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

Proceeding	92052675
Party	Defendant Scavazzo Enterprises Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Schiff s Restaurant Service, Inc.)	Cancellation No. 92/052,675
)	
Petitioner,)	Registration No. 2,966,071
)	Issued July 12, 2005
v.)	
)	
Scavazzo Enterprises Inc.)	
)	
Registrant)	

REGISTRANT’S ANSWER TO PETITION FOR CANCELLATION

Scavazzo Enterprises Inc., having its principal address at RR#1, Box 15, Stevensville, Pennsylvania 18845, is the owner of a Design mark of a butcher sharpening a knife behind a butcher block and U.S. Trademark Registration No. 2,966,071 for its mark as applied to its butcher shop services in International Class 35.

In answering the Petition for Cancellation filed by Petitioner, Schiff s Restaurant Service, Inc., Registrant says as follows. In its introduction Petitioner states:

Petitioner petitions to cancel the registration on the grounds that 1) Registrant's mark so resembles Petitioner's mark identified in Exhibit 1 (the "Mark") previously and continuously used in the United States by Petitioner and not abandoned, as to be likely, when used on or in connection with the goods or services of the Registrant, to cause confusion, or to cause mistake, or to deceive; 2) there was no bona fide use of Registrant's mark in commerce prior to the filing of the use-based application for its registration under Section 1(a) of the Trademark Act; 3) Registrant is not and was not, at the time of the filing of its application for registration, the rightful owner of the registered mark; and 4) Registrant's mark has diluted the distinctive quality of Petitioner's famous mark.

ANSWER: Registrant lacks knowledge or information sufficient to form a belief as to the allegations of the foregoing introduction that Petitioner’s mark has been “previously and continuously used in the United States by Petitioner and not abandoned, as to be likely, when used on or in connection with the goods or services of the Registrant, to cause confusion, or to cause

mistake, or to deceive;” or that Petitioner’s mark is famous and Registrant “has diluted the distinctive quality of Petitioner's famous mark” and therefore denies the same and leaves Petitioner to its proof. Registrant denies the allegations that a) “there was no bona fide use of Registrant's mark in commerce prior to the filing of the use-based application for its registration under Section 1(a) of the Trademark Act;” and b) “Registrant is not and was not, at the time of the filing of its application for registration, the rightful owner of the registered mark” and leaves Petitioner to its proof

In support of Petitioner’s complaint, it states:

1. In the early part of 1985, Petitioner engaged the services of a graphic artist to design its Mark.

ANSWER: Registrant lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 1 and therefore denies the same and leaves Petitioner to its proof.

2. Petitioner began to market its goods and services using its Mark about May, 1985, long before Registrant's claimed first use date of April 1, 2003, and has continued without break to market its goods and services using its Mark.

ANSWER: Registrant lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 2 and therefore denies the same and leaves Petitioner to its proof.

3. Petitioner's goods and services include wholesale and retail stores featuring groceries; wholesale food distributorship services; meats; produce; and condiments.

ANSWER: Registrant lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 3 and therefore denies the same and leaves Petitioner to its proof.

4. Petitioner has spent substantial sums for the advertisement and promotion of its goods and services using its Mark on/in billboards, buildings, newspapers, printed flyers, delivery vehicles and package labeling. A representative sample is attached as Exhibit 2.

ANSWER: Registrant lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 4 and therefore denies the same and leaves Petitioner to its proof.

5. By virtue of such use and expense, Petitioner's Mark is favorably known and is a valuable asset of Petitioner. The Mark is a symbol of considerable good will and recognition built up by Petitioner through the use of its Mark.

ANSWER: Registrant lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 5 and therefore denies the same and leaves Petitioner to its proof.

6. By reason of the widespread advertising and widespread distribution of Petitioner's goods and services bearing Petitioner's Mark, and the extended period of Petitioner's use of its Mark, the trade and purchasing public have come to recognize Petitioner's Mark as signifying Petitioner and as identifying Petitioner as the source of goods and services sold under Petitioner's Mark.

ANSWER: Registrant lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 6 and therefore denies the same and leaves Petitioner to its proof.

7. By reason of the widespread advertising and widespread distribution of Petitioner's goods and services bearing Petitioner's Mark, and the extended period of Petitioner's use of Petitioner's Mark, the Mark has become famous.

ANSWER: Registrant lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 7 and therefore denies the same and leaves Petitioner to its proof.

8. Registrant's trademark dilutes the distinctive quality of Petitioner's famous Mark and is likely to cause irreparable harm to Petitioner.

ANSWER: Registrant lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 8 and therefore denies the same and leaves Petitioner to its proof.

9. Upon information and belief, Vince Scavazzo is the owner of the Registrant, Scavazzo Enterprises, Inc.

ANSWER: Registrant admits that "Vince Scavazzo is the owner of the Registrant, Scavazzo Enterprises, Inc."

