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

Proceeding	92057222
Party	Defendant Chick-N-Joy Systems Limited
Correspondence Address	CHICK N JOY SYSTEMS LIMITED 4449 KINGSTON ROAD TORONTO ONTARIO, M1E 2N7 CANADA
Submission	Answer
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Date	06/25/2013
Attachments	Reg Answer to Petition for Cancellation- filed final.pdf(240013 bytes)

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

Registrant: Chick-N-Joy Systems Limited)	
)	
Registration No.: 3567736)	
)	
Registration Date: January 27, 2009)	
)	
Mark: CHICK-N-JOY)	
_____)	Cancellation No. 92057222
)	
Jollibee Foods Corporation,)	
)	
Petitioner,)	
)	
v.)	
)	
Chick-N-Joy Systems Limited)	
)	
Registrant.)	
_____)	

REGISTRANT’S ANSWER TO THE PETITION FOR CANCELLATION

Registrant Chick-N-Joy Systems Limited hereby answers the Petition for Cancellation:

1. Denied. Registrant is without knowledge or information sufficient to form a belief as to the truth of the averment.

2. Denied. Registrant is without knowledge or information sufficient to form a belief as to the truth of the averment.

3. Denied. Registrant is without knowledge or information sufficient to form a belief as to the truth of the averment.

4. Denied. Registrant is without knowledge or information sufficient to form a belief as to the truth of the averment.

5. Denied. Registrant is without knowledge or information sufficient to form a belief as to the truth of the averment.
6. Denied. Registrant is without knowledge or information sufficient to form a belief as to the truth of the averment.
7. Denied as a legal conclusion.
8. Admitted.
9. Admitted.
10. Admitted.
11. Denied. Within the alleged “three year Notice of Allowance” period, Registrants’ application was amended to become an application on a Section 44 (e) basis. Because of that amendment Registrant was not required to file a Proof of Use in U.S.
12. Admitted.
13. Denied. Within the alleged “three year Notice of Allowance” period, Registrants’ application was amended to become an application on a Section 44 (e) basis. Because of that amendment Registrant was not required to file a Proof of Use in U.S.
14. Denied. Since the day of registration, Chick-N-Joy saw that the trademark with Registration 3567736 was placed on food bags manufactured by another company in Oklahoma, U.S.A. The use of the trademark on bags manufactured in Oklahoma is contrary to the allegation that Registrant abandoned the trademark for use in the U.S.
15. Denied. Since the day of registration, Chick-N-Joy saw that the trademark with Registration 3567736 was placed on food bags manufactured by another company in Oklahoma, U.S.A. The use of the trademark on bags manufactured in Oklahoma is contrary to the allegation that Registrant abandoned the trademark for use in the U.S.

16. Denied. Since the day of registration, Chick-N-Joy saw that the trademark with Registration 3567736 was placed on food bags manufactured by another company in Oklahoma, U.S.A. The use of the trademark on bags manufactured in Oklahoma is contrary to the allegation that Registrant abandoned the trademark for use in the U.S.

17. Denied. There was no abandonment. To the contrary the trademark is used on food bags manufactured in Oklahoma. In addition, the following facts show no abandonment:

(1) The Registrant Chick-N-Joy Systems Limited (“Chick-N-Joy”) is in the restaurant business owning and operating three stores in Canada. George J. Kastanas is President of Chick-N-Joy.

(2) On January 27, 2009, the United States Patent and Trademark Office granted registration of Registrant’s Chick-N-Joy trademark.

(3) Chick-N-Joy has had the actual intent to use the trademark Chick-N-Joy in the United States since the date of registration through today as can be seen from the facts below.

(4) At the time of the U.S. registration, Registrant owned and operated 3 stores that provided restaurant services and, among other plans, had a plan to franchise stores in Canada and the USA.

(5) At the time of the registration, Mr. Kastanas, President of Chick-N-Joy received the U.S. trademark certificate of registration for Chick-N-Joy that, in part, states:

First Filing: A Declaration of Continued Use (or Excusable Non-use) filed between the **fifth and sixth years** after the registration date.

.....
YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS IDENTIFIED ABOVE DURING THE SPECIFIED TIME PERIOD.

(Emphasis added)

A copy of the certificate of registration reviewed by Mr. Kastanas is attached as Exhibit A.

(6) Mr. Kastanas had the understanding from the trademark certificate that the requirement for use was that the use had to start at the latest between the fifth and sixth years. The correspondence from Chick-N-Joy's trademark lawyer at the time states the same deadline – between 5 and 6 years.

(7) Chick-N-Joy's trademark lawyer at the time did not advise Mr. Kastanas or Chick-N-Joy that if Chick-N-Joy did not use the trademark in the United States within three years that there would be a rebuttable presumption that Chick-N-Joy abandoned use of the trademark. Mr. Kastanas and Chick-N-Joy were unaware of that three year time period.

(8) Based on the information from the company's attorney and from the U.S. trademark certificate, Mr. Kastanas believed that Chick-N-Joy did not risk losing the trademark because of non-use so long as a declaration of continued use was filed between 5 and 6 years after January 27, 2008 or between January 27, 2013 and January 27, 2014. The 5-6 year period has not expired.

(9) There were delays in Chick-N-Joy operating in the USA caused by delays of its attorneys. Chick-N-Joy's concrete plans were to go to the USA after it put in place the structure for its operations, including franchise agreements and disclosure documents.

(10) On April 30, 2010 legal counsel was hired to render advice, consultation, and document preparation in franchising matters. Documents would consist of revised franchise agreements as well as disclosure documents.

(11) On May 28, 2010, Chick-N-Joy asked legal counsel to prepare agreements for the sale and franchising of two existing CHICK-N-JOY corporate stores.

(12) Despite requests to counsel, as of March 27, 2012, counsel still had not prepared or provided the franchise documents or disclosure documents. Chick-N-Joy did not go to other attorneys at that time because of the fees and time already invested in that firm.

(13) On March 27, 2012, Chick-N-Joy reached to out its lawyer in another attempt to develop the franchise documents. That firm never did provide the franchise documents or the disclosure documents.

(14) In October 2012, Chick-N-Joy was introduced to a company that would help develop the Franchise System and in February 2013, Chick-N-Joy retained their services.

(15) In May 2013, Chick-N-Joy was introduced to a new law firm that would be able to prepare the franchise documents and disclosure documents.

(16) In this month, June 2013, the franchise and disclosure documents were COMPLETED and the sale of one Chick-N-Joy's corporate stores is almost completed.

(17) Chick-N-Joy is now set and accepting applications for expansion in Canada and the United States. At least 3 people have asked for information about franchising in the U.S.

(18) George J. Kastanas and Chick-N-Joy had hurdles to get over and delays to deal with but through it all they had the intent to do business in the USA and took steps to do so. While Mr. Kastanas went through these development steps, Mr. Kastanas' state of mind always was that he believed that Chick-N-Joy's trademark in the USA was secure so long as the use started within five-six years of the registration of the mark. The mark was not abandoned. To say the least, the use of the mark in the U.S. always had been on the table.

18. Denied. The averments constitute a little conclusion to which no response is required.

CERTIFICATE OF SERVICE

I, William M. Mullineaux, Esquire, hereby certify that on June 25, 2013, a true and correct copy of the foregoing **Registrant's Answer to the Petition for Cancellation** was sent to the following via regular mail and electronic mail, at the following addresses:

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_____/s/wmm_____
William Mark Mullineaux