

**TTAB**

**Transmittal Memorandum**

**VIA U.S. MAIL**

**TO :** Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**FROM :** Martin E. Hsia, Esq.

**DATE :** December 2, 2005

**RE :** Application Serial No. 78/429184; filed on June 3, 2004  
Applicant: Hawaii Kine Inc.  
Opposer: The Gold Corporation

We are sending you the following:

ORIG.	COPIES	DATED	DESCRIPTION
2		12/02/05	Notice of Opposition
1		12/01/05	Check No. 032239 in the amount of \$300.00 (filing fee)
1		12/02/05	Postcard Receipt of Notice of Opposition and filing fee

- For your information
- For your files
- Per your request
- Per our conversation
- For necessary action**
- Are returned herewith

- For signature and return
- For signature, forwarding,  
as noted below & return
- For review & approval
- For distribution
- For recording/filing**

REMARKS:

c: The Gold Corporation



12-05-2005

U.S. Patent & TMOc/TM Mail Rcpt Dt. #26

**C S**

Cades Schutte Building  
1000 Bishop Street, Suite 1200  
Honolulu, Hawaii 96813  
Tel: 808.521-9200  
Fax: 808.521-9210  
www.cades.com

Kona Office  
75-170 Hualalai Road, Suite 303  
Kailua Kona, Hawaii 96740  
Tel: 808.329-5811  
Fax: 808.326-1175

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

In the matter of Trademark Application Serial No. 78/429184  
Filed on June 3, 2004  
For the mark "HAWAII KINE"  
Published: November 8, 2005 at Page TM 1052

THE GOLD CORPORATION,	)	
	)	
Opposer,	)	
	)	Opposition No.: _____
v.	)	
	)	
HAWAII KINE INC.,	)	
	)	
Applicant.	)	
_____	)	

**NOTICE OF OPPOSITION**

THE GOLD CORPORATION ("**Opposer**"), whose mailing address is 96-1197 Waihona Street, No. E-2, Pearl City, Hawaii 96782, believes it will be damaged by the registration of the mark "HAWAII KINE" shown in Application Serial No. 78/429184 (the "**Application**") by HAWAII KINE INC. ("**Applicant**") in International Class 30 for "Beverages, namely, coffee", and hereby respectfully submits the following for its opposition to the Application:

1. Opposer's predecessor has used the term "KINE" in connection with foodstuffs since at least as early as August 7, 1996.
2. Opposer owns U.S. Trademark Registration No. 2,265,081 for "SCHOOL KINE COOKIES" covering "Cookies" in International Class 30.

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**CERTIFICATION OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as U.S. First Class Mail in an envelope addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451 on 12/07/2005, 2005.

MARTIN E. HSIA  
MARTIN E. HSIA 32,471

3. The goods covered by Opposer's registration for "SCHOOL KINE COOKIES" are referred to herein as the "**Opposer's Goods.**"

4. Opposer's registration 2,265,081 has become, or will soon be, "incontestable" pursuant to Section 15 of the Lanham Act, 15 U.S.C. § 1065.

5. Opposer's registration is valid and subsisting and remains in full force and effect, as evidence of the validity, and of Opposer's exclusive ownership of, and the right to use, "SCHOOL KINE COOKIES" for Opposer's Goods.

6. Opposer's registration does not contain any restrictions as to trade channels or purchasers.

7. For many years, Opposer has advertised, sold, and distributed Opposer's Goods under its mark "SCHOOL KINE COOKIES" in the United States. Opposer has developed an exceedingly valuable goodwill with respect to its mark "SCHOOL KINE COOKIES".

8. By virtue of its efforts, the expenditure of considerable sums for advertising and promotional activities, and by virtue of the excellence of its products, Opposer has gained a most valuable reputation for its mark "SCHOOL KINE COOKIES".

9. Opposer's mark "SCHOOL KINE COOKIES" is famous under 15 U.S.C. § 1125(c)(1).

10. Opposer's mark "SCHOOL KINE COOKIES" is famous as to foodstuffs, under 15 U.S.C. § 1125(c)(1).

11. On June 3, 2004, on information and belief, Applicant filed with the U.S. Patent and Trademark Office the Application for registration of the mark "HAWAII KINE" ("**Applicant's Mark**").

