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01-02-2003
U.S. Patent & TMO/c/TM Mail Rpt Dt. #73

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

LA SALSA, INC.,)
Opposer,)
v.) Opposition No. 91153522
BRINKER RESTAURANT)
CORPORATION,)
Applicant.)

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

EXPRESS MAIL NO: EV 047873332 US
DATE OF DEPOSIT: December 31, 2002

I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. § 1.10 on the date indicated above and is addressed to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513.



Signature

APPLICANT'S ANSWER TO OPPOSITION

Brinker Restaurant Corporation ("Applicant"), a corporation organized under the laws of the state of Delaware and having a principal place of business at 6820 LBJ Freeway, Dallas, Texas 75240 USA, the owner of U.S. Application Serial No. 76/314,282, ("Applicant's Mark") for its Answer to Opposition filed by La Salsa, Inc., pleads and avers as follows:

1. Answering paragraph 1 of the Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and accordingly denies the allegations.
2. Answering paragraph 2 of the Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and accordingly denies the allegations.

3. Answering paragraph 3 of the Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and accordingly denies the allegations.
4. Answering paragraph 4 of the Opposition, Applicant acknowledges that Opposer purports to be the owner of the cited registrations, but Opposer failed to provide copies of the registrations, therefore Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and accordingly denies the allegations.
5. Answering paragraph 5 of the Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and accordingly denies the allegations.
6. Answering paragraph 6 of the Opposition, Applicant acknowledges that Opposer filed its applications prior to Applicant's application but Applicant is without sufficient knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and accordingly denies the allegations.
7. Answering paragraph 7 of the Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and accordingly denies the allegations.

AFFIRMATIVE DEFENSES

8. Applicant affirmatively alleges that during examination of the present application, Serial No. 76/314,282, the Trademark Examining Attorney did not cite any U.S. trademark registration of Opposer against Applicant's Mark.
9. Applicant affirmatively alleges that Applicant's goods and services advertised, offered, sold and/or distributed under the mark ON THE BORDER MEXICAN GRILL & CANTINA (and Design) are distinctively different and distinguishable from those goods

and services identified in Opposer’s U.S. Trademark Registration Nos. 2,565,424 and 2,484,633. Consumers and prospective consumers of Applicant’s goods and services advertised, offered, sold and/or distributed under Applicant’s Mark ON THE BORDER MEXICAN GRILL & CANTINA (and Design) are not likely to be confused, mistaken or deceived that Opposer’s goods and services advertised, offered, sold and/or distributed under Opposer’s “Lime Wedge marks”, specifically, U.S. Trademark Registration Nos. 2,565,424 and 2,484,633, in any way emanate from or are in some way sponsored by or affiliated with Applicant.

10. Applicant affirmatively alleges that Opposer’s and Applicant’s marks have coexisted for some time without conflict or consumer confusion that in any way negatively impacted Opposer.
11. Applicant affirmatively alleges Opposer has not been damaged by Applicant’s use of Applicant’s Mark and will not be damaged in the future by the registration of Applicant’s Mark.
12. Applicant affirmatively alleges Opposer has no right to expand usage of Opposer’s marks.
13. Applicant affirmatively alleges the goods and services sold by Applicant under Applicant’s Mark and Applicant’s use of Applicant’s Mark do not dilute any rights Opposer may have in Opposer’s “Lime Wedge marks”.

In view of the foregoing, Applicant contends that this Opposition is groundless and baseless in fact; that Opposer has not shown wherein that it has been, will be, or is likely to be, damaged by the registration of Applicant’s Mark ON THE BORDER MEXICAN GRILL & CANTINA (and design), subject of U.S. Trademark Application Serial No. 76/314,282.

Applicant prays that this Opposition be dismissed and that registration of U.S. Trademark Application Serial No. 76/314,282 be granted.

Attorney Reference No. 10576/41901


Opposition No. 91153522

"ON THE BORDER MEXICAN GRILL & CANTINA (and Design)"

BRINKER RESTAURANT CORPORATION

Date: December 31, 2002

By:



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ATTORNEYS FOR APPLICANT

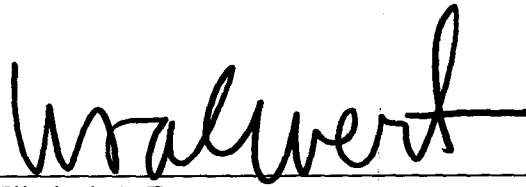
Attorney Reference No. 10576/41901

Opposition No. 91153522

“ON THE BORDER MEXICAN GRILL & CANTINA (and Design)”

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Applicant's Answer to Opposition was mailed first class mail, postage prepaid, to Steven J. Nataupsky, Knobbe, Martens, Olson & Bear, LLP, 2040 Main Street, 14th Floor, Irvine, California 92614, attorney for Opposer, this 31st day of December, 2002.

A handwritten signature in black ink, appearing to read "Evert", written over a horizontal line.

Elisabeth A. Evert