

ESTTA Tracking number: **ESTTA376552**

Filing date: **11/03/2010**

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	Fruit of the Loom, Inc.		
Entity	Corporation	Citizenship	New York
Address	1 Fruit of the Loom Drive Bowling Green, KY 42103 UNITED STATES		

Attorney information	Carrie Shufflebarger Thompson Hine, LLP 312 Walnut Street Fourteenth Floor Cincinnati, OH 45202 UNITED STATES carrie.shufflebarger@thompsonhine.com, lou.ebling@thompsonhine.com, sharon.bella@thompsonhine.com, docket@thompsonhine.com, ipdocket@thompsonhine.com Phone:513.352.6678
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Applicant Information

Application No	85022947	Publication date	10/05/2010
Opposition Filing Date	11/03/2010	Opposition Period Ends	11/04/2010
Applicants	Prentice Funches Apt. A 20324 Spice Dr. Waynesville, MO 65583 UNITED STATES Tanisha Funches Apt. A 20324 Spice Dr. Waynesville, MO 65583 UNITED STATES		

Goods/Services Affected by Opposition

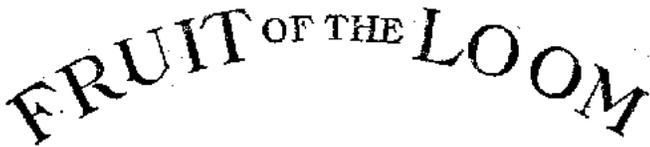
Class 040. All goods and services in the class are opposed, namely: Imprinting messages on wearing apparel, accessories and mugs

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.	174998	Application Date	11/29/1922
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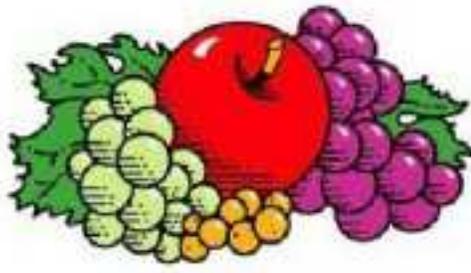
Registration Date	10/30/1923	Foreign Priority Date	NONE
Word Mark	FRUIT OF THE LOOM		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class U039 (International Class 010, 025, 026). First use: First Use: 1891/11/25 First Use In Commerce: 1891/11/25</p> <p>[Nurses' and Maids' Uniforms, Caps, and APERONS; MEN'S AND BOYS' DRESS AND NEGLIGEE SHIRTS, BOYS' BLOUSES, KITCHENETTE APRONS, LADIES DRESSES,] WOMEN'S AND CHILDREN'S TEXTILE UNDERWEAR; NIGHTS SHIRTS AND PAJAMAS FOR MEN, [WOMEN,] BOYS{, AND GIRLS]</p>		

U.S. Registration No.	913838	Application Date	06/04/1970
Registration Date	06/08/1971	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class U039 (International Class 010, 025, 026). First use: First Use: 1891/11/25 First Use In Commerce: 1891/11/25</p> <p>CLOTHING FOR MEN, WOMEN AND CHILDREN-NAMELY, UNDERWEAR, LINGERIE, [DRESS SHIRTS,] SPORT AND KNIT SHIRTS, [SLACKS], PANTS, [JEANS,] SHORTS, [BLOUSES,] PAJAMAS, [SLEEPERS, WATERPROOF PANTS, BIBS, APRONS,] GYM SHORTS AND [PLAY SUITS, BLOOMERS,] ROBES, [TIES, BELTS, GLOVES, HANDKERCHIEFS, SCARFS, RAINCOATS, CAPES, AND] JACKETS, SOCKS, HOSIERY, [LEOTARD] TIGHTS, SHOES, [SNEAKERS, BOOTS, AND RUBBERS]</p>		

