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

In the Matter of Application Serial No. 78/151,931  
Published on May 6, 2003



09-03-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #22

MCKEE FOODS KINGMAN, INC.,

Opposer,

v.

TSANG LIN INDUSTRIES LTD.,

Applicant.

Opposition No.

NOTICE OF OPPOSITION

09-03-2003

McKee Foods Kingman, Inc. ("Opposer"), a corporation organized and existing under the laws of the State of Arizona, with its principal place of business at 2675 West Oatman Road, Kingman, Arizona 86413, believes that it will be damaged by registration of the designation COSMIC JELLY WAVES and Design for "jelly, jam" in International Class 29 to Tsang Lin Industries Ltd. ("Applicant") as sought by U.S. Application Serial No. 78/151,931 and hereby opposes that application for registration.

As grounds for opposition, it is alleged that:

1. Opposer is now, and for many years has been, engaged in the marketing, sale, promotion and/or distribution of a wide variety of baked goods, snack products and cereal products.

2. Prior to August 7, 2002, the filing date of the ITU application herein opposed, Opposer has manufactured, marketed and sold food products under the trademark COSMIC, including cakes, breakfast buns, cheese and crackers, sweet rolls, peanuts and granola bars.

3. Opposer is the proprietor of Application Serial No. 76/479,218, filed on December 30, 2002 in the United States Patent and Trademark Office and based on first use of the trademark COSMIC as of November 5, 1996 for "snack cakes; breakfast buns; coffee cake; banana bread; mini donuts; sweet rolls; cheese and crackers; peanut butter crackers; salted peanuts; brownies; granola bars; party cakes; cream cheese and chive crackers," in International Class 30.

4. Ever since the first use of Opposer's COSMIC trademark on November 5, 1996, Opposer has widely and extensively sold and promoted food products bearing the COSMIC trademark in interstate commerce. As a consequence of the aforesaid sales and promotion, purchasers of Opposer's COSMIC products have come to recognize and do recognize the COSMIC trademark as being used by Opposer, and to associate and identify said mark with Opposer, and Opposer derives substantial goodwill and value from the aforesaid association.

5. By the application herein opposed, Applicant seeks to register the mark COSMIC JELLY WAVES and Design for "jelly; jams." The application was filed on August 7, 2002, on the basis of an intent to use the mark in commerce upon the aforesaid goods. Said mark is likely, when applied to Applicant's goods, which are closely related to Opposer's goods bearing the COSMIC trademark, to cause confusion and mistake, and to deceive the consuming public and the trade, with consequent injury to Opposer.

6. Opposer will be damaged by the registration sought by Applicant because such registration will support and assist Applicant in the confusing, misleading, and diluting use of Applicant's mark sought to be registered in violation of Section 2(d) of the Lanham Act, 15

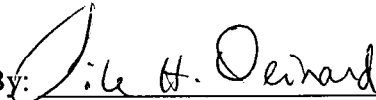
U.S.C. §§ 1052(d), and will give color of exclusive statutory rights to Applicant in violation and derogation of the prior and superior rights of Opposer.

WHEREFORE Opposer believes that it will be damaged by registration of Applicant's mark and prays that this opposition be sustained, and that Application Serial No. 78/151,931 be denied.

Please recognize as attorneys for Opposer in this proceeding Lile H. Deinard, Bruce R. Ewing, Marc Reiner and Sarah Robertson, members of the Bar of the State of New York, whose address is Dorsey & Whitney LLP, 250 Park Avenue, New York, New York 10177, telephone number (212) 415-9200.

DORSEY & WHITNEY LLP

Dated: September 3, 2003

By:   
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Attorneys for Opposer  
McKee Foods Kingman, Inc.

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**CERTIFICATE OF EXPRESS MAIL UNDER 37 CFR 1.8**

I hereby certify that one original and one duplicate copy of this Notice of Opposition, along with the required \$300 fee, are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.8 on the date indicated below and is addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513, Box TTAB Fee.

"Express Mail" Mailing Number: EL899337328US

Date of Deposit: September 3, 2003

Name: Stacy Scotto

Signature:           *Stacy Scotto*