

ESTTA Tracking number: **ESTTA406604**

Filing date: **05/02/2011**

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	05/01/2011
Address	Two Paragon Drive Montvale, NJ 07645 UNITED STATES

Attorney information	Carissa L. Alden COWAN, LIEBOWITZ & LATMAN, P.C. 1133 AVENUE OF THE AMERICAS NEW YORK, NY 10036 UNITED STATES cla@cll.com, asc@cll.com, trademark@cll.com Phone:212-790-9200
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Applicant Information

Application No	77980413	Publication date	11/02/2010
Opposition Filing Date	05/02/2011	Opposition Period Ends	05/01/2011
Applicant	Basics Plus Inc. 86 Christopher Street New York, NY 10014 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. First Use: 2005/11/15 First Use In Commerce: 2005/11/15 All goods and services in the class are opposed, namely: Retail store and on-line retail store services featuring hardware goods
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Grounds for Opposition

Other	Please see attached pleading.
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Attachments	Ltr to Commissioner re NOO for BASICS PLUS.pdf (1 page)(140832 bytes) NOO for BASICS PLUS.pdf (4 pages)(16116 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	/Carissa L. Alden/
Name	Carissa L. Alden
Date	05/02/2011



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May 2, 2011

By Electronic Filing

Commissioner for Trademarks
Attn: TTAB
P.O. Box 1451
Alexandria, VA 22313-1451

Re: The Great Atlantic & Pacific Tea Company, Inc.
Notice of Opposition Against
Basics Plus, Inc.
Application to register BASICS PLUS
Ref. No. 25897.000

Dear Commissioner:

We enclose a Notice of Opposition against Application Serial Number 77/980,413 published in the Official Gazette on November 2, 2010. Contemporaneously with the electronic filing of this Notice of Opposition, we are arranging for an electronic payment in the amount of \$300 to cover the filing fee.

If the amount received is insufficient and additional fees are required, please charge our Deposit Account No. 03-3415.

Please address all future correspondence to the attention of Arlana S. Cohen of Cowan, Liebowitz & Latman, P.C.

Respectfully submitted,

/Carissa L. Alden/
Carissa L. Alden

Enclosures

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

In re Application Serial No. 77/980,413
Filed: January 18, 2010
For Mark: BASICS PLUS
Published in the Official Gazette: November 2, 2010

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THE GREAT ATLANTIC & PACIFIC TEA	:	Opposition No.
COMPANY, INC.,	:	
Opposer,	:	<u>NOTICE OF OPPOSITION</u>
v.	:	
BASICS PLUS, INC.,	:	
Applicant.	:	
-----X	:	

Commissioner for Trademarks
Attn: Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Opposer, 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 grant to Applicant, Basics Plus, Inc. (“Applicant”) of registration of the standard character mark BASICS PLUS in International Class 35 for “retail store and on-line retail store services featuring hardware goods” as shown in Application Serial No. 77/980,413 (the “Application”), and having been granted extensions of time to oppose up to and including May 1, 2011, hereby opposes the same.

As grounds for opposition, it is alleged that:

1. Since as early as 2001, Opposer has owned and operated a chain of well-regarded, retail grocery stores and supermarkets bearing the mark FOOD BASICS. There are currently 12 such stores in the United States.

2. Since prior to November 15, 2005, Applicant's claimed first use date, Opposer has used the name or mark BASICS or FOOD BASICS, alone and/or with other word, letter and/or design elements ("Opposer's BASICS Marks"), in connection with, but not limited to, supermarkets and retail grocery store services.

3. Opposer owns two incontestable U.S. Federal registrations for Opposer's BASICS Marks in International Class 35; namely, U.S. Registration No. 2,726,744 for the mark FOOD BASICS for "Retail supermarket services" and U.S. Registration No. 2,884,450 for the mark BASICS for "Supermarket services; retail pharmacy services."

4. Since prior to November 15, 2005, Applicant's claimed first use date, Opposer has promoted and advertised its services offered in connection with Opposer's BASICS Marks.

5. As a result of the sale, distribution and promotion of its services offered in connection with Opposer's BASICS Marks, Opposer has built up highly valuable goodwill in connection with Opposer's BASICS Marks, and said goodwill has become identified and associated with Opposer.

6. On or about January 18, 2010, Applicant filed the application for the mark BASICS PLUS for "retail store and on-line retail store services featuring hardware goods" in International Class 35, based on an alleged first use date of November 15, 2005.

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

8. Applicant's proposed BASICS PLUS mark so resembles Opposer's BASICS 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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on May 2, 2011, I caused a true and correct copy of the foregoing Notice of Opposition to be sent via First Class Mail, postage prepaid, to Applicant's Attorney and Correspondent of Record, Henry J. Cittone, Office of Henry J. Cittone, Esq., 122 W. 27th St. Fl 10, New York, NY 10001-6227.

/Carissa L. Alden
Carissa L. Alden