

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE COMMISSIONER OF TRADEMARKS

JASON GAMBERT

Applicant.

v.

) In the matter of
) Trademark Application No.77171330
) For the mark: SEO
) International Class 35
)
)
) **APPLICANT’S REQUEST FOR**
) **REINSTATEMENT DUE TO AN OFFICE**
) **ERROR**

UNITED STATES PATENT AND
TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

INTRODUCTION

Applicant filed a trademark application on May 2nd 2007 for the mark SEO. Publication of the mark SEO / 77171330 occurred at 12:00am March 25th 2008 Please see “Exhibit 1.” Opposer Rhea Drysdale / 91183740 filed an Opposition on April 24th 2008. The Trademark Trial and Appeal Board through way of ESTTA considered this Opposition in error. The Opposition period ended at 12:00am on April 24th 2008. By way of the boards order before Bucher, Kuhlke, and Bergsman, March 11th 2010 the opposition was sustained, and registration to the Applicant was refused. Applicants “Request for Reinstatement” is made by way of TMEP rule 1712.01 “Reinstatement of Applications Abandoned Due to Office Error.” The notice of Abandonment was mailed September 22nd 2010. Please see “Exhibit 2.”

APPLICANT’S ARGUMENTS IN SUPPORT OF REINSTATEMENT

- I. The interlocutory attorney, the panel, and the opposition including oppositions attorney of record considered proceeding 91183740 in error, overlooking the faulty programming timing perimeters in the online filing system for the United States Patent and Trademark Office “ESTTA” this of which are clearly not in alignment with the requirements of Trademark Law, The Rules of Practice, and Federal Statutes.

1. If no opposition is filed within the time specified by Section 13(a) of the Statute or by rules 2.101 or 2.102 of the Trademark Rules, the Commissioner of Patents and Trademarks may issue a certificate of registration.
2. § 13 (15 U.S.C. § 1063). Opposition
(a) Any person who believes that he would be damaged by the registration of a mark upon the principal register, including the registration of any mark which would be likely to cause dilution by blurring or dilution by tarnishment under section 1125(c) of this title, may, upon payment of the prescribed fee, file an opposition in the Patent and Trademark Office, stating the grounds therefore, **within** thirty days after the publication under subsection (a) of section 1062 of this title of the mark sought to be registered. Upon written request **prior** to the expiration of the thirty-day period, the time for filing opposition shall be extended for an additional thirty days, and further extensions of time for filing opposition may be granted by the Director for good cause when requested prior to the expiration of an extension. The Director shall notify the applicant of each extension of the time for filing opposition. An opposition may be amended under such conditions as may be prescribed by the Director.
3. 37 CFR § 2.101 Filing an opposition.
(c) The opposition must be filed **within** thirty days after publication (§ 2.80) of the application being opposed or within an extension of time (§ 2.102) for filing an opposition.* * * *
4. 37 CFR § 2.102 Extension of time for filing an opposition.
(c) The time for filing an opposition shall not be extended beyond 180 days from the date of publication. Any request to extend the time for filing an opposition must be filed **before** thirty days have expired from the date of publication or before the expiration of a previously granted extension of time, as appropriate.
5. 306.04 Late Opposition
Because the timeliness requirements of Section 13(a) of the Act, 15 U.S.C. § 1063(a), for the filing of an opposition are statutory, they cannot be waived by stipulation of the parties, nor can they be waived by the Director on petition.⁴⁵ Accordingly, an opposition filed **after** the expiration of the would-be opposer's time for opposing must be denied by the Board as late. The opposition will not be instituted, and any submitted opposition fee will be refunded.

II. The online filing system for the United States Patent and Trademark Office “ESTTA” should not be considered as a timely submission for Opposition Rhea Drysdale / 91183740 on April 24th 2008 due to the evidenced failure of the system.

