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UNITED STATES PATENT AND TRADEMAI
OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Mailed: November 12, 2003

BROWN ADOBE, INC., THE
WAGNER GOURMET FOODS, INC.
4500 NORTHCHASE PARKWAY, NE
WILMINGTON, NC 28405

Cancellation No. 92042618
Reg. No. 1554940

SUZANNE C. ODOM
WHITE, KOCH, KELLY & MCCARTHY, P.A.
POST OFFICE BOX 787
SANTA FE, NEW MEXICO 87504-0787

THE PINK ADOBE, INC.

V.

BROWN ADOBE, INC., THE

LATRICIA HARRISON, LEGAL ASSISTANT:

A petition, a copy of which is attached, has been filed to cancel the above-identified registration.

Proceedings will be conducted in accordance with the Trademark Rules of Practice.

ANSWER IS DUE FORTY DAYS after the mailing date hereof. (See Patent and Trademark Rule 1.7 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that became effective October 9, 1998. See Notice of Final Rulemaking published in the *Official Gazette* on September 29, 1998 at 1214 TMOG 145. Slight corrections to the rules, resulting in a correction notice, were published in the *Official Gazette* on October 20, 1998 at 1215 TMOG 64.

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A copy of the recent amendments to the Trademark Rules, as well as the *Trademark Trial and Appeal Board Manual of Procedure* (TBMP), is available at <http://www.uspto.gov>.

Discovery and testimony periods are set as follows:

Discovery period to open: December 02, 2003

Discovery period to close: May 30, 2004

30-day testimony period for party
in position of plaintiff to close: August 28, 2004

30-day testimony period for party
in position of defendant to close: October 27, 2004

15-day rebuttal testimony period
for plaintiff to close: December 11, 2004

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NOTE: The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68 (June 20, 2000). A hard copy of the *Official Gazette* containing this notice is available for a fee from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (Telephone (202) 512-1800). The notice is also available at <http://www.uspto.gov>. Interlocutory matters which the Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

New Developments at the Trademark Trial and Appeal Board

TTAB forms for electronic filing of extensions of time to oppose, notices of opposition, and inter partes filings are now available at <http://estta.uspto.gov>. Images of TTAB proceeding files can be viewed using TTABVue at <http://ttabvue.uspto.gov>.

Parties should also be aware of changes in the rules affecting trademark matters, including rules of practice before the TTAB. See Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003) Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12, 2003). Notices concerning the rules changes are available at www.uspto.gov.

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

**In the matter of trademark Registration No. 155490
For the mark The Brown Adobe The New Mexican Connection
Date registered: May 5, 1989**

THE PINK ADOBE, INC.,

Petitioner,

vs.

THE BROWN ADOBE, INC.,

Respondent.

10-27-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #22

CANC. NO. 42,618

PETITION TO CANCEL

1. Petitioner, The Pink Adobe, Inc., is a New Mexico Business Corporation with its business address at 406 Old Santa Fe Trail, Santa Fe, New Mexico.
2. To the best of Petitioner's knowledge, the name and address of the current owner of the registration are: The Brown Adobe, Inc., 520 Brookside Avenue, St. Davids, Pennsylvania 19087.
3. Petitioner believes that it will be damaged by the above-identified registration, since said registration impairs Petitioner's full and legitimate use of its own mark. Petitioner accordingly petitions pursuant to § 14 of the Trademark Act of 1946, 15 U.S.C. § 1064 (the "Act") and 37 C.F.R. § 2.111 (2003) to cancel the same.
4. The grounds for cancellation are as follows:
 - A. Respondent dissolved effective July 15, 1999, is no longer a corporation in good standing and, as such, does not control and/or is not able legitimately to exercise control

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over the above-identified registration. Act § 14(5)(A), 15 U.S.C. § 1064(5)(A). A certified copy of the Articles of Dissolution for The Brown Adobe, Inc. filed with the State of Pennsylvania is attached hereto as Exhibit A.

