

ESTTA Tracking number: **ESTTA281350**

Filing date: **05/01/2009**

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	McDonald's Corporation
Granted to Date of previous extension	05/13/2009
Address	One McDonald's Plaza Oak Brook, IL 60523 UNITED STATES

Attorney information	John A Cullis Neal, Gerber & Eisenberg LLP 2 North LaSalle Street, Suite 1700 CHICAGO, IL 60602 UNITED STATES apeterson@ngelaw.com, jcullis@ngelaw.com, mturner@ngelaw.com, rbrowne@ngelaw.com Phone:312.269.8000
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Applicant Information

Application No	77553485	Publication date	01/13/2009
Opposition Filing Date	05/01/2009	Opposition Period Ends	05/13/2009
Applicant	McSherry, Cheri 724 S. Magnolia Lansing,, MI 48912 UNITED STATES		

Goods/Services Affected by Opposition

Class 016. All goods and services in the class are opposed, namely: Calendars; Envelopes; Greeting cards; Post cards; Posters
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Grounds for Opposition

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

U.S. Registration No.	1947099	Application Date	08/08/1991
Registration Date	01/09/1996	Foreign Priority Date	NONE
Word Mark	MC		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 042. First use: First Use: 1995/06/14 First Use In Commerce: 1995/06/14 restaurant services

U.S. Registration No.	1897507	Application Date	06/20/1994
Registration Date	06/06/1995	Foreign Priority Date	NONE

Word Mark	MC\$
Design Mark	

Description of Mark	NONE
Goods/Services	Class 016. First use: First Use: 1994/06/15 First Use In Commerce: 1994/06/15 printed materials, namely newsletters in the area of financial management

U.S. Registration No.	1550136	Application Date	11/23/1988
Registration Date	08/01/1989	Foreign Priority Date	NONE

Word Mark	MCCALEDAR
Design Mark	
Description of Mark	NONE
Goods/Services	Class 016. First use: First Use: 1988/08/22 First Use In Commerce: 1988/11/02 CALENDAR

U.S. Registration No.	1608229	Application Date	11/28/1989
Registration Date	07/31/1990	Foreign Priority Date	NONE

Word Mark	MCNOTES
Design Mark	

Description of Mark	NONE
Goods/Services	Class 016. First use: First Use: 1989/10/25 First Use In Commerce: 1989/10/25 NOTE PADS

U.S. Registration No.	1648153	Application Date	07/27/1990
Registration Date	06/18/1991	Foreign Priority Date	NONE

Word Mark	MCPEN
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Design Mark	
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Description of Mark	NONE
Goods/Services	Class 016. First use: First Use: 1989/10/25 First Use In Commerce: 1989/10/25 pens

U.S. Registration No.	1639570	Application Date	11/28/1989
Registration Date	04/02/1991	Foreign Priority Date	NONE

Word Mark	MCRULER
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Design Mark	
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Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 1989/10/25 First Use In Commerce: 1989/10/25 STANDARD SIX INCH OR TWELVE INCH RULERS

U.S. Registration No.	1499525	Application Date	12/09/1987
Registration Date	08/09/1988	Foreign Priority Date	NONE

Word Mark	RONALD MCDONALD
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Design Mark	
Description of Mark	NONE
Goods/Services	Class 016. First use: First Use: 1985/03/00 First Use In Commerce: 1985/03/00 GREETING CARDS

U.S. Registration No.	1279753	Application Date	09/30/1982
Registration Date	05/29/1984	Foreign Priority Date	NONE
Word Mark	RONALD MCDONALD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 014. First use: First Use: 1981/00/00 First Use In Commerce: 1981/00/00 PINS, WATCHES AND CLOCKS Class 016. First use: First Use: 1974/00/00 First Use In Commerce: 1974/00/00 COLORING BOOKS Class 025. First use: First Use: 1978/00/00 First Use In Commerce: 1978/00/00 T-SHIRTS AND PLASTIC BIBS Class 028. First use: First Use: 1974/00/00 First Use In Commerce: 1974/00/00 TOY PUPPETS AND TOY PLASTIC FLYING DISCS Class 042. First use: First Use: 1966/09/00 First Use In Commerce: 1966/09/00 RESTAURANT SERVICES		

