

ESTTA Tracking number: **ESTTA157170**

Filing date: **08/16/2007**

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	KELLOGG NORTH AMERICA COMPANY
Granted to Date of previous extension	08/19/2007
Address	One Kellogg Square PO Box 3599 Battle Creek, MI 49016 UNITED STATES
Correspondence information	DAVID A. HERDMAN ASSISTANT SECRETARY/CORPORATE COUNSEL KELLOGG NORTH AMERICA COMPANY One Kellogg Square PO Box 3599 Battle Creek, MI 49016-3599 UNITED STATES trademarks@kellogg.com Phone:269-961-2170

### Applicant Information

Application No	78905628	Publication date	02/20/2007
Opposition Filing Date	08/16/2007	Opposition Period Ends	08/19/2007
Applicant	Perdue Holdings, Inc. 1105 N. Market St. Wilmington, DE 19801 UNITED STATES		

### Goods/Services Affected by Opposition

Class 029. All goods and services in the class are opposed, namely: Poultry; Frozen, prepared or packaged entrees consisting primarily of meat, fish, poultry or vegetables
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### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	78723996	Application Date	09/30/2005
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	MEAL STARTERS		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 029. First use: VEGGIE FOOD PRODUCTS, NAMELY, VEGETABLE BASED MEAT SUBSTITUTE-TEXTURED VEGETABLE PROTEIN FOODS HAVING A MEAT-LIKE FLAVOR; VEGETABLE-BASED BEEF AND CHICKEN SUBSTITUTE

Attachments	78723996#TMSN.jpeg ( 1 page )( bytes ) MEAL TIME STARTERS & DESIGN Opposition Notice Scan.pdf ( 5 pages )(1468354 bytes )
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Signature	/DAVID A. HERDMAN/
Name	DAVID A. HERDMAN
Date	08/16/2007

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

<b>KELLOGG NORTH AMERICA COMPANY</b>	)	
	)	
Opposer,	)	
	)	
v.	)	
	)	<b>Opposition No.</b> _____
	)	Serial No. 78/905,628
<b>PERDUE HOLDINGS, INC.</b>	)	Mark: MEAL TIME STARTERS
	)	AND DESIGN
Applicant.	)	Filing Date: June 12, 2006
	)	Publication Date: February 20, 2007

**NOTICE OF OPPOSITION**

Kellogg North America Company, a Delaware corporation, located and doing business at One Kellogg Square, P.O. Box 3599, Battle Creek, Michigan 49016, (hereinafter called "Opposer"), believes that it will be damaged by the registration of the mark shown in Application Serial No. 78/905,628 in Class 29, filed by Perdue Holdings, Inc. (hereinafter "Applicant") on June 12, 2006, and opposes Application Serial No. 78/905,628.

The grounds for this opposition are as follows:

1. Commencing long prior to Applicant's filing date, Opposer and Opposer's predecessor in interest, Kellogg Company, have engaged, and Opposer is now engaged in the manufacture, distribution, sale, advertising and promotion in interstate commerce of food products, including frozen entrees, and an ever expanding range of licensed and promotional non-food products and services.

2. Commencing prior to Applicant's filing date and or any use by Applicant, Opposer has used and Opposer is now using Opposer's MEAL STARTERS trademark in connection with food products, including frozen entrees and vegetable based meat alternatives, including poultry alternatives.

3. Opposer is owner of, and will rely herein, upon the filing priority of the following trademark application:

MARK	APP. NO.	APP. DATE	GOODS
MEAL STARTERS	78/723,996	09/30/2005	Veggie food products, namely, vegetable based meat substitute-textured vegetable protein foods having a meat-like flavor, vegetable-based beef and chicken substitute

The above mark predates the filing date of Applicant's Intent to Use application, for which no Statement of Use has yet been filed.

4. In addition to the application priority for the allowed mark specified above, Opposer shall rely herein upon its actual common law usage of its MEAL STARTERS mark, which together with the application noted above is herein referred to as Opposer's Mark.

5. Opposer has made substantial investment in advertising and promoting its goods under Opposer's Mark since its initial use in 2005. Opposer has extensively used, advertised, promoted and offered Opposer's goods bearing Opposer's Mark to the public through various channels of trade in commerce, all since dates prior to the filing of Applicant's application, with the result that Opposer's customers and the public in general have come to know and recognize Opposer's Mark and associate the same with Opposer and/or the goods sold or provided by Opposer.

6. Upon information and belief, notwithstanding Opposer's rights in and to Opposer's Mark, on June 12, 2006, Applicant filed an application for registration of the MEAL TIME STARTERS and Design trademark, for "poultry; frozen, prepared or packaged entrees consisting primarily of meat, fish, poultry or vegetables" in International Class 29. Said application was assigned Serial No. 78/905,628, and was published for Opposition in the Official Gazette of February 20, 2007.

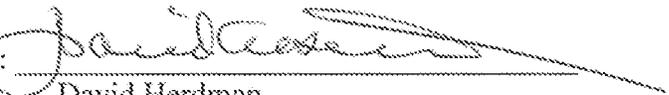
7. Applicant's MEAL TIME STARTERS and Design mark, which incorporates the entirety of Opposer's Mark, so resembles Opposer's Mark as to be likely, when applied to the proposed related goods of Applicant, to cause confusion or mistake or to deceive users resulting in damage and detriment of Opposer and its reputation.

8. Opposer, upon information and belief, avers that its customers, and the public in general, are likely to be confused, mistaken or deceived as to the origin and sponsorship of Applicant's proposed goods to be marketed under Applicant's alleged MEAL TIME STARTERS and Design mark and misled into believing that such goods emanate from, or are licensed by, or are in some way directly or indirectly associated with Opposer, to the damage and detriment of Opposer and its reputation.

9. Opposer, upon information and belief, avers that it will be damaged by the registration by Applicant of the alleged MEAL TIME STARTERS and Design trademark, as set forth in Applicant's Trademark Application Serial No. 78/905,628, in that the mark is substantially similar to Opposer's Mark and the respective goods are closely related in that both product lines, as described in their respective trademark applications, include vegetable based foods and are or are proposed to be sold and distributed through similar frozen food channels of trade to the general public, and would thus be presumed to emanate from Opposer, either directly or indirectly.

Wherefore, this Opposer, Kellogg North America Company, believes and avers that it will be damaged by registration of the alleged MEAL TIME STARTERS and Design trademark as aforesaid, prays that said Application Serial No. 78/905,628 be rejected, that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

Respectfully Submitted,  
KELLOGG NORTH AMERICA COMPANY

By: 

David Herdman  
Assistant Secretary and  
Corporate Counsel  
Kellogg North America Company  
One Kellogg Square  
P.O. Box 3599  
Battle Creek, MI 49016

Date: August 15, 2007

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

KELLOGG NORTH AMERICA COMPANY	)	
	)	
Opposer,	)	
	)	
v.	)	
	)	Opposition No. _____
	)	Serial No. 78/905,628
PERDUE HOLDINGS, INC.	)	Mark: MEAL TIME STARTERS
	)	AND DESIGN
Applicant.	)	Filing Date: June 12, 2006
	)	Publication Date: February 20, 2007

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Notice of Opposition has been served on the following counsel and correspondent for Perdue Holdings, Inc. by mailing said copy on August 16, 2007, via First Class Mail, postage prepaid to:

Sherry H. Flax  
Saul Ewing LLP  
500 East Pratt Street, Suite 900  
Baltimore, MD 21202-3170

  
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Susan A. Geist