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

Proceeding	91192828
Party	Plaintiff Contessa Premium Foods, Inc.
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Date	01/20/2011
Attachments	828 Amended Notice.pdf (6 pages)(1121762 bytes)

based snack foods excluding ice cream, ice milk and frozen yogurt" in International Class 29 and "grain-based snack foods; grain-based chips; grain-based food bars also containing dried fruits and nuts; granola snacks; snack mix consisting primarily of crackers, pretzels, candied nuts and/or popped popcorn; snack cakes; cookies; crackers; bakery goods; bakery desserts; dessert puddings; brownies; candy; salad dressings; sauces; marinades; spice rubs; flavor enhancers used in food products; frozen appetizers consisting primarily of dough" in International Class 30.

3. The Application was filed on an intent-to-use basis. As such, the Application states that Applicant has a *bona fide* intent to use the BAREFOOT CONTESSA mark in commerce in connection with the identified goods.

4. Applicant's Application is not entitled to registration because Applicant has committed fraud in the prosecution of the Application.

5. Based on research conducted on behalf of Contessa, Applicant did not have a *bona fide* intent to use the BAREFOOT CONTESSA mark in connection with fruit-based snack foods; potato-based snack foods; vegetable-based snack foods; nut and seed-based snack bars; snack mix consisting primarily of processed fruits, processed nuts and/or raisins; processed nuts; dips; dairy-based snack foods excluding ice cream, ice milk and frozen yogurt; grain-based snack foods; grain-based chips; grain-based food bars also containing dried fruits and nuts; granola snacks; snack mix consisting primarily of crackers, pretzels, candied nuts and/or popped popcorn; snack cakes; cookies; crackers; bakery goods; bakery desserts; dessert puddings; brownies; candy; salad dressings; sauces; marinades; spice rubs; flavor enhancers used in food products; or frozen appetizers consisting primarily of dough at the time it filed the Application.

6. Based on the results of research conducted on behalf of Contessa and based on Contessa's awareness of Applicant's business activities at the time, Applicant or its agent made a false, material misrepresentation to the United States Patent and Trademark Office ("USPTO")

when it stated on July 18, 2008 that it had a *bona fide* intent to use the BAREFOOT CONTESSA mark in commerce in connection with the identified goods.

7. Based upon its research and based on Contessa's awareness of Applicant's business activities at the time, Contessa alleges that Applicant knew that the statement was false at the time it was made or, at the very least, made the statement with reckless disregard as to the truth or falsity of the statement.

8. Based upon its research and based on Contessa's awareness of Applicant's business activities at the time, Contessa alleges that Applicant made such material misrepresentations to the USPTO with the intent to induce authorized agents of the USPTO to grant the Application and that, reasonably relying upon the truth of these material misrepresentations, the USPTO did, in fact, allow the Application to proceed to publication.

9. Contessa is a leading producer of fine quality foods and food products that has been in business since 1984. Contessa's food products are served in fine-dining restaurants and in many of the major hotel chains nationwide and are available in retail supermarkets, warehouse club stores, and U.S. military bases nationwide. Since 1984, Contessa has been using the trademark CONTESSA in connection with a variety of goods, and has received extensive media coverage. Contessa has developed common law rights in the CONTESSA mark and also owns several federal trademark registrations for the CONTESSA mark (collectively, the "CONTESSA Mark"), including those listed below:

Mark	Reg. No.	Goods/Services
CONTESSA	2,214,744	Frozen seafood and frozen prepared dinners, entrees and side dishes consisting primarily of seafood, poultry, meat and/or vegetables (Class 29); and frozen pizza and frozen prepared dinners, entrees and side dishes consisting primarily of pasta and grains (Class 30).

CONTESSA (Stylized)	2,077,457	Frozen poultry and seafood; and frozen prepared dinners, entrees and side dish, consisting primarily of poultry, seafood and vegetables (Class 29).
CONTESSA	1,903,693	Frozen poultry and seafood; and frozen prepared dinners, entrees and side dishes, consisting primarily of poultry, seafood and vegetables (Class 29).

9. The CONTESSA Mark is strong and distinctive, has been used in connection with food products, has long been the subject of substantial advertising and promotion, has been used and advertised throughout the United States, is widely recognized by consumers and those in the trade, and is in substantially exclusive use by Contessa. Contessa's CONTESSA Mark is recognized by the general consuming public of the United States as a designation of source for the goods of Contessa and is therefore a famous mark. The acts of Applicant alleged herein were commenced at a time after the CONTESSA Mark became famous.

10. Applicant has averred an intent to use the BAREFOOT CONTESSA mark in connection with certain goods in the United States. Applicant's intent to use the BAREFOOT CONTESSA mark indicates a likelihood of dilution by blurring by impairing the distinctiveness of Contessa's famous mark CONTESSA Mark, all causing the irreparable injury and damage to Contessa.

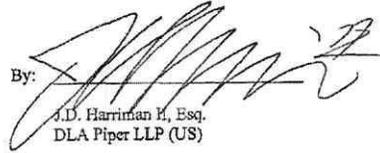
11. If Applicant's Application were granted registration, dilution, damage and/or other injury to Contessa would result

WHEREFORE, Contessa prays that registration of the BAREFOOT CONTESSA mark covered by Application Serial No. 77/526,128 be denied.

DATED: January 20, 2011

Respectfully submitted,

CONTESSA PREMIUM FOODS, INC.

By: 
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this FIRST AMENDED NOTICE OF OPPOSITION is being deposited with the United States Postal Service as First-Class Mail on January 20, 2011, in an envelope addressed to the correspondent of record:

John P. Margiotta, Esq.
FROSS ZELNICK LEHRMAN & ZISSU, PC
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New York, NY 10017-1822



Signature

Sandra S. Pedersen

Name

January 20, 2011

Date of Signature