

TTAB

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August 25, 2005

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Commissioner for Trademarks
ATTN: Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Express Mail Label No.: EV131003336US

Re: Mark: **HARRY & IZZY'S**
Opposition No. 91160935
Application Serial No.: 78/231,274
Filing Date: March 28, 2003
Applicant: Harry & Izzy's, Inc.
Our Docket No.: 9884-0026



08-25-2005

U.S. Patent & TMO/TM Mail Rcpt Dt. #72

Dear Commissioner:

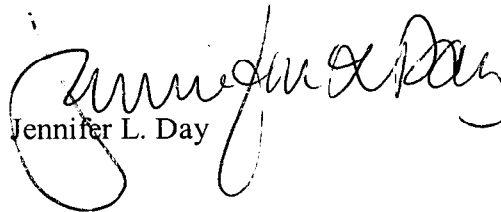
Herewith please find the following:

- (1) Answer and Affirmative Defenses to Notice of Opposition (in duplicate, including Certificate of Mailing by Express Mail); and,
- (2) Self-addressed postcard (postage affixed) listing item 1 above.

Please acknowledge receipt of the foregoing items by marking and mailing the postcard.

Sincerely,

BOSE MCKINNEY EVANS LLP


Jennifer L. Day

JLD/cmw
Enclosures

Certificate of Express Mailing Under 1.10

I hereby certify that this correspondence (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service as "Express Mail, Post Office to Addressee" by the Certificate Number set forth below, in an envelope addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451, on the date set forth below.

Date: August 25, 2005

Signature: *Cynthia M. White*
Cynthia M. White

Exp. Cert. No. EV131003336US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
IN THE MATTER OF APPLICATION SERIAL No.: 78/231,274
Filed on: March 28, 2003
For the Mark: HARRY & IZZY'S
Published: February 10, 2004

JANSEN ENTERPRISES, INC.)
)
 Opposer,)
)
 v.)
)
)
HARRY & IZZY'S INC.)
)
)
 Applicant.)

Opposition No. 91160935

**ANSWER AND AFFIRMATIVE DEFENSES
TO NOTICE OF OPPOSITION**

Commissioner for Trademarks
ATTN: Trademark Trial and Appeal Board
Box TTAB NO FEE
P.O. Box 1451
Alexandria, VA 22313-1451

Applicant, Harry & Izzy's, Inc. ("Harry & Izzy's"), by counsel, pursuant to 37 CFR § 2.106, hereby responds to Opposer's, Jansen Enterprises, Inc. ("Jansen"), Notice of Opposition as follows:

ANSWER

1. Harry & Izzy's is without information sufficient to admit or deny the material allegations set forth in paragraph 1 of the Notice of Opposition and on that basis denies each and every such allegation.

2. Harry & Izzy's is without information sufficient to admit or deny the material allegations set forth in paragraph 2 of the Notice of Opposition and on that basis denies each and every such allegation.

3. Harry & Izzy's is without information sufficient to admit or deny the material allegations set forth in paragraph 3 of the Notice of Opposition and on that basis denies each and every such allegation.

4. Harry & Izzy's is without information sufficient to admit or deny the material allegations set forth in paragraph 4 of the Notice of Opposition and on that basis denies each and every such allegation.

5. Harry & Izzy's is without information sufficient to admit or deny the material allegations set forth in paragraph 5 of the Notice of Opposition and on that basis denies each and every such allegation.

6. In response to paragraph 6 of the Notice of Opposition, Harry & Izzy's admits that its application is for the mark HARRY & IZZY'S. However, Harry & Izzy's denies the remaining material allegations set forth in paragraph 6.

