

UNITED STATES PATENT & TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL & APPEAL BOARD

Applicant: Renee Nardo D/B/A Plimoth Popcorn

vs.

Opposer: Plimoth Plantation, Inc.

Mark: Plimoth Popcorn
Serial No.: 85/878,951
Published: August 27, 2013

In the matter of Application Serial No #85/878,951 filed on March 18th, 2013 by applicant Renee Nardo d/b/a Plimoth Popcorn (“Applicant”), for the mark PLIMOTH POPCORN: Opposer Plimoth Plantation, Inc. (“Opposer” or “Plimoth Plantation”, the applicant contests that there are no valid damages by registration of the mark as shown in the above identified opposition and hereby opposes the motion to block above trademark.

As: 14 VSC 1063 states, “any person who believes that he would be damaged by the registration of a mark upon principal register”. This act allows any claimant to oppose any trademark application whether they hold a valid claim or not. In this case we will show the board that the Opposer does not hold a valid claim to block the said Applicant Plimoth Popcorn.



01-27-2014

PARTIES

Section 1: Applicant disputes statement that Plimoth Plantation uses any marketing, services, or sales with only Plimoth in the title. All signage, labeling, and marketing from the Opposer always contains "Plantation" following the town name Plimoth. Examples of this are shown in every single product label depicted on Exhibit C provided by Opposer and were submitted with dispute to applicant.

Section 2: Applicant does not reside at 43 Samoset Street. The business location of Plimoth Popcorn is based at 43 Samoset Street Plymouth, MA 02360.

SUBSTANTIVE ALLEGATIONS

Section 3: Applicant does not dispute Section 3 substantive allegations, but does question the relevance of this paragraph. This information has no bearing on this case. This is an attempt to sway the board with information not pertaining to the claim or reason for opposition. Applicant does not feel that the information regarding the Opposer's Museum and "full scale reproduction of original Mayflower" does not pertain to this case.

Section 4: Opposer's Exhibit A and B both show entertainment and educational service patents which do not relate or go against Applicant's application for Plimoth Popcorn word mark. Opposer's actual trademark registration covers only presentations and workshops in the field of cooking and not food items. Their registration covers US fields 100, 101, 107. Applicant's application has been filed under US 46. There are several companies including, but not limited to Plimoth Investment Advisors and Plimoth Rocks which have trademarked their names,

which indicates the term "Plimoth" is available for use as part of a trademarked term. Applicant does not educate, entertain, or use in any way that is listed under exhibit A or B registration number 3226980 or 3359479.

Section 5: Opposer states that Plimoth Plantation uses and markets its goods and services as Plimoth Plantation. Opposer's Exhibit C shows that all their products have "Plantation" following the town name Plimoth. This invalidates claim to Applicant's trademark as the Opposer has shown that the term "Plimoth" is always used in conjunction with Plantation. No pre-packaged flavored popcorn is included on the Opposer's list of various food products.

Section 6: Applicant disputes pending Massachusetts Trademark Application regarding word mark on Plimoth Plantation as it has no bearing on Plimoth Popcorn. Opposer filed registration for trademark on December 26, 2013, the same date that the filed an Opposition to Applicant's trademark.

Section 7: Opposer does not show any similar product as theater sells only buttered popcorn which is produced and sold in their theatre. Plimoth Popcorn sells pre-packaged gourmet flavored popcorn. As shown in Opposer's Exhibit D, Opposer's popcorn is sold much like any other movie theater found throughout the United States. Opposer's Plimoth Grist Mill was established in March 2013, which is one year after Plimoth Popcorn was established.

Section 8: Applicant disputes that the term Plimoth is not used without "Plantation" following it.

Section 9: Applicant through its efforts has created product for

community and charity events, notably a special flavor in celebration of the town of Plymouth's upcoming 400th anniversary in conjunction with the Plymouth Area Chamber of Commerce's Celebration.

Section 10: Applicant cites Exhibits "A" 1-4 which shows that other local companies and products which display same "Plimoth" in their name/logo.

Section 11: Applicant's usage of Plimoth is only in conjunction with "Popcorn".

Opposer's use of name Plimoth Plantation would not be confused with Plimoth Popcorn as per the exhibits presented by the Opposer. If such a product existed, it would be known as "Plimoth Plantation Popcorn" as per the Opposer's trademarked term. The date of the Plimoth Plantation name origin is not in dispute. Applicant notes that the Opposer was not labeling and marketing food products 60 years ago to our knowledge.

Section 12: Applicant disputes that the prominent use of "Plantation" on all of the Opposer's products and signage is not similar and would not in any way be confused with the Applicant's products.

Section 13: Opposer's mark is for "Plimoth Plantation" and not held for "Plimoth" alone. As shown in Exhibits "A" 1-4, there are several companies, products, etc. in the town of Plymouth that begin their name with "Plimoth". In addition, there are also several companies and products that use the modern spelling "Plymouth".

