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

Proceeding	91185766
Party	Plaintiff C.F.M. Distributing Company, Inc.
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Date	02/02/2010
Attachments	Reply to Response to Petition for Disqualification (020210).pdf ( 5 pages ) (190287 bytes )

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING TRANSMITTED ELECTRONICALLY TO THE COMMISSIONER FOR TRADEMARKS – <http://estta.uspto.gov/filing-type.jsp>

BY *[Signature]*

DATE: 2/2/10

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

In the Matter of Application Serial No. 77402411  
Date of Publication: July 22, 2008

C.F.M. DISTRIBUTING COMPANY, INC,	)	
	)	
Opposer,	)	
	)	
v.	)	
	)	Opposition No.: 91185766
THERESA COSTANTINE, AS PERSONAL	)	Serial No.: 77402411
REPRESENTATIVE OF THE ESTATE OF	)	
RICHARD CONSTANTINE,	)	
	)	
Applicant.	)	

**OPPOSER’S REPLY TO APPLICATION’S RESPONSE TO OPPOSER’S PETITION FOR  
DISQUALIFICATION OF APPLICANT’S COUNSEL**

Now comes the Opposer, C.F.M. DISTRIBUTING COMPANY, INC. (“CFM” or “Opposer”) by and through its undersigned attorneys hereby files this Reply to Applicant’s Response to Opposer’s Petition for Disqualification of Applicant’s counsel, Matthew G. McKinney, Esq. and states:

**I. Introduction**

Opposer filed its Petition for Disqualification on September 18, 2009 based on Applicant’s counsel’s relationship with his client and the limited liability company, MTM Enterprises, LLC (“MTM”). Applicant filed its Response on January 18, 2010 claiming that

Opposer has no right to seek disqualification of Applicant's counsel based on any possible conflict between Applicant and third party, MTM. Opposer alleges, however, that Applicant and MTM are one in the same. In fact, because MTM is operating the franchise website and offering for sale MARYLAND FRIED CHICKEN franchises under the MARYLAND FRIED CHICKEN trademark, potential franchisees will assume that MTM is the owner of the trademark. This assumption is a valid one based on the website [www.marylandfriedfranchise.com](http://www.marylandfriedfranchise.com) wherein the trademark is used throughout and the <sup>TM</sup> symbol is used in association with the trademark. See Exhibits "A" and "D" attached to Opposer's Petition for Disqualification. Moreover, should Applicant win the pending opposition proceedings it will more than likely file an assignment of the trademark rights from Theresa Costantine to MTM. Therefore, the conflict is not between Applicant and a third party because the "third party" for all intents and purposes is the Applicant.

Moreover, Applicant failed to address any of the issues raised in Opposer's Petition with respect to Applicant being a part-owner of MTM and the relationship between MTM and the Applicant. The only reference Applicant's counsel has in its Response is in footnote 1 where he states that "the undersigned serves as corporate counsel for MTM Enterprises, LLC, which is not a distributor. MTM Enterprises Group, LLC is a restaurant franchisor and will continue to operate notwithstanding the outcome of this proceeding." However, as seen in Exhibit "H" to Opposer's Petition for Disqualification, it is clear that Applicant's counsel is more than just corporate counsel, but is instead a managing member of the limited liability company who receives profits from the business. Therefore, should there come a time when it is in Applicant's best interest to settle this case rather than continue fighting it, Applicant's counsel will be unable to give unbiased advice to his client because his interest is better served if the franchise operation succeeds and he receives profits from the sale of franchises.

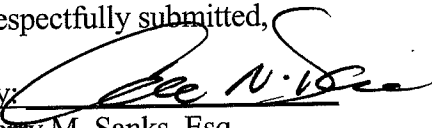
Applicant's counsel completely omitted any discussion regarding his ownership in the business and the purpose of the franchise. This was the crux of Opposer's argument, but Applicant's counsel failed to address it. It appears that Applicant's counsel's reasoning for not addressing the issue is reflected in his citation to *Unico American Corp. v. Unico Banking Group*, 223 USPQ 684, 685 (Comm'r 1984), which according to Applicant stands for the proposition that Opposer has no right to seek disqualification of Applicant's counsel based on any possible conflict between Applicant and third parties. See Response at pg. 2. A careful reading of this case, however, does not stand for this proposition. Instead, the case holds that an attorney should not be disqualified because they represented a party previously that one of the parties to the TTAB proceeding had sued in the past. This has absolutely nothing to do with the instant case. Opposer is not alleging that it sued a party in the past and Mr. McKinney represented that party so he should be disqualified. Instead, Opposer is alleging that because of the business and financial relationship between Applicant, Mr. McKinney and MTM, there is a conflict of interest for Mr. McKinney to represent Applicant. More importantly, Opposer will be significantly burdened and disadvantaged if it's required to provide its confidential and proprietary documents to Applicant's counsel who is in reality Applicant.

As discussed in more detail in Opposer's Petition for Disqualification, Applicant's attorney is a managing member of MTM and receives a share of the profits received from obtaining franchises using the MARYLAND FRIED CHICKEN and MARYLAND FRIED CHICKEN COMPLETE DINNERS TO GO! trademarks. Applicant is not entitled to create a franchise using these marks because the marks are not owned by Applicant. More importantly, although Applicant argues that confidential information is produced by competitors routinely in trademark cases, this is not a routine trademark case. If Applicant was represented by impartial

and unbiased counsel it would have no problem disclosing certain confidential information, relevant to the disposition of this matter, under the "Trade Secret/Commercially Sensitive" provision in the Standard Protective Order. However, in the instant case, Applicant's counsel is not impartial and unbiased because he is an owner of the franchise and by disclosing the information to Applicant's counsel, Opposer is disclosing it to Applicant. It is impossible under the current circumstances for Opposer to protect its "Trade Secret/Commercially Sensitive" information because even if the parties were to sign the Standard Protective Order, this would not prevent Mr. McKinney from viewing this confidential information.

WHEREFORE, Opposer CFM respectfully requests that this tribunal disqualify Matthew G. McKinney as Applicant's counsel and require Applicant to hire new and unbiased counsel and provide such other relief as this tribunal deems necessary. If the TTAB is not inclined to disqualify Mr. McKinney, Opposer requests that any documents or information it alleges is Trade Secret/Commercially Sensitive be produced under seal solely to the TTAB and not to the Applicant or Applicant's counsel.

Dated this 2nd day of February, 2010.

Respectfully submitted,  
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## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was mailed to Applicant's authorized representative on February 2nd, 2010, by first class mail, postage prepaid, at the following address:

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