U.S. Registration No.	1289798	Application Date	09/30/1982
Registration Date	08/14/1984	Foreign Priority Date	NONE
Word Mark	MCDONALDS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 006. First use: First Use: 1974/00/00 First Use In Commerce: 1974/00/00 Key Chains, Key Tags and Fobs Not of Precious Metal Class 009. First use: First Use: 1978/00/00 First Use In Commerce: 1978/00/00 Video and Audio Tapes and Films (Processed), Radios, Cameras and Electronic Calculators Class 011. First use: First Use: 1978/00/00 First Use In Commerce: 1978/00/00 Flashlights Class 014. First use: First Use: 1974/00/00 First Use In Commerce: 1974/00/00 Jewelry and Clocks Class 016. First use: First Use: 1955/00/00 First Use In Commerce: 1955/00/00 Annual Reports, Prospectus, Newsletters, Brochures Pertaining to McDonald's Corporation, Comic Books, Coloring Books, Paper Party Hats, Calendars, Pens, Pencils and Playing Cards Class 018. First use: First Use: 1974/00/00 First Use In Commerce: 1974/00/00 Luggage-Namely, Portfolios, Wallets, Tote Bags, Business Card Holders and Attache Cases		

	<p>Class 021. First use: First Use: 1974/00/00 First Use In Commerce: 1974/00/00 Glassware-Namely, Drinking Glasses and Pitchers, Ice Chests, and Beverage Trays and Holders</p> <p>Class 026. First use: First Use: 1981/00/00 First Use In Commerce: 1981/00/00 Belt Buckles</p> <p>Class 028. First use: First Use: 1974/00/00 First Use In Commerce: 1974/00/00 Sporting Goods-Namely, Tennis Balls, Golf Balls, Tees, Markers and Divot Fixers, Puzzles, and Equipment Sold as a Unit for Playing Board and Dart-Type Games</p> <p>Class 034. First use: First Use: 1974/00/00 First Use In Commerce: 1974/00/00 Cigarette Lighters</p>
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U.S. Registration No.	1286823	Application Date	09/30/1982
Registration Date	07/24/1984	Foreign Priority Date	NONE
Word Mark	M MCDONALDS		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 006. First use: First Use: 1974/00/00 First Use In Commerce: 1974/00/00 Key Chains, Key Tags and Fobs, Not of Precious Metal</p> <p>Class 009. First use: First Use: 1974/00/00 First Use In Commerce: 1974/00/00 Video and Audio Tapes and Films (Processed), Radios, Cameras and Electronic Calculators</p> <p>Class 011. First use: First Use: 1978/00/00 First Use In Commerce: 1978/00/00 Flashlights</p> <p>Class 014. First use: First Use: 1974/00/00 First Use In Commerce: 1974/00/00 Jewelry and Clocks</p> <p>Class 016. First use: First Use: 1968/00/00 First Use In Commerce: 1968/00/00 Annual Reports, Newsletters, Brochures Pertaining to McDonald's Corporation, Prospectus, Comic Books and Coloring Books, Paper Party Hats, Calendars, Pens, Pencils and Playing Cards</p> <p>Class 018. First use: First Use: 1974/00/00 First Use In Commerce: 1974/00/00 Luggage-Namely, Portfolios, Wallets, Tote Bags, Attache Cases, and Business Card Holders</p> <p>Class 021. First use: First Use: 1974/00/00 First Use In Commerce: 1974/00/00 Beverage Trays and Holders, Glassware-Namely, Drinking Glasses and Pitchers, and Ice Chests</p> <p>Class 026. First use: First Use: 1981/00/00 First Use In Commerce: 1981/00/00 Belt Buckles</p>		

	Class 028. First use: First Use: 1974/00/00 First Use In Commerce: 1974/00/00 Sporting Goods-Namely, Tennis Balls, Golf Balls, Tees, Markers, and Divot Fixers, Puzzles and Equipment Sold as a Unit for Playing Board and Dart-Type Games Class 034. First use: First Use: 1974/00/00 First Use In Commerce: 1974/00/00 Cigarette Lighters
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U.S. Registration No.	1681144	Application Date	05/04/1990
Registration Date	03/31/1992	Foreign Priority Date	NONE
Word Mark	BOOKIN' WITH RONALD MCDONALD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1988/06/02 First Use In Commerce: 1988/06/02 printed educational materials directed to teachers to encourage reading by their students Class 041. First use: First Use: 1988/06/02 First Use In Commerce: 1988/06/02 educational and entertainment services in the nature of conducting performances at school assemblies to encourage students to read, and providing materials to teachers in conjunction therewith		

U.S. Registration No.	2580453	Application Date	05/22/2001
Registration Date	06/11/2002	Foreign Priority Date	NONE
Word Mark	MCDEALS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 2001/08/20 First Use In Commerce: 2001/08/20 PRINTED REDEEMABLE CERTIFICATES		

