

ESTTA Tracking number: **ESTTA248261**

Filing date: **11/11/2008**

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	Food For Life Baking Co., Inc.
Granted to Date of previous extension	11/12/2008
Address	2991 East Doherty Corona, CA 92879 UNITED STATES

Attorney information	Dax Alvarez Blakely Sokoloff Taylor & Zafman LLP 12400 Wilshire Boulevard, 7th Floor Los Angeles, CA 90025-1040 UNITED STATES dax_alvarez@bstz.com Phone:310.207.3800
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**Applicant Information**

Application No	77134023	Publication date	07/15/2008
Opposition Filing Date	11/11/2008	Opposition Period Ends	11/12/2008
Applicant	E.A. Sween Company 16101 W. 78th Street Eden Prairie, MN 55344 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 043. All goods and services in the class are opposed, namely: Fast food Services, consisting of an area in a convenience store featuring sandwiches and other items
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**Grounds for Opposition**

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

**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	1117386	Application Date	06/24/1977
Registration Date	05/01/1979	Foreign Priority Date	NONE
Word Mark	FOOD FOR LIFE		

Design Mark	<b>FOOD FOR LIFE</b>		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1970/00/00 First Use In Commerce: 1970/00/00 COOKIES, CAKES AND PASTRIES		

U.S. Registration No.	1380666	Application Date	06/06/1985
Registration Date	01/28/1986	Foreign Priority Date	NONE
Word Mark	FOOD FOR LIFE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1970/00/00 First Use In Commerce: 1970/00/00 BREAD		

U.S. Registration No.	3252877	Application Date	05/06/2004
Registration Date	06/19/2007	Foreign Priority Date	NONE
Word Mark	FOOD FOR LIFE		
Design Mark	<b>FOOD FOR LIFE</b>		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1991/00/00 First Use In Commerce: 1991/00/00 Breakfast cereals		

U.S. Registration No.	1836407	Application Date	10/14/1992
Registration Date	05/10/1994	Foreign Priority Date	NONE
Word Mark	FOODLIFE		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 042. First use: First Use: 1993/05/05 First Use In Commerce: 1993/05/05 restaurant services
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Attachments	73131661#TMSN.gif ( 1 page )( bytes ) 78414623#TMSN.jpeg ( 1 page )( bytes ) Notice of Opposition.PDF ( 16 pages )(363610 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	/dax alvarez/
Name	Dax Alvarez
Date	11/11/2008



For: Fast food Services, consisting of an area in a convenience store featuring sandwiches and other items International Class 43

International Class: 43

Published: July 15, 2008

The grounds for this opposition are as follows:

1. Opposer, Food For Life Baking Co., Inc., is a California corporation located at 2991 East Doherty, Corona, California 92879.

2. Upon information and belief, E.A. Sween Company (hereinafter "Applicant") is a Minnesota corporation with a principal address at 16101 W. 78<sup>th</sup> Street, Eden Prairie, MN 55344.

3. Opposer is the owner of the following registered trademarks, registered on the Principal Register of the U.S. Patent and Trademark Office:

(A) FOOD FOR LIFE, Registration No. 1,117,386

Reg. Date: May 1, 1979

Goods: "Cakes and pastries";

(B) FOOD FOR LIFE, Registration No. 1,380,666

Reg. Date: January 28, 1986

Goods: "Bread";

(C) FOOD FOR LIFE, Registration No. 3,252,877

Reg. Date: June 19, 2007

Goods: "Breakfast cereals";

(D) FOODLIFE, Registration No. 1,836,407

Reg. Date: May 10, 1994

Services: "Restaurant services."

Copies of the registration information from the U.S. Patent and Trademark Office database are attached hereto as Exhibits "A" through "D" and incorporated herein by reference.

4. Opposer has used the mark FOOD FOR LIFE in connection with food products since at least as early as 1970, well prior to the March 19, 2007 filing date in the Applicant's application. Opposer used and has continued to use FOOD FOR LIFE as a trademark and corporate name to promote food products.

5. Opposer has used the mark FOODLIFE in connection with restaurant services since at least as early as 1993, well prior to the March 19, 2007 filing date in the Applicant's application. Opposer has used and has continued to use FOODLIFE as a service mark to promote restaurant services.

6. Upon information and belief, Applicant filed its intent to use trademark application on or about March 19, 2007.

7. Upon information and belief, Applicant seeks registration of the mark FOOD FOR LIFE ON THE GO! for use in connection with “fast food services, consisting of an area in a convenience store featuring sandwiches and other items.”

