

ESTTA Tracking number: **ESTTA96269**

Filing date: **08/24/2006**

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

Proceeding	91171911
Party	Defendant Northland Frozen Pizza, Inc. Northland Frozen Pizza, Inc. 121 NE Washington St. Brainerd, MN 56401
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Date	08/24/2006
Attachments	answer.pdf ( 6 pages )(352980 bytes )

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

Giovanni's Pizza, Inc.	)	
	)	
Opposer	)	Opposition No. 91/171,911
	)	
v.	)	Serial No. 76/582,697
	)	
Northland Frozen Pizza, Inc.	)	Mark: GIOVANNI'S PIZZA
	)	
Applicant	)	OG Publication Date: March 21, 2006
	)	

**APPLICANT NORTHLAND FROZEN'S ANSWER TO NOTICE OF OPPOSITION**

Applicant, Northland Frozen Pizza, Inc., ("Applicant Northland Frozen"), for its answer to Opposer, Giovanni's Pizza, Inc.'s ("Opposer Giovanni's Restaurant/Meat") Notice of Opposition, states as follows:

**GENERAL DENIAL**

Applicant Northland Frozen denies each and every allegation containing in the Notice of Opposition, unless the allegation is specifically admitted or otherwise pleaded.

**ANSWER**

Applicant Northland Frozen admits that it is the current owner of Application Serial No. 76/582,697 ("the Application") and is a Minnesota corporation doing business in Brainerd, MN 56401. Applicant Northland Frozen denies that it is doing business at 121 NE Washington Street, as Applicant Northland Frozen's business address has changed since filing the Application to 712 Thiesse Drive. Applicant Northland Frozen admits that it filed the

Application on March 23, 2004 and the Application was published on March 21, 2006. Applicant Northland Frozen admits that on April 12, 2006 a 90-day Request for Extension of Time To Oppose was granted to Opposer Giovanni's Restaurant/Meat, extending the date to oppose until July 19, 2006. Applicant Northland Frozen admits that settlement discussions have not thus far been successful. Applicant Northland Frozen admits that Opposer Giovanni's Restaurant/Meat opposes registration of the Application pursuant to section 13 of the Lanham Act, 15 U.S.C. § 1063. Applicant Northland Frozen lacks sufficient information to form a belief as to the truth of the further allegations contained in the preliminary paragraphs in the Notice of Opposition, and such statement has the effect of a denial of such allegations.

1. Applicant Northland Frozen lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 1 of the Notice of Opposition, and such statement has the effect of a denial of such allegations.
2. Applicant Northland Frozen admits that Application No. 73/439,795 for the mark GIOVANNI'S was filed on August 18, 1983 and resulted in Registration No. 1,452,339 registered August 11, 1987. Applicant Northland Frozen admits that, after Applicant Northland Frozen used Applicant's GIOVANNI'S PIZZA mark in interstate commerce and filed the Application, Application No. 78/435,192 for the mark GIOVANNI'S and Design was filed on June 15, 2004 and has not registered. Applicant Northland Frozen admits that, after Applicant Northland Frozen used Applicant's GIOVANNI'S PIZZA mark in interstate commerce and filed the Application, Application No. 78/441,675 for the mark GIOVANNI'S PIZZA POWER was filed on June 25, 2004 and has not registered. Applicant Northland Frozen admits that, after Applicant Northland Frozen used Applicant's GIOVANNI'S PIZZA mark in interstate commerce and filed the Application, Application No. 78/571,747 for the mark GIOVANNI'S PIZZA POWER

and Design was filed on February 21, 2005 and has not registered. Applicant Northland Frozen lacks sufficient information to form a belief as to the truth of the remaining allegations contained in paragraph 2 of the Notice of Opposition, and such statement has the effect of a denial of such allegations. Applicant Northland Frozen affirmatively pleads that the similarity between the GIOVANNI'S mark of Application No. 73/439.795 and the GIOVANNI'S PIZZA mark of Applicant Northland Frozen resides in a common first name, and should be analyzed for likelihood of confusion based upon the significance which consumers give to common first name marks for restaurant services and food products, including:

- a. the significance which consumers give to the mark GIOVANNI'S for bakery products, namely bread as registered in Registration No. 1,194,807 registered May 4, 1982;
- b. the significance which consumers give to the mark GIOVANNI (and design) for fresh fruits and vegetables as registered in Registration No. 2,432,109;
- c. the significance which consumers gave to the mark GIOVANNI'S for wine as registered in Registration No. 1,583,862 (now canceled); and
- d. the significance which consumers give to similar co-registered common first name marks.

