

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

SERIAL NO. : 76/305,881
FILING DATE : August 27, 2001
MARK : POOCH POPS
APPLICANT : The Jel Sert Co.
LAW OFFICE : 101
EXAMINER : Samuel E. Sharper

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

REQUEST TO AMEND THE APPLICATION

Pursuant to the Board's order of October 14, 2003, Applicant submitted an Amendment to Allege Use. Pursuant to this Board's order of January 7, 2004, Applicant requests an Amendment to the Supplemental Register. Please change the application from one seeking registration of the mark on the Principal Register, to one seeking registration of the mark on the Supplemental Register.

Please cancel the paragraph of the application as amended by the previously submitted Amendment to Allege Use, and substitute therefor: "The marks sought to be registered is in lawful use in interstate commerce in connection with the goods at least as early as April 30, 2003."

The Applicant also requests that the application be amended by disclaiming the word "POPS" as follows:

"No claim is made to the exclusive right to use POPS apart from the mark as shown."



01-26-2004

In light of the foregoing, Applicant contends the present application is now in condition to be accepted for publication.

Respectfully submitted,

THE JEL SERT CO.

Dated: January 21, 2004

By: Laurie Peard Soler
Laurie Peard Soler
Senior Legal Counsel
The Jel Sert Co.
Highway 59 and Conde Street
West Chicago, IL 60185
(630) 876-4840
Fax: (630)876-4947
lsoler@jelsert.com

CERTIFICATE OF MAILING

I certify that the foregoing is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3514, on:

Date of Deposit 1/21/04
Signature Laurie Peard Soler
Name LAURIE PEARD SOLER

To: United States Trademark Office Trial and Appeal Board
From: Russell E. Hattis, Attorney For Blueberry Confections, Inc.
Registration No. , 16,817
Re: Request for extension of time to file Opposition Proceeding

The trademark office recently published for opposition at the end of December trademark application Serial No. . 78238435 owned by an individual Richard Deer for the mark GUMMIES ON THE GO for candy. This application was based on an Intent-TO-Use application filed by Deer 4-16-03 a few months before applicant filed on 6-16-03 an application to register the mark ON THE GO also for candy in International class 030. Applicant Blueberry has an interstate use on a candy product of .the ON THE GO mark in the expression GUMMIES ON THE GO at least as early as March 7 of this year. To minimize a confusion problem applicant many months ago dropped the word GUMMIES and started using the purely descriptive adjective CANDY instead ahead of the words ON THE GO.

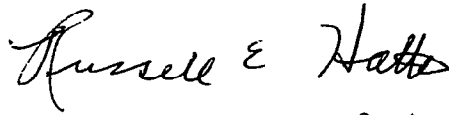
Blueberry Confections. Inc. application stands rejected, we believe mistakenly, on both the Deer application for candy published for opposition and on Registration Nos. 1983946 registered 2-7-96 for the mark ON THE GO for crackers and on Registration No. 2477751 for the same mark for cookies by the same owner PF Brands, Inc. . This allowance of the Deer application for GUMMIES ON THE GO for candy and the rejection of Blueberry's application for ON THE GO for candy on these registrations are inconsistent positions.. But if before the opposition period expires Blueberry proves to Deer's satisfaction its prior and continuous use of the ON THE GO mark on candy, it is obvious that no opposition proceeding involving these ON THE GO marks for candy will take place.

Opposition procedures can be extremely expensive to pursue. It is in every one's interest including that of the PTO to avoid this procedure, if possible. To this end, Blueberry wishes first to contact Deer to work out an understanding where at least either Deer or Blueberry would withdraw the application involved. Blueberry officials have tried in vain this past month to contact the parties in interest of Deer's company and found that they were too busy to discuss the matter until certain trade show obligations were met. It is expected that these officials will in the next several weeks agree to meet with

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Blueberry officials to explore ways to avoid the need for an opposition proceeding. To give Blueberry and Deer time to talk settlement and exchange evidence of trademark use, Blueberry hereby requests a 3 month extension of time to file an opposition proceeding involving Deer.

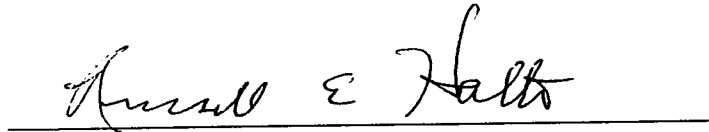
Respectfully Submitted,



Russell E. Hattis. Attorney for Applicant Blueberry Confections

CC: Mark Ducorsky

The undersigned Russell E., Hattis attests to the fact that on January 25, 2004 he placed this Request For Extensions Of Time To File an Opposition to the Registration of GUMMIES ON THE GO by Richard Deer in an envelope addressed to the Trademark Trial and Appeal Board of the United States Trademark Office, 2900 Crystal Drive, Arlington Va. 22202-3514 and mailed the same to this address first class mail.



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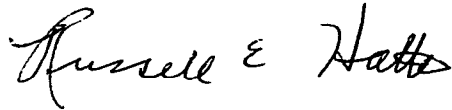
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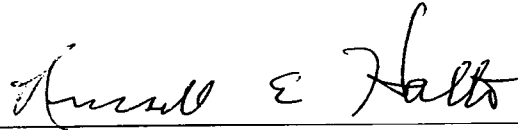
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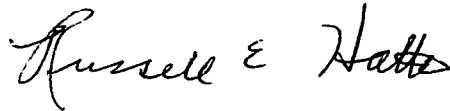
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