1. A calendar demonstration of thirty 24 hour time periods (opposition period) from the date of publication being March 25th 2008 at 12am can be seen attached. Please see “Exhibit 3.”
 2. A snapshot of the notice of opposition for Rhea Drysdale dated April 24th 2008 evidencing the late submission. Please see “Exhibit 4.”
 3. Further demonstration of the “ESTTA” online filing systems programming errors can be seen in the allowance of an acceptance of an extension of time dated February 4th 2009 ten months later from the close of the opposition period. Please see “Exhibit 5.” This is clearly against 37 CFR § 2.102.
 4. The same proceeding mentioned above “(3)” was permitted by ESTTA as an **Opposition** filed roughly ten months later from the close of the opposition period and Applicant was forced to Motion to dismiss Opposition “Shangri-La Boutique.” Since then all evidence of these ESTTA submissions have been removed from the viewable records online.
 5. Multiple extensions of time were filed after the opposition period had ended. These filings were permitted by ESTTA and accepted. Notably Opposition 91184116 / JE Hochman and Associates filed on April 24th 2008. A filing of an opposition that turned into a long and burdensome legal proceeding that should have not been permitted by ESTTA. Please see “Exhibit 6.”
 6. A “Grant of Extension of Time Vacated,” a statement from **Tyrone Craven, Paralegal Specialist**: The request for an extension of time in which to oppose filed January 23, 2009, on behalf of Shangri-La Boutique, Inc., is noted. The record in the application file reveals that the mark was published for opposition purposes on March 25, 2008. Thus, the time for filing an opposition or request for extension of time expired April 24, 2008. Therefore, the Board’s order dated February 4, 2009 granting the request to extend time to file a notice of opposition is hereby vacated and the request filed January 23, 2009 must be denied as untimely. See: Section 13 of the Act of 1946 and Trademark Rule 2.102(c), both as amended effective February 27, 1983. Please see “Exhibit 7.”
- III. The manual identification of the Opposition periods start date of March 25th 2008 at 12:00am and end date of April 24th 2008 at 12:00am should be used in the determination of this matter. Then this would be in proper alignment with the requirements of Trademark Law, The Rules of Practice, Federal Statutes, Employees of the United States Patent and Trademark Organization, Trial by Jury, or anyone with a sound mind.
1. Tyrone Craven, a Paralegal Specialist of the United States Patent and Trademark Organization attests the end date of the opposition period in application 77171330 is April 24th 2008. Please see “Exhibit 7.”

2. Jennifer D. Chicoski is a Staff Attorney in the Office of the Commissioner for Trademarks of the United States Patent and Trademark Office (USPTO). Ms. Chicoski serves as an attorney advisor on trademark policy issues and drafts decisions on petitions to the Director of the USPTO issued by the Deputy Commissioner for Trademark Examination Policy. A taped interviews transcripts can be seen in "Exhibit 8." The audio submission is in this filing labeled on a CDR "Evidence in support of Reinstatement."
3. Reviewing attorney Tina H. Mye currently reviewing a later filed application for the mark SEO 7764319 suspended the filing until the disposition of 77171330 is made. Please see "Exhibit 9"
4. Charles Joiner from the Commissioner of Trademarks Issuing department contacted applicant. Charles would have been able to start the issuing process of the trademark to Applicant, but upon his own further investigation and sending email to the TTAB to find out what the problem was, Charles got a negative response barring him from issuance. Please see voicemail transcripts for Tuesday Sep 21st at 11:35am Arizona Time being "Exhibit 10." The Audio submission is attached in this filing labeled on a CDR "Evidence in support of Reinstatement."

IV. This may be a Constitutional violation. The 14th Amendment extends the protections of the 5th Amendment to laws by the individual states. The United States Patent and Trademark Organization is a Federal program, thus the 5th Amendment due process rights of the Applicant should be of great concern.

