>Goods/Services</u>
2,529,991	SULLIVAN'S STEAKHOUSE	42	General restaurant and bar services.
2,853,848	SWINGIN' AT SULLIVAN'S	43	Restaurant and bar services.
3,264,502		43	Restaurant and bar services.

4. Opposers have extensively, continuously and without interruption used the Opposer's Marks beginning at least as early as May 10, 1996 in promoting their goods and services. By reason of Opposer's activities over an extended period of time, Opposer's Marks have become well known to the relevant public as identifying and distinguishing Opposer, Opposer's goods, and Opposer's services from those of others. Opposer, through great expense and quality control, have created, and are the owners of, substantial goodwill, consumer recognition and reputation in the Opposer's Marks for bar and restaurant services and clothing. Due to this extensive continuous and exclusive use, Opposer's Marks have become incontestable under 15 U.S.C. § 1065.

5. Applicant's Mark is substantially identical in appearance, sound and connotation to Opposer's Marks. Applicant's Mark so resembles Opposer's Marks as to be likely, when used in connection with the goods identified in the application for Applicant's mark, to cause confusion, to cause mistake, or to deceive the consuming public. Applicant's Mark should be found to be unregistrable under 15 U.S.C. § 1052(d).

6. Additionally, Applicant's Mark is primarily merely a surname. Trademarks that consist of a mark that is primarily merely a surname may not be registered absent a showing of acquired distinctiveness. Applicant has applied for registration of its mark under section 1(b) of the U.S. Trademark Act. Upon information and belief, Applicant has not used Applicant's Mark on any related goods or services that would support a finding of acquired distinctiveness. Therefore, registration of Applicant's Mark should be found to be unregistrable under 15 U.S.C. § 1052(e)(4).

7. Opposer offers clothing, including T-Shirts and headwear as well as bar and restaurant services under its marks. Upon information and belief, Applicant intends to use the Applicant's Mark on hats and t-shirts. Consumers are likely to consider the goods of Applicant rendered under Applicant's mark as emanating from or related to Opposer and engage such services as those of the Opposer, potentially resulting in damage to Opposer's business. Moreover, concurrent use of Opposer's Marks and Applicant's Mark may result in irreparable damage to Opposer's reputation and goodwill because consumers are likely to attribute the source or affiliation of Applicant's goods to Opposer.

8. Due to the similarities in Applicant's Mark and Opposer's mark, the similarities in the services used with the respective marks, and the overlap in consumers who purchase goods

and services related to the respective marks, Applicant's mark is likely to be confused with and mistaken for Opposer's Marks, so as to cause confusion and lead to deception as to source, sponsorship, or affiliation by the consuming public.

9. Opposer believes it will be damaged by registration of Applicant's Mark because such registration would give Applicant at least a *prima facie* exclusive right to use Applicant's confusingly similar mark in commerce in the United States, in derogation of Opposer's rights in Opposer's Marks. Because Opposer has priority of use of Opposer's Marks, Applicant will obtain a federal registration to which it is not entitled, and which is inconsistent with Opposers' prior rights.

10. Further, Applicant's use of Applicant's mark is likely to blur the distinctive quality of Opposer's mark pursuant to 15 U.S.C. §1125(c), and is likely to cause dilution of Opposer's mark.

11. The filing fee to oppose Applicant's mark is being submitted herewith.

WHEREFORE, Opposer believes it will be damaged by registration of Applicant's Mark and respectfully request that the opposition be sustained and that registration be refused.

Respectfully submitted,

By: 

Phillip L. Free, Jr., OBA #: 15765

David M. Sullivan, OBA # 18851

Drew T. Palmer, OBA # 21317

- Of the Firm -

CROWE & DUNLEVY, P.C.

20 N. Broadway, Suite 1800

Oklahoma City, OK 73102

(405) 235-7700

(405) 239-6651 (Fax)

ATTORNEYS FOR OPPOSER

CENTER CUT HOSPITALITY, INC.

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being electronically transmitted via ESTTA to the United States Patent and Trademark Office on this 2nd day of July, 2009.



Drew T. Palmer

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Notice of Opposition has been served on Undisputed International LLC by mailing said copy on July 2, 2009, via First Class Mail, postage prepaid to:

Undisputed International LLC
4200 Cathedral Ave. NW, #711
Washington, D.C. 20016

I hereby certify that a true and complete copy of the foregoing Notice of Opposition to has been served on Undisputed International LLC by emailing said copy on July 2, 2009 to the following email address:

amirpeay@gmail.com



Drew T. Palmer