8. Opposer has offered a wide variety of food products throughout the United States and internationally under the mark FOOD FOR LIFE. Opposer is a leading manufacturer and distributor of food products including but not limited to bread and baked goods. As a result of Opposer’s strong presence in the marketplace, Opposer has developed valuable goodwill in the mark FOOD FOR LIFE.

9. Opposer has developed common-law rights in the marks FOOD FOR LIFE and FOODLIFE in addition to rights extended by federal registrations thereof.

10. By virtue of its efforts, and the expenditure of considerable sums for advertising and other forms of promotion, and by virtue of the consistent excellence of its products, Opposer has earned an extremely valuable reputation for the mark FOOD FOR LIFE.

11. When applied to the Applicant’s services, Applicant’s Mark incorporates Opposer’s entire mark FOOD FOR LIFE, and as such is likely to be confused therewith and mistaken therefor.

12. Due to the incorporation of Opposer's entire mark in the Applicant's mark, and due further to the closely related nature of the services to be offered under the Applicant's mark, and the goods presently offered under Opposer's mark FOOD FOR LIFE, and services presently offered under Opposer's mark FOODLIFE, and the consumer recognition of Opposer's marks, it is alleged that Applicant's mark so resembles Opposer's FOOD FOR LIFE and FOODLIFE marks, as to be likely to cause confusion, or to cause mistake, or to deceive.

13. If Applicant is permitted to use and register Applicant's mark for Applicant's services, confusion, deception or mistake in the trade would likely occur, thereby causing damage and injury to Opposer. Persons familiar with Opposer's marks FOOD FOR LIFE and FOODLIFE would be likely to believe that Applicant's Services are sponsored by or associated therewith.

14. Furthermore, any defect, objection or fault found with Applicant's services offered under the mark FOOD FOR LIFE ON THE GO! would necessarily reflect upon and seriously injure the reputation which Opposer has established for high-quality products and services.

15. An additional basis for confusion exists in that Opposer's bread products bearing the mark FOOD FOR LIFE are sold to restaurants which advertise and market that their products including sandwiches are made using Opposer's bread products, thus increasing the probability Applicant's services offered under the mark FOOD FOR LIFE

ON THE GO! would be seen as being sponsored by or affiliated with Opposer or its goods and services.

16. Applicant's U.S. Application for registration of the mark FOOD FOR LIFE ON THE GO! entirely incorporates the Opposer's famous FOOD FOR LIFE mark as to be likely, when used in connection with Applicant's services, to cause or result in dilution of Opposer's famous trademark and trade name as defined in Section 43(c) of the Trademark Act, 15 U.S.C. § 1125(d).

WHEREFORE, the Opposer prays that the application Serial No. 77/134,023 be rejected, and that the mark sought for the services therein specified in International Class 43 be denied and refused.

Opposer herewith submits this Notice of Opposition in duplicate along with the requisite filing fee in the amount of \$300. *Please charge any fees or credit any overpayment to our Deposit Account No. 02-2666.*

Respectfully submitted,

BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP

Dated: November 11, 2008

By: \_\_\_\_\_

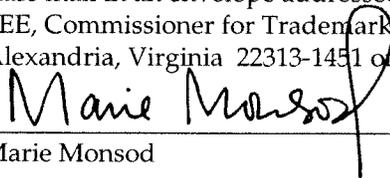


Dax Alvarez  
Counsel for Opposer

12400 Wilshire Boulevard  
Seventh Floor  
Los Angeles, California 90025-01026  
(310) 207-3800

**CERTIFICATE OF MAILING:**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop TTAB - FEE, Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451 on November 11, 2008.

  
\_\_\_\_\_  
Marie Monsod

November 11, 2008

**CERTIFICATE OF SERVICE**

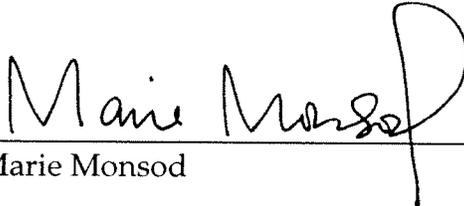
I hereby certify that a true and correct copy of the foregoing document entitled:

**NOTICE OF OPPOSITION**

was served on counsel for Applicant by first class mail, postage prepaid, in a sealed enveloped addressed as follows:

Michael T. Olsen  
Winthrop & Weinstine  
225 S. 6<sup>th</sup> St., Suite 3500  
Minneapolis, MN 55402-4629

Executed on November 11, 2008, at Los Angeles, California.