U.S. Registration No.	1771347	Application Date	07/26/1990
Registration Date	05/18/1993	Foreign Priority Date	NONE
Word Mark	MCWATCH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 014. First use: First Use: 1989/10/25 First Use In Commerce: 1989/10/25 watches		

U.S. Registration No.	1878115	Application Date	12/03/1993
Registration Date	02/07/1995	Foreign Priority Date	NONE
Word Mark	MCMERCHANDISE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 042. First use: First Use: 1993/09/00 First Use In Commerce: 1993/09/00 mail order services featuring novelty items

U.S. Registration No.	1566577	Application Date	03/27/1989
Registration Date	11/14/1989	Foreign Priority Date	NONE
Word Mark	MCGIFT SHOP		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1988/07/00 First Use In Commerce: 1988/07/00 RETAIL GIFT SHOP SERVICES		

U.S. Registration No.	2360636	Application Date	01/22/1998
Registration Date	06/20/2000	Foreign Priority Date	NONE
Word Mark	MCSTORE		
Design Mark	MCSTORE		
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1998/10/00 First Use In Commerce: 1998/10/00 retail store services featuring general merchandise		

U.S. Registration No.	939100	Application Date	07/22/1971
Registration Date	07/25/1972	Foreign Priority Date	NONE
Word Mark	MCDONALDLAND		
Design Mark	MCDONALDLAND		
Description of Mark	NONE		
Goods/Services	Class U100 (International Class 042). First use: First Use: 1971/01/01 First Use In Commerce: 1971/01/01		

	RESTAURANT SERVICES		
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U.S. Registration No.	1331343	Application Date	09/29/1982
Registration Date	04/16/1985	Foreign Priority Date	NONE
Word Mark	MAYOR MCCHEESE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1971/01/01 First Use In Commerce: 1971/01/01 Restaurant Services		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	McDome		
Goods/Services	printed matter, namely, stationery, notepads, writing paper, bond paper, construction paper, pens, markers, trading cards and more		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	McKids		
Goods/Services	printed matter, namely, stationery, note cards, envelopes, construction paper, bond paper, paper folders, spiral notebooks, coloring books, puzzle books, children's activity books and more		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	McDonald Designs		
Goods/Services	Desk Sets and Accessories-Namely, Desk Pads, Calendar Bases, Combination Memo-Calendar Bases, Pencil Caddies, Memo Boxes, Combination Pen, Memo and Calendar Bases, Letter Trays, Bookends and more		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	McQuestion		
Goods/Services	preprinted paper notepads		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	McWorld		
Goods/Services	printed matter, namely playing cards, calendars, stationery, bond paper, pens, markers, pencils and file, stationery folders and more		

Attachments	74540212#TMSN.gif (1 page)(bytes) 74005587#TMSN.gif (1 page)(bytes) 74082472#TMSN.gif (1 page)(bytes) 74005584#TMSN.gif (1 page)(bytes) 73395990#TMSN.gif (1 page)(bytes) 75421575#TMSN.gif (1 page)(bytes) 72398083#TMSN.gif (1 page)(bytes) Notice - McDOLLS AT PLAY!.pdf (8 pages)(24200 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	/John A Cullis/
Name	John A Cullis
Date	05/01/2009

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

In the Matter of:
Application Serial No. 77/553,485
Published in the *Official Gazette*
January 13, 2009

McDONALD’S CORPORATION,)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	
CHERI McSHERRY)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Opposer, McDONALD’S CORPORATION (“Opposer”), a corporation organized and existing under the laws of the State of Delaware, with offices at One McDonald’s Plaza, Oak Brook, Illinois 60523-1900, believes that it will be damaged by registration of the mark “McDOLLS AT PLAY!” in International Class 16, as shown in Application Serial No. 77/553,485 filed by Applicant, Cheri McSherry (“Applicant”), and hereby opposes the same and requests that registration to Applicant be refused.

As grounds for its opposition, Opposer alleges that:

1. Applicant seeks to register a mark that consists of the term “McDOLLS AT PLAY!” for “calendars, envelopes, greeting cards, post cards, and posters” in International Class 16 (hereinafter, “McDOLLS mark”). The application is an intent-to-use based application filed under 15 U.S.C. § 1051(1)(b).

2. Opposer has obtained the necessary extension of time in which to file this Notice of Opposition. Accordingly, this Notice of Opposition is being timely submitted.

