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

Proceeding	91168038
Party	Plaintiff The GOLD CORPORATION The GOLD CORPORATION 96-1197 Waihona Street No. E-2 Pearl City, HI 96782
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Attachments	Gold Corp- Amended Notice of Opposition.pdf (7 pages)(188050 bytes)

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

THE GOLD CORPORATION,)	
)	
Opposer,)	
)	Opposition No. 91168038
v.)	Serial No.: 78/429,184
)	
HAWAII KINE INC.,)	
)	
Applicant.)	
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AMENDED 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.
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”.

32. Applicant’s “HAWAII KINE” mark, as indicated above, includes the term, “Hawaii”, which is geographically descriptive because *inter alia* Hawaii is the 50th state of the United States and because Applicant has stated that its coffee originates from Hawaii, which Applicant stated “is home to the World's most sought after coffee beans.”

33. Applicant’s mark includes the term, “KINE”, which means “kind of” or “type of”.

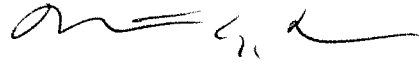
34. Applicant’s mark, “HAWAII KINE”, when applied to its coffee goods, translates to “Hawaii kind” or “Hawaii type” of coffee or “a type of coffee from Hawaii”, and is primarily geographically descriptive.

35. Applicant’s mark is primarily geographically descriptive and lacking in secondary meaning, and is thus unregistrable under Section 2(e)(2) of the Lanham Act, 15 U.S.C. § 1052(e)(2).

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, June 20, 2007.

Respectfully submitted,



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