

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

FF ACQUISITION, L.L.C.,)	Opposition No. _____
)	
Opposer,)	Mark: FARM FRESH
)	
v.)	Serial No.: 78/222,155
)	
STELLA & CHEWY'S LLC,)	Filing Date: March 5, 2003
)	
Applicant.)	Publication Date: November 4, 2003
)	

NOTICE OF OPPOSITION

FF Acquisition, L.L.C., a Virginia limited liability company having its principal place of business at 11840 Valley View Road, Eden Prairie, Minnesota 55344 (hereinafter referred to as "Opposer"), believes that it will be damaged by the registration of the mark FARM FRESH shown in application Serial No. 78/222,155, filed March 5, 2003, by Stella & Chewy's LLC (hereinafter referred to as "Applicant"), and hereby opposes registration of the mark pursuant to previously filed extensions of time to oppose. The grounds for opposition are as follows:

1. By the application herein opposed, Applicant is seeking to obtain under the provisions of the Trademark Act of 1946, as amended, registration upon the Principal Register of the mark FARM FRESH for "pet food" in International Class 31.
2. Applicant's mark published for opposition on November 4, 2003. Opposer filed and the Board approved extensions of time to oppose Applicant's Mark until May 2, 2004. This Notice of Opposition is timely filed.
3. Since at least as early as 1956, Opposer or its predecessors in interest have been using the mark FARM FRESH in connection with supermarket services. Opposer also uses the FARM FRESH mark in connection with the promotion and sale of numerous grocery products,

including fruits and vegetables, pizza, ham, fish and seafood, milk and breads. In addition, Opposer uses the FARM FRESH mark in connection with retail gasoline supply services and various promotional and advertising services.

4. Opposer owns numerous registrations for its FARM FRESH mark, including the following (collectively referred to herein as "Opposer's FARM FRESH Marks"):

Mark	Reg. No./ Reg. Date	Filing Date	Use Date	Goods
	609,215 July 19, 1955	Sept. 1, 1953	Apr. 6, 1939	Fresh vegetables.
FARM FRESH	1,544,928 June 20, 1989	Dec. 7, 1981	Dec. 3, 1956	Supermarket services.
FARM FRESH	1,563,627 Oct. 31, 1989	Dec. 3, 1984	Apr. 6, 1939	Fresh fruits and fresh vegetables.
FARM FRESH GOLD	2,244,117 May 11, 1999	June 7, 1996	Dec. 1, 1995	Pizza.
	2,700,060 Mar. 25, 2003	May 6, 2002	Mar. 1, 2002	Ham.
	2,700,061 Mar. 25, 2003	May 6, 2002	Oct. 26, 2001	Cooked and raw shrimp for human consumption.
	2,700,158 March 25, 2003	June 13, 2002	1998	Retail grocery stores.
	2,721,222 June 3, 2003	Aug. 9, 2002	Apr. 21, 2002	Retail gasoline supply services; promoting the goods of others by providing discounts on gasoline prices when certain grocery items are purchased.

5. The registrations listed in the above table have not been canceled, are valid, and are now in full force and effect.

6. The following registrations are incontestable under Section 15 of the Lanham Act, 15 U.S.C. § 1065: 609,215; 1,544,928; and 1,563,627. Consequently, these registrations are conclusive evidence of the validity of the registered marks and of the registration of the marks, of Opposer's ownership of the marks, and of Opposer's exclusive right to use the registered marks in commerce under Section 33 of the Lanham Act, 15 U.S.C. § 1115.

7. Opposer also owns two pending trademark applications for FARM FRESH marks as follows:

Mark	Serial No.	Filing Date	Use Date	Goods
	78/162,769	Sept. 11, 2002	June 20, 2002	Unprocessed vegetables; unprocessed fruits
	78/238,385	April 16, 2003	Jan. 3, 2000 (Class 29) Sept. 11, 2001 (Class 30)	Milk (Class 29); breads, hamburger buns, hot dog buns, English muffins, dinner rolls (Class 30)

7. Opposer has advertised and promoted its FARM FRESH Marks extensively. Opposer has also made substantial sales of products under said marks. As a result of such use and promotion, Opposer's FARM FRESH Marks have developed and represent valuable goodwill inuring to the benefit of Opposer.

8. Opposer's FARM FRESH Marks are famous within the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c), and became famous before Applicant commenced use of Applicant's FARM FRESH mark.

9. Opposer has priority with respect to the marks at issue in this opposition.

Opposer or its predecessors in interest adopted and commenced use of the term FARM FRESH as a trademark long before Applicant adopted the FARM FRESH mark. Opposer or its predecessors in interest's usage of the FARM FRESH Marks commenced at least as early as 1939, nearly sixty-four (64) years prior to Applicant's filing date of its application. Opposer owns a registration that registered more than forty-seven (47) years before the filing date of Applicant's application.

10. Upon information and belief, Applicant had knowledge of the fact that Opposer used the term FARM FRESH as a trademark before it adopted the FARM FRESH mark.

11. Applicant's FARM FRESH mark is confusingly and deceptively similar to Opposer's previously used and duly registered FARM FRESH Marks.

12. Applicant's alleged goods are closely related to Opposer's goods marketed and sold by Opposer in connection with its FARM FRESH Marks. For example, both parties' goods and services are sold to ordinary consumers in grocery stores.

