

ESTTA Tracking number: **ESTTA340137**

Filing date: **03/31/2010**

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	KASHI COMPANY
Granted to Date of previous extension	03/31/2010
Address	One Kellogg Square PO Box 3599 Battle Creek, MI 49016 UNITED STATES
Correspondence information	DAVID A HERDMAN ASSISTANT SECRETARY/CORPORATE COUNSEL KASHI COMPANY One Kellogg Square PO Box 3599 Battle Creek, MI 49016 UNITED STATES trademarks@kellogg.com Phone:269-961-2170

### Applicant Information

Application No	77775454	Publication date	12/01/2009
Opposition Filing Date	03/31/2010	Opposition Period Ends	03/31/2010
Applicant	Bolden, Dawn 15400 Bambi Court Woodbridge, VA 22193 UNITED STATES		

### Goods/Services Affected by Opposition

Class 030. All goods and services in the class are opposed, namely: Breakfast cereals
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### Grounds for Opposition

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

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	DAY OF CHANGE		
Goods/Services	Breakfast cereals		

Attachments	Opposition Notice Scan.pdf ( 4 pages )(148833 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	/DAVID A HERDMAN/
Name	DAVID A HERDMAN
Date	03/31/2010

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

<b>KASHI COMPANY</b>	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. _____
	)	Serial No. 77/775,454
<b>DAWN BOLDEN</b>	)	Mark: CEREAL FOR A CHANGE
	)	GENERATION
Applicant.	)	Filing Date: July 7, 2009
	)	Publication Date: December 1, 2009

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**NOTICE OF OPPOSITION**

Kashi Company, a corporation duly organized and existing under the laws of the State of California, located and doing business at 4275 Executive Square, Suite 500, La Jolla, California 92037 (hereinafter "Opposer"), believing that it will be damaged by registration of the mark shown in Application Serial No. 77/775,454 in Class 30, filed by Dawn Bolden on July 7, 2009, hereby opposes the Application Serial No. 77/775,454.

The grounds are as follows:

1. Commencing long prior to Applicant's filing date, Opposer has engaged, and Opposer is now engaged in the manufacture, distribution, sale, advertising and promotion in interstate commerce of food products, including breakfast cereals, cereal and/or grain based snack bars and frozen entrees.

2. Commencing long prior to Applicant's filing date, Opposer and Opposer's predecessor in interest have used, and Opposer is now using Opposer's DAY OF CHANGE mark in connection with a range of goods, including goods in Class 30 that are directly competitive with or are closely related to the goods included in Applicant's proposed goods claim.

3. In addition to use on breakfast cereal packaging, Opposer has also used the trademark DAY OF CHANGE in connection with Opposer's DAY OF CHANGE TOUR which is a unique series of events where an individual can "begin (or continue) a journey to living your healthiest life." The DAY OF CHANGE TOUR is an on-going promotional event presented across the United States.

4. Opposer has made substantial investment in advertising and promoting its goods under Opposer's DAY OF CHANGE Mark since its initial use at least as early as 2006. Opposer has extensively used, advertised, promoted and offered Opposer's goods bearing Opposer's DAY OF CHANGE Mark to the public through various channels of trade in commerce, with the result that Opposer's customers and the public in general have come to know and recognize Opposer's DAY OF CHANGE Mark and associate the same with Opposer and/or goods sold by Opposer. Opposer has built extensive goodwill in connection with the advertising, sale and promotion of products under Opposer's DAY OF CHANGE Mark.

5. Upon information and belief, notwithstanding Opposer's rights in and to Opposer's Marks, on July 7, 2009, Applicant filed an application for registration of the proposed CEREAL FOR A CHANGE GENERATION trademark for "Breakfast Cereals" in International Class 30. Said application was assigned Serial No. 77/775,454 and was published for Opposition in the Official Gazette of December 1, 2009.

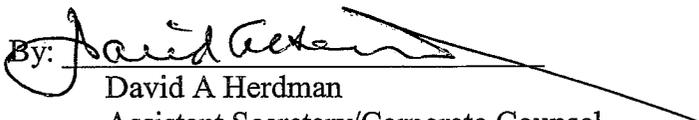
6. Applicant's proposed CEREAL FOR A CHANGE GENERATION Mark so resembles Opposer's DAY OF CHANGE Mark as to be likely, when applied to the proposed goods of Applicant, to cause confusion or mistake or to deceive purchasers resulting in damage and detriment of Opposer and its reputation.

7. Opposer, upon information and belief, avers that its customers, and the public generally, are likely to be confused, mistaken or deceived as to the origin and sponsorship of Applicant's proposed goods to be marketed under Applicant's proposed CEREAL FOR A CHANGE GENERATION Mark and misled into believing that such goods, emanate from, or are licensed by or are in some way directly or indirectly associated with Opposer, to the detriment of Opposer and its reputation.

8. Opposer, upon information and belief, avers that it will be damaged by the registration by Applicant of the proposed CEREAL FOR A CHANGE GENERATION Mark, as set forth in Applicant's Trademark Application Serial No. 77/775,454, in that Applicant's mark will be used in connection with goods that are either directly competitive with or closely related to the goods offered to the same classes of consumers.

Wherefore, this Opposer, Kashi Company, believes and avers that it is being and will continue to be damaged by registration of the proposed CEREAL FOR A CHANGE GENERATION Mark as aforesaid, prays that said Application Serial No. 77/754,454 be rejected, in accordance with the provisions of the Trademark Act, that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

Respectfully Submitted,  
KASHI COMPANY

By:   
David A Herdman  
Assistant Secretary/Corporate Counsel  
Kashi Company  
Correspondence Address:  
One Kellogg Square  
P.O. Box 3599  
Battle Creek, MI 49016

Date: March 31, 2010

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

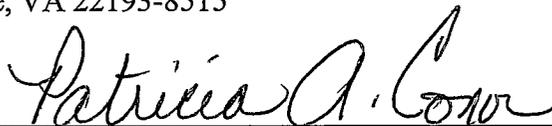
<b>KASHI COMPANY</b>	)	
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing Notice of Opposition has been served on the following Applicant and Correspondent as listed on the United States Patent and Trademark Office TARR website by mailing said copy on April 1, 2010, via First Class Mail, postage prepaid to:

Dawn Bolden  
15400 Bambi Court  
Woodbridge, VA 22193-8515

  
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Patricia A. Connor