Applicant Northland Frozen affirmatively pleads that Opposer Giovanni's Restaurant/Meat is estopped from claiming rights stemming from its Application No. 73/439,795 which would extend so far as to cover Registration No. 1,194,807 or so far as to cover the Application. Applicant Northland Frozen further affirmatively pleads that any applications or registrations owned by Opposer Giovanni's Restaurant/Meat which were filed after Applicant Northland Frozen filed the Application are irrelevant and

immaterial to this Opposition and fail to support any claim upon which relief can be granted. Applicant Northland Frozen further affirmatively and alternatively pleads that, to the extent that rights from use of a GIOVANNI'S PIZZA mark as used on restaurant services cross-over to provide any association or beneficial rights in the market for frozen pizza sold through grocery stores, through convenience stores or via shipment to the customer, Applicant Northland Frozen enjoys priority of use through assignment of any such association or beneficial rights acquired through restaurant services usage from a date prior to August 18, 1983.

3. Applicant Northland Frozen lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 3 of the Notice of Opposition, and such statement has the effect of a denial of such allegations. Applicant Northland Frozen affirmatively pleads that any use of any mark by Opposer Giovanni's Restaurant/Meat which commenced after Applicant Northland Frozen filed the Application is irrelevant and immaterial to this Opposition and fails to support any claim upon which relief can be granted.
4. Applicant Northland Frozen lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 4 of the Notice of Opposition, and such statement has the effect of a denial of such allegations.
5. Applicant Northland Frozen lacks sufficient information to form a belief as to the truth of the allegations contained in paragraph 5 of the Notice of Opposition, and such statement has the effect of a denial of such allegations.
6. Applicant Northland Frozen admits the allegations contained in paragraph 6 of the Notice of Opposition.

7. Applicant Northland Frozen denies the allegations contained in paragraph 7 of the Notice of Opposition.
8. Applicant Northland Frozen denies the allegations contained in paragraph 8 of the Notice of Opposition.
9. Applicant Northland Frozen denies the allegations contained in paragraph 9 of the Notice of Opposition.
10. Applicant Northland Frozen denies the allegations contained in paragraph 10 of the Notice of Opposition.

WHEREFOR, Applicant Northland Frozen prays the Opposition to the Application be dismissed.

Respectfully submitted,

SHEWCHUK IP SERVICES, LLC

By: 

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Attorney for Applicant Northland Frozen Foods, Inc.

I hereby certify that this correspondence is being electronically filed via ESI/TA on August 24, 2006.

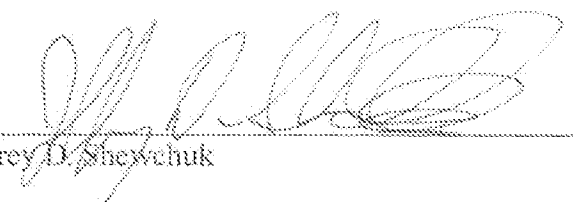
By: 

Jeffrey D. Shewchuk

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing APPLICANT NORTHLAND FROZEN'S ANSWER TO NOTICE OF OPPOSITION has been served on Opposer Giovanni's Pizza, Inc. by mailing said copy on August 24, 2006, via First Class Mail, postage prepaid to:

Scott K. Haight, Esq.  
BAKER, DONELSON, BEARMAN,  
CALDWELL & BERKOWITZ, P.C.  
165 Madison Avenue, Suite 2000  
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By:   
Jeffrey D. Shevchuk