U.S. Registration No.	1234708	Application Date	07/07/1981
Registration Date	04/12/1983	Foreign Priority Date	NONE
Word Mark	FRUIT OF THE LOOM		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1891/11/25 First Use In Commerce: 1891/11/25 Clothing for Men, Women and Children-Namely, Underwear, Lingerie, [Dress Shirts, Sport and Knit Shirts, Slacks, Pants, Jeans, Shorts, Blouses,] Pajamas, Sleeping Suits, [Waterproof Pants, Bibs, Aprons, Athletic and Play Suits, Bloomers,] Robes, [Ties, Belts, Gloves, Scarfs, Raincoats, Capes and Jackets,] Socks, Hosiery, Leotard Tights, [Shoes, Sneakers, Boots and Rubbers]

U.S. Registration No.	1876708	Application Date	12/23/1993
Registration Date	01/31/1995	Foreign Priority Date	NONE
Word Mark	FRUIT OF THE LOOM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1891/11/25 First Use In Commerce: 1891/11/25 apparel for men, women and children; namely, underwear, lingerie, shirts, tee shirts, [sport and knit shirts,] tank tops, [crop tops,] long sleeve tee shirts, [turtleneck shirts,] sweatshirts, [pants,] sweatpants, [jackets,] socks, hosiery leotard tights, shorts, brassieres, panties, [slippers, camisoles and petti culottes]		

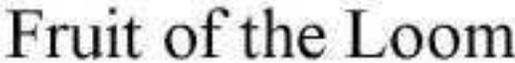
U.S. Registration No.	3032077	Application Date	10/28/2004
Registration Date	12/20/2005	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	The mark consists of an apple with stem, grapes, currants and green leaves.		

Goods/Services	Class 028. First use: First Use: 2004/06/21 First Use In Commerce: 2004/06/21 Model Cars		
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U.S. Registration No.	3119226	Application Date	08/11/2004
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Registration Date	07/25/2006	Foreign Priority Date	NONE
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Word Mark	FRUIT OF THE LOOM		
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Design Mark			
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Description of Mark	NONE		
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Goods/Services	Class 028. First use: First Use: 2004/06/21 First Use In Commerce: 2004/06/21 Model Cars		
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U.S. Registration No.	3108741	Application Date	09/14/2004
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Registration Date	06/27/2006	Foreign Priority Date	NONE
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Word Mark	NONE		
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Design Mark			
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Description of Mark	NONE		
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Goods/Services	Class 025. First use: First Use: 2001/03/29 First Use In Commerce: 2001/03/29 Socks		
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U.S. Registration No.	3013374	Application Date	09/14/2004
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Registration Date	11/08/2005	Foreign Priority Date	NONE
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Word Mark	NONE		
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Design Mark	
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 2001/03/29 First Use In Commerce: 2001/03/29 Socks

U.S. Registration No.	3011408	Application Date	09/14/2004
Registration Date	11/01/2005	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2001/03/29 First Use In Commerce: 2001/03/29 Socks		

U.S. Application No.	77888957	Application Date	12/08/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	FRUIT OF THE LOOM FRUIT OF THE LOOM ESTABLISHED 1851 AMERICAN CLASSIC SINCE 1851		

Design Mark	
Description of Mark	The mark consists of a circle, incompletely formed as if made by a rubber stamp, containing the words "FRUIT OF THE LOOM" and "established 1851" around the inside of the perimeter, with a design of fruit and the words "FRUIT OF THE LOOM" at the center. Below the circle are the words "American Classic Since 1851". The whole resembles a post-mark stamp.
Goods/Services	Class 025. First use: First Use: 2009/03/30 First Use In Commerce: 2009/03/30 T-shirts; Underwear

U.S. Application No.	85080288	Application Date	07/08/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	FRUIT OF THE LOOM FRUIT OF THE LOOM ESTABLISHED 1851		
Design Mark			
Description of Mark	The mark consists of a circle, incompletely formed as if made by a rubber stamp, containing the words "FRUIT OF THE LOOM" and "established 1851" around the inside of the perimeter, with a design of fruit over the words "FRUIT OF THE LOOM" at the center.		
Goods/Services	Class 025. First use: First Use: 2007/10/08 First Use In Commerce: 2007/10/08 T-shirts; Underwear		

