

ESTTA Tracking number: **ESTTA572794**

Filing date: **11/25/2013**

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

Proceeding	91186148
Party	Plaintiff Publix Asset Management Company
Correspondence Address	JAMES B LAKE THOMAS & LOCICERO PL 601 SOUTH BOULEVARD TAMPA, FL 33606 UNITED STATES jlake@tlolawfirm.com, tgilley@tlolawfirm.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	James B. Lake
Filer's e-mail	jlake@tlolawfirm.com, tgilley@tlolawfirm.com
Signature	/s/ James B. Lake
Date	11/25/2013
Attachments	Notice of Reliance re Applicant's oppositions.pdf(4203212 bytes)

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

Publix Asset Management Company,

Opposer,

v.

Opposition No. 91186148

Opposition No. 91186863

The Great Atlantic & Pacific Tea
Company, Inc.,

Applicant.

NOTICE OF RELIANCE

Pursuant to Trademark Rule 2.122(e), Opposer, Publix Asset Management Company (“Publix”), gives notice of reliance on the attached notices of opposition by Applicant, The Great Atlantic & Pacific Tea Company, Inc. (“A&P”). These notices are:

<u>Exhibit.</u>	<u>Opposition</u>
72	<i>The Great Atlantic & Pacific Tea Company, Inc., v. New Sprout Organic Farms, LLC</i> , Opp. No. 91210999 (accessed 22 Nov 2013)
73	<i>The Great Atlantic & Pacific Tea Company, Inc., v. Whole Foods Market IP, L.P.</i> , Opp. No. 91210702 (accessed 22 Nov 2013)
74	<i>The Great Atlantic & Pacific Tea Company, Inc., v. General Mills Marketing, Inc.</i> , Opp. No. 91206874 (accessed 22 Nov 2013)
75	<i>The Great Atlantic & Pacific Tea Company, Inc., v. Campo Verde Tucan General Mills Marketing, Inc.</i> , Opp. No. 91203500 (accessed 22 Nov 2013)

These notices of opposition are official Patent & Trademark Office records that were obtained from – and are available on – the Trademark Trial and Appeal Board’s web site at ttabvue.uspto.gov. The particular URL address for each notice appears on the first page of each exhibit. The notices are evidence that non-identical marks can be confusingly similar. The

notices, therefore, are relevant to the first likelihood of confusion factor (i.e., similarity of the marks). This evidence is offered to rebut A&P's contention that the slight difference between GREENWISE and GREEN WAY distinguishes those marks. See, e.g., Beth Curran October 2013 Trial Testimony, pages 72-74.

Respectfully submitted,

THOMAS & LOCICERO PL



Carol Jean LoCicero

Florida Bar No. 603030

James B. Lake

Florida Bar No. 0023477

jlake@tlolawfirm.com

601 South Boulevard (33606)

Tampa, FL 33601-2602

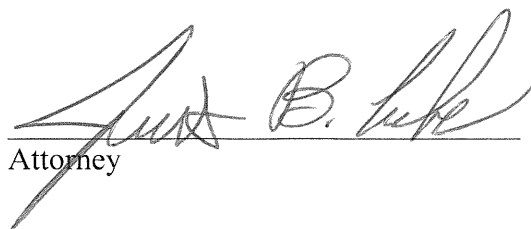
Telephone: (813) 984-3060

Attorneys for Opposer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on Nov. 25, 2013, a true and complete copy of the foregoing notice with attachments has been sent by E-mail Facsimile Express Mail Hand Delivery First Class U.S. Mail, postage pre-paid, to:

Arlana S. Cohen, Esq.
ASC@cll.com
Cowan, Liebowitz & Latman
1133 Avenue of the Americas
New York, NY 10036



Attorney

Trademark Trial and Appeal Board Electronic Filing System: <http://estta.uspto.gov>ESTTA Tracking number: **ESTTA542611**Filing date: **06/10/2013**

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	The Great Atlantic & Pacific Tea Company, Inc.
Granted to Date of previous extension	06/09/2013
Address	2 Paragon Drive Montvale, NJ 07645 UNITED STATES

Attorney information	Ariana S. Cohen Cowan, Liebowitz & Latman, P.C. 1133 Avenue of the Americas New York, NY 10036 UNITED STATES asc@cli.com, mlg@cli.com, trademark@cli.com, sbi@cli.com, jaj@cli.com Phone: 212-790-9200
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Applicant Information

Application No	85663125	Publication date	12/11/2012
Opposition Filing Date	06/10/2013	Opposition Period Ends	06/09/2013
Applicant	New Sprout Organic Farms, LLC 1070-1 Tunnel Road, Suite 10-225 Asheville, NC 28805 UNITED STATES		

Goods/Services Affected by Opposition

Class 031. First Use: 2011/07/01 First Use In Commerce: 2011/07/01 All goods and services in the class are opposed, namely: Organic fresh fruit and vegetables; organic fresh herbs; organic fresh produce, namely, fruits, vegetables, and herbs
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Grounds for Opposition

Other	Please see attached pleading as response.
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Attachments	Notice of Opposition - New Sprout Organic Farms.pdf(214593 bytes)
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Certificate of Service

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

Opposer's Ex. 72

Publix v. The Great Atlantic & Pacific
Tea Co., Opp. Nos.
91186148 & 91186863

Signature	/Arlana S. Cohen/
Name	Arlana S. Cohen
Date	06/10/2013

3. Opposer began offering these services at least as early as January 2007. Since then, it has extensively advertised and promoted these services under the service mark LIVE BETTER.

4. Opposer is the owner of the mark LIVE BETTER for *inter alia* retail supermarket services and for various personal care items, including dietary supplements.

5. Specifically, Opposer is the owner of U.S. Registration Number 4325358 filed April 23, 2013 for the mark LIVE BETTER for “retail supermarket services” and U.S. Registration No. 4089723 dated January 24, 2012 for:

Class 3: Soap, namely, foot soap or body soap for personal cleansing; foot deodorant spray;

Class 5: Eye drops; saline solution for medical and sanitary purposes; pregnancy test kits for home use; tampons; sanitary pads; panty liners; rubbing alcohol; ibuprofen for use as an oral analgesic, as children's drops or as nasal sprays; preparations for treating colds and allergy medications; anti-septic or anti-bacterial mouth wash; bandages for dressings; hydrogen peroxide for medical use and cleansing; witch hazel; epsom salts; antacids; dietary fiber caplets as an additive for food products; vitamins; aspirin; sleeping aids, namely, pills/tablets, caplets, gel-caps, and capsules; cough drops; corn pads; hand sanitizing preparations; pharmaceutical preparations for use in the removal of warts; dietary supplemental drinks; medicated anti-septic or anti-bacterial foot powder; shoe deodorizers, namely, sneaker spray;

Class 10: Fever thermometers;

Class 11: Water filtration pitchers sold empty;

Class 21: Dental floss; dental tape; disposable latex gloves for general use; and

Class 25: Foot care devices in the nature of insoles, namely, gel insoles, bamboo insoles, foam insoles, ball-of-foot insoles, heel liner inserts, odor-stopper insoles, open-style insoles.

6. The advertising and promotion of the LIVE BETTER WELLNESS CLUB services has resulted in the mark acquiring tremendous goodwill and recognition among the consuming public.

7. Opposer is also the owner of two U.S. Trademark Registrations for the mark LIVE BETTER WELLNESS CLUB and LIVE BETTER WELLNESS CLUB & Design, Registration numbers 3452346 dated June 24, 2008, and 3491210 dated August 26, 2008 respectively.

(“Hereinafter Opposer’s LIVE BETTER Marks and Opposer’s LIVE BETTER WELLNESS CLUB Marks will be combined herein as Opposer’s LIVE BETTER Marks.”)

8. On or about June 27, 2012, Applicant filed an application in the United States Patent and Trademark Office, Serial No. 85/663,125, for registration on the Principal Register of LIVE BETTER. EAT ORGANIC. for “organic fresh fruit and vegetables; organic fresh herbs; organic fresh produce, namely, fruits, vegetables” in International Class 31 based on an alleged date of first use of July , 2011.

9. The goods in the application are closely related and/or identical to the goods covered by and services rendered in connection with Opposer’s LIVE BETTER Marks.

10. Applicant’s mark so resembles Opposer’s LIVE BETTER Marks as to be likely, when used in connection with Applicant’s goods, to cause confusion, to cause mistake, and to deceive the trade and public, who are likely to believe that Applicant’s goods have their origin with Opposer and/or that such goods are approved, endorsed or sponsored by Opposer or associated in some way with Opposer. Opposer would thereby be injured by the granting to Applicant of a registration for Applicant’s mark.

11. Purchasers and potential purchasers, on seeing Applicant's LIVE BETTER. EAT ORGANIC. mark used in connection with its goods is likely to believe, in error, that such services are offered in association or affiliation with or under license from Opposer.

12. Furthermore, any objection to or fault found with Applicant's goods provided under its mark would necessarily reflect on and seriously injure the reputation that Opposer has established for its goods and services using its LIVE BETTER and LIVE BETTER WELLNESS CLUB Marks.

13. If Applicant were granted a registration for the mark herein opposed, it would obtain thereby at least a *prima facie* exclusive right to use the mark. Such registration would be a source of damage and injury to Opposer.

