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

Proceeding	91190878
Party	Plaintiff Center Cut Hospitality, Inc.
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Date	11/30/2009
Attachments	Sullivan Amended Notice of Opposition.pdf (6 pages)(181181 bytes)

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. 91190878
)	
Undisputed International LLC)	
)	
Applicant.)	

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

AMENDED 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 to promote its goods and services, beginning with its SULLIVAN'S STEAKHOUSE mark (U.S. Reg. 2,0626,37,) on May 10, 1996. 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.

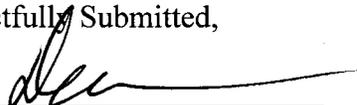
9. Opposer believes it will be damaged by registration of Applicant's Mark because such registration would give Applicant at least a *prima facie* exclusive right to use Applicant's confusingly similar mark in commerce in the United States, in derogation of Opposer's rights in Opposer's Marks. Because 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.

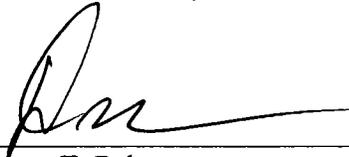
WHEREFORE, Opposer believes it will be damaged by registration of Applicant's Mark and respectfully request that the opposition be sustained and that registration be refused.

Respectfully Submitted,

By: 
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ATTORNEYS FOR OPPOSER
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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 30th day of November, 2009.



Drew T. Palmer

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Amended Notice of Opposition has been served on Undisputed International LLC by mailing said copy on November 30, 2009, via First Class Mail, postage prepaid to:

Andrew N. Spivak
Mosaic Legal Group, PLLC
2001 Twelfth Street, N.W., Suite 117
Washington, DC 20009

I hereby certify that a true and complete copy of the foregoing Amended Notice of Opposition to has been served on Undisputed International LLC by emailing said copy on November 30, 2009 to the following email address:

aspivak@mosaiclegalgroup.com



Drew T. Palmer