



TTAB

06-20-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #70

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

_____ x
 APPLEBEE'S INTERNATIONAL, INC.)
)
 Opposer,)
)
 v.)
)
 THE STUFFER CORPORATION)
)
 Applicant.)
 _____ x

Opposition No. 111,517

SKILLET SENSATIONS

I hereby certify that this correspondence is being deposited with the United States Postal Service in first class mail in an envelope addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, on 06-18-02

TRADEMARK TRIAL AND APPEAL BOARD
02 JUN 26 AM 10:38-02

BOX TTAB- NO FEE
Asst. Commissioner of Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

B. C. O'F
06-18-02

Date of Signature

**STUFFER'S RESPONSE TO MOTION TO STRIKE BRIEF
FOR EXCEEDING PAGE LIMIT**

Applicant, The Stouffer Corporation, responds to the Motion to Strike filed by Opposer, Applebee's International, Inc., in the Reply Brief of Opposer, Applebee's International, Inc., served on June 14, 2002.¹ On page 1 of the Reply Brief, Applebee's improperly asserted that Stouffer's brief was 65 pages long, thus exceeding the 55 page limit set forth in 37 CFR §2.128(b). Applebee's Motion to Strike is inappropriate, misleading, unnecessarily consumes the Board's time, and inappropriately diverts the Board's attention from the pleaded issues in this Opposition.

Stouffer's timely filed its main brief on May 20, 2002. The brief contained 52 pages which included the table of contents, index of cases, description of the record, statement of the issues,

¹The Reply Brief was to be filed on June 14, 2002. The actual date of filing the Reply Brief is not known to Applicant.

recitation of the facts, argument, and summary. The brief also included three exhibits. Exhibits I and II were one-page exhibits that illustrated a time line of Apple South categories and Applebee's categories. Exhibit III was a computer printout from Lexis of one of the case citations set forth in Stouffer's brief. Applebee's has inappropriately included the pages of Exhibits I, II and III with the 52 pages of Stouffer's brief in order to assert that Stouffer's exceeded the 55 page limit. Such argument by Applebee's is unwarranted and unfounded.

TBMP §801.03 states that "[e]xhibits or appendices to a brief, not being part of the brief itself, are not included within the page limit." TBMP §801.03 also states "[i]f the case has not been published in *The United States Patent Quarterly*, it is recommended that a copy of the case be submitted with the brief." Consequently, TBMP §801.03 expressly states that Exhibits I, II and III are not included in the page count of Stouffer's brief. Furthermore, even if Exhibits I and II were deemed to be part of the brief, which they are not, Stouffer's would still have not exceeded the 55 page limit. Only if Exhibit III is included in the page count can Stouffer's have exceeded the 55 page limit. However, Exhibit III cannot be properly included as part of the brief since Exhibit III was submitted as a copy of a case that has not been published in *The United States Patent Quarterly*. A simple investigation by Applebee's would have revealed this fact. Exhibit III is a copy of the cited case, as recommended by the Board.

Stouffer's submits that Applebee's Motion to Strike is without merit and should be denied.

By 

ROBERT V. VICKERS
VICKERS, DANIELS & YOUNG
50 Public Square
Suite 2000
Cleveland, Ohio 44113
Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing STOUFFER'S RESPONSE TO MOTION TO STRIKE BRIEF FOR EXCEEDING PAGE LIMIT was served on Opposer, Applebee's International, Inc., by first class mail, postage prepaid this 18th day of June, 2002, to the attorneys for Applebee's International, Inc. at the address below:

David J. Wharton
Constance M. Jordan
Stinson Morrison Hecker, LLP
1201 Walnut Street, Suite 2800
Kansas City, MO 64106-2150



ROBERT V. VICKERS