WHEREFORE, Opposer prays that registration of the mark of application serial no. 85/663,125 be refused and that this opposition be sustained.

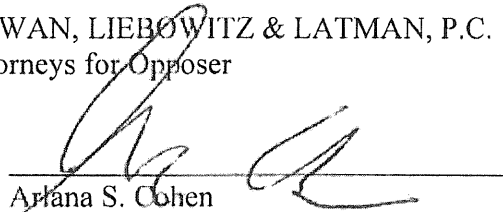
The filing fee of \$300 is enclosed herewith and any additional fees or delinquencies deemed due and owing in connection with this opposition may be charged to Deposit Account No. 03-3415 and any overpayment may be credited thereto.

Dated: New York, New York
June 10, 2013

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposer

By

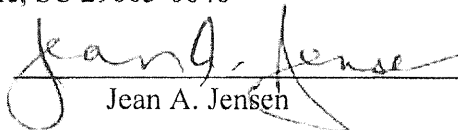

Ariana S. Cohen

1133 Avenue of the Americas
New York, New York 10036-6799
(212) 790-9200

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 10, 2013 she caused a true copy of the foregoing **NOTICE OF OPPOSITION** to be served via first class mail, postage pre-paid, to the following:

Amy Allen Hinson
Nexsen Pruet, LLC
P.O. Box 10648
Greenville, SC 29603-0648



Jean A. Jensen

Trademark Trial and Appeal Board Electronic Filing System: <http://esta.uspto.gov>ESTTA Tracking number: **ESTTA538914**Filing date: **05/20/2013**

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	The Great Atlantic & Pacific Tea Company, Inc.
Granted to Date of previous extension	05/19/2013
Address	2 Paragon Drive Montvale, NJ 07645 UNITED STATES

Attorney information	Ariana S. Cohen Cowan, Liebowitz & Latman, P.C. 1133 Avenue of the Americas New York, NY 10036 UNITED STATES asc@cli.com, mgg@cli.com, trademark@cli.com, sbi@cli.com, jaj@cli.com Phone: 212-790-9200
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Applicant Information

Application No	85327696	Publication date	11/20/2012
Opposition Filing Date	05/20/2013	Opposition Period Ends	05/19/2013
Applicant	Whole Foods Market IP, L.P. 550 Bowie Street, 6th Floor Austin, TX 78703 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. First Use: 2011/08/15 First Use in Commerce: 2011/08/15 All goods and services in the class are opposed, namely: Administration of a discount program for enabling participants to obtain discounts on goods and services
Class 044. First Use: 2011/08/15 First Use in Commerce: 2011/08/15 All goods and services in the class are opposed, namely: Medical clinics; health care services; Counseling services in the fields of health, nutrition, and herbalism; conducting personal health assessments in the nature of medical evaluation, screening and testing for diagnostic and treatment purposes

Grounds for Opposition

Other	Please see attached pleading as response.
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Attachments	Notice Opp WELLNESS CLUB 85327696.pdf(15754 bytes)
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Opposer's Ex. 73

Publix v. The Great Atlantic & Pacific
Tea Co., Opp. Nos.
91186148 & 91186863

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	/Arlana S. Cohen/
Name	Arlana S. Cohen
Date	05/20/2013

3. Opposer began offering these services at least as early as January 2007. Since then, it has extensively advertised and promoted these services under the service mark LIVE BETTER WELLNESS CLUB and/or WELLNESS CLUB.

4. The advertising and promotion of the LIVE BETTER WELLNESS CLUB and/or WELLNESS CLUB services has resulted in the mark acquiring recognition among the consuming public as emanating from Opposer.

5. Opposer is the owner of two U.S. Trademark Registrations for the mark LIVE BETTER WELLNESS CLUB and LIVE BETTER WELLNESS CLUB & Design, Registration numbers 3452346 dated June 24, 2008, and 3491210 dated August 26, 2008 respectively (“LIVE BETTER WELLNESS CLUB Registrations”). (“Hereinafter Opposer’s LIVE BETTER WELLNESS CLUB Registrations and Opposer’s LIVE BETTER WELLNESS CLUB and/or WELLNESS CLUB Marks will be combined herein as Opposer’s Marks.”)

6. Opposer’s LIVE BETTER WELLNESS CLUB Registrations are valid and subsisting.

7. On or about May 23, 2011, Applicant filed an application in the United States Patent and Trademark Office, Serial No. 85/327,696, for registration on the Principal Register of WELLNESS CLUB WHOLE FOODS MARKET for “administration of discount program for enabling participants to obtain discounts on goods and services” in International Class 35 and for “medical clinics; health care services; counseling services in the fields of health, nutrition, and herbalism; conducting personal health assessments in the nature of medical evaluation, screening and testing for diagnostic and treatment purposes” in International Class 43 based on an alleged *bona fide* intent to use.

8. The services in the Application are closely related and/or identical to the services rendered in connection with Opposer's Marks.

9. Applicant's Mark so resembles Opposer's Marks as to be likely, when used in connection with Applicant's services, to cause confusion, to cause mistake, and to deceive the trade and public, who are likely to believe that Applicant's services have their origin with Opposer and/or that such services are approved, endorsed or sponsored by Opposer or associated in some way with Opposer. Opposer would thereby be injured by the granting to Applicant of a registration for Applicant's Mark.

10. Purchasers and potential purchasers, on seeing Applicant's WELLNESS CLUB WHOLE FOODS MARKET mark used in connection with its services is likely to believe, in error, that such services are offered in association or affiliation with or under license from Opposer.

11. Furthermore, any objection to or fault found with Applicant's services provided under its mark would necessarily reflect on and seriously injure the reputation that Opposer has established for its services.

12. If Applicant were granted a registration for the mark herein opposed, it would obtain thereby at least a *prima facie* exclusive right to use the mark. Such registration would be a source of damage and injury to Opposer.

WHEREFORE, Opposer prays that registration of the mark of Application Serial No. 85/327,696 be refused and that this opposition be sustained.

The filing fee of \$600 is enclosed herewith and any additional fees or delinquencies deemed due and owing in connection with this opposition may be charged to Deposit Account No. 03-3415 and any overpayment may be credited thereto.

Dated: New York, New York
May 20, 2013

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposer

By /Arlana S. Cohen/
Arlana S. Cohen
1133 Avenue of the Americas
New York, New York 10036-6799
(212) 790-9200

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 20, 2013 she caused a true copy of the foregoing **NOTICE OF OPPOSITION** to be served via first class mail, postage pre-paid, to the following:

Christopher L. Graff, Esq.
Pirkey Barber PLLC
600 Congress Avenue
Suite 2120
Austin, TX 78701

/Jean A. Jensen/
Jean A. Jensen

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	The Great Atlantic & Pacific Tea Company
Granted to Date of previous extension	09/05/2012
Address	2 Paragon Drive Montvale, NJ 07645 UNITED STATES

Attorney information	HARA K JACOBS BALLARD SPAHR LLP 1735 MARKET STREET, 51ST FLOOR PHILADELPHIA, PA 19103-7599 UNITED STATES jacobsh@ballardspahr.com, militeloc@ballardspahr.com, camposcruzl@ballardspahr.com, philia_tmddocketing@ballardspahr.com Phone: 215.864.8209
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Applicant Information

Application No	85509241	Publication date	05/06/2012
Opposition Filing Date	09/05/2012	Opposition Period Ends	09/05/2012
Applicant	GENERAL MILLS MARKETING, INC. NUMBER ONE GENERAL MILLS BOULEVARD MINNEAPOLIS, MN 55426 UNITED STATES		

Goods/Services Affected by Opposition

Class 041: All goods and services in the class are opposed, namely: Providing a web site featuring information on fitness
Class 044: All goods and services in the class are opposed, namely: Providing a web site featuring information on health, nutrition and lifestyle wellness

Grounds for Opposition


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

U.S. Registration No.	3452346	Application Date	05/21/2007
Registration Date	06/24/2008	Foreign Priority	NONE

Opposer's Ex. 74

Publix v. The Great Atlantic & Pacific
Tea Co., Opp. Nos.
91186148 & 91186863

		Date	
Word Mark	LIVE BETTER WELLNESS CLUB		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2007/01/24 First Use In Commerce: 2007/01/24 Retail store services in the field of pharmaceuticals featuring a bonus incentive program for customers		

U.S. Registration No.	3491210	Application Date	05/21/2007
Registration Date	08/26/2008	Foreign Priority Date	NONE
Word Mark	LIVE BETTER! WELLNESS CLUB		
Design Mark			
Description of Mark	The mark consists of the words "LIVE BETTER" in a distinctive font with an exclamation point. Said exclamation point being a section of a stick figure adjacent to mark. The words "WELLNESS CLUB" in a different font beneath the words "LIVE BETTER" and a swoosh underline beginning from right to left.		
Goods/Services	Class 035. First use: First Use: 2007/01/24 First Use In Commerce: 2007/01/24 Retail store services in the field of pharmaceuticals featuring a bonus incentive program for customers		


U.S. Registration No.	4094111	Application Date	08/26/2009
Registration Date	01/31/2012	Foreign Priority Date	NONE
Word Mark	LIVE BETTER		