1. If a Government employee fails to follow the administrative rules of the executive agency for whom he/she works, he/she has violated the due process clause of the 5th amendment. The 5th Amendment is applicable to the Federal Government and the United States Patent and Trademark Office including the Trademark Trial and Appeal board.
2. The TTAB ruled in favor of a **late** opposition, sustaining a filing for judgment against Applicant, and furthermore took Applicants property without just compensation. This is in direct violation to the Fifth Amendment of the Constitution of the United States."
3. Following the Federal Circuit's decision in [Wyeth v. Kappos](#), in which the appellate court determined that 154(b)'s language is clear, unambiguous, and intolerant of the PTO's suggested interpretation," and thus, "accorded no deference to the PTO's greater-of-A-or-B rubric." It should also be provided that in this filing Trademark Rules § 13 (15 U.S.C. § 1063), 37 CFR §2.101, 37 CFR § 2.102, and rule 306.04 be justifiably determined the same.
4. Rhea Drysdales opposition was filed **after** the expiration of the opposer's time for opposing and must be denied by the Board as late. Please see rule 306.04 of the Trademark Rules.

- V. Rhea Drysdales / 91183740 opposition came late and was thus untimely, so it should be stricken from the record.
1. The time stamp of the opposition submission from 91183740 / Rhea Drysdale with the tracking number: ESTTA207087 and the late filing date of 04/24/2008 at 4:28pm can be seen as “Exhibit 11.”
 2. Applicants publication was on March 25th 2008 at 12am “Exhibit 1” and thirty days from the date of publication is April 23rd 2008 up until the end date the 31st day being April 24th 2008 at 12am. Rhea Drysdale filed her opposition “Exhibit 4” after the opposition period had already ended on April 24th 2008 and thus should be stricken from the record and not given consideration by way of Trademark Rules § 13 (15 U.S.C. § 1063), 37 CFR §2.101, 37 CFR § 2.102, rule 306.04, and the 5th Amendment of the United States Constitution in favor of the Applicant.
 3. An applicant, upon successful completion of a trademark application, is given a “Notice of Publication.” Publication of the mark takes place in the official Gazette of the USPTO. During this time frame of 30 days from the date of publication at 12am is considered to be the start of the opposition period. Please see “Exhibit 12” a picture demonstration of a filing for an opposition at 12am on the start date of publication through way of ESTTA.

SUMMARY

Applicant 77171330 had an interlocutory attorney assigned to the case who instructed Applicant not to file any motions or oppositions to filing without her leave to do so. The opposition 91183740 / Rhea Drysdale filed late, ESTTA allowed the submission late, the board made an error for accepting it late, and the interlocutory attorney made an error for allowing it to move forward even though the Opposer, Ms. Drysdale, did not comply with the rules. The board has actually held Applicant to a higher standard as they allowed Ms. Drysdale to file an opposition a day late but would not accept Applicants response to oppositions unduly burdensome discovery requests one day late, although the rule is not set in stone as the opposition rule is.

The clarification on the “Higher Standard” statement above is; Rhea Drysdale entered her opposition one day late, according to the USPTO rules. As such, her opposition should have been time barred, but the USPTO granted her opposition to Applicants disadvantage allowing her to file. Rhea Drysdale had thirty days to file an opposition and waited until the time had passed to file. The board dismissed Applicants claim for submitting discovery responses one day late, according to their ambiguous ruling. If Rhea was afforded a courtesy to file an opposition, which is more important than Applicant’s responses to vague, over-broad, and burdensome

discovery questions, why was the Applicant not afforded the same courtesy? Especially as Applicant did send the responses to Rhea's lawyer who stated she received them one day late (however, they were postmarked on the correct date). This is the higher standard.

Applicant contends opposition 91183740 is untimely from filing an opposition late through way of ESTTA on April 24th 2008. In view of the Trademark Rules and Federal Statutes under the "Filing an Opposition" rule, the statute of limitations specified in 37 CFR § 2.101 (c) are clear and begun on the Applicants publication date of March 25th 2008 at 12am. The opposition periods ending date was on April 23rd 2008 up until 12am. This then becoming April 24th 2008 the 31st day and the end date. With respect to determinations based on the Federal Circuit's decision in [Wyeth v. Kappos](#), the harm of Applicant inflicted by faulty ESTTA programming timing perimeters and the oversight by all reviewing parties in the determination of the outcome of the matter are basically identical in connotation.

