

TTAB

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EXPRESS MAIL CERTIFICATE

"Express Mail" mailing label number EV001846171US
Date of Deposit June 2, 2005. I hereby certify that this paper
or fee is being deposited with the United States Postal Service
"Express Mail Post Office to Addressee" service under 37 CFR 1.10
on the date indicated above and is addressed to the Commissioner
for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451.

Christina Matthews
Paralegal
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e-mail: cmatthews@fkks.com

Christina Matthews
Print
Christina Matthews
Signature

June 2, 2005

Via Express Mail

Commissioner for Trademarks
Attn: TTAB
P.O. Box 1451
Alexandria, VA 22313-1451

76575008

Re: Trademark Opposition No. 91164887
Mark: **CHANGING THE WAY AMERICA EATS**
Class: 35
Our Ref. No. 13594-0200-M223

Dear Sir/Madam:

We enclose herewith:

1. Answer to Notice of Opposition; and
2. Postcard receipt.

This request is being submitted in triplicate as required by 37 CFR § 2.102(d). Please stamp the enclosed postcard to acknowledge receipt.

Respectfully submitted,

Christina Matthews
Christina Matthews

Enclosures

cc: Edward H. Rosenthal, Esq.
Jean Voutsinas, Esq.



06-03-2005

Express Mail Label No. EV001846171US

Document: Answer to Notice of Opposition

Mark: CHANGING THE WAY AMERICA EATS

Class: 35

Check: N/A

Clf/mtr.: 13594-0200-M223 (Agatston)

Sent by: C. Matthews

truth of the allegations set forth in Paragraph 5 of the Opposition.

6. Applicant denies the allegations contained in paragraph 6 of the Opposition.
7. Applicant denies the allegations contained in paragraph 7 of the Opposition.
8. Applicant denies the allegations contained in paragraph 8 of the Opposition.
9. Applicant denies the allegations contained in paragraph 9 of the Opposition

except admits that it is the owner of the trademark SOUTH BEACH DIET and that it owns and licenses trademarks and intellectual property associated with that mark; admits that in 2003, Dr. Arthur Agatston wrote a bestselling book entitled *The South Beach Diet: The Delicious, Doctor-Designed, Foolproof Plan for Fast and Healthy Weight Loss* and thereafter wrote several other books and respectfully refers the TTAB to those books for their content and meaning, and admits that Applicant licenses certain of its marks to Kraft Foods, Inc. to use in connection with certain of its food products, including, without limitation, cheeses and desserts.

10. Applicant denies the allegations contained in paragraph 10 of the Opposition except admits that Applicant filed an application to register the mark CHANGING THE WAY AMERICA EATS on or about February 9, 2004 and respectfully refers the TTAB to that application for its content and meaning.

11. Applicant denies knowledge and information sufficient to form a belief as to whether Applicant and Opposer are “direct competitors in the nutrition and diet-related products and services industry” and, except as so averred, denies the remaining allegations contained in paragraph 11 of the Opposition.

12. Applicant denies the allegations contained in paragraph 12 of the Opposition.
13. Applicant denies the allegations contained in paragraph 13 of the Opposition.
14. Applicant denies the allegations contained in paragraph 14 of the Opposition.

15. Applicant denies the allegations contained in paragraph 15 of the Opposition.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

16. Opposer has failed to state a claim upon which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

17. Opposer has not developed any trademark rights in the phrase "TO CHANGE THE WAY THE WORLD EATS".

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

18. There is no likelihood of confusion between Applicant's Mark, CHANGING THE WAY AMERICA EATS, and Opposer's purported trademark TO CHANGE THE WAY THE WORLD EATS because the respective marks are distinct.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

19. There is no likelihood of confusion between Applicant's Mark CHANGING THE WAY AMERICA EATS and Opposer's purported trademark TO CHANGE THE WAY THE WORLD EATS because the goods and services for the respective marks are distinct.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

20. Opposer cannot claim dilution of its purported mark TO CHANGE THE WAY THE WORLD EATS because that Mark, either alone or in combination with another term or terms, has been commonly used by a variety of entities for a variety of goods and services, and is neither famous nor distinctive.

WHEREFORE, Applicant SBD Trademark Limited Partnership respectfully requests:

1. that the Opposition be dismissed in its entirety;
2. that Applicant be awarded its costs and attorneys' fees; and

3. that Applicant's Application Serial No. 76/575,008 be permitted to proceed to registration.

Dated: New York, New York
June 2, 2005

FRANKFURT KURNIT KLEIN & SELZ, PC

By:

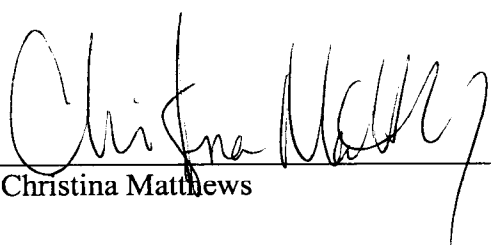


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Jean Voutsinas
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Attorneys for Applicant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 2nd day of June, 2005, a true and correct copy of the foregoing ANSWER TO NOTICE OF OPPOSITION was served by first class mail, postage pre-paid, on attorneys for Opposer:

John A. DeMaro
Ruskin Moscou Faltischek, PC
190 EAB Plaza East Tower, 15th Floor
Uniondale, NY 11556


Christina Matthews