

ESTTA Tracking number: **ESTTA14381**

Filing date: **09/01/2004**

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	Luberski, Inc.
Granted to Date of previous extension	09/01/2004
Address	Luberski, Inc. 310 North Harbor Boulevard, Suite 205 Fullerton, CA 92834 UNITED STATES

Attorney information	Stephen J. Strauss Fulwider Patton Lee & Utecht, LLP 6060 Center Drive, Tenth Floor Los Angeles, CA 90045 UNITED STATES docketla@fulpat.com Phone:310-824-5555
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Applicant Information

Application No	78197625	Publication date	05/04/2004
Opposition Filing Date	09/01/2004	Opposition Period Ends	09/01/2004
Applicant	Chiquita Brands, Inc.		

Goods/Services Affected by Opposition

Class 029. First Use: First Use In Commerce:

All goods and services in the class are opposed, namely: Fresh cut fruits and vegetables; fresh packaged fruit and vegetable salads.

In the Matter re: Serial No.: 78/197,623 Filed: December 24, 2002 Mark: PERFECTLY FRESH Published: April 27, 2004 Applicant: Chiquita Brands, Inc.

Attachments	notice of opposition - luberski.pdf (5 pages)
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Signature	/Stephen J. Strauss/
Name	Stephen J. Strauss
Date	09/01/2004

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

In the Matter of:
Serial No.: 78/197,625
Filed: December 24, 2002
Mark: CHIQUITA PERFECTLY FRESH
Published: May 4, 2004
Applicant: Chiquita Brands, Inc.

LUBERSKI, INC.,

Opposer,

v.

CHIQUITA BRANDS, INC.,

Applicant.

Opposition No.

NOTICE OF OPPOSITION

Assistant Commissioner for Trademarks
2900 Crystal Drive
Box TTAB
Arlington, VA 22202-3513

To Assistant Commissioner of Trademarks:

Luberski, Inc., a corporation organized and existing under the laws of California and having its business address at 310 N. Harbor Boulevard, Suite 100, Fullerton, California 92834 ("OPPOSER"), believes that it will be damaged by the registration of the mark shown in Application Serial No. 78/197,625 and hereby opposes same.

As grounds for this Notice, it is alleged upon information and belief that:

1. OPPOSER, and its predecessor-in-interest, has since at least as early as June 2002 used PERFECTLY FRESH as both a trademark and trade name in connection with a wide variety of fresh produce, vegetables and fruits. In July 2002, Opposer's predecessor-in-interest filed Articles of Incorporation with the California Secretary of State's Office, registering, as trade names, PERFECTLY FRESH CONSOLIDATIONS, INC.; PERFECTLY FRESH FARMS, INC.; PERFECTLY FRESH FLORALS, INC. and PERFECTLY FRESH SPECIALTIES, INC. (hereinafter collectively referred to as the "PERFECTLY FRESH Trade Names"). OPPOSER continues to use the PERFECTLY FRESH Trade Names in its business.

2. OPPOSER filed a trademark application with the United States Patent and Trademark Office on May 22, 2003 (Application Serial No. 78/253,292) covering the PERFECTLY FRESH mark for "fresh fruits and vegetables" in International Class 31.

3. OPPOSER has developed an exceedingly valuable goodwill with respect to its PERFECTLY FRESH Mark and Trade Names. OPPOSER's PERFECTLY FRESH Mark and Trade Names have become widely and favorable known throughout California and the United States and have become recognized by the purchasing public and the food industry as identifying and distinguishing OPPOSER as the source and origin of the goods identified in paragraph 1, bearing the PERFECTLY FRESH Mark and Trade Names. The PERFECTLY FRESH Mark and Trade Names are very valuable to OPPOSER and any registration by APPLICANT of a confusingly similar mark will cause immediate and irreparable harm to OPPOSER.