Opposer appears to be seeking a blanket trademark license on the 17th century spelling on a town that is located not only in Massachusetts, but also several other states within the United States as well. Opposer currently holds no trademark on any popcorn or product that contains popcorn. Reference Section 1 Articles A and B

indicate entertainment and education marks on Plimoth Plantation. No exhibit has been shown for packaged food related product or any mark for Plimoth. Marks shown are for Plimoth Plantation only.

Section 14: Applicant's mark strikes no similarities other than use of Plimoth within applicant's mark. There is no intent to give any commercial impression of any relationship to the Opposer. Sound, appearance, and commercial impression is entirely unique and not similar to any known product including Plantation products. Opposer is attempting to block a trademark on the basis that they would like to have the option to create a similar product in the future. Applicant feels that this claim is baseless and unfair. Opposer holds no trademark claims to "Plimoth Popcorn".

Section 15: Applicant disagrees with channels of trade in this section. Plimoth Plantation currently only sells its products at its locations. Unless Plimoth Plantation agreed to stock Plimoth Popcorn on its shelves, the channels of trade would never cross. Applicant is not currently offering our product for sale at any of Opposer's locations. Applicant's product is sold at events, home and trade shows to the general public. Applicant also provides special order custom items, takes part in local school fund-raising events, sales via internet as well as for walk-in customers at our own location. Applicant also provides donated products for various events within the community.

Section 16: Applicant's mark is highly unlikely to confuse the general public as there is no indication on its packaging whatsoever that alludes to or is similar to Opposer's mark. There is no indication or intended representation on Applicant's

part to have any affiliation, intended or otherwise, to Opposer.

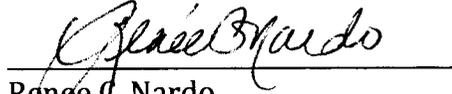
Section 17: Applicant is not currently seeking consent from Opposer. Applicant is seeking trademark rights as originally approved from the USPTO prior to opposition. USPTO approved trademark as not conflicting with any other approved trademarks on file with the USPTO, including the 2 entertainment trademarks presented by Opposer. Applicant respectfully requests that the board uphold their decision to allow trademark on this name as shown. Applicant believes that their trademark will not affect Opposer nor will cause conflict or damage in any way. Applicant has proven that the Opposer holds no claim to a trademark that conflicts with Applicant's current trademark. Opposer has shown that their current trademark to be primarily entertainment and education. Opposer shows no trademark on food product of any kind. Applicant does not educate, entertain, or publicly conduct any business that is listed under the Opposer's trademark. Applicant has one product only, which is Plimoth Popcorn. The choice to use the 17th Century spelling of the town name where our product is produced is widely used throughout the town of Plymouth with no harm or damage to the Opposer.

WHEREFORE, Applicant Plimoth Popcorn respectfully requests the United States Patent & Trademark Office to uphold their decision to allow Application Serial No #85/878,951 filed on March 18th, 2013 on the legal basis of a trademark assignment that does not conflict with any other trademark assignments.

Respectfully submitted,

PLIMOTH POPCORN

By its Owner,

A handwritten signature in cursive script, appearing to read "Renee C. Nardo", is written over a horizontal line.

Renee C. Nardo
PLIMOTH POPCORN
43 Samoset Street
Plymouth, MA 02360
Tel: 508/830-1830
Fax: 508/830-1771

Dated January 21, 2014

CERTIFICATE OF SERVICE

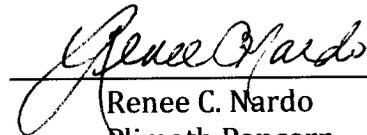
I hereby certify that I served a copy of the foregoing Answer to Opposition upon Opposer by depositing one copy thereof in a sealed envelope in the United States mail, first-class, postage prepaid, on January 21, 2014, addressed as follows:

Anthony Cataldo
GOODWIN PROCTER LLP
Exchange Place
53 State Street
Boston, MA 02109-2881

I further served a copy of the foregoing Answer to Opposition upon Opposer by depositing one copy thereof in a sealed envelope in the United States mail, first-class, postage prepaid, on January 21, 2014, addressed as follows:

Mr. Ivan Lipton, COO
Plimoth Plantation
137 Warren Avenue
Plymouth, MA 02360

Dated: January 22, 2014



Renee C. Nardo
Plimoth Popcorn

Exhibit A-

1

Plimoth Door Company, Inc

Phone: (508) 746-3667

24 Samoset St, Plymouth, MA 02360



Plimoth Investment Advisors

Plimoth Glass

FRI, NOVEMBER 23rd

THE NEW WORLD TAVERN IS PROUD TO PRESENT

PLIMOTH ROCK

FOR THE FIRST TIME BACK ON
A PLYMOUTH STAGE IN OVER 380 YEARS!



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plimothrock.com • didntplanet.com



No Cover • 21+
56 Main St. Plymouth
TheNewWorldTavern.com



PLIMOTH BAY
Property Specialists
"Custom Outdoor Living"

A rectangular box containing a pinecone illustration on the left and text on the right. The text reads 'PLIMOTH BAY' in a large, serif font, followed by 'Property Specialists' in a slightly smaller serif font, and the tagline '*"Custom Outdoor Living"*' in an italicized serif font.

