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

Proceeding	91167471
Party	Plaintiff Choi Heung Yeun - Macau Limited CHOI HEONG YUEN - MACAU LIMITED 209 AVENIDA DE ALMEIDA RIBEIRO MOX MACAU,
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Date	09/28/2006
Attachments	91167471 Opposer's Motion for Judgment.pdf (13 pages)(339733 bytes)

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

CHOI HEONG YUEN-MACAU LIMITED)	
)	
Opposer,)	
)	
v.)	Opposition No. 91167471
)	Application S.N. 78/256072
ZHONGSHAN JUXIANGYUAN FOOD)	
CO., LTD.,)	
)	
Applicant.)	

OPPOSER’S MOTION FOR JUDGMENT

Opposer CHOI HEONG YUEN-MACAU LIMITED, by its undersigned attorneys, hereby moves for Judgment on two grounds: (1) based on Applicant’s failure to comply with the Board’s Order of August 23, 2006, requiring Applicant to respond within thirty days to Opposer’s document requests; and (2) on the ground that the opposed Application is void *ab initio* in light of Applicant’s admissions that it never used the opposed mark on the goods identified in the subject Application.

I. Failure to Comply with August 23, 2006 Board Order

In its Order of August 23, 2006, which resulted from Opposer Choi Heong’s Rule 37 motion to compel, the Board allowed Applicant Zhongshan thirty days (i.e., until September 22, 2006) to (1) respond without objection to opposer’s first set of document requests and (2) select, designate and identify the items and documents, or categories of items and documents, to be produced in

response thereto and to notify opposer that the selection, designation and identification has been completed.

Applicant has wholly failed to comply with the Board's Order. It has not responded to the document requests, it has not notified opposer of the availability of documents, and it has not produced any documents. Pursuant to Trademark Rule 2.120(g)(1) and FRCP Rule 37(b)(2), Opposer requests that the Board issue a judgment by default against Applicant. The document requests at issue are coupled with Opposer's First Set of Requests for Admissions, and seek documents relating to Applicant's use of the opposed mark. Applicant's failure to respond to those document requests goes to the heart of Opposer's case, and the only logical sanction for Applicant's failure to respond, after being ordered to do so, is judgment by default.

II. Judgment based on Applicant's Admissions

Applicant Zhongshan failed to respond whatsoever to Opposer's First Set of Requests for Admissions (copy attached as Exhibit 1 hereto). Consequently, those requests stand admitted, as indicated in the Board's August 23, 2006 Order.

Applicant has therefore admitted (see, e.g., omnibus Admission Request No. 29) that it **never used** the subject mark in commerce for the goods identified in the subject Application: moon cakes, rice cakes, egg roll, cookies, crackers, waffles, biscuits with almond flavor, bread, glazed popcorn, popped popcorn, processed popcorn, snack foods prepared from potato flour, flour based chips, and cereal based snack food. [See Exhibit 2, printout from TESS for the opposed Application]. Consequently, the subject Application is void *ab initio*. See *Laboratories du Dr. N.G.*

Payot Etablissement v. Southwestern Classics Collection Ltd., 3 USPQ2d 1600 (TTAB 1987); *CPC Int'l Inc. v. Skippy Inc.*, 3 USPQ2d 1456, 1460 (TTAB 1987).

As a result, the opposition should be sustained and judgment entered in favor of Opposer.

CHOI HEONG YUEN-MACAU LIMITED

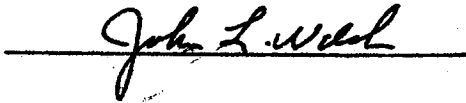


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Dated: 9/28/06

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney(s) of record for each other party by mail/hand/facsimile on 9-28-06



EXHIBIT

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

CHOI HEONG YUEN-MACAU LIMITED)	
)	
Opposer,)	
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v.)	
)	
ZHONGSHAN JUXIANGYUAN FOOD)	
CO., LTD.,)	
)	
Applicant.)	
)	

Opposition No. 91167471
Application S.N. 78/256072

OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION

Pursuant to Rule 36, Fed. R. Civ. P., Petitioner CHOI HEONG YUEN-MACAU LIMITED, by its counsel, directs the following requests for admission to Applicant.

For purposes of these requests, the term "Applicant" means Applicant Zhonghsan Juxiangyuan Food Co., Ltd., and/or "applicant's related company or licensee" and/or "applicant's predecessor in interest", as referred to in Application Serial No. 78/256072 as filed.

REQUESTS

1. Referring to Application Serial No. 78/256,072, Applicant was not using the mark of said application in commerce in connection with mooncakes on the filing date of May 30, 2003.

2. Referring to Application Serial No. 78/256,072, Applicant had not used the mark of said application in commerce in connection with mooncakes as of the filing date of May 30, 2003.

