

ESTTA Tracking number: **ESTTA410842**

Filing date: **05/25/2011**

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	Reynolds Innovations, Inc.		
Entity	Corporation	Citizenship	North Carolina
Address	401 North Main Street Winston-Salem, NC 27102 UNITED STATES		

Attorney information	William M. Bryner KILPATRICK TOWNSEND & STOCKTON LLP 1001 West Fourth Street Winston-Salem, NC 27101 UNITED STATES tmadmin@kilpatricktownsend.com, bbryner@kilpatricktownsend.com, hhenderson@kilpatricktownsend.com Phone:336-607-7300		
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**Applicant Information**

Application No	77878469	Publication date	04/26/2011
Opposition Filing Date	05/25/2011	Opposition Period Ends	05/26/2011
Applicant	New Image Global, Inc. 1672 Railroad St. Corona, CA 92882 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 034. All goods and services in the class are opposed, namely: SMOKING ARTICLES, NAMELY, FLAVORED AND NON-FLAVORED ROLLING TOBACCO SHEETS
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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. Registration No.	3341829	Application Date	04/12/2006
Registration Date	11/20/2007	Foreign Priority Date	NONE
Word Mark	XL		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 034. First use: First Use: 2006/10/23 First Use In Commerce: 2006/10/23 Cigarettes

Attachments	78860138#TMSN.jpeg ( 1 page )( bytes ) Reynolds v. New Image - Notice of Opposition.pdf ( 14 pages )(387451 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	/william m. bryner/
Name	William M. Bryner
Date	05/25/2011

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

REYNOLDS INNOVATIONS, INC,	)	
	)	In the matter of Application
Opposer,	)	Serial No. 77/878,469
	)	
	)	Mark: XL
	)	
v.	)	Opposition No. _____
	)	
NEW IMAGE GLOBAL, INC.	)	
	)	
	)	
Applicant.	)	

**NOTICE OF OPPOSITION**

Reynolds Innovations, Inc. (“Opposer”), a North Carolina corporation having its principal place of business at 401 North Main Street, Winston-Salem, North Carolina 27102, believes that it will be damaged by the registration of the trademark XL, as shown in U.S. Trademark App. Ser. No. 77/878,469, and hereby opposes the same.

As grounds for the opposition, Opposer alleges the following:

**FACTS COMMON TO ALL GROUNDS FOR OPPOSITION**

1. For several years, and well prior to Applicant’s filing of its application to register the XL mark, Opposer, together with its corporate affiliates and its predecessors-in-interest, has been engaged in the manufacture, distribution, and sale of cigarettes, smokeless tobacco and other tobacco products. Opposer’s predecessors, affiliates and licensees, including but not limited to R.J. Reynolds Tobacco Company, shall be referred to collectively as “Reynolds.”

2. Since at least as early as October 23, 2006, Reynolds has continuously used, and presently uses, the trademark XL (the “Reynolds XL Mark”) in interstate commerce

throughout the United States in connection with the advertising, promotion, distribution, and sale of its cigarette products.

3. Opposer owns Reg. No. 3,341,829 on the Principal Register of the United States Patent and Trademark Office (the “USPTO”) for the Reynolds XL Mark for “cigarettes” in International Class 34 (the “XL Registration”). Reynolds filed the application which became the XL Registration on April 12, 2006, and the XL Registration was issued on November 20, 2007. Pursuant to 37 C.F.R. § 2.122(d)(1), current printouts of information from electronic database records of the USPTO showing the current status and title of the XL Registration are attached as **Exhibit A**.

4. On November 23, 2009, Applicant New Image Global, Inc. filed an intent-to-use application, App. Serial No. 77/878,469 (the “Opposed Application”) to register the identical mark XL (“Applicant’s XL Mark”), for a wide variety of goods in Class 34, including, *inter alia*, “cigars, cigarillos, cigarettes, tobacco, and cigarette papers.”

5. On September 3, 2010, and in response to an Office Action issued by the USPTO, Applicant amended the goods identified in the Opposed Application to “smoking products, namely, flavored and non-flavored tobacco rolling sheets” in International Class 34.

#### **GROUND – LIKELIHOOD OF CONFUSION**

6. Reynolds hereby incorporates by reference the allegations of Paragraphs 1 through 5 above, as if fully set forth herein.

7. Applicant’s XL Mark, as shown in the Opposed Application, is identical to the previously used Reynolds XL Mark.

8. The goods identified in the Opposed Application are highly related to goods on which the Reynolds XL Mark is and has previously been used.

9. Applicant's XL Mark, when used in connection with Applicant's goods as identified in the Opposed Application, so resembles the previously used Reynolds XL Mark as to be likely to cause confusion, to cause mistake, and/or to deceive members of the public concerning a sponsorship or endorsement of, or an affiliation, connection, or association with the sources of goods sold under the Reynolds XL Mark, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), with consequent injury to Reynolds, the public, and the trade.

