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Filing date: **01/04/2007**

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

Proceeding	91174264
Party	Defendant Martin's Famous Pastry Shoppe, Inc. Martin's Famous Pastry Shoppe, Inc. 1000 Potato Roll Lane Chambersburg, PA 17201
Correspondence Address	MICHAEL A. DOCTROW MCNEES WALLACE & NURICK LLC P.O. BOX 1166 HARRISBURG, PA 17108-1166 UNITED STATES
Submission	Answer
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Date	01/04/2007
Attachments	A884958.PDF ( 5 pages )(104811 bytes )

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

In the Matter of:  
Trademark Application Serial No.: 78/556,939  
  
Filed: November 5, 2003  
  
Trademark: CURLY KETTLE  
  
International Classes: 029  
  
Published in The Official Gazette: May 16, 2006

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KETTLE FOODS, Inc.,  
Opposer

v.

MARTIN'S FAMOUS PASTRY SHOPPE INC.,  
Applicant

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Opposition No. 91174264

FILED ELECTRONICALLY

Attn: BOX TTAB, NO FEE  
Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

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

1. Admitted in part and denied in part. It is admitted, upon information and belief, that Kettle Foods, Inc. ("Opposer"), uses the KETTLE mark on potato chip products. Applicant Martin's Famous Pastry Shoppe Inc. ("Martin's") is without knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in Paragraph 1 of the Notice of Opposition, and the same are therefore denied.

2. Denied. Martin's is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 2 of the Notice of Opposition, and the same are therefore denied.

3. Admitted in part and denied in part. It is admitted that Opposer sells KETTLE Krinkle Cut Potato Chips and KETTLE BAKES baked potato chips. Martin's is without knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in Paragraph 3 of the Notice of Opposition, and the same are therefore denied.

4. Denied. Martin's is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 4 of the Notice of Opposition, and the same are therefore denied.

5. Denied. Martin's is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 5 of the Notice of Opposition, and the same are therefore denied.

6. Admitted.

7. Admitted in part and denied in part. It is admitted that Opposer uses the mark KETTLE in connection with potato chips. Martin's is without knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in Paragraph 7 of the Notice of Opposition, and the same are therefore denied.

8. Denied. Martin's is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 8 of the Notice of Opposition, and the same are therefore denied.

9. Denied. Martin's is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 9 of the Notice of Opposition, and the same are therefore denied.

10. Admitted, with qualification. By way of qualification, while Martin's proposed CURLY KETTLE mark does include the word "Kettle," Martin's has voluntarily disclaimed that term as descriptive in its application to register CURLY KETTLE.

11. Denied.

12. Denied.

13. Denied.

14. Denied.

15. Denied.

### **AFFIRMATIVE DEFENSES**

#### **First Defense**

16. Opposer's Notice of Opposition fails to state a claim upon which relief can be granted.

#### **Second Defense**

17. There is no likelihood of confusion between the marks used by Martin's and Opposer.

#### **Third Defense**

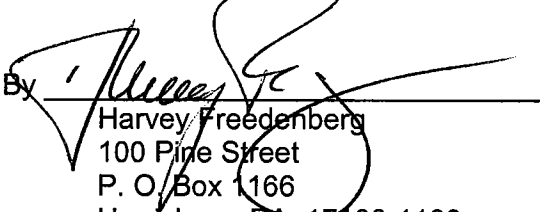
18. Martin's registration of its CURLY KETTLE mark with a disclaimer of the term "KETTLE" is not likely to cause confusion with Opposer's KETTLE mark.

#### **Fourth Defense**

19. The term "Kettle," as used with potato chips, is either generic or descriptive, and, if the latter, is neither inherently distinctive, nor has it acquired distinctiveness. Thus, Opposer's KETTLE mark is not protectable as a matter of law.

WHEREFORE, Applicant Martin's Famous Pastry Shoppe Inc. demands that the opposition of Opposer Kettle Foods, Inc. be dismissed with prejudice.

McNEES WALLACE & NURICK LLC

By   
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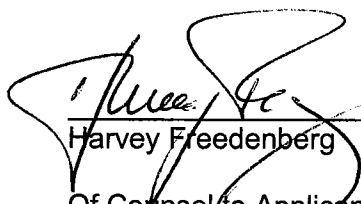
Attorneys for Applicant  
Martin's Famous Pastry Shoppe Inc.

Date: January 4, 2007

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this date a true and correct copy of the **Answer to Notice of Opposition** was electronically mailed to [cfoley@morganfinnegan.com](mailto:cfoley@morganfinnegan.com) and a courtesy hard copy was mailed via First Class Mail to:

Colin Foley, Esquire  
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Harvey Freedenberg  
Of Counsel to Applicant  
Martin's Famous Pastry Shoppe Inc.

Date: January 4, 2007