Design Mark	<h1>LIVE BETTER</h1>
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Description of Mark	NONE
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Goods/Services	<p>Class 003. First use: First Use: 2009/06/00 First Use In Commerce: 2009/06/00 denture cleaners; petroleum jelly for cosmetic purposes; non-medicated baby ointment for the prevention and treatment of diaper rash; baby bath liquid soap; toothpaste; lip balm; non-medicated mouthwash; non-medicated foot powder</p> <p>Class 005. First use: First Use: 2009/06/00 First Use In Commerce: 2009/06/00 Eye drops; hydrocortisone creams; dietary supplements; vitamin supplements; antiseptic; aspirin; nasal decongestants; medicated mouthwash; aspirin free capsules, namely, ibuprofen for use as an oral analgesic; anti-diarrhea medication; pain relief medication; multivitamin preparations; non-aspirin acetaminophen caplets; topical first aid remedy ointment; acetaminophen gel tabs; cough syrup; expectorants; antihistamines; preparations for treating fever, cold and flu; dental rinse; laxative; dietary supplements; adult incontinence garments; antacids and anti-gas tablets; pain relief medication, allergy and sinus medications; sleeping pills; bandage strips for skin wounds; athletes foot cream; cough drops; panty liners; naproxen sodium caplets; nasal sprays; hemorrhoid treatment ointment; liquid magnesia preparation for the treatment of sour stomach; herbal supplements; petroleum jelly for medical purposes; analgesics; decongestants; calamine anti-itch lotion; sterile pads in the nature of wound dressings; laxative suppository; anti-arthritis compositions and preparations; enemas; gauze roll; bismuth preparations for pharmaceutical purposes; denture adhesive; sore throat anesthetic and sprays; anti-itch cream; medicated foot powder; medicated chest rub; sanitizing wipes; chest congestion relief preparations; stool softener</p> <p>Class 021. First use: First Use: 2009/06/00 First Use In Commerce: 2009/06/00 Dental floss; dental tape</p> <p>Class 025. First use: First Use: 2009/06/00 First Use In Commerce: 2009/06/00 Foot care device in the nature of insoles, namely, gel insoles, bamboo insoles, foam insoles, ball of foot insoles, heel liner, odor stopper insoles, open style insoles and mole foam padding insoles</p>
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U.S. Registration No.	4089723	Application Date	09/17/2010
Registration Date	01/24/2012	Foreign Priority Date	NONE
Word Mark	LIVE BETTER		

Design Mark	
Description of Mark	<p>The mark consists of the words "LIVE BETTER" with an exclamation point, said exclamation point being a section of a stick figure adjacent to mark with curved bar underline which gets thicker from left to right.</p>
Goods/Services	<p>Class 003. First use: First Use: 2009/08/00 First Use In Commerce: 2009/08/00 SOAP, namely, FOOT SOAP OR BODY SOAP FOR PERSONAL CLEANSING; FOOT DEODORANT SPRAY</p> <p>Class 005. First use: First Use: 2009/06/00 First Use In Commerce: 2009/06/00 EYE DROPS; SALINE SOLUTION FOR MEDICAL AND SANITARY PURPOSES; PREGNANCY TEST KITS FOR HOME USE; TAMPONS; SANITARY PADS; PANTY LINERS; RUBBING ALCOHOL; IBUPROFEN FOR USE AS AN ORAL ANALGESIC, AS CHILDREN'S DROPS OR AS NASAL SPRAYS; PREPARATIONS FOR TREATING COLDS AND ALLERGY MEDICATIONS; ANTI-SEPTIC OR ANTI-BACTERIAL MOUTH WASH; BANDAGES FOR DRESSINGS; HYDROGEN PEROXIDE FOR MEDICAL USE AND CLEANSING; WITCH HAZEL; EPSOM SALTS; ANTACIDS; DIETARY FIBER CAPLETS AS AN ADDITIVE FOR FOOD PRODUCTS; VITAMINS; ASPIRIN; SLEEPING AIDS, NAMELY, PILLS/TABLETS, CAPLETS, GEL-CAPS, AND CAPSULES; COUGH DROPS; CORN PADS; HAND SANITIZING PREPARATIONS; PHARMACEUTICAL PREPARATIONS FOR USE IN THE REMOVAL OF WARTS; DIETARY SUPPLEMENTAL DRINKS; MEDICATED ANTI-SEPTIC OR ANTI-BACTERIAL FOOT POWDER; SHOE DEODORIZERS, NAMELY, SNEAKER SPRAY</p> <p>Class 010. First use: First Use: 2009/07/00 First Use In Commerce: 2009/07/00 FEVER THERMOMETERS</p> <p>Class 011. First use: First Use: 2009/06/00 First Use In Commerce: 2009/06/00 WATER FILTRATION PITCHERS SOLD EMPTY</p> <p>Class 021. First use: First Use: 2009/06/00 First Use In Commerce: 2009/06/00 DENTAL FLOSS; DENTAL TAPE; DISPOSABLE LATEX GLOVES FOR GENERAL USE</p> <p>Class 025. First use: First Use: 2009/08/00 First Use In Commerce: 2009/08/00 FOOT CARE DEVICES IN THE NATURE OF INSOLES, NAMELY, GEL INSOLES, BAMBOO INSOLES, FOAM INSOLES, BALL-OF-FOOT INSOLES, HEEL LINER INSERTS, ODOR-STOPPER INSOLES, OPEN-STYLE INSOLES</p>

Attachments	<p>77185924#TMSN.jpeg (1 page)(bytes) 77185766#TMSN.jpeg (1 page)(bytes) 77813448#TMSN.jpeg (1 page)(bytes) 85131981#TMSN.jpeg (1 page)(bytes) Notice of Opposition_US_ LIVE BETTER AMERICA.pdf (24 pages)(1187793 bytes)</p>
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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	/Hara K. Jacobs/
Name	HARA K JACOBS
Date	09/05/2012

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

THE GREAT ATLANTIC & PACIFIC TEA :
COMPANY, INC. :

Opposer, :
v. : Opposition No. _____
GENERAL MILLS MARKETING, INC. :
Applicant. :

NOTICE OF OPPOSITION


In the matter of the application of General Mills Marketing, Inc. (“Applicant”) for registration of the mark LIVE BETTER AMERICA, Application Serial No. 85/509,241 (the “Application”), filed January 5, 2012 and published for opposition in the Official Gazette on May 8, 2012:


The Great Atlantic & Pacific Tea Company, Inc. (“Opposer”), a Maryland corporation, with offices at 2 Paragon Drive, Montvale, New Jersey 07645, believes that it will be damaged by the registration of the mark shown in the above-identified Application and hereby opposes the same. The grounds for opposition are as follows:


1. Opposer owns and operates a chain of well-regarded retail grocery and consumer product stores that sell goods bearing the mark LIVE BETTER, and has done so for many years. For many years, Opposer has also offered related health and wellness consumer incentive program services under the mark LIVE BETTER WELLNESS CLUB.

2. Opposer is the owner of the following federal registrations for the marks LIVE BETTER WELLNESS CLUB®, LIVE BETTER! WELLNESS CLUB® (and design),

LIVE BETTER®, and LIVE BETTER® (and design) (together, “Opposer’s LIVE BETTER Marks”):

Mark	Goods/Services	Registration No.
LIVE BETTER WELLNESS CLUB®	Retail store services in the field of pharmaceuticals featuring a bonus incentive program for customers (Class 35)	3,452,346
LIVE BETTER! WELLNESS CLUB® (and design) 	Retail store services in the field of pharmaceuticals featuring a bonus incentive program for customers (Class 35)	3,491,210
LIVE BETTER®	Denture cleaners; petroleum jelly for cosmetic purposes; non-medicated baby ointment for the prevention and treatment of diaper rash; baby bath liquid soap; toothpaste; lip balm; non-medicated mouthwash; non-medicated foot powder (Class 3) Eye drops; hydrocortisone creams; dietary supplements; vitamin supplements; antiseptic; aspirin; nasal decongestants; medicated mouthwash; aspirin free capsules, namely, ibuprofen for use as an oral analgesic; anti-diarrhea medication; pain relief medication; multivitamin preparations; non-aspirin acetaminophen caplets; topical first aid remedy ointment; acetaminophen gel tabs; cough syrup; expectorants; antihistamines; preparations for treating fever, cold and flu; dental rinse; laxative; dietary supplements; adult incontinence garments; antacids and anti-gas tablets; pain relief medication, allergy and sinus medications; sleeping pills; bandage strips for skin wounds; athletes foot cream; cough drops; panty liners; naproxen sodium caplets; nasal sprays; hemorrhoid treatment ointment; liquid magnesia preparation for the treatment of sour stomach; herbal supplements;	4,094,111

