

4. Answering paragraph four of the Notice of Opposition, Applicant denies that the goods covered by Opposer's mark are similar to Applicant's goods, sold in the same channels of trade to the same consumers. AS for the remaining allegations in this paragraph, Applicant does not have sufficient knowledge or information to form a belief and accordingly denies the allegations.
5. Answering paragraph five of the Notice of Opposition, Applicant has no knowledge or information sufficient to form a belief as to the allegations contained therein and accordingly denies the allegations.
6. Answering paragraph six of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.
7. Answering paragraph seven of the Notice of Opposition, Applicant denies knowledge of Opposer's alleged licensing of its mark and the alleged policing activity. As for the remaining allegations in paragraph seven, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.
8. Answering paragraph eight of the Notice of Opposition, Applicant denies that it is aware of Opposer's alleged use of its marks and its "strict policing." However, Applicant is aware of a number of cases, apparently the result of Opposer's "strict policing", where the court found Opposer's claims to be lacking in merit. (See S Industries v. Diamond Multimedia Systems, Inc., (1998) 991 F.Supp 1012) Further, Applicant notes that no Exhibit A was attached to the Notice of Opposition and therefore Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the remaining allegations in this paragraph.
9. Answering paragraph nine of the Notice of Opposition, Applicant denies each and every allegation contained therein.

10. Answering paragraph ten of the Notice of Opposition, Applicant denies that the “registrations” of Opposer’s marks are attached to the Notice of Opposition. As for the remaining allegations contained in this paragraph, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the remaining allegations.
11. Answering paragraph eleven of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.
12. Answering paragraph twelve of the Notice of Opposition, Applicant admits that its pending mark and Opposer’s marks are the same. Applicant denies each and every remaining allegation contained in this paragraph..
13. Answering paragraph thirteen of the Notice of Opposition, Applicant denies each and every allegation contained therein.
14. Answering paragraph fourteen of the Notice of Opposition, Applicant denies each and every allegation contained therein.
15. Answering paragraph fifteen of the Notice of Opposition, Applicant denies each and every allegation contained therein.
16. Answering paragraph sixteen of the Notice of Opposition, Applicant denies each and every allegation contained therein.
17. Answering paragraph seventeen of the Notice of Opposition, Applicant denies each and every allegation contained therein.
18. Answering paragraph eighteen of the Notice of Opposition, Applicant denies each and every allegation contained therein.
19. Answering paragraph nineteen of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

20. Answering paragraph twenty of the Notice of Opposition, Applicant denies knowledge of Opposer's "aggressive licensing program" and does not have sufficient knowledge or information to form a belief as to the remaining allegations contained therein and accordingly denies those allegations.
21. Answering paragraph twenty-one of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.
22. Answering paragraph twenty-two of the Notice of Opposition, Applicant denies knowledge of Opposer's listing in the 1999 Licensing Resource Directory and does not have sufficient knowledge or information to form a belief as to the remaining allegations contained therein and accordingly denies those allegations.
23. Answering paragraph twenty-three of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.
24. Answering paragraph twenty-four of the Notice of Opposition, Applicant denies each and every allegation contained therein.
25. Answering paragraph twenty-five of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.
26. Opposer omitted paragraph twenty-six.
27. Answering paragraph twenty-seven of the Notice of Opposition, Applicant denies each and every allegation contained therein.
28. Answering paragraph twenty-eight of the Notice of Opposition, Applicant denies each and every allegation contained therein.
29. Answering paragraph twenty-nine of the Notice of Opposition, Applicant denies each and every allegation contained therein.

30. Answering paragraph thirty of the Notice of Opposition, Applicant denies each and every allegation contained therein.
31. Answering paragraph thirty-one of the Notice of Opposition, Applicant denies each and every allegation contained therein.
32. Answering paragraph thirty-two of the Notice of Opposition, Applicant denies each and every allegation contained therein.
33. Answering paragraph thirty-three of the Notice of Opposition, Applicant admits that the marks are identical.
34. Answering paragraph thirty-four of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations
35. Answering paragraph thirty-five of the Notice of Opposition, Applicant denies each and every allegation contained therein.
36. Answering paragraph thirty-six of the Notice of Opposition, Applicant denies each and every allegation contained therein.
37. Answering paragraph thirty-seven of the Notice of Opposition, Applicant denies each and every allegation contained therein.
38. Answering paragraph thirty-eight of the Notice of Opposition, Applicant denies each and every allegation contained therein.
39. Answering paragraph thirty-nine of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.
40. Answering paragraph forty of the Notice of Opposition, Applicant denies each and every allegation contained therein.
41. Answering paragraph forty-one of the Notice of Opposition, Applicant denies each and every allegation contained therein.

