

ESTTA Tracking number: **ESTTA432419**

Filing date: **09/26/2011**

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 parties oppose registration of the indicated application.

Opposers Information

Name	CFA Properties, Inc.
Granted to Date of previous extension	09/28/2011
Address	1105 North Market Street Suite 928 Wilmington, DE 19801 UNITED STATES

Name	Chick-fil-A, Inc.
Granted to Date of previous extension	09/28/2011
Address	5200 Buffington Road Atlanta, GA 30349 UNITED STATES

Attorney information	John M. Bowler, Esq. Troutman Sanders LLP 600 Peachtree Street, NE, Suite 5200 Atlanta, GA 30308 UNITED STATES john.bowler@troutmansanders.com, trademarks@agg.com
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Applicant Information

Application No	85221285	Publication date	05/31/2011
Opposition Filing Date	09/26/2011	Opposition Period Ends	09/28/2011
Applicants	Kessler, Josh 492 Henry Street #1i Brooklyn, NY 11231 UNITED STATES Barrett, Rachel 492 Henry Street #1i Brooklyn, NY 11231 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. All goods and services in the class are opposed, namely: On-line retail store services featuring cereals, oatmeal and rolled oats; Retail cereals, oatmeal and rolled oats stores

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.	2010233	Application Date	12/11/1995
Registration Date	10/22/1996	Foreign Priority Date	NONE
Word Mark	EAT MOR CHIKIN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1995/06/19 First Use In Commerce: 1995/06/19 restaurant services		

U.S. Registration No.	2240326	Application Date	08/13/1997
Registration Date	04/20/1999	Foreign Priority Date	NONE
Word Mark	EAT MOR CHIKIN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1995/06/19 First Use In Commerce: 1995/06/19 restaurant services		

U.S. Registration No.	2538070	Application Date	01/10/2001
Registration Date	02/12/2002	Foreign Priority Date	NONE
Word Mark	EAT MOR CHIKIN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1996/04/00 First Use In Commerce: 1996/04/00 Restaurant services		

U.S. Registration No.	2062809	Application Date	01/18/1996
Registration Date	05/20/1997	Foreign Priority Date	NONE
Word Mark	EAT MOR CHIKIN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1995/09/26 First Use In Commerce: 1995/12/08 clothing, namely, T-shirts and sweatshirts		

U.S. Registration No.	2197973	Application Date	08/18/1997
Registration Date	10/20/1998	Foreign Priority Date	NONE
Word Mark	EAT MOR CHIKIN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1995/06/19 First Use In Commerce: 1995/06/19 clothing, namely, hats, neckties, shirts, sweatshirts and T-shirts		

U.S. Registration No.	2538050	Application Date	12/19/2000
Registration Date	02/12/2002	Foreign Priority Date	NONE
Word Mark	EAT MOR CHIKIN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1996/04/00 First Use In Commerce: 1996/04/00 Clothing, namely, hats, neckties, shirts, sweatshirts and T-shirts		

Related Proceedings	This opposition is related to two other oppositions involving Serial Numbers 85/221306 and 85/221309.
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Attachments	76192789#TMSN.gif (1 page)(bytes) 76184298#TMSN.gif (1 page)(bytes) Opposition 85-221285.pdf (6 pages)(112578 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 M. Bowler/
Name	John M. Bowler, Esq.
Date	09/26/2011

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

CFA PROPERTIES, INC., and)	
CHICK-FIL-A, INC.,)	
)	
Opposers,)	Application Serial No. 85/221285
)	
v.)	Mark: EATMORE
)	
JOSH KESSLER AND RACHEL)	
BARRETT, D/B/A THE GRANOLA)	Opposition No. _____
BAR,)	
)	
Applicants.)	
_____)	

NOTICE OF OPPOSITION

CFA Properties, Inc. and Chick-fil-A, Inc. (collectively “Opposers”), for their Notice of Opposition against Application Serial No. 85/221285 for the mark EATMORE filed by Josh Kessler and Rachel Barrett, d/b/a The Granola Bar (“Applicant”), believe that they will be damaged by and thus oppose the issuance of the mark shown in the application.

The grounds for opposition are as follows:

A) **Likelihood of Confusion:**

1. Opposer CFA Properties, Inc. (“CFA Properties”) is a Delaware corporation with a principal place of business located at 1105 North Market Street, Suite 928, Wilmington, Delaware 19801. CFA Properties owns all rights to various trademarks, service marks, and other intellectual property that it licenses to Opposer Chick-fil-A, Inc.

2. Opposer Chick-fil-A, Inc. (“Chick-fil-A”) is a Georgia corporation with a principal place of business located at 5200 Buffington Road, Atlanta, Georgia 30349.

Chick-fil-A is the second largest quick service chicken restaurant company in the United States. Chick-fil-A specializes in chicken entrees, and it also offers a large breakfast menu that includes Yogurt Parfait with Granola, Multigrain Oatmeal, and other food selections.

3. Upon information and belief, Applicants are individuals who are New York residents doing business as The Granola Bar with a correspondence address of 492 Henry Street #1i, Brooklyn, New York 11231.

4. Application No. 85/221285 was published in the *Official Gazette* on May 31, 2011. Opposers have extended time to oppose the application through and including September 28, 2011. This Notice of Opposition is timely filed.

