

ESTTA Tracking number: **ESTTA145624**

Filing date: **06/13/2007**

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	7-Eleven, Inc.
Granted to Date of previous extension	06/13/2007
Address	One Arts Plaza 1722 Routh Street Dallas, TX 75201 UNITED STATES
Attorney information	Charles R. Mandly, Jr. Foley & Lardner LLP 321 North Clark Street Chicago, IL 60610 UNITED STATES cmandly@foley.com, cfochler@foley.com, ptomailchicago@Foley.com, dcopland@foley.com Phone:312 832 4500

Applicant Information

Application No	78916143	Publication date	02/13/2007
Opposition Filing Date	06/13/2007	Opposition Period Ends	06/13/2007
Applicant	Bucenell, Susan B 30623 Bittsbury Court Wesley Chapel, FL 33543 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and seVICES in the class are opposed, namely: Pet Beverages, namely vitamin, mineral, and supplement enriched flavored and plain purified bottled water for cats and dogs

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1110172	Application Date	04/17/1978
Registration Date	12/26/1978	Foreign Priority Date	NONE
Word Mark	BIG GULP		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 1978/02/22 First Use In Commerce: 1978/02/22 SOFT DRINKS FOR CONSUMPTION ON OR OFF THE PREMISES

U.S. Registration No.	1470871	Application Date	09/04/1986
Registration Date	12/29/1987	Foreign Priority Date	NONE
Word Mark	SUPER BIG GULP		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1983/06/01 First Use In Commerce: 1983/06/01 SOFT DRINKS FOR CONSUMPTION ON OR OFF THE PREMISES		

U.S. Registration No.	1566263	Application Date	03/10/1989
Registration Date	11/14/1989	Foreign Priority Date	NONE
Word Mark	DOUBLE GULP		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1987/07/15 First Use In Commerce: 1988/05/00 SOFT DRINKS FOR CONSUMPTION ON AND OFF THE PREMISES		

U.S. Registration No.	1586016	Application Date	08/07/1989
Registration Date	03/06/1990	Foreign Priority Date	NONE
Word Mark	GULP		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1989/03/00 First Use In Commerce: 1989/03/00 SOFT DRINKS FOR CONSUMPTION ON OR OFF THE PREMISES		

U.S. Registration No.	1615968	Application Date	11/16/1989
Registration Date	10/02/1990	Foreign Priority Date	NONE
Word Mark	DOUBLE GULP		
Design Mark			
Description of Mark	THE MARK CONSISTS OF THE STYLIZED WORDS, "DOUBLE GULP".		
Goods/Services	Class 032. First use: First Use: 1987/07/15 First Use In Commerce: 1988/05/00 SOFT DRINKS FOR CONSUMPTION ON OR OFF THE PREMISES		

U.S. Registration No.	2749708	Application Date	04/23/2002
Registration Date	08/12/2003	Foreign Priority Date	NONE
Word Mark	BIG GULP FLAVOR SHOT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2002/04/30 First Use In Commerce: 2002/04/30 soft drinks and syrups or concentrates added to soft drinks for consumption on or off the premises		

U.S. Registration No.	2997248	Application Date	02/13/2004
Registration Date	09/20/2005	Foreign Priority Date	NONE
Word Mark	BIG GULP SODA FLOAT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2004/08/16 First Use In Commerce: 2004/08/16 Soft drinks containing ice cream for consumption on or off the premises		

U.S. Registration No.	2494955	Application Date	10/20/1999
Registration Date	10/02/2001	Foreign Priority Date	NONE
Word Mark	CAR GULP		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 021. First use: First Use: 2000/02/29 First Use In Commerce: 2000/02/29 reusable plastic cups Class 032. First use: First Use: 2000/02/29 First Use In Commerce: 2000/02/29 soft drinks for consumption on or off the premises		

U.S. Registration No.	2528578	Application Date	04/21/2000
Registration Date	01/08/2002	Foreign Priority Date	NONE
Word Mark	X-TREME GULP 7-ELEVEN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 021. First use: First Use: 2000/04/30 First Use In Commerce: 2000/04/30 Beverage containers, namely, mugs Class 032. First use: First Use: 2000/04/30 First Use In Commerce: 2000/04/30 soft drinks for consumption on or off the premises		

