

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

**In re Registration No.:** 1,629,630  
**Trademark:** OLIVE'S GOURMET PIZZA AND DESIGN  
**International Class:** 42  
**Registered:** December 25, 1990

Certificate of Mailing  
 I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-5513 on: 2-3-04

----- X	:	Cancellation No. 32,958
TANGO CHIX PRODUCTIONS, INC.	:	
	:	
	:	<b>PETITIONER'S BRIEF IN</b>
	:	<b>OPPOSITION TO REGISTRANT'S</b>
	:	<b>MOTION TO SET ASIDE</b>
	:	<b>DEFAULT JUDGMENT AND</b>
v.	:	<b>ENTRY OF DEFAULT AND FOR</b>
	:	<b>LEAVE TO EXTEND TIME TO</b>
OLIVE INDUSTRIES, LTD.	:	<b>OPPOSE PETITIONER'S</b>
	:	<b><u>SERVICE MARK APPLICATIONS</u></b>
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Petitioner, Tango Chix Productions, Inc. ("Tango Chix" or "Petitioner"), by its attorneys of record, hereby submits its brief in opposition to the motion (the "Motion") of Registrant, Olive Industries, Ltd. ("Olive" or "Registrant") to set aside the default judgment entered in this Cancellation proceeding by this Trademark Trial and Appeal Board (this "Board") on April 10, 2003, and in opposition to Registrant's further Motion to extend and reopen its time to oppose Petitioner's currently pending service mark applications, U.S. App. Serial Nos. 76-218,069 and 76-218,070, for the service marks OLIVE'S and OLIVE'S NYC, respectively.

**I. INTRODUCTION**

By its motion, Registrant asks this Board to assign to Petitioner responsibility for Registrant's own negligence. The default entered by the Board on April 10, 2003 (the "Default") simply reflects Registrant's failure to follow essential trademark procedure.

In or before the year 2000, Registrant closed its “Olive’s Gourmet Pizza” restaurant in San Francisco, California, moved to Tahoe City, California, and opened a restaurant called the “Black Bear Tavern.” (See, e.g., Declaration of Craig Cooper in Support of Motion (“Cooper Decl.”) at ¶ 3). Having failed to properly notify the U.S. Patent and Trademark Office (“USPTO”) of its change of address from San Francisco to Tahoe City, however, as was its obligation, Registrant failed to obtain the Board’s notice of Petitioner’s Petition for Cancellation (the “Petition”) that was mailed on June 28, 2002. The Board, following the procedure mandated by the Trademark Rules of Practice, mailed the Petition to Registrant’s San Francisco address, because on June 28, 2002 that address, and not the Tahoe City address, was listed as current in the records of the USPTO.

Registrant alleges that *Petitioner’s* failure to notify the Board of Registrant’s new address is “extraordinary,” and “shocking.” But even if that were so, it would not provide the Board good cause to set aside the Default. Petitioner had no obligation to notify the Board, in its Petition or otherwise, that Registrant had closed its restaurant and had moved away. Indeed, even if Petitioner had taken such a gratuitous step, the Board would still have sent its correspondence to the address for Registrant listed in the USPTO database as of the mailing date. Registrant’s attempt to imbue Petitioner and its counsel with spurious, let alone fraudulent motives and intent is, therefore, both misplaced and irrelevant. Registrant is suffering the effects of its own inattention and neglect, and nothing else.

Moreover, the self-serving and unsupported general denials set forth in Registrant’s proposed Answer do not demonstrate a meritorious defense to the Petition. In truth, Registrant has no defense to cancellation because it ceased using the mark OLIVE’S GOURMET PIZZA when it closed its San Francisco restaurant and opened the Black Bear Tavern. Registrant wishes

to contest cancellation because, at best, it wants to improperly reserve its old service mark for some future use.

Notably, Olive president Craig Cooper, in his Declaration, does not even attempt to suggest, let alone demonstrate, that Registrant is currently using the mark in question. (Cooper Decl., *passim*). One would presume that if Registrant were still using its mark, it would leap at the chance to provide proof of use in support of this motion. Instead, Registrant chooses not to “argue the merits.” But the fact that Cooper’s Declaration fails to authenticate any menu, photograph of signage, business card, stationery, or any other scintilla of evidence that Registrant still uses OLIVE’S GOURMET PIZZA in any way speaks volumes as to the value of the denials set forth in Registrant’s proposed Answer. In context, the Answer is not only frivolous, it is disingenuous.

For all of these reasons, the Default was properly entered by the Board, and should not be set aside. Further, as Registrant has provided no sustainable grounds for its request to extend the time to oppose Petitioner’s service mark applications, that request should be denied.

## **II. FACTS RELEVANT TO ENTRY OF THE DEFAULT JUDGMENT**

In or about March, 2002, Petitioner’s counsel sought to contact Registrant to obtain a consent to use register Petitioner’s two service marks, OLIVE’S and OLIVE’S NYC, which were then blocked by Registrant’s OLIVE’S GOURMET PIZZA service mark. Petitioner’s counsel sent a letter by certified mail to Registrant at the address then listed on the USPTO website, [www.uspto.gov](http://www.uspto.gov), which was then, and still is “Olive Industries, Ltd., 3249 Scott Street, San Francisco, CA 94123.” This letter was returned to Petitioner’s counsel undelivered. (Declaration of Robert B. Golden in Support of Petitioner’s Opposition (“Golden Decl.”), ¶ 3).

After conducting extensive research, Petitioner's counsel located another address for Registrant in Tahoe City, California, and re-forwarded the certified letter seeking consent for use and registration. Someone apparently signed for the letter, as Petitioner's counsel received the return receipt, but Registrant never responded to grant or deny consent. (Golden Decl. ¶ 4, Exh. 1). Registrant never informed Petitioner's counsel that it had moved to Tahoe City, or that Olive's Gourmet Pizza restaurant had closed, or that Registrant had ceased doing business in San Francisco. Registrant did not inform Petitioner's counsel that its San Francisco address was no longer valid. Registrant simply did not respond. (Golden Decl. ¶ 5).

Further research revealed that Registrant had, indeed, closed its Olive's Gourmet Pizza restaurant, but informed little else regarding Registrant. Having failed to earn even a response on its request for consent to register its service marks, Petitioner determined to file its Petition for Cancellation in May, 2002, on the grounds that Registrant had ceased to use and abandoned the mark OLIVE'S GOURMET PIZZA. (Golden Decl. ¶ 6). At that time, the USPTO's records still indicated that Registrant's correspondence address was "Olive Industries, Ltd., 3249 Scott Street, San Francisco, CA 94123." (Golden Decl. ¶ 7, Exh. 2). Without any other confirmation, from Registrant or otherwise, that this address was not valid, Petitioner listed this address on the Petition. (Golden Decl. ¶ 8).