42. Answering paragraph forty-two of the Notice of Opposition, Applicant denies each and every allegation contained therein.
43. Answering paragraph forty-three of the Notice of Opposition, Applicant denies each and every allegation contained therein.
44. Answering paragraph forty-four of the Notice of Opposition, Applicant denies each and every allegation contained therein.
45. Answering paragraph forty-five of the Notice of Opposition, Applicant denies each and every allegation contained therein.
46. Answering paragraph forty-six of the Notice of Opposition, Applicant denies each and every allegation contained therein.
47. Answering paragraph forty-seven of the Notice of Opposition, Applicant denies each and every allegation contained therein.
48. Answering paragraph forty-eight of the Notice of Opposition, Applicant denies each and every allegation contained therein.
49. Answering paragraph forty-nine of the Notice of Opposition, Applicant denies each and every allegation contained therein.
50. Answering paragraph fifty of the Notice of Opposition, Applicant denies each and every allegation contained therein.
51. Answering paragraph fifty-one of the Notice of Opposition, Applicant denies each and every allegation contained therein.

AFFIRMATIVE DEFENSES

52. As the first Affirmative Defense, Applicant alleges that there is no likelihood of confusion, mistake or deception because, inter alia, Applicant's mark and the pleaded marks of Opposer are not confusingly similar.

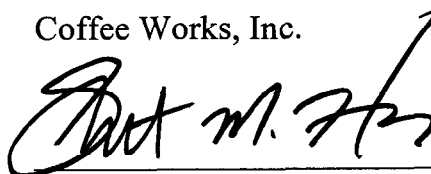
53. As a second and further Affirmative Defense, Applicant alleges that as a result of its continuous and substantial use of its mark DARK STAR the mark has become a valuable asset and carries considerable good will and consumer acceptance of the services provided under the mark. Such good will and widespread usage has made the mark distinctive to the Applicant.
54. As a third and further Affirmative Defense, Applicant alleges that the marks cited by Opposer in its Notice of Opposition are not “famous” marks.
55. As a fourth and further Affirmative Defense, Applicant alleges that by Opposer’s conduct and omissions, it is equitably estopped to assert any claim for relief against Applicant with respect to the matters that are the subject of the Notice of Opposition.
56. As a fifth and further Affirmative Defense, Applicant alleges that by Opposer’s conduct and omissions, it has waived, relinquished and or abandoned any claim for relief against Applicant with respect to the matters that are the subject of the Notice of Opposition.
57. As a sixth and further Affirmative Defense, Applicant alleges, based on information and belief, that the applications upon which Opposer relies in its Notice of Opposition are fraudulent in that, as to those applications filed based on an intent to use Opposer never had a *bona fide* to use the mark in connection with the services listed, and as to those use based, Opposer statement of a first use date was false; that said statements were known to be false when made and made with the intent to defraud the U.S. Patent and Trademark Office.

WHEREFORE, Applicant Coffee Works, Inc. prays that this Notice of Opposition be dismissed.

Dated: 7-22-02

Respectfully submitted,

Coffee Works, Inc.



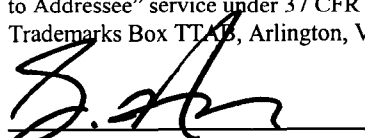
Scott M. Hervey, Attorney for
Applicant
WEINTRAUB GENSHLEA CHEDIAK
SPROUL
400 Capitol Mall, 11th Floor
Sacramento, CA 95814

CERTIFICATE OF EXPRESS MAILING

Express Mail Label Number: EL 939550207US

Date of Deposit: July 22, 2002

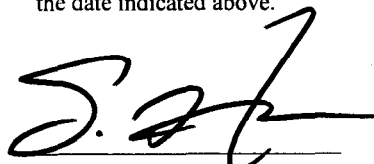
I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Assistant Commissioner for Trademarks Box TTAB, Arlington, Virginia 22202-3513 .


Scott M. Hervey

CERTIFICATE OF FACSIMILE TRANSMISSION

Date of Transmission: July 22, 2002

I hereby certify that this paper or fee is being facsimile transmitted to the TTAB Attn: Pauline Stewart at 703/308-9333 on the date indicated above.


Scott M. Hervey

PROOF OF SERVICE

I am a citizen of the United States, employed in the City and County of Sacramento, California. My business address is 400 Capitol Mall, 11th Floor, Sacramento, California 95814. I am over the age of 18 years and not a party to, nor interested in, the within action. On this date, I caused to be served the following document:

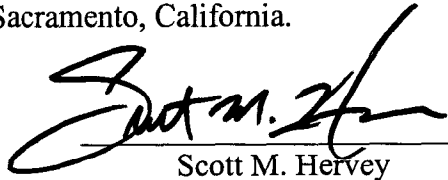
ANSWER TO NOTICE OF OPPOSITION

- United States mail by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing mail in accordance with this office's practice whereby the mail is deposited in a United States mailbox after the close of the day's business.
- By personally delivering, or causing to be delivered, a true copy thereof to the person and at the address set forth below.
- Via overnight courier.
- Via facsimile, original to follow by United States Mail

Leo Stoller
Trademark & Licensing Dept.
P.O. Box 35189
Chicago, IL 60707-0189

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed on July 22, 2002, at Sacramento, California.



Scott M. Hervey