	<p>petroleum jelly for medical purposes; analgesics; decongestants; calamine anti-itch lotion; sterile pads in the nature of wound dressings; laxative suppository; anti-arthritis compositions and preparations; enemas; gauze roll; bismuth preparations for pharmaceutical purposes; denture adhesive; sore throat anesthetic and sprays; anti-itch cream; medicated foot powder; medicated chest rub; sanitizing wipes; chest congestion relief preparations; stool softener (Class 5)</p> <p>Dental floss; dental tape (Class 21)</p> <p>Foot care device in the nature of insoles, namely, gel insoles, bamboo insoles, foam insoles, ball of foot insoles, heel liner, odor stopper insoles, open style insoles and mole foam padding insoles (Class 25)</p>	
<p>LIVE BETTER® (and design)</p> 	<p>Soap, namely, foot soap or body soap for personal cleansing; foot deodorant spray (Class 3)</p> <p>Eye drops; saline solution for medical and sanitary purposes; pregnancy test kits for home use; tampons; sanitary pads; panty liners; rubbing alcohol; ibuprofen for use as an oral analgesic, as children's drops or as nasal sprays; preparations for treating colds and allergy medications; anti-septic or anti-bacterial mouth wash; bandages for dressings; hydrogen peroxide for medical use and cleansing; witch hazel; epsom salts; antacids; dietary fiber caplets as an additive for food products; vitamins; aspirin; sleeping aids, namely, pills/tablets, caplets, gel-caps, and capsules; cough drops; corn pads; hand sanitizing preparations; pharmaceutical preparations for use in the removal of warts; dietary supplemental drinks; medicated anti-septic or anti-bacterial foot powder; shoe deodorizers, namely, sneaker spray (Class 5)</p> <p>Fever thermometers (Class 10)</p>	<p>4,089,723</p>

	 Water filtration pitchers sold empty (Class 11) Dental floss; dental tape; disposable latex gloves for general use (Class 21) Foot care devices in the nature of insoles, namely, gel insoles, bamboo insoles, foam insoles, ball-of-foot insoles, heel liner inserts, odor- stopper insoles, open-style insoles (Class 25)	
--	--	--

3. The registrations for Opposer’s LIVE BETTER Marks are valid and subsisting. Copies of TSDR report printouts from the electronic database records of the USPTO showing the current status of Opposer’s LIVE BETTER Marks are attached hereto as Exhibit A.

4. Opposer is also the owner of a pending application to register the mark LIVE BETTER, Serial No. 85/504,994, for retail supermarket services, for which a Notice of Allowance has issued.

5. Since at least as early as January 24, 2007, Opposer has promoted and advertised its health and wellness incentive program services using Opposer’s LIVE BETTER WELLNESS CLUB® and LIVE BETTER! WELLNESS CLUB® (and design) marks. Likewise, since at least as early as August 2009, Opposer has promoted and advertised consumer product goods sold in supermarkets and pharmacies under the marks LIVE BETTER® and LIVE BETTER® (and design), including, but not limited to: vitamin, herbal, and dietary supplements; lotions and ointments; dental care products; foot care products; and medications including analgesics and decongestants. Opposer’s pending application for the mark LIVE BETTER covers retail supermarket services.

6. Applicant seeks to register the mark LIVE BETTER AMERICA for “providing a web site featuring information on fitness” in Class 41, and “providing a web site featuring information on health, nutrition and lifestyle wellness” in Class 44, as evidenced by publication of said mark in the Official Gazette on May 8, 2012.

7. Upon information and belief, Applicant will promote General Mills food products through one or more web sites branded with mark LIVE BETTER AMERICA.

8. The General Mills web site located at www.generalmills.com states that General Mills is one of the world’s largest food companies, and that several General Mills brands occupy the number one or number two market positions. General Mills brand products include *Cheerios* and *Wheaties* cereals, *Green Giant* vegetables, *Gold Medal* flour, and the *Pillsbury* line of refrigerated dough. These products are sold in Opposer’s retail grocery stores that also use and promote Opposer’s LIVE BETTER Marks.

9. Applicant’s use of the mark LIVE BETTER AMERICA to promote General Mills food products, which are sold in Opposer’s retail grocery stores that also use and promote Opposer’s LIVE BETTER Marks, is likely to cause confusion, mistake and/or deception.

10. The Application for the services herein opposed was filed on January 5, 2012, based on Applicant’s intent to use the mark in commerce.

11. Upon information and belief, Applicant did not use the mark LIVE BETTER AMERICA for the services covered in the Application in United States commerce prior to its constructive first use in commerce date of January 5, 2012.

12. Opposer’s dates of first use in commerce for each of the Opposer’s LIVE BETTER Marks (Registration Nos. 3,452,346; 3,491,210; 4,094,111; and 4,089,723), and

Opposer's filing date and constructive first use in commerce date for Serial No. 85/504,994, precede Applicant's constructive first use in commerce date of January 5, 2012.

13. Opposer's LIVE BETTER Marks have been in valid and continuous use since the respective first use dates of each mark and have not been abandoned.

14. Because of the substantial investment of time and resources to promote, advertise and enforce Opposer's LIVE BETTER Marks, consumers have come to associate Opposer's LIVE BETTER Marks exclusively with Opposer's goods and services.

15. Opposer's LIVE BETTER Marks and Applicant's mark are similar in sound, appearance, connotation, and overall commercial impression. Each of Opposer's LIVE BETTER Marks and Applicant's mark employ the identical phrase "LIVE BETTER" as a dominant element.

16. In the Application for the services herein opposed, there are no restrictions on trade channels, so it must be presumed that the services of the Application identified will travel through all trade channels appropriate for services of that type.

17. Upon information and belief, Applicant's services, "providing a web site featuring information on fitness," in Class 41, and "providing a web site featuring information on health, nutrition and lifestyle wellness" in Class 44, are intended to be marketed through the same channels of trade as the goods and services rendered in connection with Opposer's LIVE BETTER Marks.

18. Applicant's LIVE BETTER AMERICA mark as used in association with a web site featuring information on fitness in Class 41, a web site featuring information on health, nutrition and lifestyle wellness in Class 44, and as used in association with a web site that promotes food products such as the General Mills products referenced above, is confusingly

similar to Opposer's LIVE BETTER Marks because the marks are similar in sound, appearance and overall commercial impression.

19. Applicant's LIVE BETTER AMERICA mark as applied to the services set forth in Class 41 and Class 44 of the Application, and as applied to a web site that promotes food products such as the General Mills products referenced above, so resembles Opposer's LIVE BETTER Marks for the goods and services rendered therewith that it is likely to cause confusion, mistake and/or deception.

20. If Applicant is permitted to register LIVE BETTER AMERICA for the services set forth in Class 41 and Class 44 of the Application, confusion of the relevant trade and public is likely to result, which will damage and injure Opposer.

21. Any defect, objection to, or fault found with Applicant's services under the LIVE BETTER AMERICA mark would necessarily reflect on and seriously injure the reputation that Opposer has established for its goods and services.

22. If Applicant is granted a registration for the mark herein opposed, it would obtain thereby at least a prima facie exclusive right to use the mark. Such registration would be a source of damage and injury to Opposer.

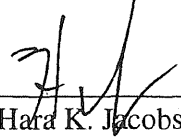
WHEREFORE, The Great Atlantic & Pacific Tea Company, Inc. prays that registration of the mark of Application Serial No. 85/509,241 in International Class 41 be refused and that this opposition be sustained.

The required fee of \$300 may be charged to Deposit Account No. 02-0755 and any overpayment may be credited to this account.

Dated: September 5, 2012

Respectfully submitted,

By: _____


Hara K. Jacobs
Corinne Militello
BALLARD SPAHR LLP
1735 Market Street, 51st Floor
Philadelphia, Pennsylvania 19103-7599
(215) 665-8500

ATTORNEYS FOR OPPOSER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Notice of Opposition was served on the Attorney of Record for the Applicant of Application Serial No. 85/509,241 by First Class U.S. Mail on the date below:

JOSHUA J. BURKE
GENERAL MILLS, INC.
1 GENERAL MILLS BLVD
MINNEAPOLIS, MN 55426-1348

Dated: 9/5/12



Corinne Militello

Exhibit A



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Mark: LIVE BETTER WELLNESS CLUB

[Trademark image](#)

US Serial Number: 77185924	Application Filing Date: May 21, 2007
US Registration Number: 3452346	Registration Date: Jun. 24, 2008
Filed as TEAS Plus: Yes	Currently TEAS Plus: Yes
Register: Principal	
Mark Type: Service Mark	
Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.	
Status Date: Jun. 24, 2008	
Publication Date: Nov. 06, 2007	

Mark Information

[Expand All](#)

Mark Literal Elements: LIVE BETTER WELLNESS CLUB

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Disclaimer: "WELLNESS CLUB"

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((.)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks "*" identify additional (new) wording in the goods/services.

For: Retail store services in the field of pharmaceuticals featuring a bonus incentive program for customers

International Class: 035 - Primary Class

U.S. Class: 100, 101, 102

Class Status: ACTIVE

Basis: 1(a)

First Use: Jan. 24, 2007

Use in Commerce: Jan. 24, 2007

▼ **Basis Information (Case Level)**

Filed Use: Yes	Currently Use: Yes	Amended Use: No
Filed ITU: No	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

▼ **Current Owner(s) Information**

Owner Name: The Great Atlantic & Pacific Tea Company, Inc.