In June, 2002, the Board mailed its notice of the Petition to Registrant at the correspondence address then listed in the USPTO's records – 3249 Scott Street, San Francisco, CA 94123. (See Golden Decl. ¶ 9). Registrant did not answer. On December 14, 2002, the Board mailed a Notice of Default to the Registrant at the correspondence address then listed in the USPTO's records – 3249 Scott Street, San Francisco, CA 94123. Registrant did not respond.

On April 10, 2003, the Board entered a judgment of default on the Petition in favor of Petitioner, and cancelled Registrant's U.S. Reg. No. 1,629,630.

On December 16, 2003 – more than 20 months after receiving Petitioner's request for consent and 8 months after the Board entered the Default, Registrant wrote Petitioner for the first time claiming that Petitioner had engineered the Default by deliberately causing the Board to notice the Petition to a former, and invalid address. (Golden Decl. ¶ 10, Exh. 3). Counsel for Petitioner responded by letter dated December 22, 2003, explaining that the Board mails notices to the correspondence address listed in the records of the USPTO, and that those records still indicated Registrant's address to be in San Francisco. Counsel for Petitioner suggested that Registrant provide proof of its continuing use of the mark OLIVE'S GOURMET PIZZA, for purposes of evaluating and considering Registrant's request to consent to setting aside the Default. (Golden Decl. ¶ 11, Exh. 4).

Registrant's counsel responded on January 9, 2004 with an unsigned, undated, single-page facsimile purporting to be a menu from an "Olive's Gourmet Pizza" located at 2255 West Lake Blvd., "2 ½ mi. S. of Tahoe City," with a telephone number of (530) 583-8626. Petitioners, however, were unable to verify the menu or the alleged restaurant. Research indicates that there are no telephone listings for an "Olive's Gourmet Pizza" in Tahoe City, or in any other metropolitan area of California. And no further information exists for an Olive's Gourmet Pizza restaurant in the Lake Tahoe area. (Golden Decl. ¶¶12-13, Exh. 5).

More importantly, counsel for Petitioner contacted the telephone number listed on the "menu" faxed by Registrant and reached *not* Olive's Gourmet Pizza, but a restaurant called the Black Bear Tavern. (Golden Decl. ¶ 14). The Black Bear Tavern can also be reached on line, at [www.blackbearlaketahoe.com](http://www.blackbearlaketahoe.com), where a menu is available. Interestingly, the Black Bear's menu

lists four Pizza selections, three of which are listed on the “menu” faxed by Registrant purporting to be from an Olive’s Gourmet Pizza. But nowhere on the Black Bear Tavern’s website or menu does the designation “Olive’s Gourmet Pizza” appear. Indeed, by utilizing the “search” function on the website, one can see that the word “Olive’s” does not appear on the site at all. Moreover, the Black Bear Tavern’s home page states that the tavern is located “2 ½ miles south of Tahoe City,” just like address supplied on the purported menu supplied by Registrant (Golden Decl. ¶¶ 15-16, Exh 6).

On January 9, 2004, counsel for Petitioner informed counsel for Registrant by letter that the “menu” did not demonstrate in any way that Registrant was using the mark OLIVE’S GOURMET PIZZA, and, accordingly, that Petitioner’s were disinclined to consider granting relief from the Default. (Golden Decl. ¶ 17, Exh. 7). Registrant responded by serving the within Motion on January 15, 2004.

### **III. FACTS RELEVANT TO THE MOTION TO EXTEND TIME TO OPPOSE**

Following cancellation of Registrant’s mark, on November 4, 2003, Petitioner’s service mark applications, Serial Nos. 76-218,069 and 76-218,070 for OLIVE’S and OLIVE’S NYC, respectively (“Applications”), were published for opposition on the Principal Register. Registrant neither opposed, nor requested an extension of time to oppose, the Applications within the 30-day period following publication prescribed by 15 U.S.C. §1063(a). Accordingly, on December 4, 2003, Registrant lost the right and/or ability to oppose the Applications. The Applications matured into U.S. Reg. Nos. 2,807,709 (OLIVE’S) and 2,807,710 (OLIVE’S NYC), respectively, on January 27, 2004.

#### IV. ARGUMENT

##### A. Registrant Has Not Demonstrated Good Cause For Relief From Default

Registrant must show “good cause” to set aside the Default. Fed. R. Civ. P. 55 and 60. Good cause for vacating a default judgment requires a showing that (1) the delay in responding did not result from an act that was willful, in bad faith or in gross neglect; (2) the delay of defendant has not resulted in substantial prejudice to the plaintiff; and (3) the defendant has a meritorious defense. *E.g., Paolo’s Assoc. Ltd. Partnership v. Bodo*, 21 U.S.P.Q. 1899 (Comm’r Pat. 1990). Because Registrant’s gross neglect occasioned the Default, and because Registrant has no meritorious defense to the Petition, Registrant’s motion must be denied.

##### 1. Registrant Neglected Its Obligation To Update USPTO Records

Registrant asserts that it defaulted in this matter because it did not receive a copy of the Petition from the Board and thus did not respond. The Board, however, followed its procedure by mailing the Petition to Registrant’s then-current USPTO correspondence address. Registrant did not receive this mailing because it had neglected, for nearly two years, to update its correspondence information at the USPTO.

Trademark registrants must provide the USPTO with updated correspondence address information when addresses become out of date. “Correspondence will continue to be sent to such [old] address until the applicant, registrant or party, or the attorney or other authorized representative of the applicant, registrant or party, indicates in writing that correspondence is to be sent to another address.” 37 C.F.R. §2.18. As the TMEP explains,

Once the correspondence address is established for a particular application, it is not changed unless there is a written request by the applicant or the attorney of record to change the address. The mere transmittal of a response to an Office action bearing a new address for an applicant or an applicant’s attorney does not effect a change in a correspondence address

...

It is the applicant's responsibility to maintain a current and accurate correspondence address in its application file. If the correspondence address changes, the Office must be promptly notified in writing.

