

10-30-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #73

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

In re Matter of Application

Serial No.: 76/112086

Filed: August 18, 2000

For the mark: RICO MADE WITH A MAGIC TOUCH!
and Design

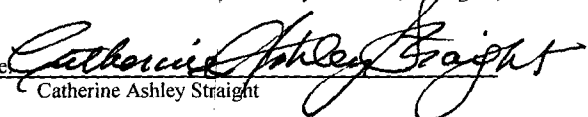
Published in the Official Gazette on July 30, 2002

RICO'S PIZZA, INC.)	
)	
Opposer,)	Opposition No. _____
)	
vs.)	
)	
RICO FROZEN FOODS, INC.)	
)	
Applicant.)	
_____)	

CERTIFICATE OF MAILING

I hereby certify that this Notice Of Opposition, and Power Of Attorney, is being deposited with the United States Postal Service as first class mail in an envelope addressed to: BOX TTAB FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513 on: October 28, 2002

Date of Signature: October 28, 2002

Signature: 
Catherine Ashley Straight

11/07/2002 TSMITH 00000056 76112086

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NOTICE OF OPPOSITION

RICO'S PIZZA, INC., a California corporation, organized and existing under the laws of the State of California, and having its principal place of business at 4211 "B" Arden

Way, Sacramento, California 95864, believes that it will be damaged by registration of the mark shown in Serial No. 76/112086, in International Class 30, and hereby opposes same.

As grounds of opposition, it is alleged that:

1. The Applicant seeks to register mark, RICO MADE WITH A MAGIC TOUCH! and Design, as a trademark, in connection with: Frozen Italian Foods, Namely, tortellini, rigatoni, pasta, shells, lasagna, manicotti, pizza crust, cavatelli, gnocchi, garlic bread and pizza dough, in International Class 30. These facts are evidenced in the file history of Applicant's application and by publication of RICO MADE WITH A MAGIC TOUCH! and Design in the Official Gazette on July 30, 2002.

2. Opposer is the owner of U.S. Trademark Registration No. 1,080,646, for the mark, RICO'S for Restaurant Services, which was registered on the Principal Register on December 27, 1977. Said registration was based on an application filed in the U.S. Patent and Trademark Office on April 27, 1977, which is a date prior to the date of filing of Applicant's application. Said registered mark of Opposer is valid and subsisting and is conclusive evidence of Opposer's exclusive right to use said mark in commerce in connection with the services specified in said registration.

3. Opposer, through its predecessor in title, has since 1960, has sold and promoted, and continues to sell and promote, Italian Food, Namely, Pizza, for consumption on and off of the premises from which the pizza was sold, under the RICO'S mark, in substantially a continuous manner, thereby using the mark RICO'S in connection with the

sale of Italian Food, Namely, Pizza.

4. Opposer, since 1960, has been, and is now, using the mark, RICO'S, as a trade name in connection with the sale of its Restaurant Services and its Pizza products.

5. All of said uses have been valid and substantially continuous since said date of first use and have not been abandoned. Said mark and trade name are symbolic of extensive good will and consumer recognition built up by Opposer through substantial amounts of time and effort in advertising and promotion.

5. The trademark RICO MADE WITH A MAGIC TOUCH! and Design, proposed for registration by Applicant includes as the dominant portion the word "RICO." In fact, a review of Applicant's specimen, submitted with the application, shows that Applicant uses the composite mark as though "RICO" is one mark, and the slogan "Made with a Magic Touch !" is a separate mark, with the two (2) portions of the mark being physically separated. Taking the dominant portion of Applicant's mark, it is evident that RICO is substantially identical visually, phonetically, and in meaning when compared to Opposer's mark, RICO'S.

