

ESTTA Tracking number: **ESTTA334741**

Filing date: **03/01/2010**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	DOMINO'S IP HOLDER LLC
Granted to Date of previous extension	02/28/2010
Address	30 Frank Lloyd Wright Drive Ann Arbor, MI 48106 UNITED STATES

Attorney information	Elizabeth F. Janda BROOKS KUSHMAN PC 1000 Town Center, 22nd Floor Southfield, MI 48075 UNITED STATES ejanda@brookskushman.com, ejbrooks@brookskushman.com Phone:248-358-4400
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Applicant Information

Application No	77324328	Publication date	09/01/2009
Opposition Filing Date	03/01/2010	Opposition Period Ends	02/28/2010
Applicant	Doctor's Associates Inc. Suite 306 300 South Pine Island Road Plantation, FL 33324 UNITED STATES		

Goods/Services Affected by Opposition

Class 030. First Use: 1967/08/01 First Use In Commerce: 1967/08/01 All goods and services in the class are opposed, namely: Sandwiches

Grounds for Opposition

The mark is merely descriptive	Trademark Act section 2(e)(1)
Genericness	Trademark Act section 23

Attachments	Oppositi.pdf (5 pages)(149417 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/elizabeth f janda/
Name	Elizabeth F. Janda
Date	03/01/2010

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

In re Trademark Application Serial No. 77/324328

Filed: November 8, 2007

Trademark: FOOTLONG

Published in the *Official Gazette* on September 1, 2009

DOMINO'S IP HOLDER LLC)	
)	
Opposer,)	
)	
v.)	Opposition No.
)	
DOCTOR'S ASSOCIATES INC.)	
)	
Applicant.)	

NOTICE OF OPPOSITION

VIA ELECTRONIC FILING
Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

Sir:

DOMINO'S IP HOLDER LLC ("DOMINO'S"), a Delaware limited liability company with a place of business at 30 Frank Lloyd Wright Drive, Ann Arbor, Michigan, believes that it is and will continue to be damaged by the Applicant's registration of the mark "FOOTLONG" for its sandwiches in Class 30, and hereby opposes registration of this mark.

As grounds for opposition, the Opposer alleges as follows:

1. The Applicant, DOCTOR'S ASSOCIATES INC., is seeking to register the mark "FOOTLONG" as a trademark for "sandwiches" in Class 30. This is evidenced by the publication of the mark in the September 1, 2009 issue of the *Official Gazette*. This application was filed on November 8, 2007.

2. Since at least as early as 1965, the Opposer, DOMINO'S and/or its predecessors-in-interest, have operated locations offering restaurant services, featuring hot pizza and other food items for consumption on or off the premises.

3. Upon information and belief, the general public does not perceive "FOOTLONG" as a distinctive source indicator for any one particular food manufacturer or restaurant, and the term is in widespread use in connection with food items and restaurant services.

4. The non-stylized phrase "FOOTLONG" is not distinctive as a source for any one entity or restaurant or food manufacturers, but is a generic term for food product that is a foot long, or 12 inches in length. As a result, the phrase is not entitled to protection under the Trademark Act Section 2(e) and Section 23.

5. Alternatively, if the term "FOOTLONG" is deemed to be "merely descriptive" as opposed to generic, it is not possible for the Applicant to acquire secondary meaning, because the extensive third party use establishes that Applicant's use is not substantially exclusive.

6. Upon information and belief, the Applicant uses "FOOTLONG" in connection with sandwiches that are a foot or 12 inches long.

7. Recently, Applicant filed a U.S. Application Serial No. 77/658312 to register "\$5 FOOTLONGS AND DESIGN" for restaurant services. This application was passed to

publication only after the Applicant complied with the Examiner's demand to disclaim the exclusive right to use terms "\$5" and "FOOTLONGS" apart from the mark.

8. If Applicant were granted the registration herein opposed, DOMINO'S is concerned that Applicant would claim at least a *prima facie* exclusive right to remove the reference "FOOTLONG" from use in connection with food products that are a foot long or 12 inches in length, which would be contrary to DOMINO'S right to use "FOOT LONG" or "FOOTLONG" to describe its goods that may be 12 inches in length. Such registration would be a source of injury and damage to DOMINO'S.

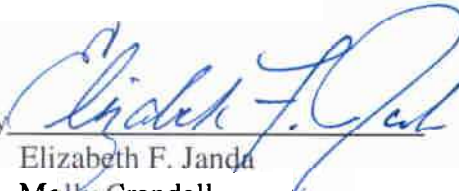
9. Applicant is not entitled to federal registration of its alleged mark, because it is not entitled to exclusive use of "FOOTLONG" in commerce in connection with the designated goods, and further that the Applicant's alleged mark does not function to identify its goods and distinguish them from those offered by others.

10. If the Applicant were granted the registration herein opposed, it would obtain at least a *prima facie* exclusive right to use of "FOOTLONG" in connection with the designated products and goods. Such registration would be a source of injury and damage to the Opposer.

11. For the foregoing reasons, Opposer DOMINO'S will be damaged by the registration of the mark "FOOTLONG" for the designated Class 30 goods.

WHEREFORE, the Opposer, DOMINO'S, prays that Application Serial No. 77/324328 for the mark "FOOTLONG" be rejected, denied and refused.

Respectfully submitted,

By 
Elizabeth F. Janda
Molly Crandall
Attorneys/Agents for Applicant

Date: March 1, 2010

BROOKS KUSHMAN P.C.
1000 Town Center, 22nd Floor
Southfield, MI 48075
Phone: 248-358-4400
Fax: 248-358-3351

Our File: DOMP 0555 OC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and complete copy of the attached Notice of Opposition has been served on counsel for the Applicant on the date listed below via First Class

U.S. Mail, postage prepaid:

Valerie A. Pochron
Doctor's Associates, Inc.
300 South Pine Island Road
Suite 306
Plantation, Florida 33324

Valerie A. Pochron
325 BIC Drive
International Legal Dept. ENT
Milford, Connecticut 06461-3072

Date: March 1, 2010

By: 
Krisanne Schmidt