4. OPPOSER has expended great effort and considerable expense in advertising, promoting, offering for sale and selling its goods under the PERFECTLY FRESH Mark and Trade Names in California and elsewhere throughout the United States.

5. OPPOSER is informed and believes, and on that ground avers that Chiquita Brands, Inc. ("APPLICANT") is a corporation organized and existing under the laws of Delaware with its principal place of business located at 2500 Chiquita Center, 250 East Fifth Street, Cincinnati, Ohio 45202.

6. APPLICANT seeks to register the mark CHIQUITA PERFECTLY FRESH and filed an intent-to-use trademark application (No. 78/197,625) on December 24, 2002 to register the mark for "fresh cut fruits and vegetables; fresh packaged fruit and vegetable salads" in International Class 29.

7. OPPOSER's (and its predecessor-in-interest's) first use of the PERFECTLY FRESH Mark and Trade Names is prior to APPLICANT's filing of Application Serial No. 78/197,625, or any subsequent claimed first use of the CHIQUITA PERFECTLY FRESH mark by APPLICANT.

8. Upon information and belief, the Class 29 goods specified in APPLICANT's CHIQUITA PERFECTLY FRESH trademark application would be distributed through similar, if not identical, channels of trade and marketed under similar, if not identical, circumstances to a same or similar class of purchasers as the products marketed by OPPOSER under its PERFECTLY FRESH Mark and Trade Names.

9. If the APPLICANT is permitted to use and register its CHIQUITA PERFECTLY FRESH mark for the Class 29 products specific in the application herein oppose, confusion in the general public and food trade resulting in damage and injury to OPPOSER would be caused and would result by reason of the similarity between APPLICANT's CHIQUITA PERFECTLY FRESH mark and the OPPOSER's PERFECTLY FRESH Mark and Trade Names. Consumers and persons familiar with OPPOSER's PERFECTLY FRESH Mark and Trade Names would be

likely to buy APPLICANT's goods as and for a product made and sold by OPPOSER. Any defect, objection or fault found with APPLICANT's products marketed under the CHIQUITA PERFECTLY FRESH trademark would necessarily reflect upon and seriously injure the reputation which the OPPOSER has established for its goods under its PERFECTLY FRESH Mark and Trade Names.

10. If APPLICANT is granted the registration herein opposed, it would thereby obtain a least prima facie exclusive right to the use of its trademark. Such registration would be a source of damage and injury to the OPPOSER, including but not limited to, placing a cloud upon the right of OPPOSER to naturally expand use or registration of its PERFECTLY FRESH Mark and Trade Names or other trademarks, to any other related goods or services not specifically defined within the above-identified applications, including those goods identified in Serial No. 78/197,625.

11. By reason of the foregoing allegations, OPPOSER has the right to use and register trademarks which are believed to be confusingly similar to the PERFECTLY FRESH trademark sought to be registered by APPLICANT, and OPPOSER believes it will be damaged by registration of the trademark shown in the opposed application.

WHEREFORE, OPPOSER prays that registration of the mark shown in Application Serial No. 78/197,625 published on May 4, 2004 in the Official Gazette, for the International Class 29 goods specified therein, be refused and denied, and that this opposition be sustained.

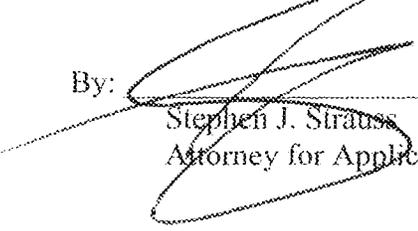
A duplicate copy of this Notice of Opposition, a check in the amount of \$300.00 as the filing fee for an opposition in one International Class, and a separate authorization to charge any additional fees to Deposit Account No. 06-2425 are enclosed herewith.

Respectfully submitted,

FULWIDER PATTON LEE & UTECHT, LLP

Dated: September 1, 2004

By:



Stephen J. Strauss
Attorney for Applicant

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