37 C.F.R. §2.18.

Prior to commencement of these cancellation proceedings, the TMEP governed Registrant's responsibilities to the USPTO regarding its registered service mark, including maintaining a current address. Thus, Registrant's claim that it used its new Tahoe City, California address on its Section 8 and 9 filings is irrelevant. Like an office action, the Section 8 and 9 filings, whether or not they listed a Tahoe City, California address, had no effect whatsoever upon Registrant's correspondence address. By ignoring stated and well-established practice, Registrant fatally neglected its obligation to maintain accurate records with the USPTO. This was Registrant's, and not Petitioner's responsibility, and Registrant must bear the consequences of its failure to discharge that responsibility.

Registrant suggests that Petitioner must shoulder the burden because it "contributed" to Registrant's "delay and confusion." See Motion, p. 5 (citing *S. Industries Inc. v. Lamb-Weston Inc.*, 45 U.S.P.Q.2d 1293 (TTAB 1997)). But this argument also ignores basic trademark practice and procedure. Under well-established rules, it is the Board, and not the Petitioner, that is responsible for effecting service of a petition for cancellation on a trademark registrant. The Board makes service by mailing the petition to the registrant at the correspondence address found in records of the USPTO on the mailing date. 37 C.F.R. §2.113. Since Petitioner was not responsible for effecting service, Petitioner neither contributed to, nor caused Registrant's failure to obtain service.



Registrant's failure to maintain its records at the USPTO was grossly negligent. Because this gross neglect, and not Petitioner, caused the Default, the Board should not aside the Default.

## **2. Petitioner Has No Meritorious Defense**

Petitioner sought cancellation on the grounds that Registrant has abandoned all use of its service mark OLIVE'S GOURMET PIZZA in commerce. In support of its Motion, Registrant has submitted a proposed Answer in connection with its Motion, which contains only a perfunctory, general denial of the allegations made by Petitioner in the Petition. See, Answer To Petition For Cancellation at ¶ 7. Registrant nowhere alleges that it still uses the mark OLIVE'S GOURMET PIZZA. Instead, Registrant claims it need not "argue the merits" of the case because its Answer is not "frivolous." Motion, p. 6.

Registrant is wrong. In order to establish a meritorious defense sufficient to support a motion to set aside default under Fed. R. Civ. P. 60, the movant must at a minimum proffer some evidence, "which, if believed, would permit either the Court or the jury to find for the defaulting party." *Colleton Preparatory Academy, Inc v. Beazer East, Inc.*, 219 F.R.D. 105, 110 (D.S.C. 2003). Since Registrant has admitted that it moved to Tahoe City, where it operates as Black Bear Tavern, and not Olive's Gourmet Pizza, in or before the year 2000, for example, absent any showing of use, Registrant's mark could be presumed to be abandoned after three years of continuous non-use. 15 U.S.C. §1127 (Lanham Act § 45).

Registrant's Motion, however, despite the weight of the law, evidence that no Olive's Gourmet Pizza restaurant exists, and a default judgment of cancellation, makes no attempt to set out a defense. The Motion completely fails to proffer any evidence, indication, or even a suggestion that Registrant is using, has used over the past three years, or has any good faith

intention to use the service mark OLIVE'S GOURMET PIZZA. Accordingly, the Board should not set aside the Default.

Even if Registrant were entitled to rest upon a well-pled answer, the sum of the evidence before the Board on this Motion suggests that Registrant's Answer is completely frivolous. As set forth in detail above, The San Francisco location of Olive's Gourmet Pizza is closed. Registrant's only attempt to persuade Petitioner that Registrant is still using the mark in question is a one-page, undated and unauthenticated Olive's Gourmet Pizza "menu" provided by Registrant's attorneys. Exh. 5 to Golden Decl. The telephone number listed on this menu, however, is for the "Black Bear Tavern," and not Olive's Gourmet Pizza, and neither the Black Bear Tavern's menu nor its website mentions the word "Olive's," let alone Olive's Gourmet Pizza. No telephone listings exist for an "Olive's Gourmet Pizza" establishment in Tahoe City, California or anywhere else in California, and there are no records on the Internet to indicate that such a business exists in Tahoe City now, or has existed there at anytime in the past. Golden Decl. ¶¶ 13-15 and Exh. 6.

Curiously, Registrant's president Cooper makes no attempt to prove, or even allege use of OLIVE'S GOURMET PIZZA in support of the Motion, and in particular does not attempt to authenticate its alleged "menu" in his Declaration. One would presume, if Registrant were indeed using the mark, that it would be a relatively simple (and certainly judicious) task to authenticate and proffer a menu, business card, phone book listing, stationery letterhead, review, or other example of use. But Registrant offers nothing at all. Registrant's failure to even *allege* use in support of the Motion, particularly in view of its burden to show a meritorious defense, loudly suggests that Registrant is at best seeking to reserve, and is not using, the mark in

question. In any case, Registrant has failed to meet its burden under Fed. R. Civ. P. 60, and thus the Board has no grounds to set aside the Default.

**B. The Board Lacks Authority To Extend Registrant's Time To Oppose Petitioner's Service Mark Applications Beyond The Statutory 30-Day Period**

As stated above, upon entry of the Default and cancellation of Registrant's mark, on November 4, 2003, Petitioner's then-pending Applications to register the service marks OLIVE'S and OLIVE'S NYC were published for opposition. The 30-day opposition period expired on December 4, 2003.

Registrant argues that the Applications "only proceeded to publication by virtue of the cancellation of the Registrant's Mark," and that the Board should thus extend Registrant's time to oppose. Motion, pp. 7-8. As demonstrated above, however, the Default, which resulted in the cancellation, was occasioned by Registrant's own neglect. And Registrant's failure to monitor the Register to police its mark against third-party applications was, and is completely unrelated to and unaffected by the Petition and underlying cancellation proceeding.

Notwithstanding the above, no authority exists for the Board to grant Registrant an extension of time to oppose Petitioner's Applications. A party can only obtain an extension of time to oppose an Application published on Principal Register by filing for such extension within the 30-day period prescribed by Section 13(a) of the Lanham Act, 15 U.S.C. §1063(a). TBMP 202.04. "Because these timeliness requirements are statutory, they cannot be waived by stipulation of the parties, nor can the Director upon petition waive them." *Id.*

In short, the Board lacks the authority and jurisdiction to grant Registrant's request to extend its time to oppose the Applications, which have now become Registrations. Registrant's sole recourse is to initiate cancellation proceedings against Petitioner's Registrations.

