

ESTTA Tracking number: **ESTTA224439**

Filing date: **07/16/2008**

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	Super Bakery, Inc.
Granted to Date of previous extension	07/16/2008
Address	5700 Corporate Drive Suite 455 Pittsburgh, PA 15237 UNITED STATES

Attorney information	John W. McIlvaine The Webb Law Firm 700 Koppers Building 436 Seventh Avenue Pittsburgh, PA 15219 UNITED STATES webblaw@webblaw.com Phone:(412) 471-8815
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Applicant Information

Application No	77019705	Publication date	03/18/2008
Opposition Filing Date	07/16/2008	Opposition Period Ends	07/16/2008
International Registration No.	NONE	International Registration Date	NONE
Applicant	Natur-All Pty Ltd. 307 Burwood Road Hawthorn Victoria, 3122 AUSTRALIA		

Goods/Services Affected by Opposition

Class 030. All goods and services in the class are opposed, namely: Nutritional health food snacks, namely, flour or grain or rice-based health food bars containing fruits and/or nuts; health food bars covered in carob, yogurt or chocolate; biscuits, cakes, pastries; confectionery, namely, fruit covered in carob, yogurt or chocolate

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.	3435967	Application Date	09/26/2005
Registration Date	05/27/2008	Foreign Priority	NONE

		Date	
Word Mark	SUPER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2002/06/24 First Use In Commerce: 2002/06/24 Confectionery, namely, candy bars		

U.S. Application No.	78855861	Application Date	04/06/2006
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	SUPER CEREAL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: mixes for bakery goods, breakfast cereals and ready-to-eat cereal derived bars		

U.S. Registration No.	2885413	Application Date	07/16/2003
Registration Date	09/14/2004	Foreign Priority Date	NONE
Word Mark	SUPER CHOCOLATE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2002/06/24 First Use In Commerce: 2002/06/24 CONFECTIONERY, NAMELY, CANDY BARS		

Attachments	78720268#TMSN.jpeg (1 page)(bytes) 78855861#TMSN.jpeg (1 page)(bytes) 76590604#TMSN.gif (1 page)(bytes) Notice of Opposition.pdf (4 pages)(283234 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	/JWMc/
Name	John W. McIlvaine
Date	07/16/2008

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

SUPER BAKERY, INC.,	:	Opposition No. (Not Yet Assigned)
	:	
Opposer,	:	Application Serial No. 77/019,705
	:	
v.	:	Trademark: NATURES SUPER FOODS
	:	and Design
NATUR-ALL PTY. LTD.,	:	
	:	Published: March 18, 2008
Applicant.	:	

NOTICE OF OPPOSITION

Opposer, Super Bakery, Inc., having its principal place of business at 5700 Corporate Drive, Suite 455, Pittsburgh, PA 15237 (“Opposer”) believes it will be damaged by registration of the alleged mark “NATURES SUPER FOODS and Design” in International Class 30 shown in Application Serial No. 77/019,705 (referred to hereinafter as “the Application”) and hereby opposes the Application under the provisions of 15 U.S.C. § 1063.

As grounds for opposing this registration, Opposer avers as follows:

1. Opposer is a corporation existing under the laws of the Commonwealth of Pennsylvania, is located in Pittsburgh, Pennsylvania and is doing business in Pittsburgh and elsewhere throughout the United States.
2. Opposer is engaged in the field of Baked Goods, including nutritionally fortified bakery products, candy bars, ready-to-eat cereal derived bars and other baked goods sold at the retail and wholesale level and through other channels.

3. Opposer is the owner of “SUPER and Design” United States Registration No. 3,435,967, “SUPER CEREAL” United States Application No. 78/855,861, “SUPER CHOCOLATE” United States Registration No. 2,885,413 and also the corporate and trade name, Super Bakery, Inc. Opposer also owns many other “SUPER” trademarks registered by the United States Patent and Trademark Office.

4. Over the years, Opposer’s nutritional baked goods, provided under its marks have gained major recognition and wide acceptance, and opposer has established secondary meaning in the term SUPER when used as a trademark in connection with nutritionally fortified bakery products, candy bars, ready-to-eat cereal derived bars and other baked goods.

5. Because of Opposer’s extensive use of its trade name and trademarks, it has substantial goodwill which is an extremely valuable asset of Opposer, and purchasers of such goods and services have come to associate SUPER and Design, SUPER CEREAL, SUPER CHOCOLATE and SUPER as well as the other SUPER trademarks with Opposer.

6. Upon information and belief, Applicant Natur-All Pty Ltd. is an Australian Company with a place of business at 307 Burwood Road Hawthorn, Victoria 3122, Australia.

7. The Application was filed October 12, 2006, and seeks registration of NATURES SUPER FOODS and Design as a trademark for Nutritional health food snacks, namely, flour or grain or rice-based health food bars containing fruits and/or nuts; health food bars covered in carob, yogurt or chocolate; biscuits, cakes, pastries; confectionery, namely, fruit covered in carob, yogurt or chocolate in International Class 030.

8. Applicant’s mark was published for opposition on March 18, 2008.

9. Applicant's use of NATURES SUPER FOODS and Design on or in connection with its goods and services in Class 030 is likely to cause confusion or to cause mistake, or will deceive the public into believing that said goods and services emanate from Opposer and/or are licensed by Opposer and/or are approved by Opposer.

10. If Applicant is permitted to register NATURES SUPER FOODS and Design, the goodwill of Opposer's marks will be adversely affected.

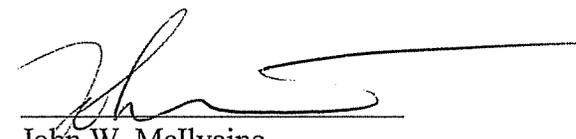
11. 15 U.S.C. § 1052(d) bars Applicant's mark from registration.

12. Accordingly, Opposer will be damaged by registration of NATURES SUPER FOODS and Design to Applicant.

WHEREFORE, Opposer respectfully prays that the registration sought by Applicant be refused and that this opposition be sustained.

The undersigned hereby authorizes the United States Patent and Trademark Office to charge any additional fees for Deposit Account No. 23-0650 and refund any overpayment in the form of a check.

Dated: July 16, 2008



John W. McIlvaine
Registration No. 34,219

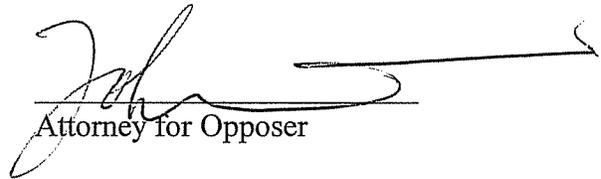
THE WEBB LAW FIRM
700 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
Telephone No.: (412) 471-8815
Facsimile No.: (412) 471-4094
E-mail: webblaw@webblaw.com

Counsel for Opposer

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the **NOTICE OF OPPOSITION** was served via first class mail, postage pre-paid, this 16th day of July, 2008 upon the following:

John Alunit
Patel and Alunit, PC
16830 Ventura Boulevard
Suite 360
Encino, CA 91436


Attorney for Opposer