

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Batter Blaster LLC)	Trademark Law Office 113
Trademark: BATTER BLASTER)	
Serial No.: 78/706478)	Trademark Attorney:
Filing Date: September 2, 2005)	Khanh M. Le

TTAB

NOTICE OF APPEAL

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

NOTICE OF APPEAL

Applicant hereby appeals to the Trademark Trial and Appeal Board from the decision of the Trademark Examining Attorney refusing registration. The fee of \$100 is enclosed herewith. A Request for Reconsideration is also being filed concurrently herewith.

12/26/2006 6TR0HAS2 00000010 78706478
01 FC:6403 100.00 OP

Respectfully submitted,
BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP

Dated: 12/15/06

By: Lori Stockton Kozak
Lori Stockton Kozak
Triet Nguyen

12400 Wilshire Boulevard
Seventh Floor
Los Angeles, California 90025
(310) 207-3800

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria Virginia 22313-1451 on 12/15/06

[Signature] 12/15/06
Signature

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Batter Blaster LLC)	Trademark Law Office 113
Trademark:	BATTER BLASTER)	
Serial No.:	78/706478)	Trademark Attorney:
Filing Date:	September 2, 2005)	Khanh M. Le

RESPONSE TO FINAL OFFICE ACTION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

REQUEST FOR RECONSIDERATION

This letter is responsive to the outstanding Final Office Action mailed on October 6, 2006. A Notice of Appeal is being filed concurrently herewith.

AMENDMENT

Please amend the identification of goods to the following:

Mixes and batters for making pancakes and waffles in International Class 30.

REMARKS

Likelihood of Confusion Refusal

The Examining Attorney has refused registration of the mark BATTER BLASTER for “mixes and batters for making pancakes and waffles,” alleging a likelihood of confusion with the mark BLASTERS for “cookies” owned by Parmalat Dairy & Bakery Inc. of Ontario, Canada. Applicant respectfully disagrees with the Examining Attorney’s analysis, and requests that he reconsider and withdraw the refusal to register.

In an analysis of likelihood of confusion, a key consideration is the relatedness of goods. In re Dixie Restaurants Inc., 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997). An analysis of the nature and scope of goods must be based on the goods as they are identified in the application vis-à-vis the goods as identified in the cited registration. Canadian Imperial Bank v. Wells Fargo Bank, 811 F.2d 1490, 1 USPQ2d 1783 (Fed. Cir. 1992). The goods identified in Applicant’s application to register BATTER BLASTERS, as amended, are “mixes and batters for making pancakes and waffles.” The Examining Attorney has cited the mark BLASTERS with an identification of goods of “cookies.” Applicant’s goods are mixes for making breakfast food items, whereas the Registrant’s goods are sweet snack desserts, and thus they will not be marketed toward the same consumers or found in the same channels of trade. Accordingly, no likelihood of confusion exists in light of the significant differences between the Applicant’s goods and the Registrant’s goods.

Further, Applicant’s batters and mixes are used to prepare breakfast food items, and are sold in refrigerated aerosol cans. In other words, Applicant’s goods are for the purpose of preparing breakfast food items and contain the ingredients for cooking such breakfast food items.

By contrast, Registrant's goods are completely cooked sweet snack foods that are commonly eaten as desserts outside of the time and setting associated with a breakfast meal. Accordingly, Applicant's goods will not be marketed towards the same consumers as the Registrant's goods and consumers are highly unlikely to be confused.

Another key consideration in a likelihood of confusion analysis is the similarities between the marks. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). Applicant's application and the cited mark must be compared in their entireties in terms of appearance, sound, connotation and commercial impression. In re E. I. du Pont de Nemours and Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Applicant's mark, BATTER BLASTER, compared as a whole to the cited mark BLASTERS, incorporates significant differences in appearance and sound, conveys a different connotation, and creates a different overall commercial impression.