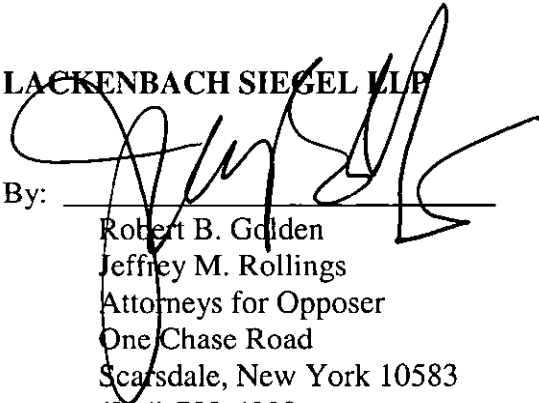
V. **CONCLUSION**

Registrant caused entry of the Default in this matter through its own gross neglect in failing to provide the USPTO updated correspondence address information. Furthermore, Registrant has abandoned the mark in question, and thus has no meritorious defense to the underlying cancellation Petition. Finally, the Board lacks the authority or jurisdiction to extend Registrant's time to oppose Petitioner's Applications beyond the 30-day period that expired on December 4, 2003. On these grounds, and all of the grounds set forth herein above, Petitioner respectfully requests that the Board deny Registrant's Motion in its entirety.

Dated: Westchester, New York  
February 3, 2004

**LACKENBACH SIEGEL LLP**

By: \_\_\_\_\_



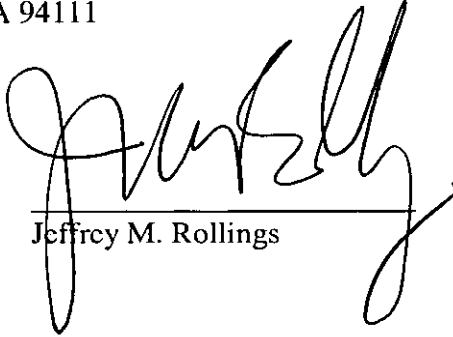
Robert B. Golden  
Jeffrey M. Rollings  
Attorneys for Opposer  
One Chase Road  
Scarsdale, New York 10583  
(914) 723-4300

**CERTIFICATE OF SERVICE**

I hereby certify that true and accurate copies of the enclosed Petitioner's Brief In Opposition To Registrant's Motion To Set Aside Default Judgment And Entry of Default and for Leave To Extend Time To Oppose Petitioner's Service Mark Applications, together with the Declaration of Robert B. Golden In Opposition To Registrant's Motion, were served on counsel for Opposer, this day, by first class mail, postage prepaid, addressed to Opposer's attorneys, as follows:

Val D. Hornstein  
Hornstein Law Offices  
20 California St., 7<sup>th</sup> Floor  
San Francisco, CA 94111

Dated: Westchester, New York  
February 3, 2004



Jeffrey M. Rollings



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

**In re Registration No.:** 1,629,630  
**Trademark:** OLIVE'S GOURMET PIZZA AND DESIGN  
**International Class:** 42  
**Registered:** December 25, 1990

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<b>TANGO CHIX PRODUCTIONS, INC.</b>	:		<b>Cancellation No. 32,958</b>
	:		
<b>Petitioner,</b>	:		<b>DECLARATION OF ROBERT B.</b>
	:		<b>GOLDEN IN OPPOSITION TO</b>
<b>v.</b>	:		<b>REGISTRANT'S MOTION TO SET</b>
	:		<b>ASIDE DEFAULT JUDGMENT AND</b>
<b>OLIVE INDUSTRIES, LTD.</b>	:		<b>ENTRY OF DEFAULT AND FOR</b>
	:		<b>LEAVE TO EXTEND TIME TO</b>
<b>Registrant.</b>	:		<b><u>SERVICE MARK APPLICATIONS</u></b>
-----	X		

ROBERT B. GOLDEN, declares and says:

1. I am a partner in the law firm of Lackenbach Siegel, LLP (“Lackenbach” or “we”), attorneys for Petitioner Tango Chix Productions, Inc. (“Petitioner”), and I have been lead counsel for Petitioner in this cancellation proceeding. I make this Declaration in support of Petitioner’s opposition to the motion (“Motion”) by Registrant Olive Industries, Ltd. (“Registrant”) to set aside the default judgment entered by this Board on April 10, 2003 (the “Default”).

2. Lackenbach is an intellectual property “boutique” and handles only trademark, patent, copyright and related intellectual property matters. I am a trademark attorney with over 12 years in the specialty, and I would estimate that nearly half, if not more, of my litigation

practice is before this Trademark Trial and Appeal Board (this “Board”) of the United States Patent and Trademark Office (“USPTO”).

3. In or about March, 2002, we sought to contact Registrant to obtain a consent to use and register Petitioner’s two service marks, OLIVE’S and OLIVE’S NYC, which were then blocked by Registrant’s OLIVE’S GOURMET PIZZA service mark. We sent a letter by certified mail to Registrant at the address then listed on the USPTO website, [www.uspto.gov](http://www.uspto.gov), which was then, and still is “Olive Industries, Ltd., 3249 Scott Street, San Francisco, CA 94123.” This letter was returned to Petitioner’s counsel undelivered.

4. After extensive research, we located another address for Registrant in Tahoe City, California, and re-forwarded the certified letter seeking consent for use and registration. We received the return receipt, indicating that someone had accepted delivery of the letter, but Registrant never responded to grant or deny consent. A true and correct copy of this letter is annexed to this Declaration as Exhibit 1.

5. Registrant never informed us that it had moved to Tahoe City, that Olive’s Gourmet Pizza restaurant had closed, or that Registrant had ceased doing business in San Francisco. Nor did Registrant inform us that its San Francisco address was no longer valid. Registrant simply did not respond.

6. We conducted further research and determined that Registrant had, indeed, closed its Olive’s Gourmet Pizza restaurant, but we were able to learn little else regarding Registrant. Having failed to earn even a response to our request for consent to register, we determined to initiate this matter by filing a Petition for Cancellation (the “Petition”) in May, 2002, on the



grounds that Registrant had ceased to use and abandoned the mark OLIVE'S GOURMET PIZZA.

7. At that time, the USPTO's records still indicated that Registrant's correspondence address was "Olive Industries, Ltd., 3249 Scott Street, San Francisco, CA 94123." A true and correct copy of a printout from the USPTO website, showing Registrant's San Francisco address as its then-current correspondence address, is annexed to this Declaration as Exhibit 2.

8. Without any other confirmation, from Registrant or otherwise, that this address was not valid, we listed this address on the Petition.

9. In accordance with procedures prescribed by regulation, the Board, and not Petitioner, effected service of the Petition on Registrant.