10. Mr. Scavazzo was employed by Petitioner from October 15, 1984 through October 18, 1991.

ANSWER: Registrant lacks knowledge or information sufficient to form a belief as to the specific

dates in the allegations of paragraph 10 and therefore denies the same and leaves Petitioner to its proof.

11. His employment coincided with Petitioner's engagement of the graphic artist to develop its Mark and Petitioner's use of its Mark.

ANSWER: Registrant lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 11 and therefore denies the same and leaves Petitioner to its proof.

12. Petitioner first discovered Registrant's use of its trademark on March 19, 2010 after an employee saw the trademark in a newspaper advertisement.

ANSWER: Registrant lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 12 and therefore denies the same and leaves Petitioner to its proof.

13. Registrant's trademark is identical to Petitioner's mark for identical goods and services.

ANSWER: Registrant admits that its mark is identical to Petitioner's alleged mark but lacks knowledge or information sufficient to form a belief as to the allegations of the goods and services of paragraph 13 and therefore denies the same and leaves Petitioner to its proof.

14. Upon information and belief, Mr. Scavazzo wrongfully took Petitioner's Mark for his own use without the knowledge or consent of Petitioner.

ANSWER: Registrant denies the allegations of paragraph 14 and leaves Petitioner to its proof.

15. Upon information and belief, Registrant's goods and services are marketed through the same channels of trade and to the same class of consumers as the goods and services of Petitioner.

ANSWER: Registrant lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 15 and therefore denies the same and leaves Petitioner to its proof.

16. Prospective purchasers of Registrant's goods and services are likely to erroneously believe that such goods and services are produced by or under the authority of Petitioner, or to erroneously assume that there is some other trade connection between Petitioner and Registrant.

ANSWER: Registrant's prospective purchasers know that its goods bearing its mark are prepared by Registrant that denies the allegations of paragraph 16 as being a faulty opinion based on erroneous legal conclusions and leaves Petitioner to its proof.

17. Registrant's trademark so resembles Petitioner's Mark that, when used on or in connection with the goods and services of Registrant:
- a. It is likely to cause confusion, or to cause mistake, or to deceive;
 - b. It falsely suggests a connection with Petitioner; and
 - c. It tends to damage Petitioner's goodwill in its Mark.

ANSWER: Registrant lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 17, and of subparagraphs a), b), and c) as being an opinion based on erroneous legal conclusions and therefore denies the same and leaves Petitioner to its proof.

18. Registration No. 2966071 was applied for under Section 1 (a). The applicant, now Registrant, declared under penalty of perjury that it or a related company or licensee, was using its trademark in commerce in connection with "butcher shop" services, at least as early as April 1, 2003.

ANSWER: Registrant admits that its Registration 2,966,071 "was applied for under Section 1(a)" and that it "declared under penalty of perjury that it or a related company or licensee, was using its trademark in commerce in connection with 'butcher shop' services, at least as early as April 1, 2003."

19. Upon information and belief, applicant, now Registrant was not and continues to not be engaged in interstate commerce, limiting its marketing and sales to Northeastern Pennsylvania.

ANSWER: Registrant denies the allegations of paragraph 19 and leaves Petitioner to its proof.

20. Therefore, the declaration of actual use in commerce as applied to federal trademark law contained in the original application was false and fraudulent. Registrant was not entitled to apply for its trademark under Section 1 (a) and was not entitled to have a registration issued based on the application, which was defective from the start. The application and now registration for Registrant's trademark was based on the false and fraudulent declaration of actual use in commerce.

ANSWER: Registrant denies the allegations in the first, second, and third sentences of paragraph 20 and leaves Petitioner to its proof.

21. For the foregoing reasons, Petitioner has been and continues to be damaged by the continued presence on the Principal Register of Registration No. 2966071.

ANSWER: Registrant lacks knowledge or information sufficient to form a belief as to the allegations of paragraph 21 and therefore denies the same and leaves Petitioner to its proof.

WHEREFORE, Registrant prays that Cancellation No. 92/052,675 to the registration of its mark be dismissed; and for such other and further relief as the Trademark Trial and Appeal Board may deem proper.

Respectfully submitted,
Scavazzo Enterprises Inc.
/Neil F. Markva/
Neil F. Markva
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Dated: October 27, 2010

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CERTIFICATE OF FILING AND SERVICE

I certify that on October 27, 2010, an original of REGISTRANT'S ANSWER TO PETITION FOR CANCELLATION is being electronically filed with the Trademark and Appeal Board of the U.S. Patent and Trademark Office.

I further certify that a copy of said document is being served by First Class Mail on Counsel for Petitioner on October 27, 2010 in an envelope addressed to:

Mitchell A. Smolow
720 Hampton Road
Shavertown, PA 18708

Dated: October 27, 2010

/Neil F. Markva/
Neil F. Markva
Attorney for Registrant/Respondent