In rule 306.01 (count 1), the doctrine of equitable tolling (unless the defendant would be unfairly prejudiced if the plaintiff were allowed to proceed count 2), and the Filing an Opposition rule 37 CFR § 2.101 (c) (count 3), Applicant also adds a fourth count being the TTAB's purposeful and deliberate diminution of the trademark term SEO constitutes a taking of Applicants property without just compensation, in violation of the Fifth Amendment of the Constitution of the United States," and a fifth count being a violation of the Administrative Procedures the USPTO's TTAB determinations were "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law within the meaning of 5 U.S.C. § 706(2)(A); contrary to Applicants constitutional rights within the meaning of 5 U.S.C. § 706(2)(B); and in excess of statutory authority within the meaning of 5 U.S.C. § 706(2)(C)".

EXHIBIT 1

Document Description: **Notice of Publication**
Mail / Create Date: **05-Mar-2008**



UNITED STATES PATENT AND TRADEMARK OFFICE

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

Mar 5, 2008

NOTICE OF PUBLICATION UNDER 12(a)

- | | |
|--------------------------------------|--|
| 1. Serial No.:
77/171,330 | 2. Mark:
SEO
Standard Character Mark |
| 3. International Class(es):
35 | |
| 4. Publication Date:
Mar 25, 2008 | 5. Applicant:
Jason Gambert |

The mark of the application identified appears to be entitled to registration. The mark will, in accordance with Section 12(a) of the Trademark Act of 1946, as amended, be published in the Official Gazette on the date indicated above for the purpose of opposition by any person who believes he will be damaged by the registration of the mark. If no opposition is filed within the time specified by Section 13(a) of the Statute or by rules 2.101 or 2.102 of the Trademark Rules, the Commissioner of Patents and Trademarks may issue a certificate of registration.

Copies of the trademark portion of the Official Gazette containing the publication of the mark may be obtained from:

The Superintendent of Documents
U.S. Government Printing Office
PO Box 371954
Pittsburgh, PA 15250-7954
Phone: 202-512-1800

By direction of the Commissioner.

EXHIBIT 2

Document Description: Paper Correspondence Incoming
Mail / Create Date: 04-Oct-2010

Previous Page Next Page You are currently on page 1 of 2

1 / 1 78.4% Collaborate Sign

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NOTICE OF ABANDONMENT
MAILING DATE: Sep 22, 2010

The trademark application identified below was abandoned on Mar 11, 2010 as a result of Trademark Trial and Appeal Board proceedings.

SERIAL NUMBER: 77171330
MARK: SEO
OWNER: Jason Gambert

EXHIBIT 3

		March - May 2008						Search Calendar
Click here to enable Instant Search								
	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	
	Mar 23	24	25	26	27	28	29	
Mar 23 - 29			Opposition Period					
	30	31	Apr 1	2	3	4	5	
Mar 30 - Apr 5			Opposition Period					
	6	7	8	9	10	11	12	
Apr 6 - 12	Opposition Period							
	13	14	15	16	17	18	19	
Apr 13 - 19	Opposition Period							
	20	21	22	23	24	25	26	
Apr 20 - 26	Opposition Period				12:00am-12:00am Opposition Period			
	27	28	29	30	May 1	2	3	
Apr 27 - May 3								

EXHIBIT 4

Trademark Trial and Appeal Board Electronic Filing System. <http://esta.uspto.gov>

ESTTA Tracking number: **ESTTA207087**

Filing date: **04/24/2008**

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	Rhea Drysdale		
Entity	Individual	Citizenship	UNITED STATES
Address	519 Midway Street Neptune Beach, FL 32266 UNITED STATES		

Correspondence information	Rhea Drysdale 519 Midway Street Neptune Beach, FL 32266 UNITED STATES rhea.drysdale@gmail.com Phone:904-742-6477		
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Applicant Information

Application No	77171330	Publication date	03/25/2008
Opposition Filing Date	04/24/2008	Opposition Period Ends	04/24/2008
Applicant	Jason Gambert 10001 Woodcreek Oaks Blvd. Suite 1627 Roseville, CA 95747 UNITED STATES		

