

ESTTA Tracking number: **ESTTA399783**

Filing date: **03/24/2011**

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	Koi Group, Inc.		
Entity	Corporation	Citizenship	Nevada
Address	3565 Las Vegas Blvd. South #311 Las Vegas, NV 89109 UNITED STATES		

Attorney information	Marvin Gelfand, Esq. Weissmann Wolff Bergman Coleman Grodin & Evall LLP 9665 Wilshire Boulevard, Ninth Floor Beverly Hills, CA 90212 UNITED STATES mgelfand@wwllp.com, dmoreno@wwllp.com Phone:(310) 860-3325		
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Applicant Information

Application No	77966557	Publication date	02/22/2011
Opposition Filing Date	03/24/2011	Opposition Period Ends	03/24/2011
Applicant	Magic Brothers Associate, Incorporated 375 Adrian Road Millbrae, CA 94030 UNITED STATES		

Goods/Services Affected by Opposition

Class 029. All goods and services in the class are opposed, namely: Prepared, frozen, canned and dried meat, poultry, game, seafood, vegetables and fruit; shellfish; frozen or prepared meals in the nature of dim sum consisting primarily of meat, poultry, game, seafood, vegetables and/or fruit; frozen or prepared soup
Class 030. All goods and services in the class are opposed, namely: Cakes; frozen or prepared meals in the nature of dim sum consisting primarily of pasta, rice, bread, cereals, noodles and/or pastries; tea

Grounds for Opposition

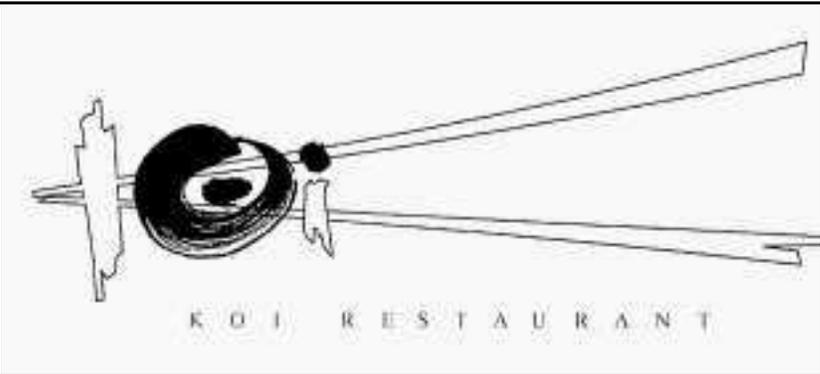
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2961393	Application Date	10/30/2003
Registration Date	06/07/2005	Foreign Priority	NONE

		Date	
Word Mark	KOI RESTAURANT & LOUNGE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 2001/11/30 First Use In Commerce: 2002/03/00 Restaurant services featuring Japanese-inspired cuisine with California accents		

U.S. Registration No.	2950303	Application Date	10/30/2003
Registration Date	05/10/2005	Foreign Priority Date	NONE

Word Mark	KOI RESTAURANT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 2001/11/30 First Use In Commerce: 2002/03/00 Restaurant services featuring Japanese-inspired cuisine with California accents		

U.S. Registration No.	2970473	Application Date	05/14/2004
Registration Date	07/19/2005	Foreign Priority Date	NONE

Word Mark	KOI DAIGINJO SAKE		
Design Mark			
Description of Mark	The mark consists of a swirling "O" drawing with Japanese accents.		
Goods/Services	Class 033. First use: First Use: 2004/02/01 First Use In Commerce: 2004/02/01 Sake beverages		

U.S. Registration	2976272	Application Date	07/22/2004
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No.			
Registration Date	07/26/2005	Foreign Priority Date	NONE
Word Mark	KOI		
Design Mark			
Description of Mark	The mark consists of A wirling "O" drawing.		
Goods/Services	Class 025. First use: First Use: 2002/02/21 First Use In Commerce: 2002/02/21 CLOTHING, NAMELY, T-SHIRTS, SWEATSHIRTS, POLO SHIRTS, SPORT SHIRTS, JACKETS, HATS, AND CAPS ALL SOLD OR DISTRIBUTED IN CONNECTION WITH A RESTAURANT		

Related Proceedings	Cancellation Proceeding 92052912; Magic Brothers Associate, Inc. v. Koi Group, Inc. C.A. No. 10-973-VBX (JCx) (C.D. Cal.)
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Attachments	78321234#TMSN.jpeg (1 page)(bytes) 78419187#TMSN.jpeg (1 page)(bytes) 78455297#TMSN.jpeg (1 page)(bytes) Notice of Opposition.pdf (8 pages)(1606221 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	/marvingelfand/
Name	Marvin Gelfand, Esq.
Date	03/24/2011

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

In the Matter of Application Serial No.: 77/966,557

Published in the *Official Gazette* on February 22, 2011

KOI GROUP, INC., a Nevada Corporation

Opposer,

v.

MAGIC BROTHERS ASSOCIATE,
INCORPORATED, a California corporation,

Applicant.