Owner Address: 2 Paragon Drive
Montvale, NEW JERSEY 07645
UNITED STATES

Legal Entity Type: CORPORATION

State or Country Where Organized: MARYLAND

▼ **Attorney/Correspondence Information**

Attorney of Record

Attorney Name: Hara K. Jacobs

Correspondent

Correspondent Name/Address: Hara K. Jacobs
Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, PENNSYLVANIA 19103-7599
UNITED STATES

Phone: 215.864.8209

Fax: 215.864.8999

Correspondent e-mail: jacobsh@ballardspahr.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

▼ **Prosecution History**

Date	Description	Proceeding Number
Mar. 28, 2012	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Mar. 21, 2012	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Nov. 16, 2011	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Mar. 24, 2011	ATTORNEY REVOKED AND/OR APPOINTED	
Mar. 24, 2011	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Jan. 19, 2011	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Jun. 24, 2008	REGISTERED-PRINCIPAL REGISTER	
May 20, 2008	EXTENSION OF TIME TO OPPOSE PROCESS - TERMINATED	
Dec. 03, 2007	EXTENSION OF TIME TO OPPOSE RECEIVED	
Nov. 06, 2007	PUBLISHED FOR OPPOSITION	
Oct. 17, 2007	NOTICE OF PUBLICATION	
Oct. 02, 2007	LAW OFFICE PUBLICATION REVIEW COMPLETED	76532
Oct. 02, 2007	ASSIGNED TO LIE	76532

Sep. 01, 2007

APPROVED FOR PUB - PRINCIPAL REGISTER

Sep. 01, 2007

ASSIGNED TO EXAMINER

69222

May 24, 2007

NEW APPLICATION ENTERED IN TRAM

▲ **TM Staff and Location Information**

▼ **Assignment Abstract of Title Information**

Summary

Total Assignments: 10

Registrant: The Great Atlantic & Pacific Tea Company, Inc.

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- » Department of Commerce NoFEAR Act Report
- » Regulations.gov
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Mark: LIVE BETTER! WELLNESS CLUB



US Serial Number: 77185766 **Application Filing Date:** May 21, 2007
US Registration Number: 3491210 **Registration Date:** Aug. 26, 2008
Filed as TEAS Plus: Yes **Currently TEAS Plus:** No
Register: Principal
Mark Type: Service Mark
Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.
Status Date: Aug. 26, 2008
Publication Date: Mar. 04, 2008

▼ Mark Information

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Mark Literal Elements: LIVE BETTER! WELLNESS CLUB

Standard Character Claim: No

Mark Drawing Type: 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of the words "LIVE BETTER" in a distinctive font with an exclamation point. Said exclamation point being a section of a stick figure adjacent to mark. The words "WELLNESS CLUB" in a different font beneath the words "LIVE BETTER" and a swoosh underline beginning from right to left.

Color(s) Claimed: Color is not claimed as a feature of the mark.

Disclaimer: "WELLNESS CLUB"

Design Search Code(s): 02.01.33 - Stick figures;Grotesque men formed by letters, numbers, punctuation or geometric shapes
02.09.05 - Humans, including men, women and children, depicted running;Running, humans
04.07.03 - Person formed by geometric shapes;Geometric shapes forming a person;Geometric figures or combinations of geometric figures representing a person;Geometric figures representing a person

26.03.21 - Ovals that are completely or partially shaded
 26.11.21 - Rectangles that are completely or partially shaded
 26.17.09 - Bars, curved; Bands, curved; Curved line(s), band(s) or bar(s); Lines, curved
 27.01.01 - Humans composed of letters or numerals; Letters forming human beings; Numbers forming human beings; Punctuation forming human beings

▼ **Goods and Services**

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((.)) identify any goods/services not claimed in a Section 15 affidavit of incontestability, and
- Asterisks "*" identify additional (new) wording in the goods/services.

For: Retail store services in the field of pharmaceuticals featuring a bonus incentive program for customers

International Class: 035 - Primary Class

U.S Class: 100, 101, 102

Class Status: ACTIVE

Basis: 1(a)

First Use: Jan. 24, 2007

Use in Commerce: Jan. 24, 2007

▼ **Basis Information (Case Level)**

Filed Use: Yes	Currently Use: Yes	Amended Use: No
Filed ITU: No	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

▼ **Current Owner(s) Information**

Owner Name: The Great Atlantic & Pacific Tea Company, Inc.

Owner Address: 2 Paragon Drive
 Montvale, NEW JERSEY 07645
 UNITED STATES

Legal Entity Type: CORPORATION

State or Country Where Organized: MARYLAND

▼ **Attorney/Correspondence Information**

Attorney of Record

Attorney Name: Hara K. Jacobs

Correspondent

Correspondent Name/Address: Hara K. Jacobs
 Ballard Spahr LLP
 1735 Market Street, 51st Floor
 Philadelphia, PENNSYLVANIA 19103-7599
 UNITED STATES

Phone: 215.864.8209

Fax: 215.864.8999

Correspondent e-mail: jacobsh@ballardspahr.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

▼ **Prosecution History**

Date	Description	Proceeding Number
Mar. 28, 2012	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Mar. 21, 2012	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Nov. 16, 2011	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	

Mar. 24, 2011	ATTORNEY REVOKED AND/OR APPOINTED	
Mar. 24, 2011	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Jan. 19, 2011	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Aug. 26, 2008	REGISTERED-PRINCIPAL REGISTER	
Jul. 18, 2008	EXTENSION OF TIME TO OPPOSE PROCESS - TERMINATED	
Mar. 04, 2008	EXTENSION OF TIME TO OPPOSE RECEIVED	
Mar. 04, 2008	PUBLISHED FOR OPPOSITION	
Feb. 13, 2008	NOTICE OF PUBLICATION	
Jan. 29, 2008	LAW OFFICE PUBLICATION REVIEW COMPLETED	76568
Jan. 28, 2008	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jan. 03, 2008	TEAS/EMAIL CORRESPONDENCE ENTERED	76568
Jan. 03, 2008	CORRESPONDENCE RECEIVED IN LAW OFFICE	76568
Dec. 21, 2007	ASSIGNED TO LIE	76568
Nov. 14, 2007	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Sep. 01, 2007	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Sep. 01, 2007	NON-FINAL ACTION E-MAILED	6325
Sep. 01, 2007	NON-FINAL ACTION WRITTEN	69222
Sep. 01, 2007	REMOVED FROM TEAS PLUS	69222
Sep. 01, 2007	ASSIGNED TO EXAMINER	69222
May 25, 2007	NOTICE OF DESIGN SEARCH CODE MAILED	
May 24, 2007	NEW APPLICATION ENTERED IN TRAM	

▼ **TM Staff and Location Information**

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Aug. 26, 2008

▼ **Assignment Abstract of Title Information**

Summary

Total Assignments: 11

Registrant: The Great Atlantic & Pacific Tea Company, Inc.

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- » Department of Commerce NoFEAR Act Report
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- » STOP!Fakes.gov

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Mark: LIVE BETTER

[Trademark image](#)

US Serial Number: 77813448

Application Filing Date: Aug. 26, 2009

US Registration Number: 4094111

Registration Date: Jan. 31, 2012

Register: Principal

Mark Type: Trademark

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Jan. 31, 2012

Publication Date: Apr. 05, 2011

Notice of Allowance Date: May 31, 2011

▼ Mark Information

Mark Literal Elements: LIVE BETTER

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

▼ Related Properties Information

Claimed Ownership of US 3452346,3491210

Registrations:

▼ Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: denture cleaners; petroleum jelly for cosmetic purposes; non-medicated baby ointment for the prevention and treatment of diaper rash; baby bath liquid soap; toothpaste; lip balm; non-medicated mouthwash; non-medicated foot powder

International Class: 003 - Primary Class

U.S Class: 001, 004, 006, 050, 051, 052

Class Status: ACTIVE

Basis: 1(a)

First Use: Jun. 2009

Use in Commerce: Jun. 2009

For: Eye drops; hydrocortisone creams; dietary supplements; vitamin supplements; antiseptic; aspirin; nasal decongestants; medicated mouthwash; aspirin free capsules, namely, ibuprofen for use as an oral analgesic; anti-diarrhea medication; pain relief medication; multivitamin preparations; non-aspirin acetaminophen caplets; topical first aid remedy ointment; acetaminophen gel tabs; cough syrup; expectorants; antihistamines; preparations for treating fever, cold and flu; dental rinse; laxative; dietary supplements; adult incontinence garments; antacids and anti-gas tablets; pain relief medication, allergy and sinus medications; sleeping pills; bandage strips for skin wounds; athletes foot cream; cough drops; panty liners; naproxen sodium caplets; nasal sprays; hemorrhoid treatment ointment; liquid magnesia preparation for the treatment of sour stomach; herbal supplements; petroleum jelly for medical purposes; analgesics; decongestants; calamine anti-itch lotion; sterile pads in the nature of wound dressings; laxative suppository; anti-arthritis compositions and preparations; enemas; gauze roll; bismuth preparations for pharmaceutical purposes; denture adhesive; sore throat anesthetic and sprays; anti-itch cream; medicated foot powder; medicated chest rub; sanitizing wipes; chest congestion relief preparations; stool softener

International Class: 005 - Primary Class

U.S Class: 006, 018, 044, 046, 051, 052

Class Status: ACTIVE

Basis: 1(a)

First Use: Jun. 2009

Use in Commerce: Jun. 2009

For: Dental floss; dental tape

International Class: 021 - Primary Class

U.S Class: 002, 013, 023, 029, 030, 033, 040, 050

Class Status: ACTIVE

Basis: 1(a)

