ESTTA Tracking number: **ESTTA25551**
Filing date: **02/09/2005**

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	Mars, Incorporated
Granted to Date of previous extension	02/09/2005
Address	6885 Elm Street McLean, VA 22101-3883 UNITED STATES

Attorney information	Timothy J. Kelly Fitzpatrick, Cella, Harper & Scinto 30 Rockefeller Plaza New York, NY 10112 UNITED STATES tkelly@fchs.com

Applicant Information

Application No	78350065	**Publication date**	10/12/2004
Opposition Filing Date	02/09/2005	**Opposition Period Ends**	02/09/2005
Applicant	ProMark Brands Inc. 877 West Main Street, Suite 604 Boise, ID 83702		

	UNITED STATES

Goods/Services Affected by Opposition

Class 029. All goods and sevices in the class are opposed, namely: Processed potatoes

Attachments	Opposition -- Country Inn Creations.pdf (5 pages)

Signature	/tjk/
Name	Timothy J. Kelly
Date	02/09/2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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MARS, INCORPORATED,	:	
	:	Serial No.: 78/350,065
Opposer,	:	
	:	Opposition No.:
v.	:	
	:	
PROMARK BRANDS, INC.,	:	
	:	
Applicant.	:	

NOTICE OF OPPOSITION

In the matter of pending trademark application Serial No. 78/350,065 for the mark COUNTRY INN CREATIONS (hereinafter the "Mark") in International Class 29 filed by ProMark Brands, Inc. (hereinafter "Applicant") for "processed potatoes", published in the Official Gazette of October 12, 2004, Mars, Incorporated (hereinafter "Opposer" or "Mars"), with a business address at 3250 E. 44th Street, Vernon, California 90058, believes it will be damaged by the registration of such trademark and hereby opposes same.

The grounds for opposition are as follows:

1. Opposer Mars, Incorporated, through its former division and predecessor-in-interest, Uncle Ben's, Inc., is and for many years has been an internationally known manufacturer, distributor and seller of food products including its UNCLE BEN'S® Brand rices, rice mixes, packaged entrees (containing meat, vegetables, rice, pasta, sauces and seasonings), soups, stuffing mixes, sauces and marinades.

2. In addition to its UNCLE BEN'S® brand products, since at least as early as 1985, a date long prior to the filing date of the instant intent-to-use application, Opposer (or its predecessor) has used the famous, registered COUNTRY INN® trademark in interstate commerce on food items, primarily starch side dishes such as rice and rice mixes.

3. In addition to rice and rice mix side dishes, over the years the COUNTRY INN® line of products has included other starch-based side dishes such as pasta side salad mixes, and pasta and sauce mixes.

4. Mars is the owner of United States Trademark Registration No. 1,593,218 for the trademark COUNTRY INN® for rice mixes, which registration claims a date of first use at least as early as 1985. A certified status and title copy of this registration will be submitted by Mars during its Testimony Period. In addition to this registration, Mars is the owner of pending intent-to-use trademark applications for the trademark COUNTRY INN for use on and in connection with prepared side dishes consisting of pasta; and for soup. These applications were filed in 2001 and 2002, respectively, have been allowed by the United States Patent and Trademark Office, and evidence the *bona fide* intention of Mars to expand its COUNTRY INN® Brand product line.

5. Over the years since the COUNTRY INN® products were first introduced, retail sales of products sold under the COUNTRY INN® trademark have amounted to hundreds of millions of dollars. Sales of COUNTRY INN® rice dishes have taken place throughout the United States in virtually every type of store that sells food

products including grocery stores, convenience stores, and warehouse stores. COUNTRY INN® Brand products have been among the most popular flavored rice products sold at retail in the United States for many years.

6. At great expense to Mars and its predecessor, COUNTRY INN® Brand products have over the years been advertised and promoted extensively. Such advertising and promotion has taken the form of nationally distributed print, radio and television advertising.

7. As a result of the long history of extensive sales, advertising and promotion of products bearing the COUNTRY INN® trademark, this trademark has become associated in the minds of the public solely with the products of Mars. Products bearing this mark have become well known to the public as identifying Mars as the exclusive and unique source of food products to which this trademark are applied. Consumers have come to recognize that the products bearing the COUNTRY INN® trademark are of high quality, and as a result, Mars' COUNTRY INN® trademark has acquired great value and goodwill, a recognized preeminence, and an excellent reputation in the minds of the purchasing public.

8. Because the COUNTRY INN® trademark and the goods and services sold by Mars under that trademark are exclusively associated with Opposer, the registration of the substantially similar mark "Country Inn Creations" by Applicant for starch-based, side dish food products such as the goods identified in the opposed application, will inevitably cause confusion in the minds of the public, leading the public to

believe that Applicant's goods emanate from Opposer or that Applicant is in some way associated with or connected to Opposer, when no such relationship exists.

9. It is likely that the products upon which Applicant has alleged an intention to use the "Country Inn Creations" mark -- a mark that incorporates the entire source-identifying element of Mars' famous trademark -- will be sold and promoted in at least some of the same channels of trade as, and to the same class of consumers as, the starch-based, side dish products bearing Opposer's COUNTRY INN® trademark.

10. Accordingly, because the goods for which Applicant's mark will be used are closely related to, will likely travel in the same channels of trade as, and will likely be marketed to the same classes of consumers as those goods on which Opposer has been and presently is using its COUNTRY INN® trademark, registration of the mark "Country Inn Creations" by Applicant in connection with the goods specified in its application will likely cause consumers to be confused, mistaken or deceived as to the source, origin or sponsorship of Applicant's goods, to believe that Applicant's goods emanate from Opposer, to believe that Applicant is in some way related to Opposer, and/or to believe that Applicant's products marketed under the opposed mark are marketed with the consent, permission or authorization of Opposer.

11. For the foregoing reasons Opposer will be damaged by the registration of Applicant's alleged mark because the public and the trade will be caused to believe that the goods sold under Applicant's alleged trademark are produced or licensed by Opposer under the COUNTRY INN® trademark, and/or are produced by Applicant

under a mark confusingly similar to Opposer's COUNTRY INN® trademark with the authorization, permission or sponsorship of Opposer.

12. For the foregoing reasons, Applicant is not entitled to registration of its alleged mark "Country Inn Creations", and is not entitled to the exclusive use thereof.

WHEREFORE, Opposer respectfully requests that this opposition be sustained and registration of the mark "Country Inn Creations" as sought by Applicant be refused.

Respectfully submitted,

Dated: February 9, 2005

By:_____

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