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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	/Carrie Shufflebarger/
Name	Carrie Shufflebarger
Date	11/03/2010

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

In the Matter of

Application No. : 85/022,947
Applicants : Prentice Funches and Tanisha Funches
Mark : FRUITFUL CLOTHING & Design
Filing Date : April 26, 2010
Publication Date : October 5, 2010
Opposed Class: : 40

FRUIT OF THE LOOM, INC.,

Opposer,

v.

PRENTICE FUNCHES and
TANISHA FUNCHES,

Applicants.

Opposition No. _____

NOTICE OF OPPOSITION

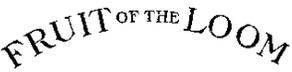
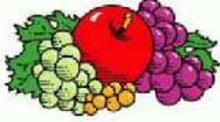
Opposer, Fruit of the Loom, Inc., a corporation duly organized and existing under the laws of the State of New York, having a mailing address at One Fruit of the Loom Drive, Bowling Green, Kentucky 42103, believes it will be damaged by registration of the mark FRUITFUL CLOTHING & Design shown in Application Serial No. 85/022,947, and hereby opposes registration of said mark.

As grounds of opposition, it is alleged that:

1. Opposer is Fruit of the Loom, Inc., owner of the famous FRUIT OF THE LOOM brand. Opposer is the owner of, is currently using, and has itself and through its predecessors-in-interest continuously used for 150 years in U.S. commerce marks consisting of or incorporating "FRUIT," "FRUIT OF THE LOOM," and/or designs incorporating fruit

elements in connection with, inter alia, clothing and textile goods, including T-shirts, underwear, sweatshirts, sweatpants, and socks (the “FRUIT Marks”).

2. Opposer (through its predecessor-in-interest) first registered THE FRUIT OF THE LOOM and Design in the U.S. Patent and Trademark Office on August 8, 1871, under U.S. Registration 418. Opposer owns numerous federal registrations on the Principal Register and pending applications therefor, including without limitation the following, many of which have become incontestable within the meaning of the Lanham Act:

Trademark	Serial/Reg.	First Use	Goods
	174,998	1891	Women’s and children’s textile underwear, and pajamas for men, and boys
	913,838	1891	Clothing for men, women and children namely, underwear, lingerie, sport and knit shirts, pants, shorts, pajamas, gym shorts and robes, jackets, socks, hosiery, tights, shoes
	1,234,708	1891	Clothing for men, women and children-namely, underwear, lingerie, pajamas, sleeping suits, robes, socks, hosiery, leotard tights
FRUIT OF THE LOOM	1,876,708	1891	Apparel for men, women and children; namely, underwear, lingerie, shirts, tee shirts, tank tops, long sleeve tee shirts, sweatshirts, sweatpants, socks, hosiery, leotard tights, shorts, brassieres, panties
	3,032,077	2004	Model cars
FRUIT OF THE LOOM	3,119,226	2004	Model Cars

Trademark	Serial/Reg.	First Use	Goods
	3,108,741	2001	Socks
	3,013,374	2001	Socks
	3,011,408	2001	Socks
	77/888,957	2009	T-shirts; Underwear
	85/080,288	2007	T-shirts; Underwear

3. Building on the tremendous success and recognition of the FRUIT OF THE LOOM brand, Fruit has also developed strong common law rights in the mark FRUIT and its other FRUIT Marks, including its world-famous “FRUIT GUYS” characters, which it promotes through web sites at www.fruit.com and www.fruitguyfans.com.
4. Opposer has expended substantial amounts of money, time, and effort in advertising, promoting, and popularizing its FRUIT Marks over many years and in preserving the good will associated therewith.
5. Opposer’s FRUIT Marks have become distinctive of and associated in the minds of the trade and purchasing public with Opposer as a well-known provider of its goods.