First Use: Jun. 2009

Use in Commerce: Jun. 2009

For: Foot care device in the nature of insoles, namely, gel insoles, bamboo insoles, foam insoles, ball of foot insoles, heel liner, odor stopper insoles, open style insoles and mole foam padding insoles

International Class: 025 - Primary Class

U.S Class: 022, 039

Class Status: ACTIVE

Basis: 1(a)

First Use: Jun. 2009

Use in Commerce: Jun. 2009

▼ **Basis Information (Case Level)**

Filed Use: No	Currently Use: Yes	Amended Use: No
Filed ITU: Yes	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

▼ **Current Owner(s) Information**

Owner Name: The Great Atlantic & Pacific Tea Company, Inc.
Owner Address: 2 Paragon Drive
 Montvale, NEW JERSEY 07645
 UNITED STATES
Legal Entity Type: CORPORATION
State or Country Where Organized: MARYLAND

▼ **Attorney/Correspondence Information**

Attorney of Record

Attorney Name: Hara K. Jacobs

Correspondent

Correspondent: Hara K. Jacobs

Name/Address: Ballard Spahr LLP
 1735 Market Street, 51st Floor
 Philadelphia, PENNSYLVANIA 19103-7599
 UNITED STATES

Phone: 215.864.8209

Fax: 215.864.8999

Correspondent e-mail: jacobsh@ballardspahr.com

Correspondent e-mail No

Authorized:

Domestic Representative - Not Found

▼ Prosecution History

Date	Description	Proceeding Number
Mar. 21, 2012	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Jan. 31, 2012	REGISTERED-PRINCIPAL REGISTER	
Dec. 28, 2011	NOTICE OF ACCEPTANCE OF STATEMENT OF USE E-MAILED	
Dec. 27, 2011	LAW OFFICE REGISTRATION REVIEW COMPLETED	68123
Dec. 21, 2011	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Dec. 08, 2011	STATEMENT OF USE PROCESSING COMPLETE	76874
Nov. 29, 2011	USE AMENDMENT FILED	76874
Dec. 08, 2011	CASE ASSIGNED TO INTENT TO USE PARALEGAL	76874
Nov. 29, 2011	TEAS STATEMENT OF USE RECEIVED	
May 31, 2011	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	
Apr. 05, 2011	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Apr. 05, 2011	PUBLISHED FOR OPPOSITION	
Mar. 24, 2011	ATTORNEY REVOKED AND/OR APPOINTED	
Mar. 24, 2011	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Mar. 03, 2011	LAW OFFICE PUBLICATION REVIEW COMPLETED	68123
Mar. 02, 2011	APPROVED FOR PUB - PRINCIPAL REGISTER	
Mar. 02, 2011	EXAMINER'S AMENDMENT ENTERED	88888
Mar. 02, 2011	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
Mar. 02, 2011	EXAMINERS AMENDMENT E-MAILED	6328
Mar. 02, 2011	EXAMINERS AMENDMENT -WRITTEN	74785
Feb. 25, 2011	PREVIOUS ALLOWANCE COUNT WITHDRAWN	
Feb. 11, 2011	WITHDRAWN FROM PUB - OG REVIEW QUERY	60756
Feb. 02, 2011	LAW OFFICE PUBLICATION REVIEW COMPLETED	68123
Jan. 31, 2011	ASSIGNED TO LIE	68123
Jan. 19, 2011	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Dec. 30, 2010	APPROVED FOR PUB - PRINCIPAL REGISTER	
Dec. 29, 2010	EXAMINER'S AMENDMENT ENTERED	88888
Dec. 29, 2010	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
Dec. 29, 2010	EXAMINERS AMENDMENT E-MAILED	6328
Dec. 29, 2010	EXAMINERS AMENDMENT -WRITTEN	74785
Dec. 13, 2010	TEAS/EMAIL CORRESPONDENCE ENTERED	88889

Dec. 13, 2010	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Dec. 13, 2010	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Jun. 17, 2010	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Jun. 17, 2010	NON-FINAL ACTION E-MAILED	6325
Jun. 17, 2010	NON-FINAL ACTION WRITTEN	74785
May 27, 2010	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
May 26, 2010	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
May 26, 2010	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Dec. 02, 2009	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Dec. 02, 2009	NON-FINAL ACTION E-MAILED	6325
Dec. 02, 2009	NON-FINAL ACTION WRITTEN	74785
Dec. 01, 2009	ASSIGNED TO EXAMINER	74785
Sep. 02, 2009	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Sep. 01, 2009	NEW APPLICATION ENTERED IN TRAM	

▼ **TM Staff and Location Information**

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Dec. 27, 2011

▼ **Assignment Abstract of Title Information**

Summary

Total Assignments: 6

Registrant: The Great Atlantic & Pacific Tea Company, Inc.

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- » Budget & Performance

- » Freedom of Information Act (FOIA)
- » Department of Commerce NoFEAR Act Report
- » Regulations.gov
- » STOP!Fakes.gov

- » Strategy Targeting Organized Piracy (STOP!)
- » Information Quality Guidelines
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An Agency of the Department of Commerce

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On August 25, 2012, the USPTO released version 2.0 of Trademark Status and Document Retrieval (TSDR). On September 1st, all existing direct (static) hyper-links displaying TARR information will be redirected to TSDR. On September 8th, all existing direct (static) hyper-links displaying TDR information will be redirected to TSDR. Soon thereafter, the web pages at <http://tarr.uspto.gov> and <http://tdr.uspto.gov> will no longer be accessible. Please send any questions to TSDR@USPTO.GOV. Additional information about the TSDR 2.0 deployment is available [here](#). TSDR 2.0

Trademark Status & Document Retrieval (TSDR) ?

US Serial No.
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STATUS | **DOCUMENTS** ? | [View Proceeding](#) | [Download](#) | [Print Preview](#)

Generated on: This page was generated by TSDR on 2012-09-05 16:55:39 EST

Mark: LIVE BETTER



US Serial Number: 85131981 Application Filing Date: Sep. 17, 2010
US Registration Number: 4089723 Registration Date: Jan. 24, 2012
Register: Principal
Mark Type: Trademark

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Jan. 24, 2012

Publication Date: Nov. 08, 2011

Mark Information

[Expand All](#)

Mark Literal Elements: LIVE BETTER

Standard Character Claim: No

Mark Drawing Type: 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of the words "LIVE BETTER" with an exclamation point, said exclamation point being a section of a stick figure adjacent to mark with curved bar underline which gets thicker from left to right.

Color(s) Claimed: Color is not claimed as a feature of the mark.

Design Search Code(s): 02.01.33 - Grotesque men formed by letters, numbers, punctuation or geometric shapes; Stick figures
24.17.14 - Exclamation points (!); Punctuation marks; Question marks (?); At symbol (@); Brackets, punctuation; Diacritical marks; Ampersands (&); Commas
26.03.21 - Ovals that are completely or partially shaded

26.17.09 - Bands, curved;Bars, curved;Curved line(s), band(s) or bar(s);Lines, curved

▼ **Related Properties Information**

Claimed Ownership of US Registrations: 3452346, 3491210

▼ **Goods and Services**

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: SOAP, namely, FOOT SOAP OR BODY SOAP FOR PERSONAL CLEANSING; FOOT DEODORANT SPRAY

International Class: 003 - Primary Class

U.S Class: 001, 004, 006, 050, 051, 052

Class Status: ACTIVE

Basis: 1(a)

First Use: Aug. 2009

Use in Commerce: Aug. 2009

For: EYE DROPS; SALINE SOLUTION FOR MEDICAL AND SANITARY PURPOSES; PREGNANCY TEST KITS FOR HOME USE; TAMPONS; SANITARY PADS; PANTY LINERS; RUBBING ALCOHOL; IBUPROFEN FOR USE AS AN ORAL ANALGESIC, AS CHILDREN'S DROPS OR AS NASAL SPRAYS; PREPARATIONS FOR TREATING COLDS AND ALLERGY MEDICATIONS; ANTI-SEPTIC OR ANTI-BACTERIAL MOUTH WASH; BANDAGES FOR DRESSINGS; HYDROGEN PEROXIDE FOR MEDICAL USE AND CLEANSING; WITCH HAZEL; EPSOM SALTS; ANTACIDS; DIETARY FIBER CAPLETS AS AN ADDITIVE FOR FOOD PRODUCTS; VITAMINS; ASPIRIN; SLEEPING AIDS, NAMELY, PILLS/TABLETS, CAPLETS, GEL-CAPS, AND CAPSULES; COUGH DROPS; CORN PADS; HAND SANITIZING PREPARATIONS; PHARMACEUTICAL PREPARATIONS FOR USE IN THE REMOVAL OF WARTS; DIETARY SUPPLEMENTAL DRINKS; MEDICATED ANTI-SEPTIC OR ANTI-BACTERIAL FOOT POWDER; SHOE DEODORIZERS, NAMELY, SNEAKER SPRAY

International Class: 005 - Primary Class

U.S Class: 006, 018, 044, 046, 051, 052

Class Status: ACTIVE

Basis: 1(a)

First Use: Jun. 2009

Use in Commerce: Jun. 2009

For: FEVER THERMOMETERS

International Class: 010 - Primary Class

U.S Class: 026, 039, 044

Class Status: ACTIVE

Basis: 1(a)

First Use: Jul. 2009

Use in Commerce: Jul. 2009

For: WATER FILTRATION PITCHERS SOLD EMPTY

International Class: 011 - Primary Class

U.S Class: 013, 021, 023, 031, 034

Class Status: ACTIVE

Basis: 1(a)

First Use: Jun. 2009

Use in Commerce: Jun. 2009

For: DENTAL FLOSS; DENTAL TAPE; DISPOSABLE LATEX GLOVES FOR GENERAL USE

International Class: 021 - Primary Class

U.S Class: 002, 013, 023, 029, 030, 033, 040, 050

Class Status: ACTIVE

Basis: 1(a)

First Use: Jun. 2009

Use in Commerce: Jun. 2009

For: FOOT CARE DEVICES IN THE NATURE OF INSOLES, NAMELY, GEL INSOLES, BAMBOO INSOLES, FOAM INSOLES, BALL-OF-FOOT INSOLES, HEEL LINER INSERTS, ODOR-STOPPER INSOLES, OPEN-STYLE INSOLES

International Class: 025 - Primary Class

U.S Class: 022, 039

Class Status: ACTIVE

Basis: 1(a)

First Use: Aug. 2009

Use in Commerce: Aug. 2009

▼ **Basis Information (Case Level)**

Filed Use: Yes	Currently Use: Yes	Amended Use: No
Filed ITU: No	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

▼ **Current Owner(s) Information**

Owner Name: The Great Atlantic & Pacific Tea Company, Inc.