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APR 06 2006

3. Referring to Application Serial No. 78/256,072, Applicant was not using the mark of said application in commerce in connection with rice cakes on the filing date of May 30, 2003.
4. Referring to Application Serial No. 78/256,072, Applicant had not used the mark of said application in commerce in connection with rice cakes as of the filing date of May 30, 2003.
5. Referring to Application Serial No. 78/256,072, Applicant was not using the mark of said application in commerce in connection with egg roll on the filing date of May 30, 2003.
6. Referring to Application Serial No. 78/256,072, Applicant had not used the mark of said application in commerce in connection with egg roll as of the filing date of May 30, 2003.
7. Referring to Application Serial No. 78/256,072, Applicant was not using the mark of said application in commerce in connection with biscuits on the filing date of May 30, 2003.
8. Referring to Application Serial No. 78/256,072, Applicant had not used the mark of said application in commerce in connection with biscuits as of the filing date of May 30, 2003.
9. Referring to Application Serial No. 78/256,072, Applicant was not using the mark of said application in commerce in connection with cookies on the filing date of May 30, 2003.
10. Referring to Application Serial No. 78/256,072, Applicant had not used the mark of said application in commerce in connection with cookies as of the filing date of May 30, 2003.
11. Referring to Application Serial No. 78/256,072, Applicant was not using the mark of said application in commerce in connection with crackers on the filing date of May 30, 2003.

12. Referring to Application Serial No. 78/256,072, Applicant had not used the mark of said application in commerce in connection with crackers as of the filing date of May 30, 2003.
13. Referring to Application Serial No. 78/256,072, Applicant was not using the mark of said application in commerce in connection with waffles on the filing date of May 30, 2003.
14. Referring to Application Serial No. 78/256,072, Applicant had not used the mark of said application in commerce in connection with waffles as of the filing date of May 30, 2003.
15. Referring to Application Serial No. 78/256,072, Applicant was not using the mark of said application in commerce in connection with biscuits with almond flavor on the filing date of May 30, 2003.
16. Referring to Application Serial No. 78/256,072, Applicant had not used the mark of said application in commerce in connection with biscuits with almond flavor as of the filing date of May 30, 2003.
17. Referring to Application Serial No. 78/256,072, Applicant was not using the mark of said application in commerce in connection with bread on the filing date of May 30, 2003.
18. Referring to Application Serial No. 78/256,072, Applicant had not used the mark of said application in commerce in connection with bread as of the filing date of May 30, 2003.
19. Referring to Application Serial No. 78/256,072, Applicant was not using the mark of said application in commerce in connection with potato chips on the filing date of May 30, 2003.

20. Referring to Application Serial No. 78/256,072, Applicant had not used the mark of said application in commerce in connection with potato chips as of the filing date of May 30, 2003.
21. Referring to Application Serial No. 78/256,072, Applicant was not using the mark of said application in commerce in connection with popcorn on the filing date of May 30, 2003.
22. Referring to Application Serial No. 78/256,072, Applicant had not used the mark of said application in commerce in connection with popcorn as of the filing date of May 30, 2003.
23. Referring to Application Serial No. 78/256,072, Applicant was not using the mark of said application in commerce in connection with potato based snack foods on the filing date of May 30, 2003.
24. Referring to Application Serial No. 78/256,072, Applicant had not used the mark of said application in commerce in connection with potato based snack foods as of the filing date of May 30, 2003.
25. Referring to Application Serial No. 78/256,072, Applicant was not using the mark of said application in commerce in connection with flour based chips on the filing date of May 30, 2003.
26. Referring to Application Serial No. 78/256,072, Applicant had not used the mark of said application in commerce in connection with flour based chips as of the filing date of May 30, 2003.

27. Referring to Application Serial No. 78/256,072, Applicant was not using the mark of said application in commerce in connection with cereal based snack food on the filing date of May 30, 2003.

28. Referring to Application Serial No. 78/256,072, Applicant had not used the mark of said application in commerce in connection with cereal based snack food as of the filing date of May 30, 2003.

29. With regard to Application Serial NO. 78/256,072, as published for opposition, Opposer has never used the mark of that application in commerce with:

- (a) moon cakes
- (b) rice cakes
- (c) egg roll
- (d) cookies
- (e) crackers
- (f) waffles
- (g) biscuits with almond flavor
- (h) bread
- (i) glazed popcorn
- (j) popped popcorn
- (k) processed popcorn
- (l) snack foods prepared from potato flour
- (m) flour based chips
- (n) cereal based snack food.

CHOI HEONG YUEN-MACAU LIMITED



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Dated: 3/2/06

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney(s) of record for each other party by mail/hand/facsimile on 3-2-06



EXHIBIT

2



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Translations The non-Latin character(s) in the mark transliterates into Jue Xiang Yuan, and this means Chew Frangrance Garden in English. The foreign wording in the mark translates into English as chew frangrance garden

Goods and Services IC 030. US 046. G & S: Cakes, namely moon cakes, rice cakes; egg roll; biscuits, namely cookies, crackers, waffles, biscuits with almond flavor; bread; glazed popcorn; popped popcorn; processed popcorn; snack foods prepared from potato flour; flour based chips; cereal based snack food. FIRST USE: 19180101. FIRST USE IN COMMERCE: 19900921

Mark Drawing Code (2) DESIGN ONLY

Design Search Code 28.01.03 - Asian characters; Chinese characters; Japanese characters

Serial Number 78256072

Filing Date May 30, 2003

Current Filing Basis 1A

Original Filing Basis 1A

Published for Opposition October 18, 2005

Owner (APPLICANT) Zhongshan Juxiangyuan Food Co. Ltd. LTD LIAB JT ST CO CHINA No. 74, Changdi Road ShiQi District, Zhongshan Guangdong CHINA

Attorney of Record Mary Beth Ciocco

Type of Mark TRADEMARK

Register PRINCIPAL

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Indicator**

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