

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Before the Trademark Trial and Appeal Board

Cheeseburger Restaurants, Inc, et al.)	
)	
Opposer,)	
)	
v.)	Opp. No. 91200813
)	
Pfoodman Holdings LLC,)	
)	
Applicant.)	Serial No.: 76/703,052
_____)		

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

APPLICANT’S RESPONSE TO OPPOSER’S MOTION TO COMPEL

Opposers’ have filed a Motion to Compel before the Trademark Trial and Appeal Board dated August 20, 2012. It requests Applicant to respond to the voluminous interrogatories, request for production, and admissions request.

The purpose of an opposition proceeding is to prevent the registration of a trademark or service mark to the Applicant. This can be done through the opposition proceeding, or by settlement between the parties.

Initially, the attorney for Opposers, Mr. Nataupsky prepared and sent to the Applicant an Express Abandonment of the U.S. application, subject to the opposition proceeding. The Applicant’s attorney signed the same, and filed it in the United States Trademark Office on August 15, 2012. A copy of this Expressed Abandonment is enclosed herein. It was done with the consent of the Opposer’s counsel, and the Opposer’s counsel actually prepared the Expressed Abandonment documentation. A copy of the same is enclosed herein.

Furthermore, the parties have been discussing the full settlement of this opposition. Applicant let Opposer know early on that the Applicant would drop its



08-28-2012

service mark application, so as to avoid further proceedings in the opposition. This can be seen from the letter of October 27, 2011. On April 17, 2012, Opposer's counsel was informed that the Applicant will drop the service mark application, will drop usage of the service mark, change the name altogether, so as to avoid the cost of further litigation.

Mr. Nataupsky, the counsel for Opposer, on August 15, sent the Expressed Abandonment to the undersigned, and the application was abandoned. Counsel also stated that settlement discussions are ongoing.

In view of this, it would appear that a Motion to Compel, and the excessive time required to try to answer the voluminous discovery, should not be necessary, since all Opposers' counsel need to do is prepare a simple settlement, recognizing that the Applicant has abandoned its application, it has dropped any usage of the subject service mark, and will not use any related service mark in the future. This should substantially lessen the need for further litigation in this opposition, particularly since the application has already been abandoned.

The Board's review of this matter would be appreciated, in response to the Motion to Compel, and urge the Opposers' counsel to prepare the settlement document, so the opposition can be formally dismissed.

Further litigation over this opposition, particularly since the subject application has been abandoned, just does not make any sense.

Respectfully Submitted,

Patent Law Office, LC

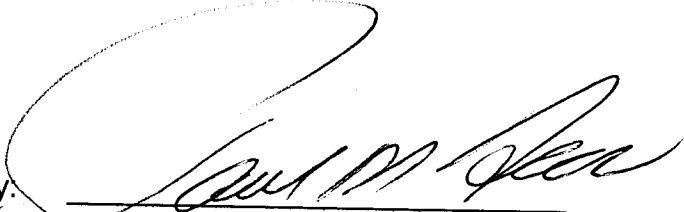
Date: 9-24-12

By: 

Paul M. Denk
763 S. New Ballas Road, Suite 305
St. Louis, MO 63141
(314) 872-8136
Attorney for Applicant
Pfoodman Holdings, LLC

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the forgoing response to Opposers' Motion to Compel upon Opposers' counsel by transmitting a copy thereof by first class mail to Steven J. Nataupsky, Esq., at Knobbe, Martens, Olson & Bear, LLP, at 2040 Main Street, 14th Floor, Irvine, CA 92614

Paul M. Denk By: 

Paul M. Denk,
Attorney for Applicant
Pat. Off. Reg. No. 22,598
763 S. New Ballas Road, Suite 305
St. Louis, MO 63141
(314) 872-8136

paul denk

From: Steven.Nataupsky [Steven.Nataupsky@knobbe.com]

Sent: Wednesday, August 15, 2012 11:48 AM

To: denkpatentlaw@earthlink.net

Cc: Amber.Molle

Subject: Pfoodman Holdings

Attachments: 2012-04-25 Express Abandonment- CHSBRGR.079M.DOC

Paul, further to our discussion earlier this week, attached is an Express Abandonment of the trademark application resolving the Cheeseburger in Paradise matter. If it is acceptable, please sign and file it with the PTO. Our deadline to file a Motion To Compel is next Monday the 20th. Thus, if you are not able to handle this this week please let me know if you consent to a 30 day suspension of the proceedings pending settlement discussions. I will be out of the office for part of tomorrow and Friday, so please "Reply All" to this email. Thank you for your time on this matter. Steven