3. Since 1955, Opposer has been in the business of developing, operating, franchising, and servicing an extensive system of restaurants that prepare, package, and sell a wide variety of high quality, quickly-prepared, modestly-priced foods. Opposer has carried on this business throughout the United States and the world. Opposer and its subsidiaries now operate or license thousands of restaurants throughout the world, including over 14,000 restaurants in the United States.

4. In connection with this business, Opposer has, for decades, extensively used its “Mc” family of marks, which includes the “Mc” formative used with various generic or descriptive terms, as trademarks and service marks in advertising, promoting and selling various food products and restaurant services. Opposer even maintains a registration for the “Mc” mark alone. Over time, Opposer has expanded its use of “Mc” formative marks across a wide variety of non-food related goods, such as children’s and adult’s clothing, toys and games, sports equipment, furniture, magazines, calendars, cooking utensils, dishware and kitchen-related items, office supplies, ornamental collectibles, and many more. All of these goods are advertised and promoted throughout the United States. In such fashion, Opposer has been continuously using and expanding its “Mc” family of marks for over forty years.

5. Opposer’s extensive advertising and promotion of its various goods and services under its “Mc” formative family of marks features the use of television and print advertising, radio, newspaper and magazine advertising, outdoor billboard, Internet advertising and direct mail, all of which are directed to and reach the public in both local and nationwide markets. In addition, Opposer uses its “Mc” formative family of marks on product packaging and point of purchase advertising.

6. Decades ago, Opposer created a series of characters in association with its “McDonaldland” to help market its goods and services. These characters include Ronald McDonald, Mayor McCheese, the Hamburglar, Grimace, and several others. For many years, Opposer has sold these characters, separately and along with food items, in many forms such as dolls, bobble-heads and plastic figurines. In addition, Opposer has licensed their independent sale in connection with its McDonaldland Playset.

7. Opposer presently offers a “McDonald’s Scrapbooking Fun Pack” via its website, which includes assorted stationery and stickers that incorporate the McDonaldland characters. In addition, through licensees, McDonald’s offers various goods that fall within the Class 16 description, including stationery, posters, and greeting cards, that incorporate its “Mc” family of marks, and in some instances additionally incorporate one or more of its McDonaldland characters. In sum, Opposer has, for many years, used its “Mc” family of marks in association with a wide variety of products and services, including goods identical or substantially similar to those for which Applicant intends to use her McDOLLS mark.

8. Opposer owns numerous federal registrations for its “Mc” family of marks. These registrations include, but are far from limited to, the following:

<u>MARK NAME</u>	<u>REG. NO.</u>	<u>REG. DATE</u>	<u>GOODS/SERVICES</u>
1. Mc	1,947,099	01/09/96	Restaurant services
2. Mc\$	1,897,507	06/06/95	Printed materials; newsletters
3. McCALENDAR	1,550,136	08/01/89	Calendars
4. McNOTES	1,608,229	07/31/90	Notepads
5. McPEN	1,648,153	06/18/91	Pens

<u>MARK NAME</u>	<u>REG. NO.</u>	<u>REG. DATE</u>	<u>GOODS/SERVICES</u>
6. McRULER	1,639,570	04/01/91	Standard six inch or twelve inch rulers
7. RONALD MCDONALD	1,499,525	08/09/88	Greeting Cards
8. RONALD MCDONALD	1,279,753	05/29/84	Coloring books
9. McDONALDS	1,289,798	8/14/1984	Comic books, coloring books, paper party hats, calendars, pens, pencils, and playing cards (+ much more)
10. M McDONALDS	1,286,823	07/24/84	Comic books, coloring books, paper party hats, calendars, pens, pencils, and playing cards (+ much more)
11. BOOKIN' WITH RONALD MCDONALD	1,681,144	03/31/92	Printed educational materials directed to teachers to encourage reading by their students
12. McDEALS	2,580,453	06/11/02	Printed redeemable certificates
13. McWATCH	1,771,347	05/18/93	Watches
14. McMERCHANDISE	1,878,115	02/07/95	Mail order services featuring novelty items
15. McGIFT SHOP	1,566,577	11/14/89	Retail gift shop services
16. McSTORE	2,360,636	06/20/00	Retail store services featuring general merchandise
17. McDONALDLAND	939,100	07/25/72	Restaurant services
18. MAYOR McCHEESE	1,331,343	04/16/85	Restaurant services

All of these registrations are valid, subsisting, and in full force and effect. Furthermore, Opposer used these marks in association with their respective designated goods and services prior to Applicant's intent-to-use filing date of August 22, 2008 for her McDOLLS mark.