  
\_\_\_\_\_  
Marie Monsod

## EXHIBIT A



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#### Typed Drawing

<b>Word Mark</b>	FOOD FOR LIFE
<b>Goods and Services</b>	IC 030. US 046. G & S: COOKIES, CAKES AND PASTRIES. FIRST USE: 19700000. FIRST USE IN COMMERCE: 19700000
<b>Mark Drawing Code</b>	(1) TYPED DRAWING
<b>Serial Number</b>	73131661
<b>Filing Date</b>	June 24, 1977
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Registration Number</b>	1117386
<b>Registration Date</b>	May 1, 1979
<b>Owner</b>	(REGISTRANT) FOOD FOR LIFE BAKING CO., INC. CORPORATION CALIFORNIA 2991 EAST DOHERTY CORONA CALIFORNIA 91719
<b>Attorney of Record</b>	Dax Alvarez
<b>Disclaimer</b>	APPLICANT DISCLAIMS THE WORD "FOOD" APART FROM THE BALANCE OF THE MARK.
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Affidavit Text</b>	SECT 15. SECT 8 (6-YR).
<b>Renewal</b>	1ST RENEWAL 19990623
<b>Live/Dead Indicator</b>	LIVE

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### Typed Drawing

<b>Word Mark</b>	FOOD FOR LIFE
<b>Goods and Services</b>	IC 030. US 046. G & S: BREAD. FIRST USE: 19700000. FIRST USE IN COMMERCE: 19700000
<b>Mark Drawing Code</b>	(1) TYPED DRAWING
<b>Serial Number</b>	73541650
<b>Filing Date</b>	June 6, 1985
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	November 5, 1985
<b>Registration Number</b>	<b>1380666</b>
<b>Registration Date</b>	January 28, 1986
<b>Owner</b>	(REGISTRANT) FOOD FOR LIFE BAKING CO., INC. CORPORATION CALIFORNIA 2991 E. DOHERITY STREET CORONA CALIFORNIA 92879
<b>Attorney of Record</b>	DAX ALVAREZ
<b>Prior Registrations</b>	1117386
<b>Disclaimer</b>	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FOOD" APART FROM THE MARK AS SHOWN
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Affidavit Text</b>	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20060925.
<b>Renewal</b>	1ST RENEWAL 20060925
<b>Live/Dead Indicator</b>	LIVE

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# FOOD FOR LIFE

<b>Word Mark</b>	FOOD FOR LIFE
<b>Goods and Services</b>	IC 030. US 046. G & S: Breakfast cereals. FIRST USE: 19910000. FIRST USE IN COMMERCE: 19910000
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	78414623
<b>Filing Date</b>	May 6, 2004
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	April 3, 2007
<b>Registration Number</b>	3252877
<b>Registration Date</b>	June 19, 2007
<b>Owner</b>	(REGISTRANT) Food For Life Baking Co., Inc. CORPORATION CALIFORNIA 2991 East Doherty Corona CALIFORNIA 92879
<b>Attorney of Record</b>	Dax Alvarez
<b>Prior Registrations</b>	1117386;1380666
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Live/Dead Indicator</b>	LIVE

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## Typed Drawing

<b>Word Mark</b>	FOODLIFE
<b>Goods and Services</b>	IC 042. US 100. G & S: restaurant services. FIRST USE: 19930505. FIRST USE IN COMMERCE: 19930505
<b>Mark Drawing Code</b>	(1) TYPED DRAWING
<b>Serial Number</b>	74322653
<b>Filing Date</b>	October 14, 1992
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1B
<b>Published for Opposition</b>	March 9, 1993
<b>Registration Number</b>	1836407
<b>Registration Date</b>	May 10, 1994
<b>Owner</b>	(REGISTRANT) Food for Life Baking Co., Inc. CORPORATION CALIFORNIA 2991 East Doherty Corona CALIFORNIA 91719
<b>Attorney of Record</b>	DAX ALVAREZ
<b>Prior Registrations</b>	1117386;1380666
<b>Type of Mark</b>	SERVICE MARK
<b>Register</b>	PRINCIPAL
<b>Affidavit Text</b>	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20040526.
<b>Renewal</b>	1ST RENEWAL 20040526
<b>Live/Dead Indicator</b>	LIVE

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