Steven J. Nataupsky

Steven.Nataupsky@knobbe.com
(949) 760-0404

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Pfoodman Holdings, L.L.C)
Serial No. : 76/703,052)
Filed : May 21, 2010)
Mark : )
Examining Attorney : Sappenfield, Ann Elizabeth)
Law Office : 117)

EXPRESS ABANDONMENT OF U.S. APPLICATION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Sir or Madam:

Applicant hereby expressly abandons the above-identified application for registration made under the serial number identified above, with prejudice, pursuant to 37 C.F.R. § 2.68.

Respectfully submitted,

PATENT LAW OFFICE LC

Dated: _____

By: _____

Paul M. Denk
763 South New Ballas Road Ste. 305
St. Louis, MO 63141-8723
Attorney for Applicant,
Pfoodman Holdings, L.L.C

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **EXPRESS ABANDONMENT OF U.S. APPLICATION** upon Opposer's counsel by transmitting an electronic copy thereof via electronic mail on 8-15-12 to the email addresses indicated below:

Steven J. Nataupsky
Steven.Nataupsky@knobbe.com
efiling@kmob.com



Paul M. Denk

PATENTS, TRADEMARKS
AND RELATED CAUSES

Paul M. Denk, JD, L.C.

PATENT LAW OFFICE, LC
763 S. NEW BALLAS ROAD, SUITE 305
ST. LOUIS, MISSOURI 63141

TEL: (314) 872-8136
FAX: (314) 447-0390

patentlaw@earthlink.net

October 27, 2011

Mr. Steven J. Nataupsky, Esq.
Knobbe, Martens, Olson & Bear LLP
2040 Main Street, 14th Floor
Irvine, CA 92614

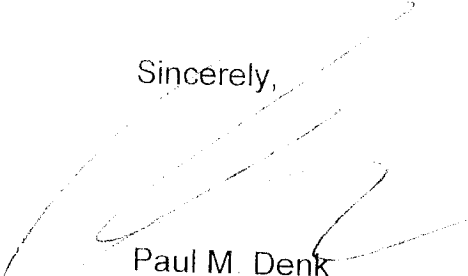
Dear Mr. Nataupsky:

Re: Trademark Opposition
Pfoodman Holdings, LLC
Cheeseburger Restaurants, Inc.,
et al v. Pfoodman Holdings, LLC
PARADISE BURGER GRILL +
Design
Opposition No. 91200813

I believe we have previously had some discussion with your paralegal regarding the above opposition proceeding. I told her that my client would be willing to just drop its service mark application upon its mark. This means you would be able to achieve what you hoped to accomplish through an opposition proceeding, without incurring substantial cost to your client. But, no one has ever gotten back with us regarding that offer.

Let us know if this opposition proceeding can be resolved, in this manner

Sincerely,



Paul M. Denk

PMD/kf

PATENTS, TRADEMARKS
AND RELATED CAUSES

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denkpatentlaw@earthlink.net

April 17, 2012

Mr. Steven J. Nataupsky, Esq.
Knobbe, Martens, Olsen & Bear, LLC
2040 Main Street, 14th Floor
Irvine, CA 92614

Dear Mr. Nataupsky:

Re: Trademark Opposition
Pfoodman Holdings, LLC
Cheeseburger Restaurants, Inc.,
v. Pfoodman Holdings PARADISE
BURGER GRILL & DESIGN
Opposition No. 91200813

We sent a letter to you back on October 27, 2011, explaining that our client was willing to drop the service mark application set forth in this opposition. In fact, the client states that it has changed its name altogether, it really has not made any primary usage of this mark upon any facility, it is willing to drop the application, that would assume that you would want to save your clients some money, and drop the opposition.

Hence, while we received your lengthy interrogatories, it would appear to be more feasible to look toward settlement of this opposition, in the matter as stated, since our client really has not made any usage of this mark, other than in its early planning stage

Can you please review this matter, and see if we can put the opposition on hold, and try to reach a simple settlement

Let us know.

Sincerely,


Paul M. Denk

PMO/LLJ