

The grounds for the opposition are as follows:

1. Opposer owns the U.S. trademark and service mark registrations listed below. Opposer acquired all rights title and interest in and to the listed marks, together with the good will of the business symbolized by the marks and registrations, effective January 1, 2000, as evidenced by a written assignment from Covalt Enterprises, Inc. ("Covalt Enterprises") dated August 11, 2000. The assignment is recorded at Reel 2144, Frames 807-810.

Registration No.	Mark	Registration Date	Goods
1,220,370	IZZY'S	Dec. 14, 1982 (incontestable; renewed March 9, 2003)	Restaurant services, class 42
1,821,543	IZZY'S	Feb. 15, 1994 (incontestable; renewed February 29, 2004)	Pizza, class 30
1,952,081	IZZY'S	Jan. 30, 1996 (incontestable)	Franchising services; namely offering technical assistance in establishment and/or operation of restaurants, class 35
2,046,855	IZZY'S PIZZA RESTAURANT	Mar. 25, 1997 (incontestable)	Restaurant services, class 42

Copies of the registration certificates are attached hereto as Exhibit A. The registrations provide exclusive rights in the area comprising the states west of the Mississippi River as a result of Concurrent Use Proceeding No. 792.

2. Covalt Enterprises adopted and continuously used in commerce the mark IZZY'S in connection with restaurant services, franchising services, pizza, and other prepared foods from a time long prior to Applicant's filing date (March 28, 2003) for the alleged mark of Serial No. 78/231,274 (HARRY & IZZY'S) until Opposer's acquisition of all rights, title, and interest in and to the marks, together with the good will of the business symbolized by the marks and registrations.

3. Covalt Enterprises used IZZY'S marks for restaurant services from at least as early as June 1979 to January 1, 2000.

4. Opposer, since acquisition of all rights, title, and interest in and to the marks, together with the good will of the business symbolized by the marks and registrations from Covalt Enterprises, has continued through its licensee to continuously use in commerce the mark IZZY'S in connection with restaurant services, franchising services, and prepared foods in the area comprising the states west of the Mississippi River, and has not abandoned use of the mark IZZY'S.

5. Opposer exclusively licenses the above-referenced trademarks and service marks to Izzy's Franchise Systems, Inc. (IFS). IFS sublicenses the trademarks and service marks to restaurant operators who use the trademarks and service marks in the area comprising the states west of the Mississippi River.

6. The opposed application, Serial No. 78/231,274, recites the phrase HARRY & IZZY'S, for use in connection with restaurant services. Such services are identical to services provided by Opposer in association with its IZZY'S service marks.

7. Opposer has expended considerable time, effort and expense in promoting its IZZY'S trademarks and service marks and the goods and services sold under such marks. The purchasing public has come to know, rely upon, and associate Opposer's IZZY'S marks with Opposer and to recognize Opposer's goods and services by such marks. Opposer has exceedingly valuable goodwill established in its IZZY'S marks.

8. The alleged mark of Serial No. 78/231,274 (HARRY & IZZY'S) so resembles Opposer's IZZY'S marks as to cause or to be likely to cause confusion or mistake, or to deceive consumers within the usage of Section 2(d) of the Trademark Act of 1946, as amended.

9. As a result of the confusing similarity between Opposer's IZZY'S marks and Applicant's alleged mark, and because services recited by Applicant and services of Opposer are identical, registration of HARRY & IZZY'S in connection with Applicant's recited services is likely to cause confusion or is likely to deceive purchasers as to the source or sponsorship of such services.

10. Use of the alleged mark of Serial No. 78/231,274 (HARRY & IZZY'S) by the Applicant may result in irreparable damage to Opposer's reputation and good will, since consumers are likely to attribute the source of the Applicant's services to the Opposer.

11. If the Applicant is granted a registration for the alleged mark of Serial No. 78/231,274 (HARRY & IZZY'S), a cloud will be placed on Opposer's IZZY'S marks, consumers will be or likely will be confused as to the source of goods and services, and Opposer's right to enjoy the free and exclusive use of its IZZY'S marks in connection with its goods and services will be lost, all to the great injury of Opposer.

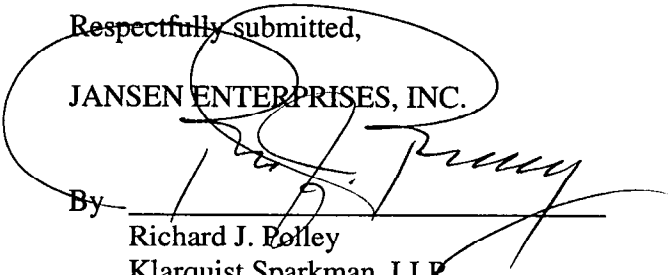
WHEREFORE, Opposer deems that it will be injured and damaged by registration of Serial No. 78/231,274 and requests that the application to register HARRY & IZZY'S be rejected and that registration of the alleged mark be refused.

A duplicate of this Notice of Opposition is being filed herewith, along with the filing fee stated in 37 C.F.R. § 2.6(a)(16).

Respectfully submitted,

JANSEN ENTERPRISES, INC.

