

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

KELLOGG NORTH AMERICA	)	
COMPANY and KELLOGG COMPANY	)	
	)	Mark: HEARTY MORNING
Opposers,	)	
	)	Opposition No. 91160980
v.	)	
	)	Serial No. 78/245067
SMALL PLANET FOODS, INC.,	)	
	)	
Applicant.	)	

**ANSWER TO NOTICE OF OPPOSITION**

COMES NOW, Small Planet Foods, Inc. (“Small Planet Foods”), and for its Answer to the Notice of Opposition filed by Kellogg North America Company and Kellogg Company (jointly “Kellogg”) states as follows:

1. Small Planet Foods is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of Paragraph One of the Notice and therefore denies such allegations.

2. Small Planet Foods is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of Paragraph Two of the Notice, and therefore denies such allegations.

3. Small Planet Foods is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of Paragraph Three of the Notice, and therefore denies such allegations.

4. Small Planet Foods is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of Paragraph Four of the Notice, and therefore denies such allegations.

5. Small Planet Foods admits that it filed Application Serial No. 78/245,067 for the mark HEARTY MORNING (the "Application") in connection with "organic breakfast cereal" and that the Application was published in the Patent and Trademark Office's Official Gazette on December 23, 2003. Small Planet Foods denies that it filed the Application on May 5, 2003 and notes that the filing date is May 2, 2003. Small Planet Foods is without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations of Paragraph Five of the Notice, and therefore denies such allegations.

6. Small Planet Foods is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of Paragraph Six of the Notice, and therefore denies such allegations.

7. Small Planet Foods denies that Opposer will be damaged by registration of the HEARTY MORNING trademark, as set forth in the Application. Small Planet Foods admits that it did not disclaim HEARTY MORNING and that the Trademark Office did not require any disclaimers in the Application. Small Planet denies that the mark HEARTY MORNING is unregistrable or merely descriptive. Small Planet Foods is without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations of Paragraph Seven of the Notice, and therefore denies such allegations.

8. Small Planet Foods denies that Kellogg will be damaged if the Application matures to registration and denies each and every remaining allegation of the Notice not specifically admitted herein.

WHEREFORE, Small Planet Foods prays that the Notice be dismissed, that the Application mature to registration, and for such other and further relief as may be just and proper.

Respectfully submitted,

SMALL PLANET FOODS, INC.

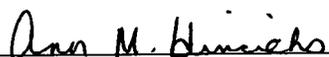
Dated: July 15, 2004



Seema R. Shah, Attorney  
Number One General Mills Boulevard  
Minneapolis, MN 55426  
(763) 764-7578

CERTIFICATE OF MAILING

I hereby certify that this Answer to Notice of Opposition for Application Serial No. 78/245,067 is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Trademarks, BOX TTAB-NO FEE, 2900 Crystal Drive, Arlington, Virginia 22202-3513 on the 15th day of July, 2004.

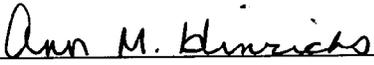
By:   
Ann Hinrichs

**CERTIFICATE OF SERVICE**

This is to certify that I have this day served a true and correct copy of the foregoing ANSWER TO NOTICE OF OPPOSITION on counsel for Opposer by placing a true and correct copy of same in the First Class U.S. Mail with proper postage affixed and addressed to:

Lisabeth H. Coakley  
Harness, Dickey & Pierce, PLC  
5445 Corporate Dr., Suite 400  
Troy, MI 48098

This 15<sup>th</sup> day of July, 2004

  
\_\_\_\_\_  
Ann Hinrichs

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

In the Matter of Serial No. 78/245067  
For the Mark: HEARTY MORNING  
Filed: May 2, 2003  
Published: December 23, 2003

KELLOGG NORTH AMERICA )  
COMPANY and KELLOGG COMPANY )  
Opposers, )  
vs. )  
SMALL PLANET FOODS, INC. )  
Applicant. )

Opposition No. 91160980

Box TTAB  
No Fee  
Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3514

I CERTIFY THAT, ON JULY 15, 2004, THIS PAPER IS BEING DEPOSITED WITH THE U.S. POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO THE COMMISSIONER FOR TRADEMARKS, 2900 CRYSTAL DRIVE, ARLINGTON, VA 22202-3514.

Ann M. Hinrichs  
Ann Hinrichs

**TRANSMITTAL LETTER**

Enclosed for filing are the following papers in connection with the above-identified trademark application:

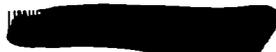
- Answer to Notice of Opposition;
- Certificate of Service; and
- Postcard

A self-addressed return postcard in accordance with T.M.E.P. Section 703 itemizing all of the above-referenced documents filed with the United States Patent and Trademark Office.

Respectfully Submitted,  
SMALL PLANET FOODS, INC.

Date: July 15, 2004

By: Seema R. Shah  
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07-19-2004