

TTAB

United States Patent and Trademark Office
Trademark Trial and Appeal Board
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02-03-2006

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

Mailed: January 17, 2006

Opposition No 91168601
Serial No. 78624615

MICHAEL UTILLA
UTILLA and ASSOCIATES
32 COURT ST STE 1800
BROOKLYN, NY 11201-4440

BARRY D. SEARS

v.

ZoneChefs, L.L.C.

AMY B. SPAGNOLE
HINCKLEY, ALLEN & SNYDER LLP
28 STATE STREET
BOSTON, MA 02109

Denise M. DelGizzi, Paralegal Specialist

A notice of opposition to the registration sought in the above-identified application has been filed. The notice of opposition can be viewed and printed at <http://ttabvue.uspto.gov/>

ANSWER IS DUE FORTY DAYS after the mailing date hereof. (See Trademark Rule 2.196 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that affect the rules of practice before the TTAB. See Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003); Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12, 2003). Notices concerning the rules changes, as well as the *Trademark Trial and Appeal Board Manual of Procedure* (TBMP), are available at www.uspto.gov/web/offices/dcom/ttab/.

The parties are particularly referred to Trademark Rule 2.126 pertaining to the form of submissions. Paper submissions, including but not limited to exhibits and depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.

Discovery and testimony periods are set as follows:

Discovery period to open: February 06, 2006
Discovery period to close: August 05, 2006

30-day testimony period for party
in position of plaintiff to close: November 03, 2006

30-day testimony period for party
in position of defendant to close: January 02, 2007

15-day rebuttal testimony period
for plaintiff to close: February 16, 2007

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NOTE: The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68 (June 20, 2000). The notice is available at <http://www.uspto.gov>. Interlocutory matters which the Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

New Developments at the Trademark Trial and Appeal Board

TTAB forms for electronic filing of extensions of time to oppose, notices of opposition, and inter partes filings are now available at <http://estta.uspto.gov>. Images of TTAB proceeding files can be viewed using TTABVue at <http://ttabvue.uspto.gov>.

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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.: 78/624,615
Applicant: ZoneChefs LLC
Mark: ZONECHEFS
Class: 39



01-03-2006

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

Dear Madam:

The following documents are submitted in connection with U.S. Application Serial No. 78/624,615, filed by ZoneChefs LLC, for the mark 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. 68556 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.)

565048

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

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



01-03-2006

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

Opposition No. _____

Mark: ZONE CHEFS
Serial No.: 78/624,615
Class: 39

NOTICE OF OPPOSITION

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. 78/624,615 for the mark ZONE CHEFS for "food delivery services," in International Class 39 on the Principal Register filed on May 6, 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:

01/05/2006 6THDMS2 00000049 78624615
01 FC:6402 300.00 DP

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

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