Index No.: _____

NOTICE OF OPPOSITION

NOTICE OF OPPOSITION

This Notice of Opposition is brought in the matter of pending trademark application Serial No. 77/966,557 filed by Magic Brothers Associate, Incorporated, a California corporation doing business at 365 Gellert Boulevard, Daly City, California 94015 (hereinafter "Applicant") for the registration of the trademark "KOI PALACE" for prepared, frozen, canned and dried meat, poultry, game, seafood, vegetables and fruit; shellfish; frozen or prepared meals in the nature of dim sum consisting primarily of meat, poultry, game, seafood, vegetables and/or fruit; frozen or prepared soup in International Class 29 and cakes; frozen or prepared meals in the nature of dim sum consisting primarily of pasta, rice, bread, cereals, noodles and/or pastries; tea in International Class 30. The application was published in the Official Gazette on February 22, 2011. Koi Group, Inc., is a Nevada corporation doing business at 3565 Las Vegas Boulevard,

South #311, Las Vegas, Nevada 89109 (hereinafter "Opposer"). Opposer believes that it will be damaged by the registration of such trademark and hereby opposes same.

COUNT ONE

1. On March 17, 2009, Applicant filed a trademark application, Serial No. 77/966,557, for the mark "KOI PALACE" for prepared, frozen, canned and dried meat, poultry, game, seafood, vegetables and fruit; shellfish; frozen or prepared meals in the nature of dim sum consisting primarily of meat, poultry, game, seafood, vegetables and/or fruit; frozen or prepared soup in International Class 29 and cakes; frozen or prepared meals in the nature of dim sum consisting primarily of pasta, rice, bread, cereals, noodles and/or pastries; tea in International Class 30.

2. Opposer is the owner of the following U.S. Trademark Registrations:

(a) U.S. Trademark Registration No. 2961393 for the mark KOI RESTAURANT AND LOUNGE on restaurant services featuring Japanese-inspired cuisine with California accents in Class 43, which was registered on June 7, 2005. Said registration was based on an application filed with the U.S. Patent and Trademark Office on October 30, 2003, which is a date prior to the date of filing of applicant's application;

(b) U.S. Trademark Registration No. 2950303 for the mark KOI RESTAURANT and design on restaurant services featuring Japanese-inspired cuisine with California accents in Class 43, which was registered on May 10, 2005. Said registration was based on an application filed with the U.S. Patent and Trademark Office on October 30, 2003, which is a date prior to the date of filing of applicant's application;

(c) U.S. Trademark Registration No. 2970473 for the mark KOI DAIGINJO SAKE and design on sake beverages in Class 30, which was registered on July 17, 2005. Said registration was based on an application filed with the U.S. Patent and Trademark Office on May 14, 2004, which is a date prior to the date of filing of applicant's application;

(d) U.S. Trademark Registration No. 2976272 for the mark KOI and design on clothing, namely, t-shirts, sweatshirts, polo shirts, sport shirts, jackets, hats, and caps all sold or distributed in connection with a restaurant in Class 25, which was registered on July 26, 2005. Said registration was based on an application filed with the U.S. Patent and Trademark Office on July 22, 2004, which is a date prior to the date of filing of applicant's application.

(Opposer's registrations hereinafter will be referred to collectively as "the KOI Marks")

3. Since at least as early as November 30, 2001, Opposer has used, and Opposer is now using the marks KOI RESTAURANT AND LOUNGE and KOI RESTAURANT and design in connection with restaurant services featuring Japanese-inspired cuisine with California accents. Said use has been valid and continuous since the date of first use and has not been abandoned. Said marks of Opposer are symbolic of extensive good will and consumer recognition built up by Opposer through substantial amounts of time and effort in advertising and promotion.

4. Since at least as early as February 1, 2004, Opposer has used, and Opposer is now using the mark KOI DAIGINJO SAKE and design on sake beverages. Said use has been valid and continuous since the date of first use and has not been abandoned. Said mark of Opposer is symbolic of extensive good will and consumer recognition built up by Opposer through substantial amounts of time and effort in advertising and promotion.

5. Since at least as early as February 21, 2002, Opposer has used, and Opposer is now using the mark KOI and design on clothing, namely, t-shirts, sweatshirts, polo shirts, sport shirts, jackets, hats, and caps all sold or distributed in connection with a restaurant. Said use has been valid and continuous since the date of first use and has not been abandoned. Said mark of Opposer is symbolic of extensive good will and consumer recognition built up by Opposer through substantial amounts of time and effort in advertising and promotion.

6. Since November 30, 2001, Opposer has continuously used the KOI Marks on a wide variety of goods and services, and has been actively expanding its use of the KOI Marks.

7. The registrations are valid and subsisting and are prima facie evidence of Opposer's exclusive right to use said mark in commerce on the goods and services specified in said registrations.

8. In view of the similarity of the respective marks and the related nature of the services of the respective parties, it is alleged that applicant's mark so resembles opposer's registered mark, as to be likely to cause confusion, or to cause mistake, or to deceive.

