

# HinckleyAllenSnyder<sup>LLP</sup>

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December 30, 2005

**VIA FIRST CLASS MAIL**

United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Re: Notice of Opposition  
of United States Trademark  
Application No.: 78/655,799  
Applicant: ZoneChefs LLC  
Mark: ZEN ZONECHEFS  
Class: 39



01-03-2006

U.S. Patent & TMO/TM Mail Rcpt Dt. #11

Dear Madam:

The following documents are submitted in connection with U.S. Application Serial No. 78/655,799, filed by ZoneChefs LLC, for the mark ZEN ZONECHEFS in International Class 39 on the Principal Register:

1. Notice of Opposition With Exhibits 1-9;
2. Opposition fee, \$300.00, by check No. 68559 for 1 class;
3. Certificate of Mailing dated December 30, 2005; and
4. Authorization to charge Deposit Account.

The Commissioner is authorized to charge any additional needed fees and to credit any overpayments to Account No. 50-0485, Hinckley Allen & Snyder LLP.

Sincerely,

  
Amy B. Spagnole

Enclosures

cc: Deborah L. Benson (w/o Encl.)

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

\_\_\_\_\_  
BARRY D. SEARS Ph.D.,  
Opposer,  
v.  
ZONECHEFS, LLC,  
Applicant.  
\_\_\_\_\_

Opposition No. \_\_\_\_\_

Mark: ZEN ZONECHEFS  
Serial No.: 78/655,799  
Class: 39



NOTICE OF OPPOSITION

01-03-2006

U.S. Patent & TMO/TM Mail Rpt Dt. #11

Barry D. Sears, Ph.D., a United States citizen, with an address of 222 Rosewood Drive, Suite 500, Danvers, Massachusetts 01923 (hereafter "Opposer" or "Dr. Sears") believes that he will be damaged by registration of the mark shown in Application Serial No. 78/655,799 for the mark ZEN ZONECHEFS for "food delivery services," in International Class 39 on the Principal Register filed on June 22, 2005 by Zone Chefs, LLC, a New York limited liability company with an address of 8608 Foster Avenue, Brooklyn, New York 11236, and hereby opposes the same.

As grounds for this opposition, Opposer alleges as follows:

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FACTS

1. Opposer is the owner of the trademark ZONE and other marks incorporating ZONE for health and nutrition products and services.
2. Since 1995, Opposer has used the trademark ZONE and composite marks, all incorporating ZONE as the dominant portion thereof, such as ZONE LABS, ZONENET, ZONE CAFÉ, ZONE CUISINE, ZONE SKIN CARE, ZONERX, and DR. SEARS ZONE, in

connection with a wide variety of branded health and nutrition products and services, including print and electronic publications, educational and counseling services, meal delivery services, prepared foods, vitamins and supplements, meal replacements bars and drinks, skin care products and restaurant and café services. Such use has been ongoing and continuous.

3. Opposer, Dr. Barry Sears, is the scientist and author who achieved considerable fame in connection with the lifelong hormonal and insulin control program that he first created about fifteen (15) years ago. See Declaration of Barry D. Sears (“Sears Decl.”) ¶ 1, attached hereto at Exhibit 1.

4. Dr. Sears’ program uses food as a drug to help people control and balance their hormonal and insulin levels to achieve maximum mental productivity and as a means to improved health. Id. at ¶ 2.

5. Dr. Sears branded his writing, teaching and consulting on the benefits of an insulin balanced hormonal control diet with the term “ZONE.” Id. at ¶ 3.

6. Dr. Sears adopted the term ZONE as his trademark to analogize the health benefits of his products and services compliant with his hormonal control program for ordinary dieters to that of the “flow” achieved by superior athletes during sports participation. Id. at ¶ 4.

7. The terms “flow” or “zone” have been used to denote a heightened state of consciousness during sports participation during which an athlete performs to the best of his or her ability. An article discussing this concept is attached at Exhibit 2.

8. The term ZONE in Dr. Sears’ ZONE Marks is not used in its ordinary sense to mean “an area” -- e.g., “play zone” describing a specific area dedicated to playing.

9. Since creation of his hormonal control/insulin balanced program, Dr. Sears has provided a wide array of health and nutrition products and services that are compliant with this

program under the trademark ZONE and composite trademarks all containing ZONE as the dominant portion thereof, including, but not limited to, ZONE, ZONE CUISINE, ZONE CAFÉ, ZONE SKIN CARE, ZONERX, ZONE LABS, ZONENET and ZONE SHAKES (the “ZONE Marks”). Id. at ¶ 5.

10. Dr. Sears is well known as the source of ZONE branded products and services.

11. Dr. Sears has authored numerous ZONE branded books which are premised upon using food as a drug to control and balance hormonal and insulin levels, including *The Zone*, *Mastering the Zone*, *Zone Food Blocks*, *The Anti-Aging Zone*, *A Week in the Zone*, *The Soy Zone*, *The Top One Hundred Zone Foods*, *The OmegaRx Zone* and *The Anti-Inflammatory Zone*. Sears Decl. at ¶ 6.

12. Several of these books have appeared on *The New York Times* bestseller list. Id. at ¶ 7.

13. Dr. Sears’ *The Zone* was number one on *The New York Times* bestseller list in 1996 and remained on that list for approximately twenty (20) weeks. Id. at ¶ 8.

14. More than five million hard cover copies of Dr. Sears’ ZONE branded books have been sold in the United States alone. Id. at ¶9.

15. Dr. Sears’ works have been translated into 22 languages and are sold in at least 40 foreign countries. Id. at ¶ 10.

16. In addition to his ZONE branded books, Dr. Sears and his ZONE branded health and nutrition products and services are widely known from his numerous and frequent live and taped appearances, including seminars, conferences, radio shows, and network television interviews, throughout the country. Sears Decl. at ¶ 11.

17. In promoting his ZONE branded health and nutrition products and services, Dr. Sears has appeared on nationally-broadcast television shows, including *The Today Show* in 1996 and again in January 2005, *20/20* in 1999, *Good Morning America* on June 9, 2000, June 15, 2000 and again in May 2002, *Dateline* in July 2002, *CBS Evening News* on May 21, 2003, *The Montel Williams Show* on April 1, 2004 and *Live With Regis and Kelly* on February 2, 2005. Id. at ¶ 12.

18. Additionally, each year since 1998, Dr. Sears has conducted a week long ZONE branded seminar aboard a cruise ship, providing a series of presentations and demonstrations on mastering his hormonal and insulin control program. Id. at ¶ 13.

19. Dr. Sears is well and favorably known throughout the United States and has built up valuable goodwill and reputation in his ZONE Marks. Id. at ¶ 14.

20. The widespread recognition, fame and goodwill associated with ZONE for products and services in the health and nutrition marketplace is a result of the Opposer's continuous marketing efforts, national media attention, the expenditure of considerable amounts of money for advertising and promotional activities and by virtue of the high quality of the Opposer's ZONE branded products and services.

21. Opposer is the owner of approximately seventy (70) plus trademarks and service marks comprising or containing "ZONE" for a wide array of health and nutrition products and services. Id. at ¶ 15.

22. By way of example, Opposer owns the following United States Trademark Registrations:

Mark:	ZONE
Registration No.:	2,689,749
Registration Date:	February 25, 2003
App. Date:	May 22, 2000

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