13. Upon information and belief, the goods listed in Opposer's FARM FRESH registrations and Applicant's FARM FRESH application are promoted and sold in the same channels of trade to the same consumers or class of consumers.

14. Applicant's FARM FRESH mark is identical in sight, sound and commercial impression to Opposer's FARM FRESH Marks.

15. Due to the similarity between Applicant's claimed mark, FARM FRESH, and Opposer's previously used and duly registered FARM FRESH Marks, the related nature of the goods of the respective parties, customers and potential customers are likely to believe that

Applicant's products originate from Opposer, resulting in a likelihood of confusion in the marketplace, and damage to Opposer.

16. The use and registration by Applicant of the mark FARM FRESH for Applicant's goods is likely to cause confusion or to cause mistake or deception in the trade, and among purchasers and potential purchasers, with Opposer's previously used and duly registered FARM FRESH Marks, again resulting in damage to Opposer.

17. Because of the related nature of the goods, and the similarity of the marks, use and registration of the term FARM FRESH by Applicant is likely to cause confusion, mistake, or deception that Applicant's goods are those of Opposer, or are otherwise endorsed, sponsored, or approved by Opposer for use with Opposer's products causing further damage to Opposer.

18. Applicant's use and registration of the FARM FRESH mark is likely to dilute the distinctive quality of Opposer's famous FARM FRESH Marks, again resulting in damage to Opposer.

19. If Applicant is granted registration of the mark herein opposed, it would thereby obtain at least a *prima facie* exclusive right to the use of its alleged mark. Such registration would be a source of further damage and injury to Opposer.

20. Registration of the mark shown in Application Serial No. 78/222,155 will result in damage to Opposer under the provisions of Sections 2(d) and 2(f) of the U.S. Trademark Act, 15 U.S.C. Sections 1052(d) and 1052(f), pursuant to the allegations stated above.

WHEREFORE, Opposer requests that the registration sought by Applicant in application Serial No. 78/222,155 be refused and that this Notice of Opposition be sustained.

Please direct all correspondence to:

Scott W. Johnston
MERCHANT & GOULD P.C.
P.O. Box 2910
Minneapolis, MN 55402-9944

The Opposer appoints Paul A. Welter, Reg. No. 20,890; D. Randall King; John A. Clifford, Reg. No. 30,247; Linda M. Byrne, Reg. No. 32,404; John L. Beard, Reg. No. 27,612; Sandra Epp Ryan, Reg. No. 39,667; Scott W. Johnston, Reg. No. 39,721; Kristina M. Foudray, Anna W. Manville, Gregory C. Golla, and Andrew S. Ehard of the firm of Merchant & Gould P.C., its attorneys to transact all business in the U.S. Patent and Trademark Office relating to this matter with full power of substitution.

Accompanying the duplicate signed copies of this Notice of Opposition is the required fee of \$300.00. Please charge any excess fees for or credit any overpayment to the Deposit Account No. 13-2725 of Opposer's counsel noted below.

Respectfully submitted,

FF ACQUISITION, L.L.C.

By its Attorneys,

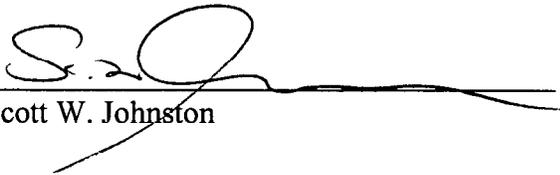


Scott W. Johnston
MERCHANT & GOULD P.C.
80 South Eighth Street, Suite 3200
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(612) 332-5300

Date: 5-3-04

CERTIFICATE OF MAILING

The undersigned hereby certifies that the foregoing NOTICE OF OPPOSITION, regarding U.S. Serial No. 78/222,155, is being deposited with the U.S. Postal Service by First Class Mail, in an envelope addressed to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3514 on this 3rd day of May, 2004.


Scott W. Johnston

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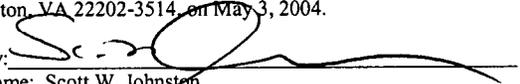
A Professional Corporation

FF ACQUISITION, L.L.C.,)
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v.) Opposition No. _____
STELLA & CHEWY'S LLC,)
Applicant.)
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Mark: FARM FRESH
Serial No.: 78/222,155
Docket Number: 14197.2USTA
Official Gazette: November 4, 2003

Due Date: May 3, 2004 (May 2, 2004 was a Sunday)
Filing Date: March 5, 2003

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this Transmittal Letter and the paper, as described herein, are being deposited in the United States Postal Service, as first class mail, in an envelope addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3514, on May 3, 2004.

By: 
Name: Scott W. Johnston

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

Dear Commissioner:

We are transmitting herewith the attached:

- Return postcard.
- Transmittal Sheet in duplicate containing Certificate Under 37 C.F.R. 1.8
- Notice of Opposition (1 Original and 1 Copy)
- Check in the amount of \$300.00 to cover Filing Fee.

Please charge any additional fees or credit overpayment to Deposit Account No. 13-2725. A duplicate copy of this sheet is enclosed.

By: 
Name: Scott W. Johnston
Reg. No.: 39,721
SWJ/skl



05-05-2004

(CONTESTED MATTER)