

TTAB

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

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APPLEBEE'S INTERNATIONAL, INC. )  
 )  
Opposer, )  
 )  
v. )  
 )  
THE STOUFFER CORPORATION )  
 )  
Applicant. )  
\_\_\_\_\_ X



Opposition No. 111,517  
SKILLET SENSATIONS

05-22-2003  
U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

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STOUFFER'S RESPONSE TO MOTION TO REOPEN TESTIMONY

Applicant, The Stouffer Corporation ("Stouffer"), herein responds in opposition to the Motion to Reopen Testimony filed by Opposer, Applebee's International, Inc. ("Applebee's"). The motion is untimely and the subject matter of the motion has no bearing on the controversy of this Opposition, thus should be denied.

Oral argument for this Opposition was set by the Board for June 11, 2003, less than one month from the filing of Applebee's motion. As Applebee's noted when opposing efforts by Stouffer to introduce current Applebee's menus, the testimony period has long been closed. Applebee's motion is untimely and no further items should be introduced at this stage of the proceedings.

The delay associated with Applebee's motion is furthered by the fact that Applebee's waited over two (2) months after receiving the Canadian letter before filing its motion. Such a delay at this

stage of the proceedings is significant. The lateness of Applebee's motion, plus the delay in the filing of the motion, will adversely affect the timing of the proceedings, as well as the Board's docket. Both the Board and Stouffer have an interest in seeing the expeditious resolution of this Opposition. Applebee's motion and filing delay not only adversely affects Stouffer, but also the Board's resources and docket. *Old Nutfield Brewing Co. v. Hudson Valley Brewing Co.*, 65 USPQ2d 1701, 1703 (TTAB 2002).

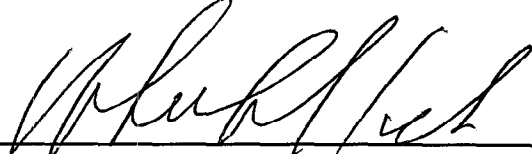
The Canadian letter, which is the subject of Applebee's motion, has no bearing on the Opposition. The letter pertains to a possible Canadian controversy, not the inter parte dispute which is the subject of this Opposition. It is not proper to impute a legal argument made in one country into a controversy existing in another country. Indeed, arguments in Canada do not constitute "evidence" in this Opposition. Consequently, the Canadian letter has no weight in this proceeding, thus does not justify the extraordinary procedure of now reopening Applebee's testimony period for new testimony and then rebuttal by Stouffer.

Applebee's counsel also attached a self-serving letter to its motion. The inclusion of Applebee's letter serves no purpose other than to submit additional arguments in the present opposition. The letter by opponent's counsel is not "evidence."

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

Respectfully submitted,

FAY, SHARPE, FAGAN, MINNICH & McKEE

By: 

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing STOUFFER'S RESPONSE TO MOTION TO REOPEN TESTIMONY PERIOD was served on Opposer, Applebee's International, Inc., by first class mail, postage prepaid this 20<sup>th</sup> day of May, 2003, to the attorneys for Applebee's International, Inc. at the address below:

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