10. On December 16, 2003 – more than 20 months after receiving Petitioner's request for consent and 8 months after the Board entered the Default, Registrant wrote Petitioner for the first time claiming that Petitioner had engineered the Default by deliberately causing the Board to notice the Petition to a former, and invalid address. A true and copy of this letter is annexed to this Declaration as Exhibit 3.

11. We responded by letter dated December 22, 2003, explaining that the Board mails notices to the correspondence address listed in the records of the USPTO, and that those records still indicated Registrant's address to be in San Francisco. We further suggested that Registrant provide proof of its continuing use of the mark OLIVE'S GOURMET PIZZA, so we might better evaluate and consider Registrant's request for a consent relief from the Default. A true and correct copy of this letter is annexed to this Declaration as Exhibit 4.

12. Registrant's counsel responded on January 9, 2004, with an unsigned, undated, single-page facsimile purporting to be a menu from an "Olive's Gourmet Pizza" located at 2255 West Lake Blvd., "2 ½ mi. S. of Tahoe City," with a telephone number of (530) 583-8626 (the "Purported Menu"). A true and correct copy of this Purported Menu is annexed to this Declaration as Exhibit 5.

13. In order to attempt to verify the Purported Menu, we conducted extensive research of telephone records and Internet records. Nevertheless, we were unable to verify the menu or the alleged restaurant. Our research indicates, to the contrary, that there are no telephone listings for an "Olive's Gourmet Pizza" in Tahoe City, or in any other metropolitan area of California. And no further information exists for an Olive's Gourmet Pizza restaurant in the Lake Tahoe area.

14. We next attempted to contact a representative of the purported Olive's Gourmet Pizza restaurant in Tahoe City by calling the telephone number listed on the Purported Menu. That number, however, reached not Olive's Gourmet Pizza, but a restaurant called the "Black Bear Tavern."

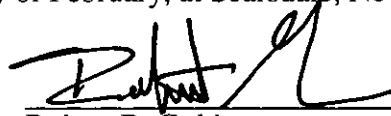
15. We conducted further Internet research, and determined that the Black Bear Tavern can be found on line, at [www.blackbearlaketahoe.com](http://www.blackbearlaketahoe.com), where a menu is available. A true and correct copy of a printout of the Black Bear Tavern's menu and home page are annexed to this Declaration as Exhibit 6. The home page states that the tavern is located "2 ½ miles south of Tahoe City," just like the Purported Menu supplied by Registrant.

16. Interestingly, the Black Bear Tavern's menu lists four Pizza selections, three of which are listed on the Purported Menu. But nowhere on the Black Bear Tavern's website or

menu does the designation “Olive’s Gourmet Pizza” appear. Indeed, by utilizing the “search” function on the website, we were able to determine that the word “Olive’s” does not appear on the site at all.

17. On January 9, 2004, we informed counsel for Registrant by letter that the Purported Menu did not demonstrate that Registrant was using the mark OLIVE’S GOURMET PIZZA, and, accordingly, that Petitioner was disinclined to consider granting relief from the Default. A true and correct copy of this letter is annexed hereto as Exhibit 7. Registrant responded only by serving the within Motion on January 15, 2004.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 3<sup>rd</sup> day of February, at Scarsdale, New York.

  
\_\_\_\_\_  
Robert B. Golden

# LACKENBACH SIEGEL

*Intellectual Property Attorneys*



*Since 1923*

March 13, 2002

**BY REGISTERED MAIL-RETURN RECEIPT**

Mr. Craig Cooper  
OLIVE'S INDUSTRIES, LTD.  
P.O. Box 8311  
Tahoe City CA 96145

Re: OLIVE'S PIZZA AND DESIGN  
Docket: 6493

Dear Mr. Cooper:

I have a client who would like to register a trademark, OLIVE NYC. Your client's Trademark Registration No. 1,629,630 is holding it up, and I should appreciate your letting me know whether you would give my client a consent to have their Mark registered.

As I understand, there would be no conflict with your client's restaurant services and my client's restaurant services would be substantially limited to the New York City area within a delivery area of the New York City area. Moreover, my client's establishment would not be considered to be a gourmet establishment, and my client does not sell pizza. If you want, we would be willing to give you a statement that no pizza would ever be sold from that establishment and that the area would be limited to the metropolitan New York City area.

Basically, my client is a local restaurant service provider who delivers food within the local area. There is no intent to expand to California, nor for that matter to expand outside of the metropolitan area.

Please let me hear from you at your convenience.

Sincerely yours,

J. Harold Nissen

cc: Trademark Owner  
Olive Industries  
3249 Scott St  
San Francisco CA 94123

CVI Document30721Range Clin Products, UCL3 13.02.0492, Content 3/02

TELEPHONE: (914) 723-4300

E-MAIL: [mail@lsmag.com](mailto:mail@lsmag.com)

FACSIMILE: (914) 723-4301

LACKENBACH SIEGEL MARZULLO ARONSON & GREENSPAN, P.C.  
Lackenbach Siegel Building • One Chase Road • Scarsdale, New York 10583 U.S.A.

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2004-01-23 09:22:16 ET

Serial Number: 74039264

Registration Number: 1629630

Mark



(words only): OLIVE'S GOURMET PIZZA

Standard Character claim: No

Current Status: Registration canceled under Section 7.

Date of Status: 2003-07-14

Filing Date: 1990-03-12

Transformed into a National Application: No

Registration Date: 1990-12-25

Register: Principal

Law Office Assigned: (NOT AVAILABLE)

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)

Current Location: 900 -Warehouse (Newington)

Date In Location: 2003-12-17

---

**LAST APPLICANT(S)/OWNER(S) OF RECORD**

---

1. Olive Industries, Ltd.

Address:

Olive Industries, Ltd.