By


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Int. Cl.: A2

Prior U.S. Cl.: 100

United States Patent and Trademark Office
Amended

Reg. No. 1,220,370
Registered Dec. 14, 1982
OG Date May 17, 1994

SERVICE MARK
PRINCIPAL REGISTER



COVALT ENTERPRISES, INC.
(OREGON CORPORATION)
110 THIRD AVENUE, S.E.
ALBANY, OR 97321

REGISTRATION LIMITED TO THE
AREA COMPRISING THE STATES
WEST OF THE MISSISSIPPI RIVER.
CONCURRENT USE PROCEEDING NO.

792 WITH SERIAL NO. 73/448,288; 73/
448,308; 73/448,310; 73/448,370; 73/448,371;
73/448,372; AND 73/451,970.

FOR: RESTAURANT SERVICES, IN
CLASS 42 (U.S. CL. 100).
FIRST USE 6-18-1979; IN COMMERCE
6-18-1979.

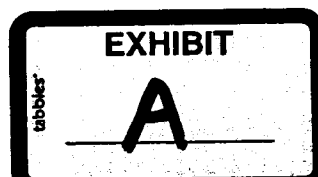
SER. NO. 73-298,236, FILED 2-23-1981.



*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on May 17, 1994.*



COMMISSIONER OF PATENTS AND TRADEMARKS



Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office Reg. No. 1,821,543
Registered Feb. 15, 1994

**TRADEMARK
PRINCIPAL REGISTER
CONCURRENT USE**

IZZY'S

COVALT ENTERPRISES, INC. (OREGON CORPORATION)
110 THIRD AVENUE, S.E.
ALBANY, OR 973214891

FOR: PIZZA, IN CLASS 30 (U.S. CL. 46).
FIRST USE 6-18-1979; IN COMMERCE
6-18-1979.

REGISTRATION LIMITED TO THE AREA
COMPRISING THE STATES WEST OF THE

MISSISSIPPI RIVER. CONCURRENT USE PRO-
CEEDING NO. 792 WITH SERIAL NOS. 73/
448,288; 73/448308; 73/448,310; 73/448,370; 73/
448,371; 73/448,372; AND 73/451,970.
OWNER OF U.S. REG. NO. 1.220.370.

SER. NO. 74-057,534, FILED 5-10-1990.

CYNTHIA SUMMERFIELD, EXAMINING AT-
TORNEY

Int. Cl.: 35

Prior U.S. Cl.: 101

United States Patent and Trademark Office

Reg. No. 1,952,081

Registered Jan. 30, 1996

**SERVICE MARK
PRINCIPAL REGISTER**

IZZY'S

COVALT ENTERPRISES, INC. (OREGON COR-
PORATION)
110 THIRD AVENUE, S.E.
ALBANY, OR 973214891

FOR: FRANCHISING SERVICES; NAMELY,
OFFERING TECHNICAL ASSISTANCE IN ES-
TABLISHMENT AND/OR OPERATION OF
RESTAURANTS, IN CLASS 35 (U.S. CL. 101).

FIRST USE 8-31-1983; IN COMMERCE
8-31-1983.

OWNER OF U.S. REG. NOS. 122,037, 1,220,370,
AND 1,821,543.

SER. NO. 74-059,426, FILED 5-16-1990.

SCOTT J. MAJOR, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cl.: 100

Reg. No. 2,046,855

United States Patent and Trademark Office Registered Mar. 25, 1997

TRADEMARK
PRINCIPAL REGISTER

IZZY'S PIZZA RESTAURANT

COVALT ENTERPRISES, INC. (OREGON CORPORATION)
110 THIRD AVENUE S.E.
ALBANY, OR 973214891

FOR: RESTAURANT SERVICES, IN CLASS
42 (U.S. CL. 100).

FIRST USE 7-0-1979; IN COMMERCE
7-0-1979.

SUBJECT TO CONCURRENT USE PROCEEDING WITH IZZY'S, INC. APPLICANT
CLAIMS EXCLUSIVE RIGHT TO USE THE

ENTIRE UNITED STATES EXCEPT FOR THE
AREA COMPRISING THE STATES EAST OF
THE MISSISSIPPI RIVER.

OWNER OF U.S. REG. NOS. 1,220,370 AND
1,821,543.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "PIZZA RESTAURANT",
APART FROM THE MARK AS SHOWN.

SER. NO. 74-147,568, FILED 3-14-1991.

MARY I. SPARROW, EXAMINING ATTORNEY

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Trademark Application of:
Harry & Izzy's Inc. Corp.
Application No. 78/231,274
Filed: March 28, 2003
Published in Official Gazette on February 10, 2004
International Class No.: 043
For: HARRY & IZZY'S

TRANSMITTAL LETTER

COMMISSIONER FOR TRADEMARKS
2900 Crystal Drive
Arlington, VA 22202-3513

Enclosed for filing are the following items concerning the application referenced above:

- Notice of Opposition with Exhibit A (in duplicate).
- A check in the amount of \$300.00.
- The Director is hereby authorized to charge any additional fees, or credit any over-payment, to Account No. 02-4550 that may be required in connection with this application. A copy of this sheet is enclosed.
- Please return the enclosed postcard to confirm that the items listed above have been received.

Respectfully submitted,

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By


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06-10-2004

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #77

cc: Docketing