

Exhibits

FIAB

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

CHEF AMERICA, INC.,)
)
Opposer,)
)
v.)
)
J.M. SCHNEIDER, INC.,)
)
Applicant)

Opposition No. _____
Serial No. 78/060,378
Published May 14, 2002

TRADEMARK TRIAL AND APPEAL BOARD
06-17-2002
U.S. Patent & TMO/Trademark Mail Room #70
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NOTICE OF OPPOSITION

Opposer, Chef America, Inc. ("Opposer"), believes that it will be damaged by registration of the mark SCHNEIDERS HOTSTUFFS (& Design) by Applicant J.M. Schneider, Inc. ("Applicant"), and opposes the same. The grounds for opposition are as follows:

1. Opposer manufactures and markets packaged food products. Among the products marketed by Opposer are several lines of frozen stuffed sandwiches, consisting of various fillings wrapped inside a layer of bread, dough or pastry.
2. Opposer's predecessor introduced its first line of frozen stuffed sandwiches under the HOT POCKETS trademark in 1982.
3. On March 27, 1984, Opposer's predecessor received Registration No. 1,271,973 of the mark HOT POCKETS (& Design) for "pre-cooked, ready-to-eat, frozen bread having a fruit, meat and/or vegetable filling." Opposer has complied with all requirements necessary to maintain this registration, which is now incontestable under 15

U.S.C. § 1065. A true and correct copy of Registration No. 1,271,973 is attached as Exhibit A.

4. On April 21, 1999, Opposer received Registration No. 2,151,684 for the mark HOT-POCKETS for “pre-cooked, ready-to-eat, frozen bread having a fruit, meat and/or vegetable filling.” A true and correct copy of Registration No. 2,151,684 is attached as Exhibit B.

5. In addition to its HOT POCKETS marks, Opposer also owns several federal registrations for marks, which have as a distinctive common element the term “Stuffs” (hereinafter, “STUFFS Marks”). These STUFFS Marks include: STUFFS (Reg. No. 2,330,040), PIZZA STUFFS (Reg. No. 2,330,040), and BIG STUFFS (Reg. No. 2,250391). Opposer also owns a federal registration for the mark DELI STUFFS (Reg. No. 2,071,506) for “prepared frozen sandwiches comprised of a meat filling with cheese and/or vegetables and bread; prepared frozen sandwiches comprised of meat, cheese, vegetables, fruit and/or vegetable filling.” True and correct copies of the registration certificates for the STUFFS Marks are attached as Exhibit C.

6. Opposer has expended substantial sums of money in developing purchaser recognition for Opposer’s HOT POCKETS Marks and STUFFS Marks. The public and wholesale and retail buyers are familiar with and identify Opposer’s HOT POCKETS Marks and STUFFS Marks with Opposer, and food products sold under those marks are understood by the public and in the grocery trade to be those of Opposer.

7. Applicant has filed application Serial No. 78/060,378 to register the mark SCHNEIDERS HOTSTUFFS (& Design) for “prepackaged entrees or meals consisting

primarily of meat, poultry, vegetables, eggs, fruit, cheese or any combination thereof,” and this application was published for opposition on May 14, 2002.

8. The products identified by application Serial No. 78/060,378 are identical or closely related to the food products sold under Opposer’s HOT POCKETS Marks and STUFFS Marks and are likely to be sold to the same or similar customers through the same wholesale and retail channels of trade.

9. The most prominent feature of Applicant’s mark are the words “Hot” and “Stuffs,” which is a combination of Opposer’s HOT POCKETS Marks and STUFFS Marks. Applicant’s mark is similar in sound, appearance, and meaning to Opposer’s HOT POCKETS Marks and STUFFS Marks.

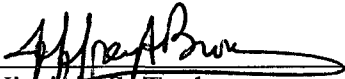
10. Opposer will be damaged by registration of Applicant’s SCHNEIDERS HOTSTUFFS mark because the mark so resembles Opposer’s HOT POCKETS Marks and STUFFS Marks as to be likely to cause confusion, mistake, and deception, particularly in view of the closely related nature of the parties’ goods.

11. Persons familiar with Opposer’s marks and goods would be likely to erroneously believe that Applicant’s goods are products of Opposer or are authorized, licensed, endorsed, or sponsored by Opposer, and registration of Applicant’s mark on the Principal Register would be inconsistent with Opposer’s rights in the HOT POCKETS Marks and STUFFS Marks.

12. A duplicate copy of this Notice of Opposition and the required fee of \$300.00 are enclosed. **The Commissioner is authorized to debit Kilpatrick Stockton LLP deposit account no. 11-0860 if there is a deficiency in the required fee.**

WHEREFORE, Opposer requests that the Board refuse registration of the application for SCHNEIDERS HOTSTUFFS (Ser. No. 78/060,378), and sustain this Opposition in favor of Opposer.

Respectfully Submitted:


Virginia S. Taylor
Michael W. Rafter
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Attorneys for Chef America, Inc.

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)	
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CERTIFICATE OF MAILING

I hereby certify that this NOTICE OF OPPOSITION is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Box TTAB FEE, Arlington, Virginia 22202-3515, on this the 13th day of June, 2002.

Respectfully submitted,



Jeffrey A. Brown

Attorney for Opposer
Chef America, Inc.



**KILPATRICK
STOCKTON LLP**

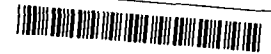
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June 13, 2002

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06-17-2002

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

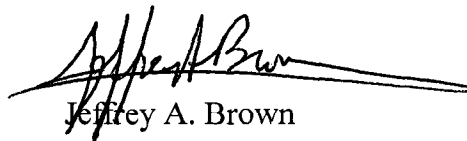
Re: Opposer: Chef America, Inc.
Applicant: J.M. Schneider, Inc.
Mark: SCHNEIDERS HOTSTUFFS (& Design)
Ser. No.: 78/060,378
Our Ref.: C0310.265216

Dear Sir/Madam:

Enclosed are an original and a copy of **Opposer's Notice of Opposition**. Please acknowledge receipt of the enclosures by initialing and dating the enclosed postcard and returning it to me.

Thank you for your assistance.

Sincerely,


Jeffrey A. Brown

Enclosures

cc: Virginia A. Taylor, Esq.
Michael W. Rafter, Esq.