6. The public has come to know Opposer's FRUIT Marks and recognize that any goods so marked originate with Opposer. By virtue of these efforts and by virtue of the excellence of its goods, Opposer has gained a valuable reputation for its FRUIT Marks.
7. The term "FRUIT," alone and in combination with other terms, has become synonymous with Opposer for a variety of clothing goods.
8. Prentice Funches and Tanisha Funches, individuals domiciled in Missouri, filed Application Serial No. 85/022,947 under Section 1(b) of the Lanham Act on April 26, 2010 ("Application"), seeking registration of the trademark FRUITFUL CLOTHING & Design ("Applicants' Mark") for "Imprinting messages on wearing apparel, accessories and mugs" in International Class 40.
9. Priority is not an issue: Opposer's longstanding use of its FRUIT Marks described above is well prior to the filing date of the Application.
10. The services for which Applicants seek to register Applicants' Mark are closely related to Opposer's goods sold under the FRUIT Marks, and are likely to be sold to the same class of purchasers as Opposer's goods sold under its FRUIT Marks.
11. Applicants' Mark so resembles the marks previously used by Opposer in commerce as to be likely, when used in connection with Applicants' services, to cause confusion, deception or mistake as to the affiliation, connection or association of Applicants with Opposer, and/or the origin, sponsorship, or approval of Applicants' services or commercial activities by Opposer under 15 U.S.C. § 1052(d). The aforesaid likelihood of confusion will damage Opposer within the meaning of 15 U.S.C. § 1063.

12. Opposer's FRUIT Marks are famous and distinctive within the meaning of the Lanham Act.
13. Opposer's FRUIT Marks became famous long prior to the filing date of the Application.
14. Registration of the highly similar Applicants' Mark will lessen the capacity of Opposer's famous and distinctive FRUIT Marks to distinguish and identify Opposer's goods and services from those of others, thereby diluting the distinctive quality of Opposer's FRUIT Marks in violation of 15 U.S.C. § 1125(c), and causing damage to Opposer within the meaning of 15 U.S.C. § 1063.
15. Opposer would be damaged by registration of Applicants' Mark because registration would grant Applicants statutory rights under the Trademark Act of 1946, and would tend to restrict, interfere with, and damage Opposer in the unhampered conduct of its business and protection of its legitimate interests.

WHEREFORE, Opposer prays this Opposition be sustained, and registration of the application cited above be refused.

Please charge the appropriate filing fee to the credit card account of Opposer's counsel, as provided through the ESTTA filing system.

Please direct all correspondence to Carrie A. Shufflebarger, Esq., at Thompson Hine, LLP, 312 Walnut Street, Fourteenth Floor, Cincinnati, Ohio 45202, and all calls to the same at (513) 352-6678.

Respectfully submitted,

/s/ Carrie A. Shufflebarger

Carrie A. Shufflebarger, Esq.
Louis K. Ebling, Esq.
THOMPSON HINE, LLP
312 Walnut Street
Fourteenth Floor
Cincinnati, Ohio 45202
(513) 342-6678
carrie.shufflebarger@thompsonhine.com
lou.ebling@thompsonhine.com

Date: November 3, 2010

CERTIFICATE OF FILING

I certify that this NOTICE OF OPPOSITION is being submitted electronically to the Trademark Trial and Appeal Board at the United States Patent and Trademark Office on this 3rd day of November, 2010.

/s/ Carrie A. Shufflebarger

Carrie A. Shufflebarger

CERTIFICATE OF SERVICE

I certify that a copy of this NOTICE OF OPPOSITION is being served via United States mail, postage prepaid, on the following, on this 3rd day of November, 2010.

Prentice Funches
Tanisha Funches
Apt. A 20324 Spice Dr.
Waynesville, MO 65583

/s/ Carrie A. Shufflebarger

Carrie A. Shufflebarger