

Gazette, believes that it is entitled to registration of the published mark XOCOLATE and pleads and avers as follows:

In response to the first introductory paragraph of the Notice of Opposition, Applicant denies that Opposer will be damaged by the issuance of the registration of the trademark XOCOLATE, Serial No. 78/164,521.

1. In response to paragraph 1 of the Notice of Opposition, Applicant admits that its application to register the trademark XOCOLATE is for “confections, namely, candies, chocolate and chocolate truffles,” as Application Serial Number 78/164,521, filed September 16, 2002 for goods in International Class 30 in the name of Randy Judd.

2. In response to paragraph 2 of the Notice of Opposition, Applicant denies that it did not use XOCOLATE for the goods recited in application Serial Number 87/164,521 prior to September 16, 2002.

3. In response to paragraph 3 of the Notice of Opposition, Applicant admits that the Trademark Office record speaks for itself.

4. In response to paragraph 4 of the Notice of Opposition, Applicant denies the allegations contained therein.

5. In response to paragraph 5 of the Notice of Opposition, Applicant denies the allegations contained therein.

6. In response to paragraph 6 of the Notice of Opposition, Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and therefore denies the same.

7. In response to paragraph 7 of the Notice of Opposition, Applicant denies the allegations

contained therein.

In further response to the Notice of Opposition, Applicant avers the following:

FIRST DEFENSE (DISSIMILAR MARKS)

The marks themselves are sufficiently dissimilar such that confusion is highly unlikely. The mark XOCOLATE is one which is significantly different in appearance, sound and commercial impression than the mark XOCO.

SECOND DEFENSE (DISSIMILAR GOODS)

The goods identified in connection with the XOCOLATE mark are not sufficiently similar to Opposer's goods, thereby eliminating a likelihood of confusion. The Opposer's application is for "cocoa, pastry and candy, chocolate, chocolate food beverages not being dairy based or vegetable based, chocolate based fillings for pies and cakes, and chocolate based ready to eat food bars." The XOCOLATE mark is for use in connection with "confections, namely, candies, chocolate and chocolate truffles."

THIRD DEFENSE (SOPHISTICATION OF BUYERS)

The purchasers of the XOCOLATE products are extremely sophisticated, thereby eliminating any likelihood of confusion.

FOURTH DEFENSE (DISSIMILAR CHANNELS OF TRADE)

The channels of trade through which the XOCOLATE products and the XOCO products

are distributed are dissimilar. Consequently, no likelihood of confusion exists.

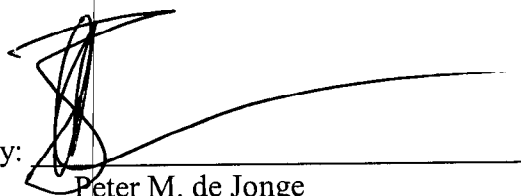
WHEREFORE, Applicant prays:

1. That the Notice of Opposition be dismissed in its entirety with prejudice.
2. That a registration on the Principal Register issue to Randy Judd for the XOCOLATE mark as set forth in Application Serial No. 78/164,521.

Dated this 12th day of April, 2004.

Respectfully submitted,

By:



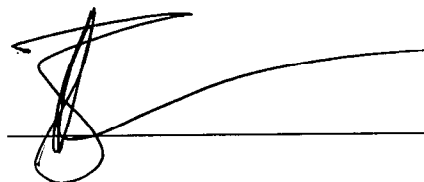
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing APPLICANT'S ANSWER TO NOTICE OF OPPOSITION was served on Opposer by depositing said true and correct copy with the United States Postal Service, First Class Mail, postage prepaid, this 12th day of April, 2004, in an envelope addressed to Opposer's attorney of record as follows:

Robert V. Vickers
Fay, Sharpe, Fagan, Minnich & McKee, LLP
1100 Superior Avenue, Seventh Floor
Cleveland, OH 44114-2579

A handwritten signature in black ink, appearing to be "R. V. Vickers", written over a horizontal line. The signature is stylized and somewhat abstract.