3249 Scott St.  
San Francisco, CA 94123  
United States  
**Legal Entity Type:** Corporation  
**State or Country of Incorporation:** California

---

**GOODS AND/OR SERVICES**

---

restaurant services  
**International Class:** 042  
**First Use Date:** 1989-11-15  
**First Use in Commerce Date:** 1989-11-15

**Basis:** 1(a)

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**ADDITIONAL INFORMATION**

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**Disclaimer:** "GOURMET PIZZA"

**Description of Mark:** THE MARK CONSISTS IN PART OF THE DESIGN OF AN OLIVE.

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**MADRID PROTOCOL INFORMATION**

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(NOT AVAILABLE)

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**PROSECUTION HISTORY**

---

2003-07-14 - Canceled Section 7 - total surrender  
2003-07-07 - Cancellation terminated for Proceeding  
2002-06-28 - Cancellation instituted for Proceeding  
2001-03-10 - First renewal 10 year  
2001-03-10 - Section 8 (10-year) accepted/ Section 9 granted  
2000-10-16 - Combined Section 8 (10-year)/Section 9 filed  
1996-07-12 - Section 8 (6-year) accepted  
1996-03-19 - Section 8 (6-year) filed  
1990-12-25 - Registered - Principal Register  
1990-10-02 - Published for opposition  
1990-09-01 - Notice of publication  
1990-07-23 - Approved for Pub - Principal Register (Initial exam)

1990-07-19 - Examiner's amendment mailed

1990-07-03 - Case file assigned to examining attorney

---

**CONTACT INFORMATION**

---

**Correspondent (Owner)**

OLIVE INDUSTRIES, LTD.

3249 SCOTT ST.

SAN FRANCISCO, CA 94123

---

# HORNSTEIN LAW OFFICES

ATTORNEYS AND COUNSELORS

20 CALIFORNIA STREET, 7<sup>TH</sup> FLOOR  
SAN FRANCISCO, CALIFORNIA 94111-4807  
TELEPHONE (415) 454-1490  
FACSIMILE (415) 616-7000

VALD HORNSTEIN  
Admitted to practice law in  
CA, DC & NY

LOS ANGELES OFFICE  
120 El Camino, Suite 210  
BEVERLY HILLS, CALIFORNIA 90212

16 December 2003

Lackenbach Siegel et. al.  
One Chase Road  
Scarsdale, NY 10583

Via Facsimile 914-723-4301  
And Post

Attr: J. Harold Nissen, Esq.

Re: Tango Chix Productions Inc. v. Olive Industries Ltd. (TTAB Cancellation  
No. 32,958 re OLIVE'S GOURMET PIZZA, U.S. TM Reg. No. 1,629,630)

Dear Mr. Nissen,

This is to follow-up to my call to you this afternoon and per your request.

We represent Olive Industries Ltd. the owner of the above-described trademark (the "Mark"). We were recently engaged to transact business regarding the Mark and learned of the default judgment in the above-described proceeding.

As we discussed, we note that on March 13, 2002 you sent a letter by certified mail to our client at its Tahoe City, CA address. That address is the most current address in the USPTO records for the mark, appearing in the October 2000 section 8 & 9 filing. However, in your Petition to Cancel the Mark, filed on May 14, 2002, you advised the TTAB that Registrant's address is the old address in San Francisco, CA. Accordingly, the TTAB notice of proceeding was apparently mailed to the old address, and in any event, our client did not receive notice of the proceeding. As a consequence no response was filed and you took our client's default which resulted in the cancellation of the Mark. This caused the loss of our client's intellectual property, and it permitted your client's application to overcome a rejection based on our prior registration for the Mark.

As we discussed, I write to seek your cooperation in undoing this damage.



HORNSTEIN LAW OFFICES

J. Harold Nissen, Esq.  
16 December 2003  
Page 2

Please contact the undersigned at your earliest convenience to discuss how this matter can be amicably and expeditiously resolved. I would appreciate your call by the end of this week.

Thank you in advance for your anticipated cooperation and courtesies.

Sincerely,

A handwritten signature in black ink, appearing to read "Val D. Hornstein". The signature is fluid and cursive, with a prominent initial "V" and a long, sweeping tail.

VAL D. HORNSTEIN

U (Hornstein Chit v Olive)  
(USPTO file)



**FAXED**  
12-22-03

WRITER'S DIRECT DIAL  
(914) 723-4394  
rgolden@lsllp.com

December 22, 2003

**Via Facsimile No. (415) 616-7000 2 Pages**

Val D. Hornstein, Esq.  
Hornstein Law Offices  
20 California Street  
San Francisco, California 94111-4807

**Re: *Tango Chix Productions Inc. v. Olive Industries Ltd.***

Dear Mr. Hornstein:

Your letter dated December 16, 2003 addressed to J. Harold Nissen, Esq. has been forwarded to me for response, as I head this firm's litigation group and I personally prepared and filed the Petition for Cancellation and related documents.

To the extent your letter implies some wrongdoing on our part, we reject your implication. The address set forth in the Petition for Cancellation was the address listed for your client in the records of the USPTO at the time I drafted the Petition. In fact, the address set forth in the Petition is the address that is currently listed in the records of the USPTO, as can be confirmed by viewing the records found on the TARR web site - <http://tarr.uspto.gov/>.

In any event, under TTAB procedure, the TTAB, and not the petitioner, is responsible for service of the petition on the registrant. The TTAB will make service upon the registrant's correspondence address as found in the records of the USPTO. 37 CFR § 2113. Thus, the address I set forth in the Petition for Cancellation is wholly irrelevant to the address used by the TTAB to effect service. To the extent you nonetheless believe you have a complaint, your complaint is with the TTAB, not with us.

The TTAB, however, followed proper procedure. As noted above, the TTAB rules state that it will make service at the address shown in the records of the USPTO. As an experienced trademark practitioner, you should know that a correspondence address for a registrant is not changed merely by filing a document from an address other than the formal correspondence address. Title 37 of the Code, §2.18 provides that "[c]orrespondence will continue to be sent to such address until the applicant, registrant or party, or the attorney or other authorized representative of the applicant, registrant or party, indicates in writing that correspondence is to be sent to another address." Section 8 and 9 filings are not writings which effectively

Val D. Hornstein, Esq.  
Hornstein Law Offices  
Page 2  
December 22, 2003

change a correspondence address. As the TMEP explains, "once the correspondence address is established for a particular application, it is not changed unless there is a written request by the applicant or the attorney of record to change the address. The mere transmittal of a response to an Office action bearing a new address for an applicant or an applicant's attorney does not effect a change in a correspondence address." And as the TMEP concludes, ["i]t is the applicant's responsibility to maintain a current and accurate correspondence address in its application file. If the correspondence address changes, the Office must be promptly notified in writing. 37 C.F.R. 2.18."

The records of the USPTO indicate that no change of address was filed. Thus, if anyone has committed any errors, it is either you or your client. We reject your effort to shift blame to us. We filed and prosecuted the Petition for Cancellation in accordance with all applicable rules and regulations, and the default judgment was properly taken.

