

EXPRESS MAIL LABEL EV-279436886-US
ATTORNEY DOCKET NO. 2002-1276

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

In Re App	:	Sheldon F. Jacobs Co.)
Ser. No.	:	76/411,235)
Mark	:	AUNT TILLY LEWIS)
Filed	:	May 20, 2002)



Box: TTAB
TRADEMARK TRIAL AND APPEAL BOARD
COMMISSIONER FOR TRADEMARKS
2900 CRYSTAL DRIVE
ARLINGTON, VA 22202-3514

04-07-2004
U.S. Patent & TMCfc/TM Mail Rcpt Dt. #78

APPLICANT'S REPLY TO EXAMINING ATTORNEY'S APPEAL BRIEF

I. Introduction

This reply responds to the Examining Attorney's Appeal Brief dated March 18, 2004.

For all of the reasons stated in his original papers, Applicant contends that its mark, AUNT TILLY LEWIS, is registrable over the registration cited against it, TILLIE LEWIS, U.S. Reg. No. 759,315.

Applicant notes that action on this Appeal, as of January 14, 2004, was "suspended" with proceedings to be "resumed" if, in light of Applicant's November 10, 2003 response to the Final Refusal, the refusal "is maintained" (see Exhibit A). Applicant filed its Appeal Brief on January 9, 2004, five (5) days before the January 14, 2004 Notice of Suspension was received. The Examining Attorney did not generate a communication to Applicant indicating that the

"refusal of registration (was) maintained", but, rather, filed his Appeal Brief on March 18, 2004.

Irrespective of the fact that Applicant's mark is registrable in spite of the '315 mark, Applicant, as stated, maintains his position set forth in the January 9, 2004 Appeal Brief. This entire matter, however, will be mooted if the '315 Registration is not renewed on or before April 29, 2004. This date is arrived at based on the following: The Registration cited against Applicant was registered on October 29, 1963. This Registration was renewed on October 29, 1983. The 20-year renewal, taking into account the six (6) month grace period, is due to be filed on or before April 29, 2004 (see Exhibit B).

Finally, Applicant notes that on January 9, 2004, it filed with this Honorable Board a REQUEST FOR SUSPENSION OF APPEAL PURSUANT TO TBMP §1213(3) (see Exhibit C, submitted minus exhibits attached to filed Request). This request discusses §1213(3), and in particular notes that:

If an applicant requests suspension based upon the possibility that the cited registration may have expired for failure to renew it, the Board will grant such request if the Board acts on the request after...the 19th anniversary of the issue date for 20-year registrations (registrations which issued prior to November 16, 1989 and which have not yet been renewed.

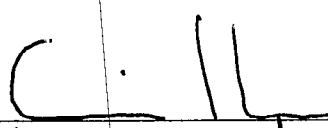
As discussed earlier, the Registration cited against Applicant, U.S. Reg. No. 759,315, will expire on April 29, 2004, in all likelihood, based on the fact that the Registration has not been renewed nor, by all indications, will it be renewed. If this registration expires, the only basis of refusal remaining in connection with Applicant's mark will have been eliminated, and Applicant's mark will be passed on to publication. At this juncture, Applicant respectfully suggests that suspension of the instant Appeal, pursuant to §1213(3) is the most efficient route for this Honorable Board to take.

For all of the above-stated reasons, it is respectfully requested that this Board find in Applicant's favor. Additionally, Applicant requests that this matter be suspended until it is determined whether or not the '315 registration, the registration cited against Applicant, expires.

Respectfully submitted,

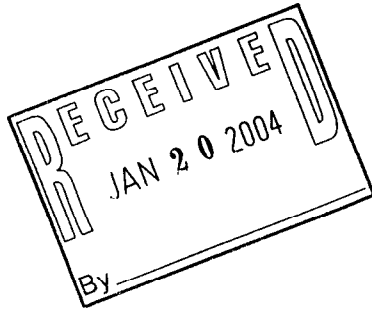
HAUGEN LAW FIRM PLLP

Date: April 7, 2004


Eric O. Haugen
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Phone: (612) 339-8300

2002-1274

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513



Mailed: January 14, 2004

In re Sheldon F. Jacobs
Company

Serial No. 76411235

Filed: 05/20/2002



04-07-2004

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #78

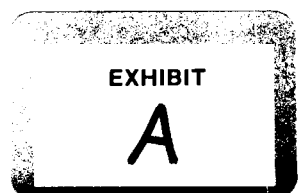
ERIC O. HAUGEN
HAUGEN LAW FIRM PLLP
121 SOUTH EIGHTH STREET, SUITE 1130
MINNEAPOLIS, MN 55402

Clara Vela, Paralegal Specialist

Applicant's appeal and response to the final refusal filed November 10, 2003 are noted.

