

ESTTA Tracking number: **ESTTA77390**

Filing date: **04/21/2006**

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	Island Oasis Frozen Cocktail Company, Inc.		
Entity	Corporation	Citizenship	Massachusetts
Address	141 Norfolk Street Walpole, MA 02081 UNITED STATES		

Attorney information	John L. Welch Foley Hoag LLP 155 Seaport Boulevard Boston, MA 02110 UNITED STATES jwelch@foleyhoag.com Phone:617-832-1000		
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Applicant Information

Application No	78622486	Publication date	04/11/2006
Opposition Filing Date	04/21/2006	Opposition Period Ends	05/11/2006
Applicant	Schiff,Gary,D/Name 5645 Golf Pointe Dr. Sarasota, FL 34243 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. All goods and services in the class are opposed, namely: Retail stores services and online ordering featuring Fruit Smoothies, Ice Cream and Yogurt Smoothies

Attachments	ISLAND BREEZE Notice of Opposition.pdf (4 pages)(236301 bytes)
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Signature	/johnlwelch/
Name	John L. Welch
Date	04/21/2006

and distributing shaver/blender machines and concentrated bases used in making frozen drinks, including smoothie beverages, to restaurants, bars, sandwich shops, and other establishments. In connection therewith, Opposer has continuously and extensively used the mark and name ISLAND OASIS® in association with the advertising, promotion, and sale of its products and services. The mark is and has been displayed on more than ten thousand frozen-drink making machines located in commercial establishments across the country, as well as on tens of thousands of containers for the fruit-based concentrated bases, on counter cards and menus displayed in those establishments, and on glassware, clothing, banners, and other materials used in promoting the sale of Opposer's goods and services. Moreover, the mark is prominently displayed at Opposer's website at <www.islandoasis.com>. As a result of these promotional efforts, from a date long prior to Applicant's filing date the mark ISLAND OASIS has achieved substantial public recognition and renown and is a very strong source indicator for Opposer's products and services.

4. Opposer is the owner of the following United States Trademark and Service Mark Registrations for its mark ISLAND OASIS:

<u>REG. NO.</u>	<u>ISSUED</u>	<u>GOODS/SERVICES</u>
1,662,686	10-29-91	non-alcoholic concentrate used in making alcoholic or non-alcoholic cocktails
1,662,032	10-22-91	distribution services in the field of frozen cocktail concentrated bases
2,083,591	07-19-97	machines for making frozen drinks
2,577,180	06-11-02	frozen prepared alcoholic cocktails for consumption on the premises

2,756,107

08-26-03

shirts, t-shirts, sweaters, jackets, hats, and caps

5. The services identified in Application Serial No. 78/622,486 are closely related to the goods and services in connection with which Opposer has used and is using its mark and name ISLAND OASIS. In addition, on information and belief, Applicant's services will be offered to the same class of consumers who obtain the goods and services in connection with which Opposer uses its mark and name ISLAND OASIS.

6. The applied-for mark ISLAND BREEZE sought to be registered by Applicant so closely resembles Opposer's mark and name ISLAND OASIS as to be likely to cause confusion, mistake, and deception as to the source of Applicant's services, all to Opposer's damage. Potential customers are likely to believe that Applicant's services originate from, or are sponsored or approved by, Opposer, when that is not the case. Any dissatisfaction with Applicant's services would reflect upon and irreparably damage Opposer's reputation and goodwill as embodied in its ISLAND OASIS mark and name.

7. If Applicant is granted the registration herein opposed, he would thereby obtain a *prima facie* exclusive right to use of his mark, which would be a further source of damage to Opposer.

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WHEREFORE, Opposer believes that it will be damaged by registration of said mark, and prays that this Opposition be sustained, that Application Serial No. 78/622,486 be rejected, and that the mark applied for therein be refused registration.

Respectfully submitted,

Island Oasis Frozen Cocktail
Company, Inc.



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