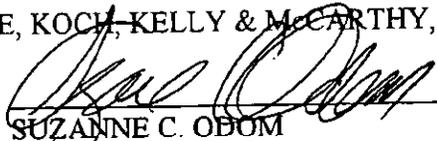
B. Respondent has abandoned the above-identified registration through non-use for over three consecutive years. Act § 14(3), 15 U.S.C. § 1064(3); Exhibit A.

C. No assignment of the above-identified registration has been made of record with the United States Patent and Trademark Office, nor, upon information and belief, has any other valid written assignment of the above-identified registration pursuant to § 10 of the Act, 15 U.S.C. § 1060 been made.

Respectfully submitted,

WHITE, KOCH, KELLY & McCARTHY, P.A.

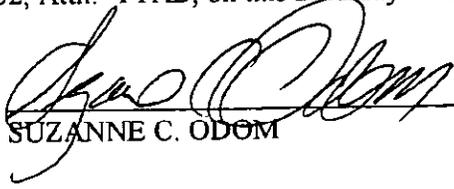
By:


SUZANNE C. ODOM
Attorneys for Petitioner
Post Office Box 787
Santa Fe, New Mexico 87504-0787
(505) 982-4374

Dated: October 23, 2003

CERTIFICATE OF MAILING UNDER 37 CFR 1.8(a)

I hereby certify that this Petition to Cancel is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of the Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202, Attn: TTAB, on this 23rd day of October, 2003.


SUZANNE C. ODOM

Microfilm Number _____

Filed with the Department of State on _____

JUL 15 1999

Entity Number 101478 9953-262

Secretary of the Commonwealth

ARTICLES OF DISSOLUTION-DOMESTIC BUSINESS CORPORATION

DSCB:15-1977 (Rev 90)

1977

In compliance with the requirements of 15 Pa.C.S. § 1977 (relating to articles of dissolution), the undersigned business corporation, desiring to dissolve, hereby states that: By Shareholders

1. The name of the corporation is: The Brown Adobe, Inc.

2. The (a) address of this corporation's current registered office in this Commonwealth or (b) name of its commercial registered office provider and the county of venue is (the Department is hereby authorized to correct the following information to conform to the records of the Department):

(a) 520 Brookside Ave., St. Davids PA 19087 Delaware
Number and Street City State Zip County

(b) c/o: _____
Name of Commercial Registered Office Provider County

For a corporation represented by a commercial registered office provider, the county in (b) shall be deemed the county in which the corporation is located for venue and official publication purposes.

3. The statute by or under which it was incorporated is: Pennsylvania Corporation Law, 15 P.S. § 204 (1933)

4. The date of its incorporation is: January 6, 1988

5. The names and addresses, including number and street, of its directors are:
Judith V. Brown, 520 Brookside Avenue, St. Davids, PA 19087
Karel Hayes, 800 Mill Road, Bryn Mawr, PA 19010

6. The names and addresses, including number and street, and official titles of its officers are:
Judith V. Brown, 520 Brookside Avenue, St. Davids, PA 19087,
President, Treasurer, and Secretary

7. (Check one of the following):
 The proposal to dissolve voluntarily was adopted by the shareholders (or members) pursuant to 15 Pa.C.S. § 1905.
 The proposal to dissolve voluntarily was adopted by the directors and shareholders (or members) pursuant to 15 Pa.C.S. § 1974(a).

PA DEPT. OF STATE

JUL 15 1999



8. (Check one of the following):

9953-263

All liabilities of the corporation have been discharged.

Adequate provision has been made for the discharge of the liabilities of the corporation.

The assets of the corporation are not sufficient to discharge its liabilities, and all the assets of the corporation have been fairly and equitably applied, as far as they will go, to the payment of such liabilities.

9. (Check one of the following):

All remaining assets of the corporation, if any, have been distributed as provided in the Business Corporation Law of 1988.

The corporation has elected to proceed under 15 Pa.C.S. Subch. 19H (relating to postdissolution claims) and any remaining assets of the corporation will be distributed as provided in that subchapter.