The response requires consideration by the Trademark Examining Attorney. The appeal is instituted, but action on it is suspended and the file is herewith remanded to the Examining Attorney.

In the event registrability is found on the basis of this paper, the appeal will be moot and the Board should be so informed. In the event the refusal of registration is maintained, the file should be returned to the Trademark Trial and Appeal Board, proceedings will be resumed and applicant will be allowed time in which to file its brief on appeal.



Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2004-04-07 11:56:10 ET

Serial Number: 72148248 Assignment Information

Registration Number: 759315 Assignment Information

Mark

TILLIE LEWIS

(words only): TILLIE LEWIS

Standard Character claim: No

Current Status: Registered.

Date of Status: 1984-01-31

Filing Date: 1962-07-02

Transformed into a National Application: No

Registration Date: 1963-10-29

Register: Principal

Law Office Assigned: Unknown

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -Warehouse (Newington)

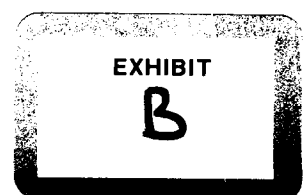
Date In Location: 1986-08-07

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Ogden Food Products Corporation

Address:

Ogden Food Products Corporation
Stockton, CA



United States

Legal Entity Type: Corporation

State or Country of Incorporation: Delaware

GOODS AND/OR SERVICES

Dietetic Food Products-Namely, Fruit Jellies, Preserves and Jam; Fruit and Otherwise Flavored Preparations in the Nature of Syrups for Use as Dessert Toppings; Salad Dressing; Canned Fruits; Canned Vegetables; an Artificially Sweetened Maple Flavored Preparation in the Nature of a Syrup for Use on Pancakes and Waffles; Liquid Sweetener; Sugar Substitute

U.S. Class: 046 (International Class 029, 030, 031)

First Use Date: 1954-03-10

First Use in Commerce Date: 1954-03-10

Basis: 1(a)

ADDITIONAL INFORMATION

Name Portrait Consent: "TILLIE LEWIS" IDENTIFIES MRS. MEYER L. LEWIS, WHOSE CONSENT IS OF RECORD.

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

1983-10-29 - Registration renewed - 20 year

CONTACT INFORMATION

(NOT AVAILABLE)

EV241979914US

EXPRESS MAIL NO. EV241979914US

ATTORNEY DOCKET NO. 2002-1276

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

In Re App	: Sheldon F. Jacobs Co.)
Ser. No.	: 76/411,235)
Mark	: AUNT TILLY LEWIS)
Filed:	May 20, 2002)

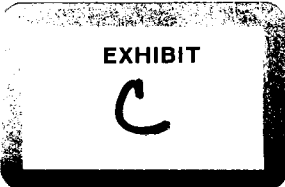
TRADEMARK TRIAL AND APPEAL BOARD
COMMISSIONER FOR TRADEMARKS
2900 CRYSTAL DRIVE
ARLINGTON, VA 22202-3514

REQUEST FOR SUSPENSION OF APPEAL PURSUANT TO TBMP §1213(3)

Pursuant to TBMP §1213(3), Applicant hereby requests suspension of these proceedings pending a determination as to whether the registration cited against Applicant is renewed under Section 9 of the Lanham Act. The registration cited against Applicant is on the mark TILLIE LEWIS, and bears U.S. Reg. No. 759,315. This mark was registered on October 29, 1963, and thus will need to be renewed no later than April 29, 2004 (taking into account the six month grace period). A copy of information retrieved off of the TARR web server is enclosed.

Section 1213(3) allows for suspension when:

A registration cited as a reference, under Section 2(d) of the Act, 15 U.S.C. §1052(d), against applicant's mark is due, or will soon be due, . . . for an application for renewal under Section 9 of the Act, 15 U.S.C. §1059. Board may suspend pending determination of whether registration will continue in existence or will, instead, . . . expire under Section 9. . . If an applicant requests suspension based on the possibility that the cited registration may have expired for failure to renew it, the Board will grant such request if the Board acts on the request after . . . the 19th anniversary date of the issue date for twenty-year registrations (registrations which issued prior to November 16, 1989 and which have not yet been renewed).

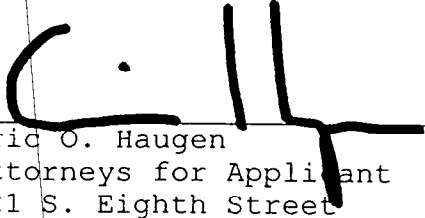


Based on the above, suspension is respectfully requested.