BATTER BLASTER is not similar in appearance and is certainly not pronounced the same as BLASTERS. BATTER BLASTER is a two word mark comprised of four syllables, whereas BLASTERS is a single word which has only two syllables. Moreover, the lyrical cadence of the combination BATTER BLASTER is entirely different from BLASTERS. The Examining Attorney has implied that the term "BATTER" in Applicant's mark is not a significant consideration in his likelihood of confusion determination. However, Applicant's mark is not merely BLASTER, but rather the lyrical phrase BATTER BLASTER, which presents a unique play on words. It is Applicant's contention that the incorporation of "BATTER" is an important part of Applicant's mark and the Examining Attorney must consider this portion of the mark in his likelihood of confusion analysis. It is respectfully submitted that the inclusion of "BATTER" makes the marks of the respective parties visually distinguishable, and distinctly

different as to connotation and commercial impression and, accordingly, consumers are not likely to be confused as to the source of the goods provided.

Further, it is Applicant's contention that a review of the Federal Register reveals that, with respect to food products, the term BLASTERS has become rather common in marks. There are a number of registrations for marks incorporating the term "BLASTERS" for food products such that consumers would not likely be confused by Applicant's mark. The existence of third-party registrations is evidence that the mark is less than a strong mark and, as a result, its scope is limited. Marcal Paper Mills, Inc. v. American Can Co., 212 USPQ 852 (TTAB 1981). For example, the third party registrations include:

Mark	Reg. No.	Owner	Goods
BLASTERS	3077574	Barber Foods	Stuffed breaded chicken
BLASTERS	2510971	Lettieri's, Inc.	Food item consisting of bread with a filling comprised primarily of one or more of meats, cheeses, sauces, vegetables, condiments, grains, dairy products and flavorings
BLASTER	2545152	Nicole Bloomquist	Nutritional food bars, used as a dietary supplement for children and youth
BERRY BLASTERS (disclaimer of "BERRY")	2981832	Victor Packing, Inc.	Infused flavored raisins
FRUIT BLASTERS (disclaimer of "FRUIT")	1906220	Power Packaging, Inc.	Fruit juice
MOTT'S FRUIT BLASTERS (disclaimer of "FRUIT")	2670348	Mott's Inc.	Squeezable fruit snack

SNUZZY'S BLASTER	2628972	Southern Food Systems, Inc.	Ice Cream
ASS BLASTER	2339294	Southwest Specialty Food, Inc.	Salsa, wing, steak, teriyaki, hot and barbeque sauce, mustard, ketchup, popcorn seasoning, corn chips and mayonnaise, marinade and bread mix.
HUNGER BLASTER	1507380	Curtice-Burns Foods, Inc.	Snack foods, namely potato chips
A.M. BLASTERS	78/546926 (Notice of Allowance issued 8/08/2006)	Wells' Dairy, Inc.	Yogurt
MASTER BLASTER	76/615216 (Notice of Allowance issued 12/13/2005)	Weider Health and Fitness, Inc.	Beverages, namely sport drinks, energy drinks, fruit juices and water
COLORBLASTER	2518469	Impact Confections, Inc.	Candy, namely lollipops
YANKEEBLASTER	78/832697 (Notice of Publication issued 10/18/2006)	Michael Don Obermark	Seasoning, specifically, a unique seasoning blend.
GHETTOBLASTER	2712492	Motor City Brewing Works, Inc.	Beer

Although third-party registrations are not dispositive in any given case, the abundance of registrations in which BLASTERS is incorporated presents a convincing picture that the Registrant does not have exclusive use of BLASTERS, even for sweet snack foods, much less for breakfast items. Many of the marks identified in the registrations above are used on snack foods and sweets, which are much more closely related to the Registrant's goods than Applicant's mixes and batters for pancakes and waffles. For example, BERRY BLASTERS for raisins, with BERRY disclaimed, co-exists peacefully with BLASTERS for cookies. Similarly, several of BLASTERS marks (identical marks) for food items co-exist with the cited mark. FRUIT BLASTERS (with the term FRUIT disclaimed) for fruit snacks also co-exists with the cited

mark. It is clear from the state of the Federal Register that Registrant does not own exclusive rights to BLASTERS for snack foods, much less own rights to prevent registration of the mark BATTER BLASTERS for batters and mixes for pancakes and waffles. Given that each of the marks noted above co-exist on the Federal Register and in the marketplace with the cited mark, Applicant respectfully submits that its mark can also co-exist without confusion.

Accordingly, Applicant respectfully requests that the Examining Attorney withdraw the refusal to register and approve the mark for publication in the Official Gazette at his earliest convenience. If the Examining Attorney has any questions, he is urged to telephone the undersigned attorney.