Owner Address: 2 Paragon Drive
Montvale, NEW JERSEY 07645
UNITED STATES

Legal Entity Type: CORPORATION

State or Country Where Organized: MARYLAND

▼ **Attorney/Correspondence Information**

Attorney of Record

Attorney Name: Arlana S. Cohen

Docket Number: 25897.198

Correspondent

Correspondent Arlana S. Cohen
Name/Address: Cowan, Liebowitz & Latman, P.C.
1133 Avenue of the Americas
New York, NEW YORK 10036
UNITED STATES

Phone: 212-790-9200

Fax: 212-575-0671

Correspondent e-mail: trademark@cll.com

Correspondent e-mail No Authorized:

Domestic Representative - Not Found

▼ **Prosecution History**

Date	Description	Proceeding Number
Mar. 21, 2012	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Jan. 24, 2012	REGISTERED-PRINCIPAL REGISTER	
Nov. 08, 2011	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Nov. 08, 2011	PUBLISHED FOR OPPOSITION	
Sep. 30, 2011	LAW OFFICE PUBLICATION REVIEW COMPLETED	67287
Sep. 28, 2011	ASSIGNED TO LIE	67287
Sep. 16, 2011	APPROVED FOR PUB - PRINCIPAL REGISTER	
Aug. 30, 2011	EXAMINER'S AMENDMENT ENTERED	88888
Aug. 30, 2011	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
Aug. 30, 2011	EXAMINERS AMENDMENT E-MAILED	6328
Aug. 30, 2011	EXAMINERS AMENDMENT -WRITTEN	85334
Jul. 14, 2011	NOTIFICATION OF LETTER OF SUSPENSION E-MAILED	6332
Jul. 14, 2011	LETTER OF SUSPENSION E-MAILED	6332
Jul. 14, 2011	SUSPENSION LETTER WRITTEN	85334
Jun. 10, 2011	ATTORNEY REVOKED AND/OR APPOINTED	
Jun. 10, 2011	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	

Jun. 11, 2011	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Jun. 10, 2011	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Jun. 10, 2011	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Mar. 24, 2011	ATTORNEY REVOKED AND/OR APPOINTED	
Mar. 24, 2011	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Jan. 19, 2011	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Dec. 10, 2010	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Dec. 10, 2010	NON-FINAL ACTION E-MAILED	6325
Dec. 10, 2010	NON-FINAL ACTION WRITTEN	85334
Nov. 30, 2010	ASSIGNED TO EXAMINER	85334
Sep. 23, 2010	NOTICE OF DESIGN SEARCH CODE MAILED	
Sep. 22, 2010	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Sep. 21, 2010	NEW APPLICATION ENTERED IN TRAM	

▼ **TM Staff and Location Information**

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Jan. 24, 2012

▼ **Assignment Abstract of Title Information**

Summary

Total Assignments: 6

Registrant: The Great Atlantic & Pacific Tea Company, Inc.

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- » Department of Commerce NoFEAR Act Report
- » Regulations.gov
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Trademark Trial and Appeal Board Electronic Filing System, <http://estta.uspto.gov>

ESTTA Tracking number: ESTTA452836

Filing date: 01/24/2012

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	The Great Atlantic & Pacific Tea Company, Inc.
Granted to Date of previous extension	01/25/2012
Address	2 Paragon Drive Montvale, NJ 07645 UNITED STATES

Attorney information	Hara K. Jacobs Ballard Spahr LLP 1735 Market Street, 51st Floor Philadelphia, PA 19103-7599 UNITED STATES jacobsh@ballardspahr.com, phila_tmddocketing@ballardspahr.com, camposcruz@ballardspahr.com, sternam@ballardspahr.com
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Applicant Information

Application No	85320885	Publication date	09/27/2011
Opposition Filing Date	01/24/2012	Opposition Period Ends	01/25/2012
Applicant	Campo Verde Tucan S.A. de C.V. Mina 1120 Monterrey, 64000 MEXICO		

Goods/Services Affected by Opposition

Class 031. All goods and services in the class are opposed, namely: Fresh fruit and vegetables.
--


Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2085126	Application Date	06/06/1986
Registration Date	08/05/1997	Foreign Priority Date	NONE
Word Mark	SUPER FRESH		
Design Mark			
Description of	NONE		

Opposer's Ex. 75Publix v. The Great Atlantic & Pacific
Tea Co., Opp. Nos.
91186148 & 91186863

Mark			
Goods/Services	Class 042. First use: First Use: 1982/07/14 First Use In Commerce: 1982/07/14 RETAIL GROCERY STORE SERVICES		
U.S. Registration No.	3467757	Application Date	01/23/2008
Registration Date	07/15/2008	Foreign Priority Date	NONE
Word Mark	S SUPERFRESH		
Design Mark			
Description of Mark	The mark consists of design of the letter "S" within a circle with design of a leaf off the right, bottom portion of the letter "S" also within the circle. The word "SUPERFRESH" shown below the design and outside of the circle.		
Goods/Services	Class 035. First use: First Use: 2004/06/26 First Use In Commerce: 2004/06/26 Supermarkets; Retail store services featuring a wide variety of consumer goods of others		

Attachments	77378422#TMSN.jpeg (1 page)(bytes) Notice of Opposition_SUPERFRESH BY GREEN TUCAN.pdf (14 pages) (148844 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	/Hara K. Jacobs/
Name	Hara K. Jacobs
Date	01/24/2012

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

THE GREAT ATLANTIC & PACIFIC TEA :
COMPANY, INC. :

Opposer, :

v. :

Opposition No. _____

CAMPO VERDE TUCAN S.A. de C.V. Corp. :
Applicant. :

NOTICE OF OPPOSITION

In the matter of the application of Campo Verde Tucan S.A. de C.V. Corporation (“Applicant”) for registration of the mark SUPER FRESH! BY GREEN TUCAN, Application Serial No. 85/320,885 (the “Application”), filed May 13, 2011 and published for opposition in the Official Gazette on September 27, 2011:

The Great Atlantic & Pacific Tea Company, Inc. (“Opposer”), a Maryland corporation, with offices at 2 Paragon Drive, Montvale, New Jersey 07645, believes that it will be damaged by the registration of the mark shown in the above-identified Application and hereby opposes the same. The grounds for opposition are as follows:

1. Opposer owns and operates a chain of well-regarded, quality retail grocery and consumer product stores bearing the mark SUPER FRESH, and has done so for many years.
2. Opposer is the owner of federal registrations for the marks SUPER FRESH®, Registration No. 2,085,126, and S SUPERFRESH® (and design), Registration No. 3,467,757, collectively referred to as “Opposer’s SUPERFRESH Marks.” Registration No. 2,085,126 is incontestable. Attached hereto as Exhibits A and B are current TARR report printouts from the electronic database records of the USPTO showing the current status and title of these registrations.

3. Since at least as early as July 14, 1982, Opposer has promoted and advertised the sale and distribution of goods or services bearing, or offered in connection with, Opposer's SUPERFRESH Marks, including, but not limited to, supermarkets and retail grocery and consumer product store services as well as grocery and consumer product goods, including fruits and vegetables.

4. Applicant seeks to register the mark SUPER FRESH! BY GREEN TUCAN (and design) for fresh fruit and vegetables in class 46, as evidenced by publication of said mark in the Official Gazette on September 27, 2011.

5. The Application for the goods herein opposed was filed on May 13, 2011, based on Applicant's intent to use the mark in commerce.

6. Upon information and belief, Applicant did not use the mark SUPER FRESH! BY GREEN TUCAN (and design) for the goods covered in the Application in United States Commerce prior to its constructive first use in commerce date of May 13, 2011.

7. Opposer's dates of first use in commerce for each of the Opposer's SUPERFRESH Marks, Registration Numbers 2,805,126 and 3,467,757, precede Applicant's constructive first use in commerce date of May 13, 2011.