10. (Check one of the following):

There are no actions or proceedings pending against the corporation in any court.

Adequate provision has been made for the satisfaction of any judgement or decree that may be obtained against the corporation in each action or proceeding pending against the corporation.

11. Notice of the winding-up proceedings of the corporation was mailed by certified or registered mail to each known creditor and claimant of the corporation and to each municipal corporation in which the corporation's registered office or principal place of business in this Commonwealth is located.

IN TESTIMONY WHEREOF, the undersigned corporation has caused these Articles of Dissolution to be signed by a duly authorized officer thereof this 21st day of November, 1998

The Brown Adobe Inc
(Name of Corporation)

BY: [Signature]
(Signature)

TITLE: President

THE BROWN ADOBE, INC.

UNANIMOUS CONSENT OF SHAREHOLDERS

November 15, 1998

The undersigned, constituting all of the shareholders of The Brown Adobe, Inc. a Pennsylvania corporation (the "Corporation"), pursuant to the authority contained in Section 1766(a) of the Pennsylvania Business Corporation Law of 1988, as amended, consent in writing to the adoption of the following resolutions, with the same force and effect as if the resolutions had been duly proposed and adopted at a meeting of the shareholders of the Corporation duly called and held in accordance with applicable law and the bylaws of the Corporation:

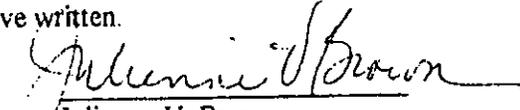
WHEREAS, the Board of Directors of the Corporation adopted resolutions recommending that the Corporation be dissolved, and directing that the question of dissolution be submitted to the shareholders of the Corporation, it:

RESOLVED, that the Corporation be dissolved; and

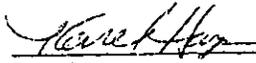
RESOLVED, that the proper officers of the Corporation are authorized and directed to take all steps necessary to give effect to this resolution

The undersigned, being all of the shareholders of Corporation, authorize the above resolutions by their written signatures below. This unanimous consent may be executed in one or more counterparts, all of which together shall be one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this Unanimous
Consent of Shareholders as of the date first above written.



Julienne V. Brown



Karel Hayes

Ellen Barolak

Carol Heringslake

THE TRADEMARK TRIAL AND APPEAL BOARD WOULD LIKE YOU TO KNOW:

The TTAB Customer Service Center is available to

- *answer telephone inquiries
- *explain pertinent legal provisions and related administrative practices as they apply to specific cases
- *provide status information on pending cases
- *provide access to the files of pending cases
- *resolve problems

The telephone number for the TTAB Customer Service Center is (703) 308-9300, extension 0 [zero].

The Patent and Trademark Office has two special boxes for expedited processing and distribution of documents filed with the TTAB. Envelopes and transmittal letters for TTAB should be addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202, followed by one of the following designations

"Box TTAB Fee": for papers filed with the TTAB that include filing fees, such as notices of opposition, petitions to cancel, and notices of ex parte appeal
and

"Box TTAB": for all non-fee papers filed with the TTAB, such as requests for extensions of time to file notices of opposition and motions.

The TTAB Customer Service Center makes every effort to provide public access to application files, opposition files, cancellation files and concurrent use files immediately upon request for access. Files located will be made available in a central storage area accessible to the public. You can also access information about TTAB proceeding files online. Go to <http://www.uspto.gov/web/offices/dcom/ttab/> and click the "BISX LINK".

Any questions, comments, or suggestions concerning TTAB service should be directed to Jean Brown, TTAB Technical Program Manager, at (703) 308-9300, extension 123 or Afendi Ziad, Supervisory Legal Assistant at (703) 308-9300, extension 205 or Angela Pope, Supervisory Legal Assistant at (703) 308-9300, extension 144.