Respectfully submitted,

BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP

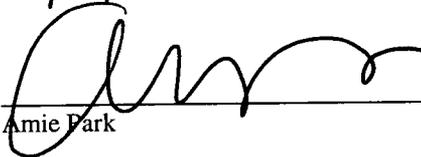
Dated: 12/15/06

By: 
Lori Stockton Kozak
Triet Nguyen

12400 Wilshire Boulevard
Seventh Floor
Los Angeles, California 90025
(310) 207-3800

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12/15/06
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BATTER BLASTER

Word Mark BATTER BLASTER
Goods and Services IC 030. US 046. G & S: Mixes and batters for making pancakes, waffles, muffins, brownies, cookies, and cakes
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Design Search Code
Serial Number 78706478
Filing Date September 2, 2005
Current Filing Basis 1B
Original Filing Basis 1B
Owner (APPLICANT) Batter Blaster, LLC LTD LIAB CO DELAWARE 8901 North 85th Way Scottsdale ARIZONA 85258
Attorney of Record Lori Stockton Kozak
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BATTER" APART FROM THE MARK AS SHOWN
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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TARR Status ASSIGH Status TDR TTAB Status (Use the "Back" button of the Internet Browser to return to TESS)

BLASTERS

Word Mark BLASTERS
Goods and Services IC 029. US 046. G & S: Stuffed breaded chicken. FIRST USE: 20040600. FIRST USE IN COMMERCE: 20040600
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Design Search Code
Serial Number 78401443
Filing Date April 14, 2004
Current Filing Basis 1A
Original Filing Basis 1B
Published for Opposition February 8, 2005
Registration Number 3077574
Registration Date April 4, 2006
Owner (REGISTRANT) Barber Foods CORPORATION MAINE 56 Milliken Street Portland MAINE 041031530
Attorney of Record Gloria A. Pinza
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Typed Drawing

Word Mark BLASTERS
Goods and Services IC 030. US 046. G & S: Food item consisting of bread with a filling comprised primarily of one or more of meats, cheeses, sauces, vegetables, condiments, grains, dairy products and flavorings. FIRST USE: 19950400. FIRST USE IN COMMERCE: 19960100
Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 75721507
Filing Date June 4, 1999
Current Filing Basis 1A
Original Filing Basis 1B
Published for Opposition August 15, 2000
Registration Number 2510971
Registration Date November 20, 2001
Owner (REGISTRANT) Lettieri's, Inc. CORPORATION MINNESOTA 11351 Rupp Drive Suites D and E Burnsville MINNESOTA 55337
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record William J. O'Brien
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Word Mark BLASTER
Goods and Services IC 005. US 006 018 044 046 051 052. G & S: Nutritional food bars, used as a dietary supplement for children and youths. FIRST USE: 19990430. FIRST USE IN COMMERCE: 19990430
Mark Drawing Code (5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM
Design Search Code
Serial Number 75419600
Filing Date January 16, 1998
Current Filing Basis 1A
Original Filing Basis 1B
Published for Opposition February 1, 2000
Registration Number 2545152
Registration Date March 5, 2002
Owner (REGISTRANT) Bloomquist, Nicole INDIVIDUAL UNITED STATES 462 Menlo Oaks Dr. Menlo Park CALIFORNIA 94025
Attorney of Record JACK RUSSO
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Typed Drawing

Word Mark BERRY BLASTERS
Goods and Services IC 029. US 046. G & S: infused flavored raisins. FIRST USE: 20041001. FIRST USE IN COMMERCE: 20041001
Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 78246223
Filing Date May 6, 2003
Current Filing Basis 1A
Original Filing Basis 1B
Published for Opposition March 16, 2004
Registration Number 2981832
Registration Date August 2, 2005
Owner (REGISTRANT) Victor Packing, Inc CORPORATION CALIFORNIA 11687 Road 27 1/2 Madera CALIFORNIA 93637
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE BERRY APART FROM THE MARK AS SHOWN
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Typed Drawing

