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02-19-2003

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #64



UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

IN-N-OUT BURGERS

Opposer,

Opposition No. 911154347

v.

TONY CHACHERE'S CREOLE FOODS
OF OPELOUSAS, INC.

Applicant.

ANSWER & AFFIRMATIVE DEFENSES

Applicant Tony Chachere's Creole Foods of Opelousas, Inc. ("Tony Chachere's") hereby answers the Notice of Opposition filed by In-N-Out Burgers ("In-N-Out") as follows:

1. Tony Chachere's is without actual or sufficient knowledge of the facts alleged in Paragraph 1 of the Notice of Opposition and therefore denies same.
2. Admitted.
3. Admitted.
4. Tony Chachere's is without actual knowledge of the allegations of Paragraph 4 of the Notice of Opposition and therefore denies same.
5. Tony Chachere's admits that In-N-Out is the record owner of U.S. Trademark Registration No. 930,203 **IN'N'OUT** but is without knowledge of In-N-Out's retail grocery store services.

6. Tony Chachere's is without knowledge of the allegations of Paragraph 6 of the Notice of Opposition and therefore denies same.

7. Admitted.

8. Denied.

9. Denied.

FIRST AFFIRMATIVE DEFENSE

The Notice of Opposition fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Opposer's rights to its various **IN-N-OUT** marks for restaurant services, food items sold at its restaurants and even to grocery store services do not extend into the field of spices and marinades.

THIRD AFFIRMATIVE DEFENSE

There is no likelihood of confusion between the marks of the parties for many reasons, including the facts that the marks of the parties and the goods and services offered by the parties are sufficiently different and distinguishable.

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed with prejudice.

Respectfully submitted,

TONY CHACHERE'S CREOLE FOODS
OF OPELOUSAS, INC

By: 

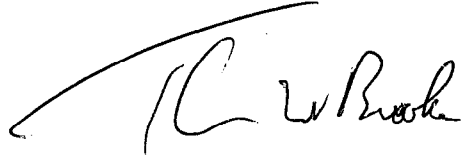
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(202) 955-3000

Counsel for Registrant

CERTIFICATE OF SERVICE

I hereby certify that this Answer to Notice of Opposition is being served by first class mail, postage prepaid, to counsel for Petitioner, Edward O. Ansell, 449 Willamette Lane, Claremont, California 91711 this 19th day of February, 2003

WAS1 #1159879 v1

A handwritten signature in black ink, appearing to read "J. C. W. Bush". The signature is written in a cursive style with a long, sweeping horizontal line above the first few letters.