NOTICE CONCERNING ALTERNATIVE DISPUTE RESOLUTION (ADR)

The Trademark Trial and Appeal Board encourages you to consider alternative dispute resolution as a means of settling the issues raised in this opposition or cancellation proceeding. Although more than 95% of Board proceedings are decided prior to trial (by settlement or by entry of pre-trial judgment), alternative dispute resolution techniques might produce an earlier, mutually agreeable resolution of your dispute or might, at least, narrow the scope of discovery or the issues for trial. In either case, alternative dispute resolution might save you time and money.

Many non-profit organizations, both inside and outside the intellectual property field, offer alternative dispute resolution services. Listed below are the names and addresses of organizations that have indicated that they can make arrangements for alternative dispute resolution. The listings are given for your convenience; the Board does not sponsor nor endorse any particular organization's alternative dispute resolution services.

International Trademark Association Telephone: (212) 642-1726 Fax: (212) 768-7796 www.inta.org/adr/index.shtml e-mail: lstigliano@inta.org	CPR Institute for Dispute Resolution Telephone: (212) 949-6490 Fax: (212) 949-8859 www.cpradr.org e-mail: info@cpradr.org
American Intellectual Property Law Association (AIPLA) 2001 Jefferson Davis Highway Suite 203 Arlington, Virginia 22202 Telephone: (703) 415-0780 Fax: (703) 415-0786	
American Arbitration Association (AAA) Headquarters 140 West 51 st Street New York, New York 10020-1203 Telephone: (212) 484-3266 Fax: (212) 307-4387	

Finally, if the parties consider using alternative dispute resolution in this proceeding, the Board would like to know; and if the parties actually engage in alternative dispute resolution, the Board would be interested to learn what mechanism (e.g., arbitration, mediation, etc.) was used and with what general result. Such a statement from the parties is not required but would be helpful to the Board in assessing the value of alternative dispute resolution in Trademark Trial and Appeal Board proceedings.

PROCEEDING SYNOPSIS

United States Patent and Trademark Office - Trademark Trial and Appeal Board
Trademark Opposition and Cancellation Proceedings Under 15 USC 1063, 1064, 37 CFR 2.101 et seq.

FILING OPPOSITION/CANCELLATION

Any person (Opposer) may file a Notice of Opposition within 30 days of the date of publication of the mark against any mark published under 15 USC 1062(a) in Official Gazette; may oppose in whole or part.

Time for filing Notice may be extended by written request to TTAB. A first extension for not more than 30 days will be granted upon request. Further extensions may be granted for good cause. Extensions aggregating more than 120 days from pub. date not granted unless consented to by applicant or extraordinary circumstances. 37 CFR 2.102(c). Request should be in triplicate. 37 CFR 2.102(d).

Any person (Petitioner) may file a Petition to cancel a registration in whole or in part, but only under conditions set forth in 15 USC 1064. Geographic limitation will be considered by TTAB only in concurrent use proceeding. 37 CFR 2.99(h), 2.133(c).

Opposer/Petitioner is in position of Plaintiff and Applicant/Respondent is Defendant. 37 CFR 2.116(b).

Notice/Petition corresponds to complaint in civil action. 37 CFR 2.116(c).

Amendment to pleadings in accord with Rule 15, Fed. Rules of Civil Procedure (FRCP). 37 CFR 2.107, 2.115.

MAILING PROCEDURES

Certificate of Mailing or Transmission and Express Mail procedures effective for all papers. 37 CFR 1.8, 1.10.

INSTITUTION OF PROCEEDING; WITHDRAWAL

TTAB examines Notice/Petition for formal requirements and sends notification to Defendant, generally within few weeks of filing date. Duplicate copy of Notice/Petition and Exhibits sent to Defendant. 37 CFR 2.105, 2.113.

Notice/Petition may be withdrawn without prejudice before Defendant files Answer. 37 CFR 2.106(c), 2.114(b). With written consent of Defendant, later withdrawal may be without prejudice.

Defendant may not abandon application or surrender registration without prejudice except with written consent of Plaintiff. 37 CFR 2.135, 2.134.

ANSWER; MOTIONS

Time for Answer set by TTAB for 40 days from Notification mailing date. Counterclaim should be filed with answer or promptly upon discovery of information supporting Counterclaim. 37 CFR 2.106(b), 2.114(b).