Word Mark FRUIT BLASTERS
Goods and Services IC 016. US 002 005 022 023 029 037 038 050. G & S: cardboard juice boxes. FIRST USE: 19940318. FIRST USE IN COMMERCE: 19940318
 IC 032. US 045 046 048. G & S: fruit juice. FIRST USE: 19940318. FIRST USE IN COMMERCE: 19940318
Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 74435979
Filing Date September 14, 1993
Current Filing Basis 1A
Original Filing Basis 1B
Published for Opposition March 22, 1994
Change In Registration CHANGE IN REGISTRATION HAS OCCURRED
Registration Number 1906220
Registration Date July 18, 1995
Owner (REGISTRANT) Power Packaging, Inc. CORPORATION ILLINOIS 525 Dunham Road St. Charles ILLINOIS 61074
 (LAST LISTED OWNER) BYESVILLE LLC LTD LIAB CO OHIO 2915 NW 122ND STREET OKLAHOMA CITY OKLAHOMA 73120
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record JEFFREY S. STANDLEY
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FRUIT" APART FROM THE MARK AS SHOWN
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20051012.
Renewal 1ST RENEWAL 20051012
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Typed Drawing

Word Mark MOTT'S FRUIT BLASTERS
Goods and Services IC 029, US 046, G & S: Squeezable fruit snack. FIRST USE: 20020115. FIRST USE IN COMMERCE: 20020115
Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 78051874
Filing Date March 7, 2001
Current Filing Basis 1A
Original Filing Basis 1B
Published for Opposition March 5, 2002
Registration Number 2670348
Registration Date December 31, 2002
Owner (REGISTRANT) Mott's Inc. CORPORATION DELAWARE 6 High Ridge Park P.O. Box 3800 Stamford CONNECTICUT 069050800
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record Daniel Chung, Esq.
Prior Registrations 2143436;2234230;2283974;AND OTHERS
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FRUIT" APART FROM THE MARK AS SHOWN
Type of Mark TRADEMARK
Register PRINCIPAL
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Typed Drawing

Word Mark SNUZZYS BLASTER
Goods and Services IC 030. US 046. G & S: Ice cream. FIRST USE: 20000820. FIRST USE IN COMMERCE: 20010310
Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 76063025
Filing Date June 2, 2000
Current Filing Basis 1A
Original Filing Basis 1B
Published for Opposition June 19, 2001
Registration Number 2628972
Registration Date October 1, 2002
Owner (REGISTRANT) Southern Food Systems, Inc. CORPORATION INDIANA P.O. Box 19635 Indianapolis INDIANA 46219
Attorney of Record Deborah R. Beck
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Typed Drawing

Word Mark ASS BLASTER
Goods and Services IC 030. US 046. G & S: Salsa, wing, steak, teriyaki, hot, and barbecue sauce, mustard, ketchup, popcorn seasoning, corn chips and mayonnaise, marinade and bread mix. FIRST USE: 19990623. FIRST USE IN COMMERCE: 19990623
Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 75584964
Filing Date November 9, 1998
Current Filing Basis UNKNOWN
Original Filing Basis 1B
Published for Opposition August 10, 1999
Registration Number 2339294
Registration Date April 4, 2000
Owner (REGISTRANT) Southwest Specialty Food, Inc. CORPORATION ARIZONA 5805 West McLellan, #3 Glendale ARIZONA 85301
Attorney of Record Jordan M. Meschkow
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Typed Drawing

Word Mark HUNGER BLASTER
Goods and Services IC 029. US 046. G & S: SNACK FOODS, NAMELY POTATO CHIPS. FIRST USE: 19871111. FIRST USE IN COMMERCE: 19871111
Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 73702402
Filing Date December 22, 1987
Current Filing Basis 1A
Original Filing Basis 1A
Published for Opposition July 12, 1988
Registration Number 1507380
Registration Date October 4, 1988
Owner (REGISTRANT) CURTICE-BURNS FOODS, INC. CORPORATION NEW YORK 90 LINDEN PLACE ROCHESTER NEW YORK 14625
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record BRIAN B. SHAW
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).
Live/Dead Indicator LIVE

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A.M. BLASTERS

Word Mark A.M. BLASTERS
 Goods and Services IC 029. US 046. G & S: YOGURT
 Standard Characters Claimed
 Mark Drawing Code (4) STANDARD CHARACTER MARK
 Design Search Code
 Serial Number 78546926
 Filing Date January 13, 2005
 Current Filing Basis 1B
 Original Filing Basis 1B
 Published for Opposition May 16, 2006
 Owner (APPLICANT) Wells' Dairy, Inc. CORPORATION IOWA One Blue Bunny Drive P.O. Box 1310 Le Mars IOWA 51031
 Attorney of Record Bruce W. McKee
 Type of Mark TRADEMARK
 Register PRINCIPAL
 Live/Dead Indicator LIVE