The discussion of the propriety of the cancellation proceeding and default judgment begs the underlying issues: has your client abandoned the trademark, and if your client still uses the mark, is there a likelihood of confusion with our client's mark. Before we discuss consent to relief from the default judgment, we will require documentation of the nature and extent of your client's current trademark usage, if any. The address and telephone number of an operational business address would be a good start.

Very truly yours,

**LACKENBACH SIEGEL**



Robert B. Golden

RBG/abm  
cc: J. Harold Nissen, Esq.

MODE = MEMORY TRANSMISSION START=DEC-22 12:53 END=DEC-22 12:54

FILE NO.=678

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-LACKENBACH SIEGEL LLP -

\*\*\*\*\* -914 723 4301 - \*\*\*\*\*

**Lackenbach**  
INTELLECTUAL PROPERTY ATTORNEYS SINCE 1923  
**Siegel, LLP**

WRITER'S DIRECT DIAL  
(914) 723-4394  
rgolden@lsllp.com

December 22, 2003

Via Facsimile No. (415) 616-7000 2 Pages

Val D. Hornstein, Esq.  
Hornstein Law Offices  
20 California Street  
San Francisco, California 94111-4807

Re: *Tango Chix Productions Inc. v. Olive Industries Ltd.*

Dear Mr. Hornstein:

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## TELECOPY TRANSMITTAL

9 January 2004

TO: Rob Golden, Esq.

FIRM: Lackenbach Siegel et. al.

FAX NUMBER: 914-723-4301

VOICE NUMBER: 914-723-4300

FROM: VAL HORNSTEIN

NUMBER OF PAGES (including cover page): 2 FILE NO. 860

Re: *Tango Chix Productions Inc. v. Olive Industries Ltd. (TTAB Cancellation No. 32,958 re OLIVE'S GOURMET PIZZA, U.S. TM Reg. No. 1,629,630)*

Please see attached per your request.

CONFIDENTIALITY NOTICE: THE INFORMATION CONTAINED IN THIS FACSIMILE IS CONFIDENTIAL AND ALSO MAY BE LEGALLY PRIVILEGED AS AN ATTORNEY-CLIENT COMMUNICATION. THE INFORMATION IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHOM IT IS ADDRESSED. IF YOU ARE NOT THE ADDRESSEE, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER THIS FACSIMILE TO ITS INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY REVIEW, USE, DISSEMINATION, DISTRIBUTION, DISCLOSURE, COPYING OR TAKING OF ANY ACTION IN RELIANCE ON THE CONTENTS OF THIS INFORMATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE AND RETURN THE ORIGINAL FACSIMILE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU



*Olive's*  
*Gourmet Pizza*

<b><i>Quattro Fromaggio</i></b> Mozzarella, Fontina, Provolone, and Reggiano With Crushed Tomato Sauce	<b>11.00</b>
<b><i>Margherita</i></b> Mozzarella, Provolone, Roasted Garlic, Fresh Tomatoes, and Basil Chiffonade	<b>12.00</b>
<b><i>Pepperoni</i></b> Mozzarella, Provolone, Pepperoni With Crushed Tomato Sauce	<b>12.50</b>
<b><i>Fennel Spiced Sausage</i></b> Mozzarella, Fontina, Carmelized Onions, With Crushed Tomato Sauce	<b>14.00</b>
<b><i>Eggplant Caponata</i></b> Mozzarella, Provolone, Sweet & Hot Eggplant Caponata With Sun-dried Tomatoes	<b>14.50</b>
<b><i>Mushrooms &amp; Sun-dired Tomato Pesto</i></b> Mozzarella, Fontina, Crimini Mushrooms With Sun-dired Tomato Pesto,	<b>15.00</b>
<b><i>Wild Mushrooms &amp; White Truffle Oil</i></b> Mozzarella, Fontina, Wild Mushrooms, Shallots, White Truffle Oil	<b>16.00</b>
<b><i>Fresh Basil Pesto &amp; Smoked Shrimp</i></b> Mozzarella, Provolone, Smoked Shrimp, Pesto	<b>16.50</b>

*for Take Out Hot or Half-baked (530) 583-8626*  
*2255 West Lake Blvd. 2 1/2 mi. S. of Tahoe City*

# *Black Bear Tavern*

*Lake Tahoe, California*

*2.5 Miles South of Tahoe City on Highway 89*  
(530) 583-8626

## *Welcome to the Black Bear Tavern*

**The Black Bear Tavern is located in the heart of the west shore of Lake Tahoe, 7 miles south of Tahoe City, California.**

**The Black Bear Tavern is known for its simple rustic mountain elegance atmosphere. Patrons enjoy world class cuisine and excellent wines. The Tavern is open for dinner, and is available for Weddings, Receptions, Re Dinners, Private Parties, and Special Occasion Events. The Black Bear Tavern is the perfect setting for your next romantic evening, or your special event.**

**For additional information, or reservations:**

**Contact the Black Bear Tavern at (530) 583-8626, or e-mail us at [reservations@blackbearlaketahoe.com](mailto:reservations@blackbearlaketahoe.com)**



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[Holidays](#) | [Wedding & Special Events Contact Form](#)



# Menu

*Our Selections Change from Season to Season.  
If You are Planning a Wedding, or Private Party  
We can Incorporate any of the Following Selection  
or Create Some Thing New to Meet Your Needs.  
Our Menu has included the Following:*

## Appetizers

### *Soup Du Jour*

***Chilled Smoked Shrimp Cocktail*** Served with Chipotle Red Pepper Sauce

***Crab Cakes*** On a bed of Orange, Fennel, & Red Onion Coleslaw, topped with Citrus Aioli

***Duck Liver and Pork Mousse with Plum Wine*** Served On toasted Focaccia with Ci

***Imperial Roll*** Rice Paper with Napa Cabbage, Onions, Bean Sprouts, Red Peppers, Carrots, Cila

***Goat Cheese Tart*** Sweet Onions, Chevre, Heirloom Tomatoes, Fresh Basil, Balsamic Glaze

***Quesadilla on the Grill*** Cheese with Tomato & Tomatillo Salsa & Chipotle Red Pepper Sauce  
Add Chicken, Crab, or Smoked Shrimp

## Pizza

***Quattro Formaggio*** With Tomato Sauce

***Roasted Garlic, Fresh Tomato and Basil*** With Tomato Sauce

***Pepperoni*** With Tomato Sauce

***Fennel Spiced Sausage*** With Tomato Sauce

## Salads

***House Salad*** Mixed Greens tossed with Dijon-Balsamic Vinaigrette

***Caesar Salad*** Choice baby Romaine Hearts served with creamy Caesar, Garlic Croutons & Regg  
Add Chicken, or Smoked Shrimp

***Summer Tomato Salad*** A Selection of In-Season Tomatoes with French Feta Cheese, set on  
Mixed Greens tossed with Dijon-Balsamic Vinaigrette.

