

UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE DIRECTOR OF THE UNITED STATES PATENT AND  
TRADEMARK OFFICE

C.F.M. Distributing	)	
Company, Inc.	)	
	)	
Opposer	)	Opposition No. 91185766
	)	
v.	)	
	)	On Petition for
Theresa Constantine, as	)	Disqualification
Personal Representative	)	
Of the Estate of	)	Mailed: 29 December 2009
Richard Constantine	)	
	)	
Applicant.	)	
	)	
Original Maryland	)	
Fried Chicken, LLC	)	
	)	
Opposer	)	Opposition Nos. 91187377 and
	)	91187378
	)	
v.	)	
	)	
Theresa Constantine, as	)	
Personal Representative	)	
Of the Estate of	)	
Richard Constantine	)	
	)	
Applicant.	)	

ORDER

Drost, Administrative Trademark Judge:

On September 19, 2009, opposer, C.F.M. Distributing Company, Inc., filed a petition to disqualify Matthew G. McKinney as counsel for applicant, Theresa Constantine. The petition was filed in Opposition No. 91185766, in which applicant is seeking to register the mark MARYLAND FRIED

**Opposition Nos. 91185766, 91187377, and 91187378**

CHICKEN COMPLETE DINNERS TO GO! and design (all wording disclaimed) in Serial No. 77402411.

On September 25, 2009, the Board issued a decision on several motions in this opposition. In that order, the Board, inter alia: (1) consolidated this opposition with Opposition Nos. 91187377 and 91187378; (2) held that opposer failed to plead a proper claim of fraud; and (3) "otherwise suspended" proceedings pending the disposition of the petition to disqualify. However, the order permitted opposers twenty days to file an amended pleading with a proper fraud claim. Opposers filed amended pleadings on October 14 and 15, 2009. Also, on October 15, 2009, opposers filed a Notice of Substitution of Counsel appointing the same counsel in all three oppositions.

On October 20, 2009, applicant moved to strike any papers filed after the Board's suspension of the proceedings. On October 30, 2009, opposer opposed the motion to strike. Finally, on November 4, 2009, applicant requested clarification of the Board's suspension of proceedings. In that motion (pp. 1-2), applicant noted that the "Board provided no instructions on a timetable" and she "requests that the Board clarify whether the Applicant is required to respond to the Petition to Disqualify."

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In Opposition No. 91187377, opposer Original Maryland Fried Chicken LLC also opposes applicant's 77402411 application and, in Opposition No. 91187378, it opposes applicant's Serial No. 77497042 for a chicken design mark. In its amended petition, opposer CFM alleges that "Maryland Fried Chicken, Inc. and C.F.M. Distributing Company, Inc. entered into a distribution contract wherein CFM was named the exclusive distributor of Maryland Fried Chicken products and CFM was granted a licensee to make, use, and sell products bearing the Maryland Fried Chicken trademarks and copyrights." Second Amended Notice of Opposition at 3.<sup>1</sup>

"Petitions to disqualify in matters before the Board are currently determined by the Chief Administrative Trademark Judge under authority delegated by the Director." TBMP § 513.02 (2d. ed. rev. 2004). "Petitions to disqualify a practitioner in ex parte or inter partes matters in the Office are not governed by §§ 1.19 through 11.60 and will be handled on a case-by-case basis under such conditions as the USPTO Director deems appropriate." 37 CFR § 11.19(c).

Now that the petition to disqualify has been filed, the following briefing schedule is set:

Opposer has fifteen days from the date of this

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<sup>1</sup> This paper is subject to applicant's motion to strike. It is referenced only to clarify the status of the opposers.

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order to clarify whether its petition to disqualify is applicable to all three oppositions. Opposer may supplement its petition when it files its response.

Applicant has fifteen days from the date of the filing of opposer's clarification to file her response.

Opposer(s) have fifteen days from the date of applicant's response to opposer's clarification to file its response to applicant's filing.

Action on applicant's motion to strike is deferred until the case is returned to the Board.

cc:

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