10. Applicant's XL Mark, as shown in the Opposed Application, is identical to the previously registered Reynolds XL Mark as shown in the XL Registration.

11. Goods identified in the Opposed Application are highly related to goods identified in the XL Registration..

12. Applicant's XL Mark, when used in connection with Applicant's goods as identified in the Opposed Application, so resembles the mark shown in the previously registered XL Registration as to be likely to cause confusion, to cause mistake, and/or to deceive members of the public concerning a sponsorship or endorsement of, or an affiliation, connection, or association with the sources of goods sold under the Reynolds XL Mark, as shown in the XL Registration, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), with consequent injury to Reynolds, the public, and the trade.

13. Pursuant to Section 13(a) of the Lanham Act, 15 U.S.C. § 1063(a), Reynolds believes it will be damaged by registration of Applicant's XL Mark in that members of the purchasing public and/or the trade are likely to be confused or mistaken that Applicant's

goods offered under Applicant's XL Mark originate from Reynolds, or from the same source as goods sold under the Reynolds XL Mark and/or the registered mark shown in the XL Registration, or that such goods of Applicant are sponsored by, endorsed by, or affiliated with the source of goods sold under the Reynolds XL Mark and/or the registered mark shown in the XL Registration. Such likelihood of confusion results in damage to the goodwill among purchasers and the trade that the Reynolds XL Mark symbolizes. Registration of Applicant's XL Mark will support and assist Applicant in the confusing and misleading use of Applicant's XL Mark, and, in addition, will give color and exclusive statutory right to Applicant in violation and derogation of the prior and superior rights of Reynolds.

**WHEREFORE**, Opposer requests that registration of Applicant's XL Mark, as shown in the Opposed Application, be refused.

The required fee for instituting this opposition proceeding is being submitted herewith. Please charge any deficiency or refund in the filing fee to Deposit Account No. 16-1435.

Please recognize William M. Bryner and the law firm of Kilpatrick Townsend & Stockton LLP as attorneys for Opposer in connection with this opposition proceeding. Please address all correspondence regarding this proceeding to William M. Bryner at Kilpatrick Townsend & Stockton LLP, 1001 West Fourth Street, Winston-Salem, NC, 27101.



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

REYNOLDS INNOVATIONS, INC,	)	
	)	In the matter of Application
Opposer,	)	Serial No. 77/878,469
	)	
	)	Mark: XL
	)	
v.	)	Opposition No. _____
	)	
NEW IMAGE GLOBAL, INC.	)	
	)	
	)	
Applicant.	)	

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing NOTICE OF OPPOSITION was served on counsel of record for the Applicant on May 25, 2011 via first class United States mail to:

Dwayne L. Mason  
Greenberg Traurig, LLP  
1000 Louisiana Street, Suite 1700  
Houston, Texas 77002

/hwh/\_\_\_\_\_  
*Counsel for Opposer*

**CERTIFICATE OF TRANSMITTAL**

I hereby certify that a true copy of the foregoing NOTICE OF CONSOLIDATED OPPOSITION is being filed electronically with the TTAB via ESTTA on this day, May 25, 2011.

/hwh/\_\_\_\_\_  
*Counsel for Opposer*

**EXHIBIT A**



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<b>Word Mark</b>	XL
<b>Goods and Services</b>	IC 034. US 002 008 009 017. G & S: Cigarettes. FIRST USE: 20061023. FIRST USE IN COMMERCE: 20061023
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Trademark Search Facility Classification Code</b>	LETS-2 XL Two letters or combinations of multiples of two letters
<b>Serial Number</b>	<b>78860138</b>
<b>Filing Date</b>	April 12, 2006
<b>Current Filing Basis</b>	1A

**Original Filing Basis** 1B

**Published for Opposition** June 26, 2007

**Registration Number** 3341829

**Registration Date** November 20, 2007

**Owner** (REGISTRANT) GMB, Inc. CORPORATION NORTH CAROLINA P.O. Box 2202 Jefferson Square, Suite D King NORTH CAROLINA 27021

(LAST LISTED OWNER) REYNOLDS INNOVATIONS INC. CORPORATION NORTH CAROLINA 401 North Main Street Winston-Salem NORTH CAROLINA 27102

**Assignment Recorded** ASSIGNMENT RECORDED

**Attorney of Record** William M. Bryner

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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[NEW USER](#)

[STRUCTURED](#)

[FREE FORM](#)

[BROWSE DICT](#)

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Serial Number: [78860138 Assignment Information](#)      [Trademark Document Retrieval](#)

Registration Number: [3341829](#)

Mark

**XL**

(words only): [XL](#)

Standard Character claim: [Yes](#)

**Current Status:** [Registered](#). The registration date is used to determine when post-registration maintenance documents are due.