***Winter Waldorf*** Fancy Mixed Greens with Endive, Granny Smith Apples, Candied Walnuts,

Maytag Blue Cheese, and Black Cherry Balsamic Vinaigrette

## *Sandwiches*

***Black Bear Burger*** One-Half Pound chargrilled Burger served on House-made Focaccia with tossed with Dijon Vinaigrette.  
Add Cheese, or Grilled Balsamic Onions

***Chicken Chipotle Sandwich*** Grilled Chicken, Tomato Salsa, Chipotle Red Pepper Sauce, & tossed with Dijon Vinaigrette.

## *Entrées*

***Penne Pasta*** With Garlic, Olive Oil, & Aged Parmesan Cheese

***Penne Pasta with Pesto*** With Pesto, Garlic, Olive Oil, & Aged Parmesan Cheese

***Pomodoro*** With Roma Tomatoes, Garlic, Balsamic Vinegar, & Aged Parmesan Cheese

***Roasted Roma & Andouille Sausage*** Roasted Tomatoes, Garlic, Basil, Cajun Andouille  
Add Chicken, or Smoked Shrimp

***Grandma's Boarding House Meatloaf*** It's a secret! Served with House Mashed Potato

***Herb Roasted Chicken*** Lemon & Shallot Herb Chicken with Lemon-Thyme Lentils

***Oriental Marinated Salmon*** Grilled & topped with Watermelon, Cantaloupe, & Honeydew

***Eggplant Timbale*** Eggplant, Wild Mushrooms, Red Onions, Roasted Peppers, Polenta, & Spic

***Pan Seared Duck Breast*** Chinese Plum Sauce Vegetables, with Spicy Rice

***Hillcountry Wild Boar Tenderloin*** Blackberry Shallot Mashed Potatoes with in-season '1

***Seared Ahi Tuna*** Wasabi Mashed Potatoes with Tsunomono Cucumber Salad

***Stuffed Pork Chop*** Carrots, Shallots, Spinach, Asiago Cheese, & Veal Reduction Mustard Cre

***Grilled Venison Medallions*** Blackberry Mashed Potatoes with Garlic Green Beans

***Rack of Lamb*** Grilled Polenta, Garlic Spinach, Ratatouille

***Grilled Rib Eye*** Garlic Green Beans, and Shallot Mashed Potatoes

***Filet Rossini*** Seared Foie Gras, Black Truffle Sauce, and Shallot Mashed Potatoes

## *Desserts*

***Gelato*** Italian Ice Cream (Vanilla Bean, or Hazelnut)

***Tiramisu*** Italian Lady Finger Cookies in a Mascarpone, Espresso, & Amaretto Pudding

***Blonde Brownie A La Mode*** White Chocolate Brownie topped with Vanilla Bean Gelato, &

***Bananas Foster ( The Adult Banana Split)***

Bananas and Brown Sugar flambéed with Brandy over Vanilla Bean Gelato

***Vanilla Cheese Cake*** Rich Vanilla Cheese Cake with an extra thick Gram Cracker Crust

***Brown Sugared Fancy*** Caramelized Apples on Brown Sugared Shortbread with Vanilla Bean Gelato

***The Chocolate Chaisey*** *A must for Chocolate Lovers!*

A rich, decadent Chocolate creation. As with all of our desserts, the Chocolate dessert of the day is made at Black Bear Tavern. Ask your server for today's delicious Chocolate details!

"Our Menu selections change based upon the season and the availability of fresh ingredients. Our goal is to always provide a great dining and culinary experience for our customers. We are always updating our web site to reflect the variety of cuisines. Please check back with us for changes."

***Bon Appétit! - Chef Cooper***

For additional information, please e-mail us at  
[reservations@blackbearlaketahoe.com](mailto:reservations@blackbearlaketahoe.com),

or call us directly at (530)583-8626

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[Holidays](#) | [Wedding & Special Event Contact Form](#)

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**FAXED**  
1-9-04

WRITER'S DIRECT DIAL  
(914) 723-4394  
rgolden@lsllp.com

January 9, 2004

Via Facsimile No. (415) 616-7000 1 Pages

Val D. Hornstein, Esq.  
Hornstein Law Offices  
20 California Street  
San Francisco, California 94111-4807

**Re: *Tango Chix Productions Inc. v. Olive Industries Ltd.***

Dear Mr. Hornstein:

We are in receipt of your facsimile of this date. The single, undated page is unpersuasive evidence of current, valid trademark use of the OLIVE'S mark. Our independent investigation reveals that the telephone number listed on the bottom of the provided page is answered "Black Bear Tavern." The current website for the Black Bear Tavern (with matching telephone number and address in Lake Tahoe, California ), <http://www.blackbearlaketahoe.com>, shows no use of the OLIVE'S trademark. The fact that the owner of the Black Bear Tavern may have previously owned a restaurant in San Francisco which used the OLIVE'S trademark does not give him the right to "reserve" the name in perpetuity.

Unless and until we receive evidence of current, valid trademark use of the OLIVE'S mark, we are not inclined to discuss relief from the default judgment.

Very truly yours,

**LACKENBACH SIEGEL**

Robert B. Golden

RBG/abm

cc: J. Harold Nissen, Esq.

MODE = MEMORY TRANSMISSION START=JAN-09 16:52 END=JAN-09 16:52

FILE NO.=155

STN NO.	COMM.	ONE-TOUCH/ ABBR NO.	STATION NAME/TEL NO.	PAGES	DURATION
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-LACKENBACH SIEGEL LLP -

\*\*\*\*\* -914 723 4301 - \*\*\*\*\*

**Lackenbach**  
INTELLECTUAL PROPERTY ATTORNEYS SINCE 1923  
**Siegel, LLP**

WRITER'S DIRECT DIAL  
(914) 723-4394  
rgolden@tlp.com

January 9, 2004

Via Facsimile No. (415) 616-7000 1 Pages

Val D. Hornstein, Esq.  
Hornstein Law Offices  
20 California Street  
San Francisco, California 94111-4807

**Re: *Tango Chix Productions Inc. v. Olive Industries Ltd.***

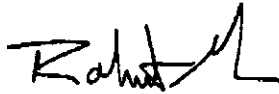
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