

Henry

TTAB

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



07-08-2002
U.S. Patent & TMO/TM Mail Rpt D.t. #26

APPLEBEE'S INTERNATIONAL, INC.)
)
Opposer,)
)
vs.)
)
THE STOFFER CORPORATION)
)
Applicant.)

Opposition No. 111,517
Serial No. 75/301,628
Mark: **SKILLET SENSATIONS**

BOX TTAB NO FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

**OPPOSITION TO APPLICANT'S MOTION TO STRIKE
PORTION OF OPPOSER'S REPLY BRIEF**

Opposer Applebee's International, Inc. opposes the Motion to Strike filed by

Stouffer Corporation and states as follows:

There are adequate facts in the record from which the Board can conclude that Opposer's mark SKILLET SENSATIONS is inherently distinctive or had acquired secondary meaning prior to Applicant's first actual, technical use and prior to Applicant's constructive use date. This evidence includes a successful advertising campaign in a large test market, an extensive national advertising campaign, substantial sales, and the fact that Opposer's mark was accepted by the Trademark Office for registration on the Principal Register without any showing

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TRADEMARK TRIAL AND
APPEAL BOARD

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to BOX TTAB NO FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513, on:

July 3, 2002 *Constance M. Jordan*

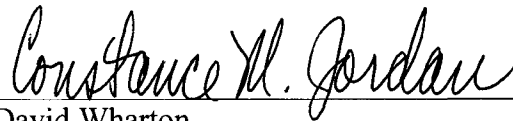
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of secondary meaning (subject to disposition of Applicant's earlier filed application).

Defendants frequently assert affirmative defenses which are not pursued. The burden was not on Opposer to specifically raise the argument of inherent distinctiveness in its opening brief (although the factual evidence shows distinctiveness), but it is certainly entitled to rebut Applicant's argument raised in Applicant's brief that the mark in question is merely descriptive.

Accordingly, Opposer requests that Applicant's Motion to Strike be denied and that Opposer's reply brief be considered in its entirety.

Respectfully submitted,



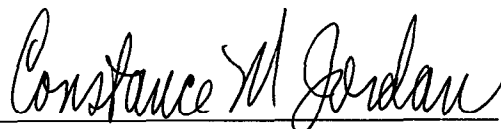
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ATTORNEYS FOR OPPOSER

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Opposition to Applicant's Motion to Strike was served upon Applicant's attorney by depositing the same in the United States mail, first class postage prepaid, on this 3rd day of July, 2002, addressed to:

Robert V. Vickers, Esq.
Vickers, Daniels & Young
2000 Terminal Tower
Cleveland, Ohio 44113



Constance M. Jordan
Attorney for Opposer