12. The Application covers “Beverages, namely, coffee” (“**Applicant’s Goods**”) in International Class 30.

13. The Application is not restricted as to channels of trade or purchasers.

14. On information and belief, Mauna Loa Macadamia Nut Corporation holds Registration No. 2,683,419 for “MAUNA LOA” in connection with “brownies, coffee, cookies, cake, candy, chocolate confectionery, toffee, jellied fruits, chocolate covered macadamia nuts, flavored popcorn, glazed popcorn” in International Class 30.

15. On information and belief, Hickory Farms, Inc. holds Registration No. 3,016,141 for “HICKORY FARMS” in connection with “Cakes; nut cakes; fruit cakes; cheese cakes; pastries; petit fours; pies; breads; rolls; breadsticks; pretzels; cookies; crackers; bakery products; bakery desserts; baked desserts, namely tortes; candies; mints; chocolates; bakery goods; nut brittle; processed popcorn; popped popcorn; coffee; espresso; cappuccino; tea; frozen confections; sorbet; ice cream; mayonnaise substitute; sauces; horseradish sauce; mustard; sweet and sour sauce; cracker and cheese combinations; cereal based snack foods; snack mix consisting primarily of crackers, pretzels, candied nuts and/or popped popcorn; food package combinations consisting primarily of crackers, bread and/or cookies; candied pretzels; candied nuts” in International Class 30.

16. Coffee is related to cookies.

17. Opposer’s Goods and Applicant’s Goods are related.

18. The Application contains a disclaimer of “HAWAII”.

19. “HAWAII” is a geographically descriptive term.

20. “HAWAII” is not distinctive.

21. The dominant portion of Applicant’s Mark is “KINE”.

22. The only distinctive portion of Applicant's Mark is "KINE".
23. Applicant's Mark is confusingly similar to Opposer's Mark.
24. Applicant's Mark has not acquired secondary meaning for Applicant's Goods.
25. The use and registration of Applicant's Mark, as indicated above, would result in confusion, mistake, and/or deception as to the source or origin of Applicant's Goods, leading consumers to believe that they are somehow affiliated with, approved, sponsored, or licensed by Opposer.
26. A likelihood of confusion exists under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d) between Opposer's registered mark "SCHOOL KINE COOKIES", and Applicant's Mark.
27. If Applicant is permitted to use and register Applicant's Mark for the goods specified in the Application, confusion in trade, resulting in irreparable damage and injury to Opposer, inevitably would result by reason of the similarity between Applicant's and Opposer's marks and the goods and sold thereunder. Any defect, objection, or fault found with goods marketed under Applicant's Mark, would reflect on, and injure, the reputation Opposer has established for goods sold under its mark "SCHOOL KINE COOKIES".
28. If Applicant is granted the registration herein opposed, Applicant would obtain a *prima facie* exclusive right to use the mark set forth in the Application. Such registration would become a source of damage and injury to Opposer through the generation of confusion, mistake, and/or deception, the dilution of Opposer's registered mark, and the diminution of Opposer's ability to control the quality of goods and services sold thereunder.

29. Moreover, such registration would run contrary to the requirement that all doubts as to the likelihood of confusion must be resolved in favor of Opposer, and against Applicant, who has a legal duty to select a mark totally dissimilar to marks already in use.

30. Applicant's Mark as used on the goods listed in the Application, would likely dilute, and/or would actually dilute, the distinctiveness of Opposer's mark, "SCHOOL KINE COOKIES".

31. There is no issue as to priority. Opposer has been using its "SCHOOL KINE COOKIES" mark since before the Application's filing date. As evidenced by Opposer's registrations identified above, Opposer has been using its mark "SCHOOL KINE COOKIES" since at least as early as August 7, 1996. On information and belief, Applicant has not used Applicant's Mark in commerce in the United States in connection with the applied for goods, prior to Opposer's use of the mark "SCHOOL KINE COOKIES".

WHEREFORE, Opposer prays that this Opposition be sustained, that the Application be refused, and that the mark applied for therein be refused registration. A duplicate copy of this Notice of Opposition and the fee required in 37 C.F.R. § 2.6(a)(17) are enclosed herewith.

DATED: Honolulu, Hawaii, December 2, 2005.

Respectfully submitted,

  
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Martin E. Hsia, Reg. No. 32,471  
CADES SCHUTTE LLP  
A Limited Liability Law Partnership  
1000 Bishop Street, Suite 1200  
Honolulu, HI 96813  
Tel: (808) 521-9200  
Attorney for THE GOLD CORPORATION