5. Opposer CFA Properties is the owner of the mark EAT MOR CHIKIN for “restaurant services” and owns the following federal service mark and trademark registrations incorporating the EAT MOR CHIKIN mark (hereinafter, collectively, “Opposers’ EAT MOR CHIKIN Marks”), which it has licensed to Opposer Chick-fil-A:

Mark	Reg. No.	Int’l Class	Goods/Services
EAT MOR CHIKIN	2,010,233	42	“Restaurant services”
EAT MOR CHIKIN	2,240,326	42	“Restaurant services”
EAT MOR CHIKIN & Design	2,538,070	42	“Restaurant services”
EAT MOR CHIKIN	2,062,809	25	“Clothing, namely, T-shirts and sweatshirts”
EAT MOR CHIKIN	2,197,973	25	“Clothing, namely, hats, neckties, shirts, sweatshirts and T-shirts”
EAT MOR CHIKIN & Design	2,538,050	25	“Clothing, namely, hats, neckties, shirts, sweatshirts, and T-shirts.”

6. By virtue of widespread sales and continuous and extensive advertising and promotion of the various goods and services identified by Opposers’ EAT MOR CHIKIN Marks, and the maintenance of high quality standards relating thereto, Opposers’ EAT MOR CHIKIN Marks are well known by the general public and in the relevant industries, are recognized and

relied upon as identifying Opposers' goods and services and as distinguishing them from the goods and services of others.

7. As a consequence, Opposers have established extremely valuable goodwill and exclusive rights in the EAT MOR CHIKIN Marks.

8. Applicants filed Application Serial No. 85/221285 to register EATMORE as a service mark on January 19, 2011 ("Applicant's Mark").

9. Applicants filed under Section 1(b) on an intent-to-use basis. The recitation of services for the application, which Applicants filed in International Class 35, was published as "On-line retail store services featuring cereals, oatmeal and rolled oats; retail cereals, oatmeal and rolled oats stores."

10. Opposers have continuously and exclusively used Opposers' EAT MOR CHIKIN Marks in connection with restaurant services originating through Opposers since at least 1995 – long prior to Applicants' filing date in the PTO.

11. Opposers' rights in Opposers' EAT MOR CHIKIN Marks are superior to Applicants' rights in the Applicants' Mark.

12. Applicants' EATMORE Mark is highly similar to Opposers' EAT MOR CHIKIN Marks in sound, meaning, appearance, and commercial impression.

13. Applicants' intended use of EATMORE set forth in the Application, for "On-line retail store services featuring cereals, oatmeal and rolled oats; retail cereals, oatmeal and rolled oats stores," is highly related to the services offered under Opposers' EAT MOR CHIKIN Marks.

14. Opposers have nationwide rights in the EAT MOR CHIKIN Marks by virtue of the incontestable federal registrations for the Marks. The Chick-fil-A restaurant system is

comprised of over 1,500 locations nationwide, including a licensed restaurant location in New York City, where the Applicants are located.

15. Upon information and belief, Applicants intend to use the EATMORE service mark not only in Applicants' stores, but also in marketing and/or other activities via the Internet. Chick-fil-A conducts wide promotional activity utilizing the EAT MOR CHIKIN Marks in a variety of media, including over the Internet at Chick-fil-A's web site www.chick-fil-a.com.

16. Because of the substantial similarity of the marks and the relatedness of the goods and services through overlapping audiences, the use and registration of Applicants' Mark is likely to cause confusion, mistake, or deception in the minds of the purchasing public and to cause the purchasing public to assume that the services identified by Applicants' Mark are provided by Opposers or that such services originate with or are in some way connected to Opposers, which they are not, in violation of Section 2(d) of the Trademark Act, 15 U.S.C. §§ 1052(d) and 1125(a).

B) Dilution of a Famous Trademark:

17. Opposers repeat and reallege all allegations found in paragraphs numbered 1 through 16 above.

18. Opposers first used their EAT MOR CHIKIN Marks in commerce over sixteen (16) years ago, and through considerable efforts of the Opposers, the EAT MOR CHIKIN Marks are famous and easily recognized.

19. Opposers' EAT MOR CHIKIN Marks are not only famous, but also so distinctive that the public in general would associate the mark with Opposers even when the public encounters the mark apart from the Opposers' goods and services.

20. Opposers' EAT MOR CHIKIN Marks have been famous for over sixteen (16) years, well before the filing date of Applicants' application for the EATMORE Mark.

21. Applicants' use of the substantially similar EATMORE Mark has led, or will lead, to dilution of a famous mark under section 43(c) of the Trademark Act, 15 U.S.C. § 1125(c).

22. By reason of the foregoing, the use and registration of Applicants' Mark will be injurious to Opposers in violation of Section 13 of the Trademark Act, 15 U.S.C. § 1063(a).

WHEREFORE, Opposers believe that they will be damaged by the registration of the Applicants' Mark and pray that said Application No. 85/221285 be refused, and that no registration be issued thereon to Applicants, and that this Opposition be sustained in favor of Opposers.

This 26th day of September, 2011.

Respectfully submitted,

TROUTMAN SANDERS LLP



John M. Bowler
Georgia Bar No. 071770

Attorneys for Opposers

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BAR,)	
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Applicants.)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Opposition was sent by first-class mail, postage prepaid to the Applicant, as follows:

Josh Kessler and Rachel Barrett,
d/b/a The Granola Bar
492 Henry Street #1i
Brooklyn, NY 11231

John J. Driscoll, Esq.
Windels Marx Lane & Mittendorf, LLP
156 West 56th Street, New York, New York 10019

This 26th day of September, 2011.



John M. Bowler