U.S. Registration No.	2928007	Application Date	03/01/2004
Registration Date	02/22/2005	Foreign Priority Date	NONE
Word Mark	PRO CAR GULP		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 021. First use: First Use: 2004/04/01 First Use In Commerce: 2004/04/01 Reusable plastic cups Class 032. First use: First Use: 2004/04/01 First Use In Commerce: 2004/04/01 Soft drinks for consumption on or off the premises		

U.S. Registration No.	3076786	Application Date	04/20/2005
Registration Date	04/04/2006	Foreign Priority Date	NONE
Word Mark	BIG GULP		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2005/08/08 First Use In Commerce: 2005/08/08 Confectionery products, namely candy		

U.S. Registration No.	3082886	Application Date	09/02/2005
Registration Date	04/18/2006	Foreign Priority Date	NONE
Word Mark	TEAM GULP		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 021. First use: First Use: 2005/06/30 First Use In Commerce: 2005/06/30 Beverage containers, namely, reusable plastic cups, plastic sports and squeeze bottles sold empty		

Attachments	73817236#TMSN.gif (1 page)(bytes) 74002867#TMSN.gif (1 page)(bytes) 76399944#TMSN.gif (1 page)(bytes) 78367791#TMSN.jpeg (1 page)(bytes) 75827544#TMSN.gif (1 page)(bytes) 76031493#TMSN.gif (1 page)(bytes) 78376439#TMSN.jpeg (1 page)(bytes) 78612911#TMSN.jpeg (1 page)(bytes) 78706473#TMSN.jpeg (1 page)(bytes) HEALTHY_GULP.pdf (5 pages)(62343 bytes)
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Signature	/Charles R. Mandly, Jr./
Name	Charles R. Mandly, Jr.
Date	06/13/2007

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

In the Matter of Application Serial Number 78/916,143: HEALTHY GULP
Published in the Official Gazette of February 13, 2007
in International Class 05

7-ELEVEN, INC.)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	
SUSAN B. BUCENELL,)	
)	
Applicant.)	
_____)	

NOTICE OF OPPOSITION

Opposer, 7-Eleven, Inc. (“7-Eleven”), a Texas corporation, with offices at One Arts Plaza, 1722 Routh Street, Dallas, Texas, believes that it will be harmed by the issuance of a registration for Application Serial Number 78/916,143, and hereby opposes such application.

As grounds for the opposition, 7-Eleven alleges the follows:

1. For decades, and since long prior to June 24, 2006, 7-Eleven has been engaged in the business, *inter alia*, of offering convenience store services and products to the general public at various locations throughout the United States.

2. Since long prior to June 24, 2006, 7-Eleven has used various trademarks, composed, in whole or in part, of the term “gulp” for, *inter alia*, soft drinks for consumption on or off the premises, as well as for beverage containers and other goods, including, but not limited to GULP, BIG GULP, SUPER BIG GULP, DOUBLE GULP, SPORT GULP, MINI GULP, CAR GULP, PRO CAR GULP, GUMMI GULP, SLURP & GULP, CANDY GULP, GARDEN GULP, X-TREME GULP and TEAM GULP (collectively hereinafter “GULP Marks”).

3. There are currently over 5,000 convenience stores throughout the United States operated by 7-Eleven or its franchisees under 7-Eleven's 7-ELEVEN name and mark, which sell, *inter alia*, soft drinks and other goods under 7-Eleven's aforesaid GULP Marks.

4. Due to the fame and popularity of 7-Eleven's GULP Marks and associated products, 7-Eleven's use of GULP Marks was extended to additional goods such as confections, other food products, clothing and sporting goods.

5. Since long prior to June 24, 2006, 7-Eleven and its franchisees annually have sold many tens of millions of dollars of products under the aforesaid GULP Marks, and annually have spent millions of dollars to advertise and promote those products nationally.