9. Opposer's goods and services sold under and in connection with Opposer's marks, have met with popular approval from consumers. As a result of Opposer's extensive sales and advertising, the marks KOI RESTAURANT AND LOUNGE, KOI RESTAURANT and design, KOI DAIGINJO SAKE and design, and KOI and design have come to mean, and are understood to mean, throughout the United States, the Opposer and Opposer's goods and/or services.

10. During the time Opposer has used its marks, Opposer has expended money to advertise and promote its products and services under the KOI Marks. As a result of this advertising and promotion, Opposer's products and services sold and advertised under its KOI

Marks have acquired and now possess a favorable reputation such that the trade and consumers have come to associate products bearing the KOI Marks as products and services produced exclusively by Opposer.

11. As a result of the widespread use in interstate commerce by the Opposer and its licensees of the aforesaid KOI Marks in connection with a wide variety of goods and services, the marks have acquired extensive goodwill, have developed a high degree of distinctiveness and are well known and recognized as identifying high quality goods and services which have their origin with or have been authorized by the Opposer.

12. The parties' respective goods and services are generally related, and Applicant's use of KOI PALACE in connection with its goods and services is without the consent or permission of Opposer.

13. Applicant's goods are related to the goods and services sold and provided in connection with Opposer's KOI Marks and/or represent a natural zone of expansion for Opposer and such goods and would travel and/or be promoted through the same channels of trade for sale to, and use by, the same class of purchasers.

14. The registration of the mark KOI PALACE to Opposer will cause the relevant purchasing public to erroneously assume and thus be confused, misled or deceived, that Applicant's goods are licensed by, controlled by, sponsored by, or in some way connected, related or associated with Opposer, all to Opposer's irreparable damage.

15. Applicant's use of the mark KOI PALACE in connection with its proposed goods is likely to cause confusion, mistake or deception as to the source of origin of Applicant's goods in that the public, the trade and others are likely to believe that Applicant's goods are: (a) the same goods and/or services as Opposer's; or (b) provided by, sponsored by, approved by,

licensed by, affiliated with or in some other way legitimately connected to Opposer and/or its goods, or licensed products.

16. Upon information and belief, Applicant has made no use of the mark KOI PALACE as a trademark in the United States on prepared, frozen, canned and dried meat, poultry, game, seafood, vegetables and fruit; shellfish; frozen or prepared meals in the nature of dim sum consisting primarily of meat, poultry, game, seafood, vegetables and/or fruit; frozen or prepared soup, cakes; frozen or prepared meals in the nature of dim sum consisting primarily of pasta, rice, bread, cereals, noodles and/or pastries; or tea.

17. Applicant's mark KOI PALACE is confusingly similar to Opposer's KOI Marks in sound, appearance and commercial impression.

COUNT TWO

18. Opposer repeats and realleges the allegations set forth in paragraphs 1 through 17 as thou set forth herein.

19. Opposer's KOI Marks are distinctive and famous and had become famous long prior to the acquisition of any rights Applicant may claim in the mark KOI PALACE.

20. Use of the mark KOI PALACE by Applicant causes dilution of the distinctive quality of Opposer's famous KOI Marks.

21. Opposer will be damaged by the registration sought by Applicant because such registration would support and assist Applicant in use of its mark and thereby dilute Opposer's rights in its distinctive and famous KOI Marks.

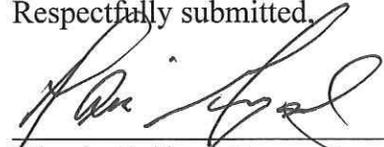
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WHEREFORE, Opposer respectfully requests that this opposition be sustained and Applicant's application to register the mark KOI PALACE be denied in all respects.

Dated: March 24, 2011

Respectfully submitted,



Marvin Gelfand, Esq.
WEISSMANN WOLFF BERGMAN
COLEMAN GRODIN & EVALL LLP
9665 Wilshire Boulevard, Ninth Floor
Beverly Hills, California 90212
Telephone: (310) 858-7888
Facsimile: (310) 550-7191
mgelfand@wwllp.com

Attorneys for Opposer
Koi Group, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **NOTICE OF OPPOSITION** has been served on the Applicant by mailing said copy on March 24, 2011, via First Class Mail, postage prepaid to:

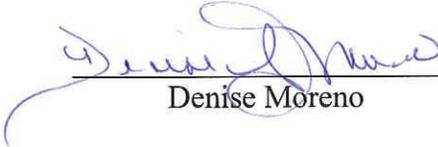
Magic Brothers Associate, Incorporated
365 Gellert Boulevard
Daly City, CA 94015

and

Rachelle A. Dubow, Esquire
Bingham McCutchen LLP
1 Federal St
Boston, MA 02110
Phone Number: 617-951-8000
Fax Number: 617-951-8736

I hereby further certify that the instant document was filed on the date indicated below via the Trademark Trial and Appeal Board's online electronic filing system.

Dated: March 24, 2011



Denise Moreno