Respectfully submitted,

HAUGEN LAW FIRM PLLP

Date: January 9, 2004



Eric O. Haugen
Attorneys for Applicant
121 S. Eighth Street
1130 TCF Tower
Minneapolis, MN 55402
(612) 339-8300 - Telephone

Attachments

EXPRESS MAIL NO. EV241979914US

ATTORNEY DOCKET NO. 2002-1276

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

In Re App : Sheldon F. Jacobs Co.)
Ser. No. : 76/411,235)
Mark : AUNT TILLY LEWIS)
Filed : May 20, 2002)

TRADEMARK TRIAL AND APPEAL BOARD
COMMISSIONER FOR TRADEMARKS
2900 CRYSTAL DRIVE
ARLINGTON, VA 22202-3514

CERTIFICATE VIA EXPRESS MAIL


Dear Trademark Trial and Appeal Board:

I hereby certify that the foregoing REQUEST FOR SUSPENSION OF APPEAL PURSUANT TO TBMP §1213(3) and attached Letter in the above-identified trademark application are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated below and is addressed to: TRADEMARK TRIAL AND APPEAL BOARD, COMMISSIONER FOR TRADEMARKS, 2900 Crystal Drive, Arlington, VA 22202-3514 under Express Mail No. Ev241979914US.

Respectfully submitted,

HAUGEN LAW FIRM PLLP

Date: January 9, 2004


Christie J. Carper
On Behalf of Eric O. Haugen
Attorneys for Applicant
121 S. Eighth Street
1130 TCF Tower
Minneapolis, MN 55402
(612) 339-8300 - Telephone

Attachments

EXPRESS MAIL NO. EV241979914US

ATTORNEY DOCKET NO. 2002-1276

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

In Re App : Sheldon F. Jacobs Co.)
Ser. No. : 76/411,235)
Mark : AUNT TILLY LEWIS)
Filed : May 20, 2002)

TRADEMARK TRIAL AND APPEAL BOARD
COMMISSIONER FOR TRADEMARKS
2900 CRYSTAL DRIVE
ARLINGTON, VA 22202-3514

LETTER

Dear Trademark Trial and Appeal Board:

Enclosed herewith is **REQUEST FOR SUSPENSION OF APPEAL PURSUANT TO TBMP §1213(3)** submitted in connection with Applicant's appeal of a final rejection of the above-captioned trademark application.

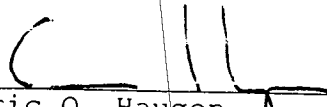
The Commissioner is authorized to charge any additional fees or refund any overpayment under 37 CFR 2.6 which may be required by this paper to Deposit Account No. 50-0789.

Of course, contact the undersigned with any questions you may have regarding the above.

Respectfully submitted,

HAUGEN LAW FIRM PLLP

Date: January 9, 2004


Eric O. Haugen
Attorneys for Applicant
121 S. Eighth Street
1130 TCF Tower
Minneapolis, MN 55402
(612) 339-8300 - Telephone

RECEIVED IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re App: Sheldon F. Jacobs Co.
Serial No.: 76/411,235
Mark: AUNT TILLY LEWIS
Filed: May 20, 2002
Docket No. 2002-1276 / EOH:cjc

Receipt is hereby acknowledged for a REQUEST FOR SUSPENSION OF APPEAL
PURSUANT TO TBMP SECTION 1213(3); LETTER and EXPRESS MAIL CERTIFICATE
UNDER NO. EV241979914US, relevant to the above-referenced trademark application
matter.



TRADEMARK TRIAL AND APPEAL BOARD
COMMISSIONER FOR TRADEMARKS
2900 CRYSTAL DRIVE
ARLINGTON VA 22202-3514



01-09-2004

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

Mailed: January 9, 2004



TTAB

EXPRESS MAIL LABEL EV-279436886-US
TRADEMARK APPLICATION
Attorney Docket No. 2002-1276

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

In Re Application of:

Re App : Sheldon F. Jacobs Co. : November 10, 2003
S.N. : 76/411,235 : Class Nos. 029 and 030
Filed : May 20, 2002 : Examiner:
Mark : AUNT TILLY LEWIS : Geoffrey A. Fosdick

CERTIFICATE OF MAILING VIA EXPRESS MAIL



BOX TTAB
Commissioner for Trademarks
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, VA 22202-3514

04-07-2004
U.S. Patent & TMO/c/TM Mail Rcpt Dt. #78

Sir:

I hereby certify that the attached Applicant's Reply to Examining Attorney's Appeal Brief including Exhibits A-C in the above-identified trademark application are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to: BOX TTAB, Commissioner for Trademarks, Trademark Trial and Appeal Board, 2900 Crystal Drive, Arlington, VA 22202-3514, under Express Mail Post Office to Addressee Label No. EV-279436886-US.

Respectfully submitted,

HAUGEN LAW FIRM PLLP

Dianne R. Kammerlander
On behalf of Eric O. Haugen
Attorney for Applicant
1130 TCF Tower
121 South Eighth Street
Minneapolis, Minnesota 55402
Phone: (612) 339-8300

Date: April 7, 2004