



TTAB

09-17-2001

U.S. Patent & TMO/TM Mail Rcpt Dt. #76

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

Rush Beverage Company, Inc.,)	Opposition No. _____
)	
Opposer,)	
)	
v.)	
)	
Recot, Inc.,)	
)	
Applicant.)	

SEP 24 PM 3:59

OPPOSITION

In the matter of an application for registration of the mark SEE THE FLAVOR, TASTE THE RUSH (hereinafter referred to as "Applicant's Mark"), Serial No. 76/195,498 filed January 17, 2001 for potato based snack foods; namely, potato chips and potato crisps ("Applicant's Products"), in Class 29, by Recot, Inc. of Pleasanton, California, (hereinafter referred to as "Applicant"), which was published on August 14, 2001, in the Official Gazette of August 14, 2001; Rush Beverage Company, Inc., having a place of business located at 12201 S. Western Avenue, Blue Island, Illinois 60406 (hereinafter referred to as "Opposer"), believes that it will be damaged by the registration of said mark, and hereby opposes the registration of said mark in Class 29.

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The grounds for opposition are as follows:

POINT 1:

1. Opposer is the owner of the trademarks RUSH, GINSENG RUSH AND DR. RUSH (“Opposer’s Marks”) and variations thereof for soft drinks (“Opposer’s Products/Products”). Opposer has been in the business of the sale of said Products under Opposer’s Marks since at least 1978.

POINT 2:

2. Opposer alleges that Applicant has made no use of Applicant’s Mark here sought to be registered at this time.

POINT 3:

3. Opposer alleges that at the time Applicant adopted Applicant’s Mark here sought to be registered, it had knowledge of one or more of Opposer’s Marks for the Opposer’s Products.

POINT 4:

4. Opposer alleges that at the time Applicant first used Applicant’s Mark here sought to be registered, it had knowledge of Opposer’s Marks for the Opposer’s Products.

POINT 5:

5. Opposer alleges that the Opposer’s Products and Applicant’s Products are related.

POINT 6:

6. Snack foods, namely potato chips and potato crisps are often eaten at the same time as soft drinks are being consumed.

POINT 7:

7. Opposer alleges that the Opposer's Products upon which Opposer's Marks are used and those upon which the Applicant's Mark is used are of the same general nature and that they are both sold to the same class of trade through the same channels of distribution, and, hence, when Opposer's Marks and Applicant's Mark are applied thereto, there is likelihood of confusion, mistake or deception.

POINT 8:

8. The registration and use of the mark here sought to be registered by the Applicant will injure Opposer by causing the purchasing public to be confused or mistaken or deceived into believing that the Products sold by the Applicant are those of the Opposer, and will place a cloud on the title of Opposer's Marks. In addition, the Opposer has no control over the nature and quality of the Products to which the Applicant applies its mark, and the Opposer's reputation would be damaged, and the value of its marks jeopardized by the registration of the mark.

WHEREFORE, the Opposer prays that the Opposition be sustained, and that Application Serial No. 76/195,490 be rejected, and that the registration of the mark therein shown and specified be refused and denied.

Respectfully submitted,

By: 

James L. Kurtz
Counsel for Opposer
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Dated: Sept 12, 2001

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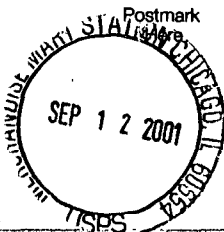
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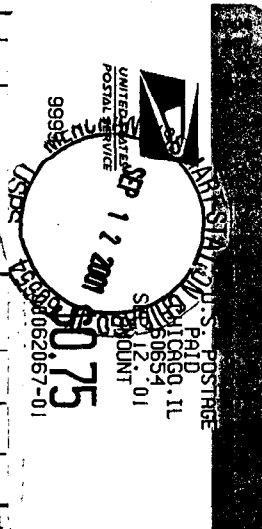
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09-17-2001

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TTAB OFFICE FEE DOCUMENTS

Box: TTAB Fee
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Date: 9-12-01

Mark: See the Flavor Taste the Real
Owner: Recot, Inc
Application No. 76/195 498 or
Registration No. _____

Dear Sir:

Enclosed for filing please find the following documents:

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Sincerely,

LADAS & PARRY

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