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

In the Matter of Trademark Application Serial No. 76/378,230
For the Mark **INSIDE AND OUT**
Published in the Official Gazette on August 20, 2002

In-N-Out Burgers)
Opposer)
)
v.)
)
Tony Chachere's Creole Foods)
of Opelousas, Inc.)
)
Applicant)
_____)

_____)
11-20-2002
U.S. Patent & TMO/c/TM Mail Rpt Dt: #70

NOTICE OF OPPOSITION

Opposer, In-N-Out Burgers, a California Corporation, with a business address of 4199 Campus Drive, 9th Floor, Irvine, CA 92612, hereby opposes registration of the mark **INSIDE AND OUT** that is the subject of application 76/374,230, published in the Official Gazette of August 20, 2002, and requests that registration to Applicant be refused.

As grounds in support of the opposition, Opposer asserts as follows:

1. Opposer, for many years and since long prior to any date of application or first use, if any, upon which Applicant can rely, has adopted and continuously used the term **IN-N-OUT** for its restaurant services, and food items associated with its restaurant services;
2. Opposer is the owner of registrations for the mark **IN-N-OUT**, for restaurant services and carry-out restaurant services, each of said registrations being valid,

subsisting, unrevoked and uncanceled, namely registrations 1,085,163, 1,522,799, and 1,525,982;

3. Opposer is the owner of registrations 1,101,628, 1,101,638, 1,522,799, and 1,525,982 for the mark IN-N-OUT for food items associated with its restaurant services, namely cheeseburgers, hamburgers, French fried potatoes, hot coffee, milk, milkshakes, lemonade and soft drinks, each of said registrations being valid, subsisting, unrevoked and uncanceled;
4. Opposer provides condiments, including spices, for use with food items purchased by members of the public in the performance of Opposer's restaurant services;
5. Opposer is the owner of Registration 930,203, IN'N'OUT, registered February 29, 1972, for retail grocery services, said Registration being valid, subsisting, unrevoked and uncanceled.
6. Said Registration 930,203 is in use by controlled licensees, pursuant to agreement, in connection with retail grocery services, including the sale of spices, marinades and related items.
7. Applicant has filed an intent-to-use application to register the mark INSIDE AND OUT for spices and marinades. That application was filed on March 4, 2002, and assigned Serial No. 76/378,230.
8. Applicant's mark so resembles Opposer's previously used and registered marks IN-N-OUT, and IN'N'OUT as to be likely, when used in connection with the goods set forth in Applicant's application, to cause confusion, mistake, or deception within the meaning of Section 2(d) of the Trademark Act.

9. Applicant's mark so resembles Opposer's previously used, registered, and famous marks IN-N-OUT and IN'N'OUT as to be likely, when used in connection with the goods set forth in Applicant's application, to lessen the capacity of Opposer's said marks to identify and distinguish Opposer's services and goods, regardless of the presence or absence of competition between Opposer and Applicant, or likelihood of confusion, mistake or deception.

WHEREFORE, Opposer prays that the opposition be sustained and that registration to Applicant be refused.

Respectfully submitted,
In-N-Out Burgers

By Edward O. Ansell
Edward O. Ansell
Attorney for Opposer

Date: Nov 20, 2002

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Date of Deposit: Nov 20, 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. § 1.110 on the date indicated above and is addressed to: Assistant Commissioner for Trademarks, Box: TTAB/FEE 2900 Crystal Drive, Arlington, Va 22202-3513.

Edward O. Ansell

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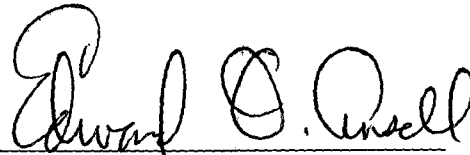
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TRADEMARK TRIAL AND APPEAL BOARD

NOTICE OF OPPOSITION

Commissioner for Trademarks
Box: TTAB/FEE
2900 Crystal Dr.
Arlington, VA 22202-3513

Sir:

Please find enclosed a Notice of Opposition (in triplicate) with respect to Application Serial No. 76/374,230, **INSIDE AND OUT**, published in the Official Gazette of August 20, 2002, together with a check for \$300.



Edward O. Ansell

Attorney for Opposer, In-N-Out Burgers

Date: Nov 20, 2002

Enc. a/s

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