EXHIBIT 5

Potential Opposer

Name: [Shangri-La Boutique, Inc.](#)
Correspondence: [Clinton W. Cimring](#)
2395 Jaeger Drive, Ste 5C
Delray Beach, FL 33444-2042
UNITED STATES
Granted To Date: 02/28/2009

Prosecution History

#	Date	History Text
16	02/03/2010	CHANGE OF CORRESPONDENCE ADDRESS
15	02/06/2009	TERMINATED
14	02/06/2009	GRANT OF EXTENSION REQUEST VACATED
13	02/04/2009	EXTENSION OF TIME GRANTED
12	01/23/2009	INCOMING - EXT TIME TO OPPOSE FILED
11	09/19/2008	CHANGE OF CORRESPONDENCE ADDRESS
10	05/19/2008	EXTENSION OF TIME GRANTED
9	05/19/2008	INCOMING - EXT TIME TO OPPOSE FILED
8	04/24/2008	EXTENSION OF TIME GRANTED
7	04/24/2008	INCOMING - EXT TIME TO OPPOSE FILED
6	04/24/2008	EXTENSION OF TIME GRANTED
5	04/24/2008	INCOMING - EXT TIME TO OPPOSE FILED
4	04/21/2008	EXTENSION OF TIME GRANTED
3	04/21/2008	INCOMING - EXT TIME TO OPPOSE FILED
2	04/18/2008	EXTENSION OF TIME GRANTED
1	04/18/2008	INCOMING - EXT TIME TO OPPOSE FILED

Results as of 10/08/2010 03:35 PM

EXHIBIT 6

Michael H. Sproule
Akabas & Sproule
488 Madison Avenue, 11th Floor
New York, NY 10022

Mailed: April 24, 2008

Serial No.: 77171330
ESTTA TRACKING NO: ESTTA206891

The request to extend time to oppose is granted until
5/24/2008 on behalf of potential opposer **JE Hochman &
Associates LLC**

Please do not hesitate to contact the Trademark Trial and
Appeal Board at (571)272-8500 if you have any questions
relating to this extension.

EXHIBIT 7

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: February 6, 2009

Applicant: Jason Gambert
Serial No.: 77171330
Filed: 5/2/2007
Mark: SEO

JASON GAMBERT
Modern Consulting Solutions
9450 E. Becker Ln., Suite 2054A
Scottsdale, AZ 85260

Tyrone Craven, Paralegal Specialist:

The request for an extension of time in which to oppose filed January 23, 2009, on behalf of Shangri-La Boutique, Inc., is noted.

The record in the application file reveals that the mark was published for opposition purposes on March 25, 2008. Thus, the time for filing an opposition or request for extension of time expired April 24, 2008. Therefore, the Board's order dated February 4, 2009 granting the request to extend time to file a notice of opposition is hereby vacated and the request filed January 23, 2009 must be denied as untimely. See: Section 13 of the Act of 1946 and Trademark Rule 2.102(c), both as amended effective February 27, 1983.

EXHIBIT 8

Phone Call September 27th 2010 at 10:45 to JENNIFER D. CHICOSKI (571-272-8950) Ext: 28943

Applicant 77171330: Dialing 571-272-8950 reaching USPTO recording and entering Extension 28943.

Jennifer D. Chicowski: "This is Jennifer how may I help you?"

Applicant 77171330: "Jennifer Chicowski?"

Jennifer D. Chicowski: "Yes."

Applicant 77171330: "Hi how are you doing?" "Applicant 77171330 here I think we spoke sometime last week in regards to the untimely opposition of 77171330 and the filing date of 91183740 Rhea Drysdale." "Have you learned anything since we last spoke?"

Jennifer D. Chicowski: "Um other than I know we have routinely denied requests like this on petition."

Applicant 77171330: "Right and I got a question for you." "On the day of publication let's say for example someone has a trademark such as myself, on the day of publication which would have been March 25th 2008, on that day can people file oppositions since it is the day of publication?"