**Date of Status:** [2007-11-20](#)

**Filing Date:** [2006-04-12](#)

**Filed as TEAS Plus Application:** [Yes](#)

**Currently TEAS Plus Application:** [Yes](#)

**Transformed into a National Application:** [No](#)

**Registration Date:** [2007-11-20](#)

**Register:** [Principal](#)

**Law Office Assigned:** [LAW OFFICE 102](#)

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at**

[TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)

**Current Location:** 650 -Publication And Issue Section

**Date In Location:** 2007-10-18

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**LAST APPLICANT(S)/ OWNER(S) OF RECORD**

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1. [REYNOLDS INNOVATIONS INC.](#)

**Address:**

[REYNOLDS INNOVATIONS INC.](#)

[401 North Main Street](#)

[Winston-Salem, NC 27102](#)

[United States](#)

**Legal Entity Type:** [Corporation](#)

**State or Country of Incorporation:** [North Carolina](#)

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**GOODS AND/ OR SERVICES**

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**International Class:** [034](#)

**Class Status:** [Active](#)

[Cigarettes](#)

**Basis:** [1\(a\)](#)

**First Use Date:** [2006-10-23](#)

**First Use in Commerce Date:** [2006-10-23](#)

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**ADDITIONAL INFORMATION**

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(NOT AVAILABLE)

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**MADRID PROTOCOL INFORMATION**

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(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

2011-02-18 - Attorney Revoked And/Or Appointed

2011-02-18 - TEAS Revoke/Appoint Attorney Received

2009-01-21 - Applicant/Correspondence Changes (Non-Responsive) Entered

2009-01-21 - TEAS Change Of Owner Address Received

2009-01-14 - Automatic Update Of Assignment Of Ownership

2009-01-13 - Applicant/Correspondence Changes (Non-Responsive) Entered

2009-01-13 - TEAS Change Of Owner Address Received

2008-03-19 - Assignment Of Ownership Not Updated Automatically

2007-11-20 - Registered - Principal Register

2007-10-18 - Law Office Registration Review Completed

2007-10-17 - Allowed for Registration - Principal Register (SOU accepted)

2007-10-16 - Statement Of Use Processing Complete

2007-09-27 - Use Amendment Filed

2007-09-27 - TEAS Statement of Use Received

2007-09-18 - NOA Mailed - SOU Required From Applicant

2007-06-26 - Published for opposition

2007-06-06 - Notice of publication

2007-04-24 - Law Office Publication Review Completed

2007-04-23 - Approved For Pub - Principal Register

2007-04-20 - Teas/Email Correspondence Entered

2007-04-20 - Communication received from applicant

2007-04-20 - Assigned To LIE

2007-03-19 - TEAS Response to Office Action Received

2007-01-17 - Applicant/Correspondence Changes (Non-Responsive) Entered

2007-01-17 - TEAS Change Of Owner Address Received

2006-09-20 - Non-final action e-mailed

2006-09-20 - Non-Final Action Written

2006-09-20 - Assigned To Examiner

2006-04-19 - New Application Entered In Tram

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**ATTORNEY/ CORRESPONDENT INFORMATION**

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**Attorney of Record**

William M. Bryner

**Correspondent**

William M. Bryner

Kilpatrick Townsend & Stockton LLP

1001 W. Fourth Street

Winston-Salem NC 27101

Phone Number: 336-607-7300

Fax Number: 336-607-7500

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#### Total Assignments: 2

Serial #: [78860138](#)

Filing Dt: 04/12/2006

Reg #: [3341829](#)

Reg. Dt: 11/20/2007

Registrant: GMB, Inc.

Mark: XL

#### Assignment: 1

Reel/ Frame: [3740/0923](#)

Received: 03/17/2008

Recorded: 03/17/2008

Pages: 7

Conveyance: GRANT OF SECURITY INTEREST

Assignor:

[GMB, INC.](#)

Exec Dt: 01/31/2008

Entity Type: CORPORATION

Citizenship: NORTH CAROLINA

Assignee: [JP MORGAN CHASE BANK, N.A.](#)

4 NEW YORK PLAZA, 4TH FLOOR  
NEW YORK, NEW YORK 10004

Entity Type: COLLATERAL AGENT

Citizenship: NONE

Correspondent: MATTHEW BART

WHITE & CASE LLP  
1155 AVENUE OF THE AMERICAS  
NEW YORK, NY 10036

#### Assignment: 2

Reel/ Frame: [3913/0770](#)

Received: 01/06/2009

Recorded: 01/06/2009

Pages: 9

Conveyance: CHANGE OF NAME

Assignor:

[GMB, INC.](#)

Exec Dt: 11/04/2008

Entity Type: CORPORATION

Citizenship: NORTH CAROLINA

Assignee: [REYNOLDS INNOVATIONS INC.](#)

JEFFERSON SQUARE, SUITE D  
P.O. BOX 2202  
KING, NORTH CAROLINA 27025

Entity Type: CORPORATION

Citizenship: NORTH CAROLINA

Correspondent: RANDEL S. SPRINGER

ONE WEST FOURTH STREET  
WOMBLE CARLYLE SANDRIDGE & RICE, PLLC  
WINSTON-SALEM, NC 27101

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