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MASTER BLASTER

Word Mark	MASTER BLASTER
Goods and Services	IC 032. US 045 046 048. G & S: beverages, namely sport drinks, energy drinks, fruit juices and water
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Design Search Code	
Serial Number	76615216
Filing Date	October 12, 2004
Current Filing Basis	1B
Original Filing Basis	1B
Published for Opposition	September 20, 2005
Owner	(APPLICANT) Weider Health and Fitness CORPORATION NEVADA 21300 Erwin Street Woodland Hills CALIFORNIA 91367
Attorney of Record	Norman Zafman
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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Typed Drawing

Word Mark COLORBLASTER
Goods and Services IC 030. US 046. G & S: candy, namely lollipops. FIRST USE: 20000328. FIRST USE IN COMMERCE: 20000328
Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 75875906
Filing Date December 20, 1999
Current Filing Basis 1A
Original Filing Basis 1B
Published for Opposition October 17, 2000
Registration Number 2518469
Registration Date December 11, 2001
Owner (REGISTRANT) Impact Confections, Inc. CORPORATION NEW MEXICO P.O. BOX 588 Roswell NEW MEXICO 88202
Attorney of Record Stanley I. Goldman
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Start List At: OR Jump to record: **Record 2 out of 39**

TARR Status ASSIGN Status TDR TTAB Status (Use the "Back" button of the Internet Browser to return to TESS)

Yankeeblaster

Word Mark YANKEEBLASTER
Goods and Services IC 030. US 046. G & S: Seasoning, specifically, a unique seasoning blend. FIRST USE: 19920301. FIRST USE IN COMMERCE: 19920301
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Design Search Code
Serial Number 78832697
Filing Date March 8, 2006
Current Filing Basis 1A
Original Filing Basis 1A
Published for Opposition November 7, 2006
Owner (APPLICANT) Obermark, Michael Don INDIVIDUAL UNITED STATES 1826 Enchanted Lane Lancaster TEXAS 75146
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Word Mark GHETTOBLASTER

Goods and Services IC 032. US 045 046 048. G & S: Beer. FIRST USE: 19970601. FIRST USE IN COMMERCE: 19970601

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code

- 01.15.02 - Electricity; Lightning; Sparks (jagged lines)
- 15.01.04 - Air cleaner filters, automotive; Alternators; Boat motors, outboards; Carburetors, vehicle; Diesel engines; Engines, combustion; Engines, steam; Engines, turbine; Filters, air cleaner (automotive); Filters, oil (automotive); Generators; Internal combustion engines; Motors (machinery); Motors, outboard (boat); Valves, automobile engine
- 16.01.03 - CB radios; Projection screens (television); Radios; Remote controls, television; Screens, projection; Screens, television; Television sets
- 16.01.04 - Amplifiers, sound; Answering machines, telephone; Dictating machines; DVD players; Loudspeakers; Phonographs; Receivers, stereo; Record players; Recorders, tape; Recorders, video; Sound amplifiers; Speakers, audio; Stereo receivers, tuners, amplifiers, speakers; Tape players, audio and video; Tape recorders, audio and video; Telephone answering machines; Tuners, stereo; Turntables; Video cassette recorders; Video disc players; Video recorders
- 26.03.21 - Ovals that are completely or partially shaded
- 26.03.28 - Miscellaneous designs with overall oval shape, including amoeba-like shapes and irregular ovals; Oval shape (miscellaneous overall shape)
- 26.09.21 - Squares that are completely or partially shaded
- 26.17.10 - Lines, zig-zag; Zig-zag line(s)

Serial Number 76075428

Filing Date June 22, 2000

Current Filing Basis 1A

Original Filing Basis 1A

Published for Opposition February 11, 2003

Registration Number 2712492

Registration Date May 6, 2003

Owner (REGISTRANT) Motor City Brewing Works, Inc. CORPORATION MICHIGAN 470 W. Canfield Detroit MICHIGAN 48201
Attorney of Record Allen M. Krass
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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