

ESTTA Tracking number: **ESTTA97983**

Filing date: **09/06/2006**

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	MaryB.Walker		
Entity	Individual	Citizenship	UNITED STATES
Address	3149 Ocean Drive Vero Beach, FL 32963 UNITED STATES		

Attorney information	Bridget C. Heffernan Allen, Dyer, Doppelt, Milbrath & Gilchrist, P. A. 255 South Orange Avenue Suite 1401 Orlando, FL 32801 UNITED STATES bheffernan@addmg.com, hallen@addmg.com Phone:407 841-2330
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### Applicant Information

Application No	78639659	Publication date	08/08/2006
Opposition Filing Date	09/06/2006	Opposition Period Ends	09/07/2006
Applicant	D'Vine Cravings, LLC 7505 Calderon Ct., Unit F Alexandria, VA 22306 UNITED STATES		

### Goods/Services Affected by Opposition

Class 030. First Use: 2002/07/00 First Use In Commerce: 2003/07/00 All goods and services in the class are opposed, namely: Bakery desserts; bakery goods; bakery products
Class 035. First Use: 2002/07/00 First Use In Commerce: 2003/07/00 All goods and services in the class are opposed, namely: Retail bakery shops; retail shops featuring baked goods, sandwiches and beverages

Attachments	GC9463.PDF ( 5 pages )(14106 bytes )
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Signature	/Bridget C. Heffernan/
Name	Bridget C. Heffernan
Date	09/06/2006

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

In the matter of Application Serial No. 78/639,659  
Published in the Official Gazette on August 8, 2006

MARY B. WALKER,

Opposer,

v.

Opposition No: \_\_\_\_\_

D’VINE CRAVINGS LLC

Applicant.

\_\_\_\_\_ /

**NOTICE OF OPPOSITION**

Opposer Mary B. Walker, a United States citizen whose address is 3149 Ocean Drive, Vero Beach, Florida, 32963, believes that she will be damaged by registration of the mark **D’VINE CRAVINGS**, shown in Serial No. 78/639,659, in International Classes 30 for “bakery desserts, bakery goods, bakery products,” and in International Class 35 for “retail bakery shops; retail shops featuring baked goods, sandwiches and beverages,” and hereby opposes registration of the application in Classes 30 and 35, pursuant to an Extension of Time allowed on August 22, 2006.

As grounds for opposition it is alleged that:

1. Applicant seeks to register **D’VINE CRAVINGS** as a trademark for the above-described goods and services, as evidenced by the publication of the mark in the Official Gazette on August 8, 2006.

2. Applicant filed its application on May 30, 2005, based on use of the mark in commerce since July 2003.

3. Opposer is the owner of the following trademarks and service marks:

MARK	GOODS/SERVICES	FIRST USE	U.S. REG. NO.
<b>CRAVINGS</b>	Foodstuffs, namely, cookies, brownies, candy, muffins, croissants, rolls, cakes and specialty gift packages consisting primarily of cookies, brownies, candy, muffins, croissants, rolls and cakes, in Class 30.	1983	2,994,188
<b>CRAVINGS COOKIES</b>	Foodstuffs, namely, cookies, brownies, candy, muffins, croissants, rolls, cakes and specialty gift packages containing same, in Class 30	1991	3,057,082
<b>CRAVINGS BY MAIL</b>	Mail order services in the field of foods, in Class 42.	10/25/1989	1,731,788
<b>CRAVINGS</b>	Restaurant services; retail bakery, ice cream and candy store services, in Class 42.	5/13/1983	1,522,155
<b>COMPULSIVE CRAVINGS</b>	Candy, in Class 30	7/1/1983	1,351,957
<b>CRAVINGSBYMAIL.COM</b>	Food mail order services	1998	n/a
<b>1-877-7CRAVING</b>	Food mail order services	1998	n/a
<b>CRAVINGS ON THE MOVE</b>	Breakfast cookies	2001	n/a

3. Opposer has extensively promoted and continuously used each of her marks, and has made significant sales of products under each of her marks and, as a result, Opposer's marks have developed and represent valuable goodwill to Opposer.

4. Opposer has exclusive rights to use each of the federally registered marks in commerce. Further, Registration Nos. 1,731,788; 1,522,155; and 1,351,957 are incontestable, which is conclusive evidence of Opposer's exclusive right to use these marks in commerce in connection with the goods listed above.

5. Opposer has used each of her marks in commerce prior to Applicant's filing of its application, and on information and belief, before Applicant's alleged first use of its mark in connection with its goods.

6. Applicant's mark **D'VINE CRAVINGS** is confusingly and deceptively similar to each of Opposer's marks, namely, **CRAVINGS, CRAVINGS COOKIES, CRAVINGS BY MAIL, CRAVINGS, COMPULSIVE CRAVINGS, CRAVINGSBYMAIL.COM, 1-877-7CRAVINGS, and CRAVINGS ON THE MOVE**. Applicant's mark is very similar in sight, sound, connotation, and commercial impression to each of Opposer's marks.

7. Applicant's goods, "bakery desserts, bakery goods, bakery products," in Class 30 and "retail bakery shops; retail shops featuring baked goods, sandwiches and beverages," in Class 35, are very similar and closely related to Opposer's goods, including cookies, brownies, candy, muffins, croissants, rolls, cakes and specialty gift packages consisting primarily of cookies, brownies, candy, muffins, croissants, rolls and cakes, in Class 30; retail bakery, ice

cream and candy store services, in Class 42; and food mail order services. Applicant's channels of trade and class of purchasers are very similar to those of Opposer.

8. Due to the similarity between Applicant's mark and goods and Opposer's previously used and registered marks and goods and services, the registration of Applicant's mark will cause great damage and injury to Opposer. Persons familiar with Opposer's marks, goods, and services would likely confuse Applicant's goods and services with those provided by Opposer. Any defect, objection or fault found with Applicant's goods offered under the mark **D'VINE CRAVINGS** may reflect upon and expose Opposer to liability, and seriously injure the reputation that Opposer has established for her goods and services.

9. If Applicant is granted the registration herein opposed, it would obtain at least a *prima facie* exclusive right to use the mark **D'VINE CRAVINGS**, thereby causing damage and injury to Opposer.

10. Registration of Applicant's mark is likely to dilute the ability of Opposer's marks to identify and distinguish Opposer as the source of her goods and services.

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