Time for reply to Counterclaim set by TTAB for not less than 30 days from TTAB action mailing date. 37 CFR 2.106(b), 2.114(b).

Motions may be brought before TTAB in writing and with Brief in support. Brief in opposition thereto, 15 days (30 days for summary judgment motion). Briefs limited to 25 pages. Reply Brief, if filed, 15 days, limited to 10 pages. Reconsideration 30 days after decision; Opposition Brief, 15 days. 37 CFR 2.127. Most motions used in Federal practice are applicable.

Motions for Summary Judgment, to Compel, and to Test Sufficiency of Responses to Requests for Admissions, if filed, due before Plaintiff testimony period opens. 37 CFR 2.127(e), 2.120(e), 2.120(h).

TRIAL DATES

TTAB issues Order setting opening and close of Discovery and Trial dates. Discovery set for period of 180 days; 30-day Pl. Testimony period closes 90 days after close of Discovery period; 30-day Def. Test. period closes 60 days after Pl. Test. period; 15-day Pl. Rebuttal Test. period closes 45 days after Def. Test. period. 37 CFR 2.120(a), 2.121.

In cases where Counterclaim filed, TTAB sets additional time periods for testimony and briefing.

DISCOVERY PERIOD

Interrogatories, Reqs. for Prod. of Docs. & Things, and Reqs. for Adm., if served, must be served by last day of Discovery period. Written Responses within 30 days from date of service of Disc. Reqs. FRCP apply except as otherwise provided. 37 CFR 2.116, 2.120(a). Extension of Time to respond to discovery granted upon cause or by stipulation.

Interrogatories limited to proceeding total of 75, counting subparts; additional interrogatories allowed upon motion for good cause or by stipulation. 37 CFR 2.120(d)(1).

Discovery Depositions (noticed and taken within Disc. Period) in District where deponent resides or is employed. 37 CFR 2.120(a), 2.120(b). Either party may request designation of witnesses under FRCP 30(b)(6), 31(a).

PLAINTIFF'S TRIAL PERIOD

Plaintiff's Testimony-in-Chief. Opens 60 days after Discovery Period closes, and runs for 30 days (refer to Order).

Testimony taken by deposition upon oral examination or upon written questions. 37 CFR 2.123, 2.124.

Plaintiff serves Transcript of testimony and copies of documentary exhibits on adverse party within 30 days after completion of taking testimony. Certified transcript and exhibits filed with TTAB. 37 CFR 2.125.

Notice of Reliance as appropriate on Discovery Deps., Adms. and Int. Answers, with copies of same, due before close of Test. 37 CFR 2.120.

Involved app. or reg. files are in evidence for relevant and competent purposes Publications in gen. Circ. or in libraries, and official records, must be received if appropriate Notice of Reliance is filed and copies submitted within Test. period. 37 CFR 2.122.

Motion under 37 CFR 2.132, if filed due after close of Pl.'s Test. period & before opening of Def.'s

DEFENDANT'S TRIAL PERIOD

Opens 30 days after close of Pl. Test. period. Runs for 30 days.

Test. taken by deposition upon oral examination or upon written questions. 37 CFR 2.123, 2.124

Notice of Reliance on Discovery responses also due within Test. period, if filed. 37 CFR 2.120

Notice of Reliance on gen. cir. publ. and official records due within Test. period, if filed. 37 CFR 2.122.

Def. serves Test. transcript within 30 days and files cert. transcript and exhibits with 37 CFR 2.125.

PLAINTIFF'S REBUTTAL PERIOD

Rebuttal Test. period for Pl. 30 days after close of Def.'s period and runs for 15 days.

Pl. may file Notice of Reliance under 37 CFR 2.120, 2.122, matter relied on, and take rebut. Def. Test. and other

Pl. serves and files Transcript of Rebuttal Test. and exhibits in accordance with 37 CFR 2.125.