9. Each of the aforesaid registrations is at least *prima facie* evidence of the validity of each registration, of Opposer's ownership thereof, and of Opposer's exclusive right to use such registered mark on the goods or services set forth in the registration.

10. In addition to those federally registered trademarks listed above, Opposer has used, and in many cases still is using, the following "Mc" formative marks specifically in association with the goods and services for which Applicant has applied: McDOME, McKIDS, McDONALD DESIGNS, McQUESTION, and McWORLD.

11. As a result of the use, over many years, of the various "Mc" formative marks listed above, Opposer has developed exceedingly valuable goodwill with respect to its "Mc" family of marks. Such use has caused consumers worldwide to associate composite terms incorporating "Mc" with Opposer. As a result of its efforts, Opposer's "Mc" family of marks is famous and was famous long prior to the date of filing of Applicant's subject application.

12. Despite Opposer's long-standing prior rights in its "Mc" family of marks, Applicant filed her intent-to-use application on or about August 22, 2008 to register her McDOLLS mark for calendars, envelopes, greeting cards, post cards, and posters.

13. Upon information and belief, Applicant intends to market and sell specialty stationery and other paper goods under her McDOLLS mark which feature various animated characters (e.g., dolls) in playful poses.

14. Applicant's intended use of her McDOLLS mark will be directed at the same consumers that Opposer targets with its use of its famous "Mc" family of marks.

15. Potential purchasers, upon seeing Applicant's McDOLLS mark used in connection with calendars, envelopes, greeting cards, post cards, and posters, are likely to mistakenly believe that such a term and the goods offered thereunder originate with or are

connected with, sponsored by, associated with, or licensed or approved by Opposer. Thus, the registration and use by Applicant of the her McDOLLS mark in connection with its recited goods is likely to cause confusion, mistake, or deception in violation of 15 U.S.C. § 1052(d).

16. Issuance of a registration to Applicant for her McDOLLS mark would also diminish the distinctive quality of Opposer's rights in its famous "Mc" family of marks and would blur and otherwise impair the distinctiveness of this family of marks, in violation of 15 U.S.C. § 1125(c). In addition, should Applicant's goods or services fall short of the high level of quality consumers have come to expect from Opposer's goods and services, Applicant's use of her McDOLLS mark as intended may also tarnish the good image of Opposer's famous "Mc" family of marks, and would thereby cause harm to Opposer's reputation in violation of 15 U.S.C. §1125(c).

17. If a registration is issued to Applicant for her McDOLLS mark, the confusion with Opposer's marks would result in damage and injury to Opposer and the public. Registration of this term would give Applicant an unqualified right to wrongfully appropriate Opposer's valuable goodwill and reputation associated with Opposer's marks; to benefit from the likely confusion among purchasers led to believe that Applicant's services are related in some fashion to Opposer; to dilute the distinctiveness of Opposer's marks and harm its goodwill and reputation associated with its marks; to tarnish Opposer's good name by offering confusingly similar goods and services not subject to Opposer's quality controls; and to restrict the natural growth of Opposer's "Mc" family of marks.

WHEREFORE, Opposer requests that this Opposition be sustained and Application Serial No. 77/553,485 be refused registration.

Please charge the fee of \$300 and any additional fees related to this matter to Deposit
Account No. 502261.

Respectfully submitted,

McDONALD'S CORPORATION

Date: May 1, 2009

By: /John A. Cullis/

Robert E. Browne
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CERTIFICATE OF TRANSMISSION

I hereby certify that the foregoing *Notice of Opposition* is being electronically transmitted via the Electronic System for Trademark Trials and Appeals (“ESTTA”) at <http://estta.uspto.gov/> on the date noted below:

Date: May 1, 2009

By: /Mike R. Turner/
One of the Attorneys for McDonald’s Corporation

Robert E. Browne
Michael G. Kelber
John A. Cullis
Mike R. Turner
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Chicago, Illinois 60602-3801
(312) 269-8000

CERTIFICATE OF SERVICE

I, Mike R. Turner, state that I served a copy of the foregoing *Notice of Opposition* upon Applicant for Application Serial No. 77/553,485 as listed with the USPTO:

Cheri McSherry
724 S. Magnolia Ave.
Lansing, MI 48912-2936

via First Class Mail in accordance with Trademark Rule §§ 2.201 and 2.119 on this 1st day of May, 2009.

/Mike R. Turner/
Mike R. Turner