Jennifer D. Chicowski: "Yes."

Applicant 77171330: "They Can?"

Jennifer D. Chicowski: "Yes."

Applicant 77171330: "Ok so then wouldn't that be considered the first day?"

Jennifer D. Chicowski: "It starts with the first day of publication, which is on that day, and the day isn't over yet until twenty four hours go by." "You got to think about it as thirty twenty four hour time periods."

Applicant 77171330: "Got you." "What time in the morning does the publication take place I mean for example on the 25th what time did it publish?"

Jennifer D. Chicowski: "I believe it goes live on the website at 12:01 it happens automatically, it goes live on a computerized schedule, barring any complications on posting, it is considered to be that day, so as soon as it clicks over to that day, twelve AM or whatever it is, you know it takes some period of seconds or you know minutes to load all of that information up there, but it goes up there that day."

Applicant 77171330: "Awesome Jennifer well hey I appreciate it thank you so much."

Jennifer D. Chicowski: "But again we routinely deny these because the period is set and the that's the system its set to receive those up until the end of that Thursday."

Applicant 77171330: "Ok let's get, I just want to verify, on the 24th of March, on the 24th of March at 12:01 AM it becomes the 25th it automatically does it all."

Jennifer D. Chicowski: "At 12:00 AM March 25th which would be considered midnight, you know, 12AM starts the day."

Applicant 77171330: "I got you, that makes sense." "Thank you, thank you very much Jennifer." "Thank You."

Jennifer D. Chicowski: "You're Welcome."

Applicant 77171330: "Bye."

EXHIBIT 9

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77643198

MARK: SEO

77643198

CORRESPONDENT ADDRESS:

Morrison-Willoughby, Inc.
7777 West Glades Road Suite 100
Boca Raton FL 33434

GENERAL TRADEMARK INFORMATION:
<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: Shangri-La Boutique, Inc.

CORRESPONDENT'S REFERENCE/DOCKET NO:

N/A

CORRESPONDENT E-MAIL ADDRESS:

searchenginepartner@gmail.com

NOTICE OF SUSPENSION

ISSUE/MAILING DATE: 9/10/2010

SUSPENSION PROCEDURE: This suspension notice serves to suspend action on the application for the reason(s) specified below. No response is needed. However, if you wish to respond to this notice, you should use the "Response to Letter of Suspension" form found at <http://teasroa.uspto.gov/rsi/rsi>. The Office will conduct periodic status checks to determine if suspension remains appropriate.

This letter responds to the August 20, 2010 response to office action.

Action on this application is suspended pending the disposition of:

EXHIBIT 9 CONTINUED

- Application Serial No(s). 77171330

Since applicant's effective filing date is subsequent to the effective filing date of the above-identified application(s), the latter, if and when it registers, may be cited against this application in a refusal to register under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d). See 37 C.F.R. §2.83; TMEP §§1208 et seq. A copy of information relevant to this pending application(s) was sent previously. **The other prior pending applications that were also advised to possibly lead to potential Section 2(d) refusals are dead, and thus, the advisory as to them is withdrawn.**

Applicant may submit a request to remove the application from suspension to present arguments related to the potential conflict between the relevant application(s) or other arguments related to the ground for suspension. TMEP §716.03. Applicant's election not to present arguments during suspension will not affect the applicant's right to present arguments later should a refusal in fact issue. If a refusal does issue, applicant will be afforded 6 months from the mailing or e-mailing date of the Office action to submit a response. 15 U.S.C. §1062(b); 37 C.F.R. §2.62.

The following refusal(s)/requirement(s) is/are continued and maintained: Sections 2(a) deceptive refusal, 2(e)(1) deceptively misdescriptive refusal, 2(e)(1) descriptive, and rejection of Section 2(f) claim. As stated in the June 22, 2009 and June 25, 2010 office actions, applicant's arguments and evidence against the refusals were not persuasive and will be addressed when the application is no longer in suspension.

If applicant has any questions regarding this action or needs assistance in responding, applicant is encouraged to contact the undersigned.

