


TTAB

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

IN THE MATTER OF APPLICATION SERIAL NO. 76/378,230
FOR THE MARK "INSIDE AND OUT"
PUBLISHED IN THE OFFICIAL GAZETTE OF AUGUST 20, 2002

IN-N-OUT BURGERS)
)
OPPOSER)
)
v.)
)
TONY CHACHERE'S CREOLE)
FOODS OF OPELOUSAS, INC.)
)
APPLICANT)
_____)

OPPOSITION NO. 91154347


10-22-2003
U.S. Patent & TMO/c/TM Mail Rcpt Dt. #78

Box: TTAB/NO FEE
Commissioner for Trademarks
2900 Crystal Dr.
Arlington, VA 22202-3514

OPPOSER'S MOTION TO RESUME PROCEEDINGS

and

**OPPOSER'S MOTION FOR JUDGMENT, SUSTAINING
OPPOSITION, AND DENIAL OF REGISTRATION**

(Including Memorandum and Declaration of Edward O. Ansell in Support)

Dear Sirs:

The undersigned Opposer hereby moves the TTAB to resume the above-captioned Opposition, suspended by an Order mailed September 2, 2003, subject to the right of either party to request resumption at any time.

Opposer further moves the TTAB for an order of Judgment, sustaining this Opposition, and denying the registration of Applicant's mark. These motions are potentially dispositive of the instant proceeding.

Opposer supports these motions with the herein memorandum and declaration of Edward O Ansell.

MEMORANDUM

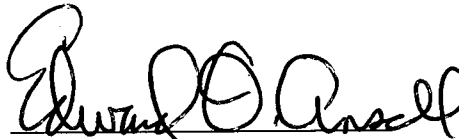
In view of the on-going settlement discussions between Applicant and Opposer, the TTAB Interlocutory Attorney mailed a six-month Suspension Order on September 2, 2003. The Order was made subject to the right of either party to request resumption of the instant proceeding at any time. In a telephone conversation held on September 26, 2003, Thomas Brooke, Attorney for Applicant, informed the undersigned of Applicant's rejection of Opposer's most recent offer of settlement. He stated that Applicant did not wish to make any further expenditures in an effort to obtain registration of Application Serial No. 76/378,230, the subject of the instant Opposition. He further stated that he would not oppose a "Motion of Default," and, in response to a direct question, he stated that he had no objection if he was quoted.

In view of the failure to negotiate a settlement, there is no reason to continue the suspension, so Opposer moves for the proceeding to be resumed, as provided in the Suspension Order. Should the TTAB grant Opposer's Motion for Judgment, the resulting Order would be dispositive of the instant proceeding. Rule 2.127(d) states that when any party files a motion which is potentially dispositive of a proceeding, the case will be suspended by the Trademark Trial and Appeal Board with respect to all matters not germane to the motion and no party shall file any paper which is not germane to the motion except as otherwise specified in the Board's suspension order. If the case is not

disposed of as a result of the motion, proceedings will be resumed pursuant to an order of the Board when the motion is decided.

If the Applicant does not contest Opposer's Motion within the time period provided in Rule 2.127(a), the matter should be viewed as a default by Applicant, whereupon the TTAB is requested to issue an Order of Judgment, sustaining the Opposition, and denying registration of Applicant's mark.

Respectfully submitted,



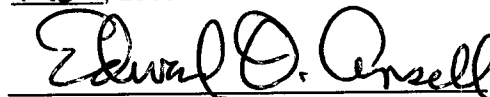
Edward O. Ansell
Attorney for Opposer
In-N-Out Burgers

Date: Oct 20, 2003

427 N. Yale Avenue, Suite 204
P.O. Box 1163
Claremont, CA 91711
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Fax: (909) 624-1664
e-mail: anselaw@att.net

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing OPPOSER'S MOTION TO RESUME PROCEEDINGS AND OPPOSER'S MOTION FOR JUDGMENT SUSTAINING OPPOSITION AND DENIAL OF REGISTRATION was sent by first class mail, postage pre-paid to Counsel for Applicant, Thomas W. Brooke, Esq. Holland R. Knight, LLP, 2009 Pennsylvania Avenue, N.W., #100, Washington, D.C. 20006-6801 on October 20, 2003



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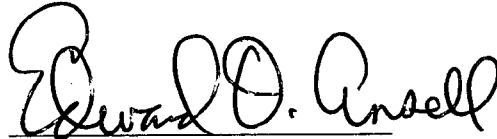


DECLARATION OF EDWARD O. ANSELL

I, EDWARD O. ANSELL do hereby declare and state:

1. I am a citizen of the United States, a member of the bar of the United States District Court in the Central District of California, and a resident of the County of Los Angeles in the State of California. I am attorney of record for Petitioner/Opposer in the above entitled action, and my business address for this Opposition is 427 N. Yale Avenue, Suite 204, Claremont, CA 91711
2. On Monday, August 11, 2003, a counter-offer of settlement was made by me on behalf of Opposer In-N-Out Burgers in a telephone conversation with Thomas Brooke, attorney for Applicant. It was followed up with an e-mail confirmation that same day.
3. On Monday, September 26, 2003, Mr. Brooke informed me in a telephone conversation that he had heard back from his client, who was not inclined to accept the terms of the counter-offer; did not wish to spend any more money; and was going to walk away from the Opposition.

4. Mr. Brooke stated that he would not object to a motion for default, and in answer to a specific question, stated that I was free to quote him
5. These motions are made in good faith and not filed for any improper purpose, the legal contentions contained in the motions are warranted by existing law, and all factual contentions made by declarant in the motions and memorandum are supported by evidence.
6. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.


Edward O. Ansell

Date: Oct. 20, 2003

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