6. 7-Eleven has registered a number of its GULP Marks with the United States Patent and Trademark Office, including the following:

<u>MARK</u>	<u>REG. NO.</u>	<u>REG. DATE</u>	<u>GOODS</u>
BIG GULP	1,110,172	12/26/1978	Soft drinks for consumption on or off the premises
SUPER BIG GULP	1,470,871	12/29/1987	Soft drinks for consumption on or off the premises
DOUBLE GULP	1,566,263	11/14/1989	Soft drinks for consumption on or off the premises
DOUBLE GULP (stylized)	1,615,968	10/2/1990	Soft drinks for consumption on or off the premises
GULP	1,586,016	3/6/1990	Soft drinks for consumption on or off the premises
BIG GULP FLAVOR SHOT	2,749,708	8/12/2003	Soft drinks and syrups or concentrates added to soft drinks for consumption on or off the premises
BIG GULP SODA FLOAT	2,997,248	9/20/2005	Soft drinks containing ice cream for consumption on or off the premises

MARK	REG. NO.	REG. DATE	GOODS
CAR GULP	2,494,955	10/2/2001	Reusable plastic cups; soft drinks for consumption on or off the premises
X-TREME GULP 7-ELEVEN & Design	2,528,578	1/8/2002	Beverage containers, namely, mugs; soft drinks for consumption on or off the premises
PRO CAR GULP	2,928,007	2/22/2005	Reusable plastic cups; soft drinks for consumption on or off the premises
BIG GULP	3,076,786	4/4/2006	Confectionery products, namely candy
TEAM GULP	3,082,886	4/18/2006	Beverage containers, namely, reusable plastic cups, plastic sports and squeeze bottles sold empty

These registrations are valid, subsisting and owned by 7-Eleven, and Registration Numbers 1,110,172, 1,470,871, 1,566,263, 1,586,016 and 1,615,968 are now incontestable in accordance with Sections 15 and 33(b) of the Trademark Act, 15 U.S.C. §§ 1065 & 1115(b).

7. Since long prior to June 24, 2006, 7-Eleven has owned an invaluable goodwill represented by each of its GULP Marks.

8. Since long prior to June 24, 2006, 7-Eleven has owned a family of “Gulp” marks for its aforesaid products.

9. Since long prior to June 24, 2006, each of 7-Eleven’s GULP Marks became famous within the meaning of Section 43(c) of the United States Trademark Act, 15 U.S.C. § 1125(c).

10. Applicant, Sarah B. Bucenell, has filed an intent-to-use application Serial No. 78/916,143 to register the trademark HEALTHY GULP for pet beverages, namely vitamin, mineral, and supplement enriched flavored and plain purified bottled water for cats and dogs (collectively “Pet Beverages”).

11. On information and belief, Applicant made no use of the trademark HEALTHY GULP for Pet Beverages prior to June 24, 2006.

12. Applicant’s mark HEALTHY GULP consists of or comprises a mark which so resembles each of 7-Eleven’s GULP Marks as to be likely, when used for Pet Beverages, to cause confusion, or to cause mistake, or to deceive; wherefore registration of Applicant’s said mark would violate Section 2(d) of the United States Trademark Act, 15 U.S.C. § 1052(d).

13. Use of Applicant’s aforesaid mark HEALTHY GULP for each of the applied for goods is likely to dilute the distinctive quality of each of 7-Eleven’s GULP Marks; wherefore registration of Applicant’s said mark would violate Sections 2(f) and 43(c) of the United States Trademark Act, 15 U.S.C. §§ 1052(f) & 1125(c).

WHEREFORE, Susan B. Bucenell is not entitled to register the trademark HEALTHY GULP, and any such registration would be damaging to 7-Eleven.

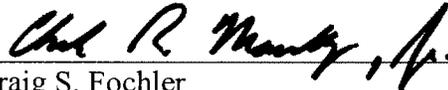
7-Eleven herewith submits the requisite filing fee in the sum of three hundred dollars (\$300). Please deduct any underpayment of requisite fees regarding the prosecution of this opposition from, or credit any overpayment to, the deposit account of Foley & Lardner LLP, Deposit Account Number 19-0741.

Please address all communications to Craig S. Fochler, Foley & Lardner LLP, 321 North Clark Street, Chicago, Illinois 60610; Telephone No. (312) 832-4500; email address ptomailchicago@foley.com.

Dated: June 13, 2007

Respectfully submitted,

FOLEY & LARDNER LLP

A handwritten signature in black ink, reading "Charles R. Mandly, Jr.", is written over a horizontal line.

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