8. Opposer's SUPERFRESH Marks have been in valid and continuous use since the respective first use dates of each mark and have not been abandoned.

9. Because of the substantial investment of time and resources nationally to promote, advertise and enforce Opposer's SUPERFRESH Marks, consumers have come to associate Opposer's SUPERFRESH Marks exclusively with Opposer's goods and services.

10. Each of Opposer's SUPERFRESH Marks and Applicant's mark employ the identical phrase "SUPER FRESH" as a dominant element.

11. In the Application for the services herein opposed, there are no restrictions on trade channels, so it must be presumed that the goods of the Application identified will travel through all trade channels appropriate for goods of that type.

12. On information and belief, Applicant's goods for fresh fruit and vegetables in class 46 are intended to be marketed through the same channels of trade as the goods and services rendered in connection with Opposer's SUPERFRESH Marks.

13. Applicant's SUPER FRESH! BY GREEN TUCAN mark as used in association with fresh fruit and vegetables in class 46 is confusingly similar to Opposer's SUPERFRESH Marks because the marks are similar in sound, appearance and overall commercial impression.

14. Applicant's SUPER FRESH! BY GREEN TUCAN mark as applied to the identification of goods in the Application so resembles Opposer's SUPERFRESH Marks for the goods and services rendered therewith that it is likely to cause confusion, mistake and/or deception.

15. If Applicant is permitted to register SUPER FRESH! BY GREEN TUCAN for the goods set forth in Class 46 of the Application, confusion of the relevant trade and public is likely to result, which will damage and injure Opposer.

16. Any defect, objection to, or fault found with Applicant's goods under the SUPER FRESH! BY GREEN TUCAN mark would necessarily reflect on and seriously injure the reputation that Opposer has established for its goods and services.

17. If Applicant is granted a registration for the mark herein opposed, it would obtain thereby at least a *prima facie* exclusive right to use the mark. Such registration would be a source of damage and injury to Opposer.

WHEREFORE, The Great Atlantic & Pacific Tea Company, Inc. pray that registration of the mark of Application Serial No. 85/320,885 in International Class 46 be refused and that this opposition be sustained.

The required fee of \$300 may be charged to Deposit Account No. 02-0755 and any overpayment may be credited to this account.

Dated: January 24, 2012

Respectfully submitted,

By: /Hara K. Jacobs/

Hara K. Jacobs
Andrew M. Stern
BALLARD SPAHR LLP
1735 Market Street, 51st Floor
Philadelphia, Pennsylvania 19103-7599
(215) 665-8500

ATTORNEYS FOR OPPOSER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Notice of Opposition was served on the Attorney of Record for the Applicant of Application Serial No. 85/320,885 by First Class U.S. Mail on the date below:

L. JEREMY CRAFT
CRAFT CHU PLLC
1445 NORTH LOOP W STE 840
HOUSTON, TX 77008-1673

Dated: 1/24/12

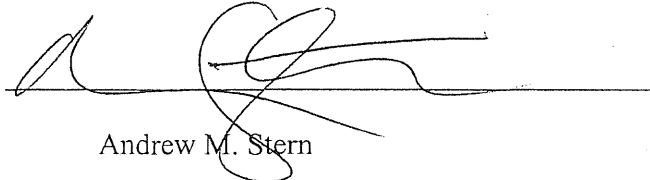

Andrew M. Stern

EXHIBIT A

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2012-01-24 10:29:29 ET

Serial Number: 73732662 Assignment Information Trademark Document Retrieval

Registration Number: 2085126

Mark (words only): SUPER FRESH

Standard Character claim: No

Current Status: The registration has been renewed.

Date of Status: 2007-10-18

Filing Date: 1988-06-06

Transformed into a National Application: No

Registration Date: 1997-08-05

Register: Principal

Law Office Assigned: LAW OFFICE 109

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 830 -Post Registration

Date In Location: 2007-10-18

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. GREAT ATLANTIC & PACIFIC TEA COMPANY, INC., THE

Address:

GREAT ATLANTIC & PACIFIC TEA COMPANY, INC., THE
2 PARAGON DRIVE
MONTVALE, NJ 07645
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Maryland

GOODS AND/OR SERVICES

International Class: 042
Class Status: Active
RETAIL GROCERY STORE SERVICES
Basis: 1(a)
First Use Date: 1982-07-14
First Use in Commerce Date: 1982-07-14

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

- 2011-11-16 - Assignment Of Ownership Not Updated Automatically
- 2011-03-24 - Attorney Revoked And/Or Appointed
- 2011-03-24 - TEAS Revoke/Appoint Attorney Received
- 2011-01-19 - Assignment Of Ownership Not Updated Automatically
- 2007-10-18 - First renewal 10 year
- 2007-10-18 - Section 8 (10-year) accepted/ Section 9 granted
- 2007-10-18 - Assigned To Paralegal
- 2007-07-17 - TEAS Section 8 & 9 Received
- 2007-03-09 - Case File In TICRS
- 2006-04-05 - Assignment Of Ownership Not Updated Automatically
- 2005-01-07 - TEAS Change Of Correspondence Received
- 2004-02-03 - PAPER RECEIVED
- 2003-06-16 - Section 8 (6-year) accepted & Section 15 acknowledged

2003-03-10 - Section 8 (6-year) and Section 15 Filed
2003-03-10 - Section 8 (6-year) and Section 15 Filed
2003-03-10 - PAPER RECEIVED
1997-08-05 - Registered - Principal Register
1997-05-13 - Published for opposition
1997-04-11 - Notice of publication
1997-02-04 - Approved for Pub - Principal Register (Initial exam)
1996-12-20 - Communication received from applicant
1996-07-25 - Non-final action mailed
1991-08-09 - Assigned To Examiner
1990-02-07 - Assigned To Examiner
1989-07-05 - Assigned To Examiner
1988-08-26 - Letter of suspension mailed
1988-08-08 - Assigned To Examiner
1988-07-29 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Hara K. Jacobs

Correspondent

Hara K. Jacobs

Ballard Spahr LLP

1735 Market Street, 51st Floor

Philadelphia PA 19103-7599

Phone Number: 215.864.8209

Fax Number: 215.864.8999

EXHIBIT B

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2012-01-24 10:29:56 ET

Serial Number: 77378422 Assignment Information Trademark Document Retrieval

Registration Number: 3467757

Mark



(words only): S SUPERFRESH

Standard Character claim: No

Current Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Date of Status: 2008-07-15

Filing Date: 2008-01-23

Filed as TEAS Plus Application: Yes

Currently TEAS Plus Application: Yes

Transformed into a National Application: No

Registration Date: 2008-07-15

Register: Principal

Law Office Assigned: LAW OFFICE 103

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 650 -Publication And Issue Section

Date In Location: 2008-07-15

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. The Great Atlantic & Pacific Tea Company, Inc.

Address:

The Great Atlantic & Pacific Tea Company, Inc.
2 Paragon Drive
Montvale, NJ 07645
United States

Legal Entity Type: Corporation**State or Country of Incorporation:** Maryland**Phone Number:** 212-790-9237

GOODS AND/OR SERVICES

International Class: 035**Class Status:** Active

Supermarkets; Retail store services featuring a wide variety of consumer goods of others

Basis: 1(a)**First Use Date:** 2004-06-26**First Use in Commerce Date:** 2004-06-26

ADDITIONAL INFORMATION

Color(s) Claimed: Color is not claimed as a feature of the mark.**Description of Mark:** The mark consists of design of the letter "S" within a circle with design of a leaf off the right, bottom portion of the letter "S" also within the circle. The word "SUPERFRESH" shown below the design and outside of the circle.**Design Search Code(s):**

05.03.08 - More than one leaf, including scattered leaves, bunches of leaves not attached to branches

26.01.21 - Circles that are totally or partially shaded.

26.17.04 - Bands, vertical; Bars, vertical; Lines, vertical; Vertical line(s), band(s) or bar(s)

26.17.09 - Bands, curved; Bars, curved; Curved line(s), band(s) or bar(s); Lines, curved

27.03.01 - Geometric figures forming letters, numerals or punctuation

Prior Registration Number(s):

2085126

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2011-11-16 - Assignment Of Ownership Not Updated Automatically
2011-03-24 - Attorney Revoked And/Or Appointed
2011-03-24 - TEAS Revoke/Appoint Attorney Received
2011-01-19 - Assignment Of Ownership Not Updated Automatically
2008-07-15 - Registered - Principal Register
2008-04-29 - Published for opposition
2008-04-09 - Notice of publication
2008-03-21 - Law Office Publication Review Completed
2008-03-20 - Data Modification Completed
2008-03-20 - Assigned To LIE
2008-03-19 - Approved for Pub - Principal Register (Initial exam)
2008-03-19 - Examiner's Amendment Entered
2008-03-19 - Notification Of Examiners Amendment E-Mailed
2008-03-19 - Examiners amendment e-mailed
2008-03-19 - Examiners Amendment -Written
2008-03-19 - Assigned To Examiner
2008-01-29 - Notice Of Design Search Code And Pseudo Mark Mailed
2008-01-28 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Hara K. Jacobs

CorrespondentHara K. Jacobs
Ballard Spahr LLP

1735 Market Street, 51st Floor
Philadelphia PA 19103-7599
Phone Number: 215.864.8209
Fax Number: 215.864.8999
