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

Proceeding	91185766
Party	Defendant Theresa Costantine, as Personal Representative of the Estate of Richard Costantine
Correspondence Address	Matthew G. McKinney McKinney Law, LLC 121 S. Orange Avenue, Suite 1500 Orlando, FL 32801 UNITED STATES mgm@mckinneylawllc.com
Submission	Other Motions/Papers
Filer's Name	Matthew G. McKinney
Filer's e-mail	mgm@mckinneylawllc.com
Signature	/Matthew G. McKinney/
Date	02/03/2010
Attachments	226-05 Surreply to Response Petition to Disqualify.pdf (3 pages)(29951 bytes)

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

In the Matter of Application Serial No. 77/402,411
Published in the *Official Gazette* on July 22, 2008

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)	
CFM DISTRIBUTING COMPANY, INC.,)	
)	
Opposer,)	Opposition No.: 91185766
)	Serial No.: 77402411
v.)	
)	
THERESA COSTANTINE, PERSONAL)	
REPRESENTATIVE OF THE ESTATE)	
OF RICHARD COSTANTINE,)	
)	
Applicant.)	

**APPLICANT’S SUPPLEMENTAL RESPONSE TO
OPPOSER’S PETITION TO DISQUALIFY APPLICANT’S COUNSEL AND,
ALTERNATIVELY, PETITION TO DISQUALIFY OPPOSER’S COUNSEL**

The Applicant, THERESA COSTANTINE, PERSONAL REPRESENTATIVE OF THE ESTATE OF RICHARD COSTANTINE, by and through her undersigned counsel, hereby files her Supplemental Response to Opposer’s Petition to Disqualify Applicant’s Counsel and, Alternatively, Petition to Disqualify Opposer’s Counsel, and states the following in support thereof:

The Opposer now states as a new basis for disqualification is that “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 profits from the sale of franchises.” Opposer’s Reply, page 2. However, the Applicant is most certainly better served to prevail in this opposition proceeding and register the trademark. As opposing counsel is well aware, the Applicant was recently forced to file a lawsuit and obtain an injunction against a competitor

pursuant to Applicant's common law rights in a Leesburg, Florida restaurant. Thus, the Applicant would most certainly benefit from obtaining the federal registration to protect itself from competitors and not having to rely solely on common law rights. In contrast to the undersigned, it is clear that Opposer's counsel's interest is better served to continue this opposition and to keep profiting and charging the Opposer tens of thousands of dollars in attorneys' fees rather than to withdraw the opposition. If the Opposer withdrew the opposition instead of fighting, then Opposer's counsel, Terry Sanks and Amber Davis, would not be collecting any more attorneys' fees from Opposer, which clearly would not be in their best interests. Accordingly, if the Board is inclined to disqualify the undersigned, then Terry Sanks, Amber Davis and the law firm of Beusse, Wolter, Sanks, Mora & Maire, P.A., should also be disqualified on the basis that they are not impartial and unbiased counsel for the Opposer.

Counsel for the Opposer continues to believe that it is going to produce discovery that is Trade Secret/Commercially Sensitive. Instead, the Applicant is simply seeking discovery that the Opposer believes will establish its priority and use of the mark over the Applicant as alleged in the Opposition. There should be none of that designation of "Trade Secret/Commercially Sensitive" based on the discovery requests of the Applicant. In addition, the undersigned reminds counsel for Opposer, Terry Sanks and Amber Davis, that they have a professional and ethical obligation as attorneys not to designate items incorrectly when they should know such designation would be inappropriate. For example, identifying a client list as even "confidential" as stated in their Petition would be unethical when the list was previously attached to the Opposition and filed with the Board.

Dated this 3rd day of February 2010.

/Matthew G. McKinney/
Matthew G. McKinney
Florida Bar No. 385298
McKinney Law
121 S. Orange Ave., Suite 1500
Orlando, Florida 32801
Tel: 407-956-1075
Fax: 407-956-1076
mgm@mckinneylawllc.com
Attorneys for Applicant

CERTIFICATE OF SERVICE

We certify that a true and correct copy of the forgoing has been furnished by U.S. Mail to Amber Davis, Esq., 390 N Orange Ave., Suite 2500, Orlando, FL 32801 and Suzanne Meehle, Esq., 258 East Altamonte Drive, Suite 2001, Altamonte Springs, FL 32701; this 3rd day of February 2010.

/Matthew G. McKinney/
Matthew G. McKinney
Florida Bar No. 385298
McKinney Law
121 S. Orange Ave., Suite 1500
Orlando, Florida 32801
Tel: 407-956-1075
Fax: 407-956-1076
mgm@mckinneylawllc.com
Attorneys for Applicant

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