Tina H. Mai
/Tina H. Mai/
Trademark Examining Attorney
Law Office 108
Phone Number: 571-272-4110

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

EXHIBIT 10

Charles Joiner: “Hello this message is for Jason Gambert, Jason this is Charles Joiner we spoke yesterday about your trademark application I told you I sent an email to the Trademark Trial and Appeal Board to see what was going on and actually opposition number 91183740 the board ruled against you and they sustained the opposition and they refused registration to you because you didn’t comply with the discovery requests to be submitted to the opposer’s attorney within twenty days. And that’s the reasoning they gave and that was entered in on March 11th of 2010 and the application I guess wasn’t entered into as being abandoned, but now it has been and after they reviewed there records and made the adjustment on that so on the status of the application that the status wasn’t adjusted after they made that ruling. So that is why it was still in a live status at the time that you called yesterday to our office. Please feel free to give me a call back at 571-272-8942 again 571-272-8942 I will be in pretty much until three thirty three forty five eastern standard time, so please give me a call back if you want to discuss it further. Bye bye.

EXHIBIT 11

RE: Service Request number 1-176711684

tacmail@uspto.gov

Follow up. Start by Thursday, October 21, 2010. Due by Thursday, October 21, 2010.
Extra line breaks in this message were removed.

Sent: Thu 10/21/2010 8:57 AM

To:

Message | ESTTA207087.doc (37 KB)

Dear Sir/Madam,

In response to your e-mail, we received this filing on April 24 2008 at 4:28 pm. Please see the enclosed attachment.

If you have any further questions relating this matter please contact me at 571-272-6470.

Sincerely,

Hind Abdelrazig
Trademark Information System Specialist
[THREAD ID:1-2X6JIJ]

 ESTTA207087.xml	6,907	04/24/08 4:28:09 PM
 notice-of-opposition#page1.tif	49,910	04/24/08 4:26:03 PM
 seo-site-usage2.jpg	461,727	04/24/08 3:29:18 PM

EXHIBIT 12 (Pages 17-28)

USPTO. ESTTA. Notice of Opposition.. Application Data - Windows Internet Explorer

http://estta.uspto.gov/noo/q.jsp;jsessionid=estta.uspto.gov-b91%3A4cbd1aee%3Add115bb72c3cdd1a?form

File Edit View Favorites Tools Help

USPTO. ESTTA. Notice of Opposition.. Applicatio...

United States Patent and Trademark Office

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Electronic System for Trademark Trials and Appeals

Notice of Opposition.
Navigation: - TARR

ESTTA v.3.0
PTO-2120 (Exp. 01/31/2011)
OMB No. 0651-0040 (Exp. 01/31/2011)

Application Data

Applicant	Mambo Seafood #1, Inc.
Application Serial Number	85044658
Filing Date of Application	2010-05-21
Date of Publication	10/19/2010
International Classes	043
Applied-for Mark	PANZA LLENA, CORAZÓN CONTENTO

This is the correct application/registration Cancel

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10/19/2010 12:13 AM EDT

USPTO, ESTTA. Notice of Opposition.. Goods and Services Opposed - Windows Internet Explorer

http://estta.uspto.gov/noo/q.jsp

File Edit View Favorites Tools Help

USPTO, ESTTA. Notice of Opposition.. Goods and...

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Electronic System for Trademark Trials and Appeals

Notice of Opposition. ESTTA v.3.0
 Navigation: [TARR](#) - Goods/Services PTO-2120 (Exp. 01/31/2011)
OMB No. 0651-0040 (Exp. 01/31/2011)

Goods and Services Opposed

Application Serial No 85044658 has 1 class. Please indicate below which goods/services are being opposed.

