

ESTTA Tracking number: **ESTTA200114**

Filing date: **03/24/2008**

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	ProMark Brands Inc.
Granted to Date of previous extension	03/23/2008
Address	2541 North Stokesberry Place, Suite 100 Meridian, ID 83636 UNITED STATES

Attorney information	Timothy P. Fraelich Jones Day 901 Lakeside Avenue Cleveland, OH 44114 UNITED STATES tfraclich@jonesday.com, clkiedrowski@jonesday.com, jwalworth@jonesday.com,pcyngier@jonesday.com Phone:216-586-1247
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**Applicant Information**

Application No	77138509	Publication date	09/25/2007
Opposition Filing Date	03/24/2008	Opposition Period Ends	03/23/2008
Applicant	New World Pasta Company 85 Shannon Road Harrisburg, PA 17112 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 030. All goods and services in the class are opposed, namely: pasta, sauce, prepared or packaged meals consisting primarily of pasta and containing sauce
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**Grounds for Opposition**

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

U.S. Registration No.	2916539	Application Date	01/14/2004
Registration Date	01/04/2005	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2001/04/01 First Use In Commerce: 2001/04/01 Pre-cooked ready-to-eat frozen bread or wrap having a meat and/or vegetable filling with or without cheese

U.S. Registration No.	2916538	Application Date	01/14/2004
Registration Date	01/04/2005	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1997/11/30 First Use In Commerce: 1997/11/30 Pizza		

U.S. Registration No.	2204080	Application Date	01/08/1998
Registration Date	11/17/1998	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1997/11/03 First Use In Commerce: 1997/11/03 Frozen desserts consisting of milk based or milk substitute based desserts, cakes, pies and mousses		

U.S. Registration No.	1911590	Application Date	05/20/1994
Registration Date	08/15/1995	Foreign Priority Date	NONE
Word Mark	SMART ONES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1992/05/01 First Use In Commerce: 1992/05/01 frozen entrees consisting primarily of chicken, beef, fish and/or vegetables Class 030. First use: First Use: 1992/05/01 First Use In Commerce: 1992/05/01 frozen entrees consisting primarily of pasta and/or rice alone or in combination with other foods		

Attachments	78352011#TMSN.jpeg ( 1 page )( bytes ) 78351994#TMSN.jpeg ( 1 page )( bytes ) 931063205005.pdf ( 3 pages )(107973 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Timothy P. Fraelich/
Name	Timothy P. Fraelich
Date	03/24/2008

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

In the matter of Trademark Application No. 77/138509  
For the mark SMART TASTE  
Date filed: March 23, 2007  
Published: September 25, 2007

PROMARK BRANDS, INC.  
2541 North Stokesberry Place  
Suite 100  
Meridian, Idaho 83642

Opposition No. \_\_\_\_\_

Opposer,

v.

NEW WORLD PASTA COMPANY  
85 Shannon Road  
Harrisburg, Pennsylvania 17112

Applicant.

COMMISSIONER FOR TRADEMARKS  
P.O. Box 1451  
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

1. Opposer, PROMARK BRANDS, INC., a corporation organized and existing under the laws of the State of Idaho, located and doing business at 2541 North Stokesberry Place, Suite 100, Meridian, Idaho, 83642 ("Opposer") believes that it will be damaged by registration of Application No. 77/138509 for the word SMART TASTE and hereby opposes same pursuant to 15 U.S.C. §§ 1052 and 1063.

2. To the best of Opposer's knowledge, the name and address of the current owner of the application is: NEW WORLD PASTA COMPANY, 85 Shannon Road, Harrisburg, Pennsylvania 17112.

As grounds for opposition, it is alleged that:

3. Applicant, New World Pasta Company, filed the above cited application to register the mark SMART TASTE in connection with the following goods: “pasta, sauce, prepared or packaged meals consisting primarily of pasta and containing sauce”, in International Class 30. The application was published for opposition in the Official Gazette on September 25, 2007.

4. Opposer is the owner of United States Registration No. 2916539 issued on January 4, 2005 for the mark SMART ONES (the “Mark”) to identify “pre-cooked ready-to-eat frozen bread or wrap having a meat and/or vegetable filling with or without cheese”, in International Class 30.

5. Opposer, since as early as April 1, 2001 has been, and is now, using the mark SMART ONES throughout the United States and internationally in connection with goods described above.

6. Opposer is the owner of United States Registration No. 2916538 issued on January 4, 2005 for the mark SMART ONES (the “Mark”) to identify “pizza”, in International Class 30.

7. Opposer, since as early as April 1, 2001 has been, and is now, using the mark SMART ONES throughout the United States and internationally in connection with goods described above.

8. Opposer is the owner of United States Registration No. 2204080 issued on November 17, 1998 for the mark SMART ONES (the “Mark”) to identify “frozen desserts consisting of milk based or milk substitute based desserts, cakes, pies and mousses”, in International Class 30.

9. Registration No. 2204080 is valid, has not been abandoned by Opposer, and has become incontestable.

10. Opposer is the owner of United States Registration No. 1911590 issued on August 15, 1995 for the mark SMART ONES (the “Mark”) to identify “frozen entrees consisting primarily of chicken, beef, fish and/or vegetables”, in International Class 29, and “frozen entrees consisting primarily of pasta and/or rice alone or in combination with other foods”, in International Class 30.

11. Registration No. 1911590 is valid, has not been abandoned by Opposer, and has become incontestable.

12. Opposer's continuous and commercially successful use of its Mark is symbolic of extensive good will and consumer recognition built up by Opposer through substantial amounts of time and effort in advertising and promotion of such Mark and has come to serve as a unique identifier of Opposer's goods.

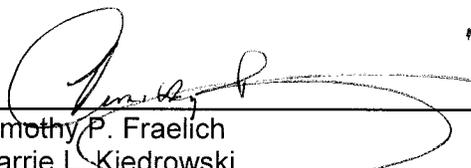
13. In view of the similarity of the respective marks and the related nature of the goods and services of the respective parties, it is alleged that Applicant's mark SMART TASTE so resembles Opposer's Mark, as to be likely to cause confusion, or to cause mistake, or to deceive by suggesting that Applicant's goods and services are associated with or approved, endorsed, authorized or sponsored by Opposer.

14. The Commissioner is hereby authorized to charge Jones Day's Deposit Account No. 50-1432, in the amount of \$300 to account number 931063-205005. In case any other fees are required, please also charge this Deposit Account.

WHEREFORE, Opposer prays that Application No. 77/138509 for the word SMART TASTE be denied registration and that this Opposition be sustained in favor of Opposer.

Dated this 24<sup>th</sup> of March, 2008.

Respectfully submitted,

By:   
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