BRIEFS; ORAL HEARING

Pl. Brief due 60 days after period closing.

Def. Brief, if filed, due after Pl. Brief due.

Pl. Reply Brief, if filed, due 30 days after Def. Brief due. 37 CFR 2.128.

Separate Request for Oral Hearing, if filed, due not later than 10 days after Reply Brief due. 37 CFR 2.129.

TTAB Notice of Oral Hearing sent to all parties.

❖ Oral Hearing before panel of at least three TTAB judges. 30 minutes for each party. 37 CFR 2.129.

❖ DECISION; RECONSIDERATION; APPEAL
TTAB Deliberation. Writing of Opinion and Decision in due course.

❖ Request for rehearing, reconsideration or modification, if filed, due within one month. Brief

in opposition due within 15 days. 37 CFR 2.129(c).

❖ Any Appeal from TTAB Decision due within two months of Decision or two months after denial of req. for recon. See especially 37 CFR 2.129(d).

NOTE: Footnotes and TTAB addresses and telephone number appear on the back of this sheet

FOOTNOTES

- 1) Opposer may be any legal entity including a corporation. Opposer must believe that opposer would be damaged by registration of the mark and state the reasons. 15 USC 1063 and 37 CFR 2.101. Notice of Opposition need not be verified. \$300 required fee for each class for each person opposing. 37 CFR 2.6, 2.101(b). May be signed by attorney. 37 CFR 2.101(b). Duplicate copy including exhibits required. Order status and title copies of pleaded registrations in advance and attach to Notice/Petition or introduce as evidence during Testimony-in-Chief period. 37 CFR 2.122.
- (2) Action, grounds and requirements (Footnote 1) for initiation of Cancellation proceeding are similar to those for an Opposition proceeding and are covered in 15 USC 1064, 1092 and 37 CFR 2.111, 2.112. \$200 required fee per class, per person. Duplicate copy required.
- (3) Except Notice/Petition, each paper must be served on opponent. Statement of service (date and manner) is required. Period to respond to Motions and Discovery Requests is extended 5 days when service is by first-class mail, "Express Mail," or overnight courier. 37 CFR 2.119. Action due on weekend or D.C. holiday can be taken on next business day. 37 CFR 1.7.
- (4) Resetting of time to respond to Discovery Request does not result in extension of Discovery period and subsequent testimony periods unless requested. 37 CFR 2.120(a). All consented extensions of time should be filed in triplicate and list specific dates for all subsequent periods affected.
- (5) Except for 37 CFR 2.122(e) documents, documents produced in response to Requests for Production cannot be made of record by Notice of Reliance alone. 37 CFR 2.120(j)(ii).
- (6) Briefs should be typewritten or printed, double-spaced, in at least pica or eleven-point type, on letter paper (8½ x 11). Three copies of briefs required. Alphabetical index of cases required. Length limit of 55 pages, including table of contents, index of cases, description of record, statement of issues, recitation of facts, argument, and summary. Reply brief 25 pages total. 37 CFR 2.128(b).

ADDRESSES AND TELEPHONE

All papers not requiring a fee should be mailed to:

Box TTAB No Fee
Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

NOTE: For papers with fee, use "Box TTAB Fee"

TTAB Office Location and Telephone Number

2900 Crystal Drive
South Tower, Suite 9B40
Arlington, Virginia 22202-3513

Telephone: (703) 308-9300

UNITED STATES DEPARTMENT OF COMMERCE

Patent and Trademark Office

Assistant Commissioner, Copyrights

2099 Crystal Drive, N.W.

Arlington, Virginia 22202

If Undeliverable, Send in Envelope

OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE, \$300

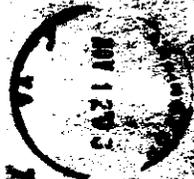
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ANK 12/31

- A / INSUFFICIENT ADDRESS
- C ATTEMPTED NOT KNOWN
- S NO SUCH NUMBER / STREET
- . UNABLE TO FORWARD
- OTHER

RTS
RETURN TO SENDER

MRS. BLAS



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