<input checked="" type="radio"/> All of the goods in this class	IC 043.
<input type="radio"/> Some of the goods in this class (deletions only)	Opposed Goods and Services:
<input type="radio"/> None of the goods in this class	<div style="border: 1px solid gray; padding: 2px;"> Restaurant services </div>

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Company (click here to change)

Other Entity type * Proof

Incorporated or registered in * state:

or country:

Individual

Prefix First Name * Middle Initial Last Name * Suffix

Individual

Country of Citizenship *

Other:

If the country is not on the list, please, specify the country name

Address

Street * 5120 E. Hampton Avenue

(continued)

City * Mesa

State * ARIZONA

Country * UNITED STATES

Postal code * 85206

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- Change information in the request

Opposed application

Serial #: 85044658 Mark: PANZA LLENA, CORAZÓN CONTENTO Applicant: Mambo Seafood #1, Inc.	Remove
Class 043 Opposed all goods and services in the class: Restaurant services	Edit

Opposer

Oppositor Proof Individual: Nationality: UNITED STATES 5120 E. Hampton Avenue Mesa, AZ 85206 UNITED STATES	Edit
--	------

- Continue
If you do not need to change the above information, click "Next" button below to proceed with correspondence information

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Enter the address at which you would like to receive [correspondence regarding this filing](#).

Name *	<input type="text" value="Oppositor Proof"/>
Title	<input type="text"/>
Business	<input type="text"/>
Street address *	<input type="text" value="5120 E. Hampton Avenue"/>
(continued)	<input type="text"/>
City *	<input type="text" value="Mesa"/>
State *	<input type="text" value="ARIZONA"/>
Zip/Postal Code *	<input type="text" value="85206"/>
Country *	<input type="text" value="UNITED STATES"/> <input type="button" value="Switch to non US address"/>
E-mail Address *	<input type="text"/> <small>Note: The TTAB will respond to this request via e-mail. Later communications may be in paper form. Multiple e-mail addresses may be provided separated by commas</small>
Telephone Number	<input type="text"/>

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<input type="checkbox"/>	or signature of a living individual without written consent, or the name, portrait, or signature of a deceased president without the written consent of the surviving spouse	
<input type="checkbox"/>	Priority and likelihood of confusion	Trademark Act section 2(d)
<input type="checkbox"/>	The mark is merely descriptive	Trademark Act section 2(e)(1)
<input type="checkbox"/>	The mark is deceptively misdescriptive	Trademark Act section 2(e)(1)
<input type="checkbox"/>	The mark is primarily geographically descriptive	Trademark Act section 2(e)(2)
<input type="checkbox"/>	The mark is primarily geographically deceptively misdescriptive	Trademark Act section 2(e)(3)
<input type="checkbox"/>	The mark is primarily merely a surname	Trademark Act section 2(e)(4)
<input type="checkbox"/>	The mark comprises matter that, as a whole, is functional	Trademark Act section 2(e)(5)
<input type="checkbox"/>	Dilution	Trademark Act section 43(c)
<input type="checkbox"/>	Fraud	<i>Tarres v. Cantine Tarresella S.r.l.</i> 808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
<input type="checkbox"/>	Genericness	Trademark Act section 23
<input checked="" type="checkbox"/>	Other (please concisely indicate grounds and statutory or common-law basis for opposition)	This will be stopped at the payment page it is only proof of opposition being made on the day of publication at 12AM being the first day.

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10/19/2010 12:21 AM EDT

Application No	85044658	Publication date	10/19/2010
Opposition Filing Date	Not assigned yet	Opposition Period Ends	11/18/2010
Applicant	Mambo Seafood #1, Inc. 6101 Airline Drive Houston, TX 77076 UNITED STATES		

Goods/Services Affected by Opposition

Class 043.
All goods and services in the class are opposed, namely: Restaurant services

Grounds for Opposition

Other	This will be stopped at the payment page it is only proof of opposition being made on the day of publication at 12AM being the first day.
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Fee code	7402		
amount	300.00		
description	Notice of Opposition, per Class, Electronically Filed		
Serial #	85044658	# of Classes	1
Total			300.00

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Respectfully submitted,



Jason Gambert

September 01, 2010

Date

5120 E. Hampton Ave., Suite 1057
Mesa, AZ 85206
Phone: (602) 384-4420

E-mail: jasongambert@gmail.com