6. In view of the similarity of the respective marks, and the related nature of the goods and services of the respective parties, it is alleged that Applicant's mark so resembles Opposer's registered mark, common law mark, and trade name, all previously used in the United States, as to be likely to cause confusion, or to cause mistake, or to deceive. If Applicant is permitted to use and register RICO MADE WITH A MAGIC TOUCH!, for the goods specified in the application herein opposed, among other things, confusion in both the

trade and with the consuming public will result in damage and injury to Opposer. A defect, objection or fault found with Applicant's goods marketed under its proposed mark could reflect upon and damage the reputation and goodwill of Opposer which has been established under the RICO'S mark..

7. If Applicant is granted the registration herein opposed, it would thereby obtain at least a *prima facie* exclusive right to the use and ownership of the RICO MADE WITH A MAGIC TOUCH! The existence of such registration would cause significant damage to Opposer, and would place a cloud on the title to Opposer's 1,080,646 Registration.

8. Opposer's filing fee to oppose registration of Applicant's mark in the single class specified in the application is enclosed herewith.


WHEREFORE, Opposer prays that Application Serial No. 76/112086 be rejected, and that the mark therein sought for the goods therein specified be denied and refused registration.

Dated: October 28, 2002

Respectfully submitted,

RICO'S PIZZA, INC.

By:


Catherine Ashley Straight
for HODGSON & STRAIGHT
Attorneys for Opposer

The correspondence address for
this communication is:
HODGSON & STRAIGHT
8801 Folsom Boulevard, Suite 150
Sacramento, California 95826
Telephone: (916) 381-3800
Facsimile: (916) 381-3886

10-30-2002

U.S. Patent & TMO/ TM Mail Rcpt Dt. #73

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

In re Matter of Application

Serial No.: 76/112086

Filed: August 18, 2000

For the mark: RICO MADE WITH A MAGIC TOUCH!
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 RICO FROZEN FOOD, INC.)
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 Applicant.)
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Opposition No. _____

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Trademark Trial and Appeal Board

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

POWER OF ATTORNEY

The above-identified Opposer is the owner of the service mark RICO'S, Registration No. 1,080,646, Registered on December 27, 1977, and thereafter renewed, for Restaurant Services, in International Class 42.

Registrant and Opposer hereby appoints Catherine Ashley Straight, and Timothy E.

Hodgson, attorneys at law of the firm of HODGSON & STRAIGHT, 8801 Folsom Boulevard, Suite 150, Sacramento, California 95826, to prosecute the Opposition to registration of the mark RICO'S MADE WITH A MAGIC TOUCH! and Design, application serial number 76/112086, and to transact all business in the Patent and Trademark Office in connection therewith.

RICO'S PIZZA, INC.

Date: 10/28/02


Daniel E. Ryhal
President

The correspondence address for
this communication is:
HODGSON & STRAIGHT
8801 Folsom Boulevard, Suite 150
Sacramento, California 95826
Telephone: (916) 381-3800
Facsimile: (916) 381-3886

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FAX: (916) 381-3886

October 28, 2002

File No. 0374

Box TTAB FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

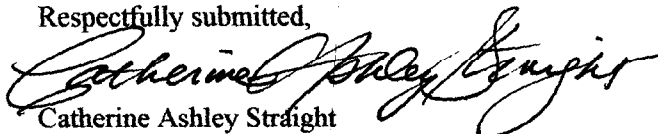
Dear Sir:

Enclosed, herewith, for filing is a Notice of Opposition by Opposer, Rico's Pizza, Inc., for the trademark, RICO MADE WITH A MAGIC TOUCH! and Design, application serial no. 76/112086, filed August 18, 2000, by Rico Frozen Foods, Inc.

Enclosed herewith is our check in the amount of \$300.00 for the Opposition filing fee for the single class specified in the application.

Also enclosed herewith is a Power of Attorney appointing our firm to prosecute this Opposition.

Respectfully submitted,



Catherine Ashley Straight

for

HODGSON & STRAIGHT

CAS/cb

Enclosures:

Notice of Opposition
Power of Attorney