7. Harry & Izzy's denies the material allegations set forth in paragraph 7 of the Notice of Opposition.

8. Harry & Izzy's denies the material allegations set forth in paragraph 8 of the Notice of Opposition.

9. Harry & Izzy's denies the material allegations set forth in paragraph 9 of the Notice of Opposition.

10. Harry & Izzy's denies the material allegations set forth in paragraph 10 of the Notice of Opposition.

11. Harry & Izzy's denies the material allegations set forth in paragraph 11 of the Notice of Opposition.

12. Harry & Izzy's hereby appoints Jennifer L. Day and Amy L. Cueller, attorneys licensed by the State of Indiana, and members of the firm of Bose McKinney & Evans LLP, as its attorneys, with full power of substitution and revocation to defend this opposition proceeding and to transact all business in the Patent and Trademark Office in connection therewith.

13. The Commissioner is respectfully requested to direct all correspondence in this opposition proceeding to Ms. Day, whose address is:

Jennifer L. Day, Esq. (Attorney No. 20855-49)
Bose McKinney & Evans LLP
2700 First Indiana Plaza
135 North Pennsylvania Street
Indianapolis, IN 46204
(317) 684-5000
(317) 684-5173 (FAX)

WHEREFORE, Applicant, Harry & Izzy's, Inc., by counsel, respectfully requests that Opposer's, Jensen Enterprises, Inc., Notice of Opposition be dismissed for lack of merit and that Harry & Izzy's, Inc.'s application under Serial No. 78/231,274, for the HARRY & IZZY'S trademark, be allowed to proceed and that said trademark be registered upon the Principal Register, and for all other appropriate relief.

AFFIRMATIVE DEFENSES

1. Jansen's Notice of Opposition fails to state a claim upon which relief can be granted due to the marked differences in appearance, sound, meaning and commercial impression between Jansen's alleged marks and Harry & Izzy's, Inc.'s HARRY & IZZY'S trademark.

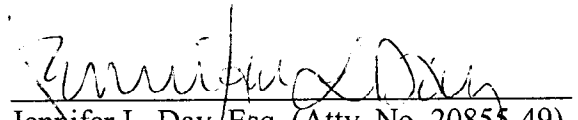
2. Jansen's Notice of Opposition further fails to state a claim upon which relief can be granted because the services allegedly marketed under Jansen's alleged marks are offered only in the area comprising the states west of the Mississippi River.

3. Jansen's Notice of Opposition fails to state a claim upon which relief can be granted due to the distinctly different nature of services promoted by the respective parties: Jansen uses its alleged marks for pizza restaurant services, whereas the HARRY & IZZY'S mark will be used for restaurant services that do not include pizza.

4. No likelihood of confusion exists between Harry & Izzy's, Inc.'s HARRY & IZZY'S trademark and Jansen's alleged marks.

WHEREFORE, Applicant, Harry & Izzy's, Inc., by counsel, respectfully requests that Opposer's, Jansen Enterprises, Inc., Notice of Opposition be dismissed for lack of merit and that Harry & Izzy's, Inc.'s application under Serial No. 78/231,274, for the HARRY & IZZY'S trademark, be allowed to proceed in that said trademark be registered upon the Principal Register, and for all other appropriate relief.

Respectfully submitted,


Jennifer L. Day, Esq. (Atty. No. 20855-49)
Amy L. Cueller, Esq.

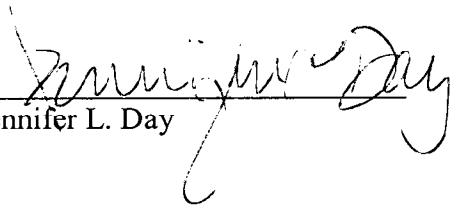
BOSE McKINNEY & EVANS LLP
2700 First Indiana Plaza
135 North Pennsylvania Street
Indianapolis, Indiana 46204
(317) 684-5000
(317) 684-5173 (FAX)

*Attorneys for Applicant,
Harry & Izzy's, Inc.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing "Answer and Affirmative Defenses to Notice of Opposition" has been served upon the following counsel of record by first class, United States mail, postage prepaid, this 25th day of August, 2005:

Richard J. Polley
Sheree Rybak
Klarquist Sparkman, LLP
One World Trade Center, Suite 1600
121 S.W. Salmon Street
Portland, OR 97204



Jennifer L. Day

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