

ESTTA Tracking number: **ESTTA434488**

Filing date: **10/07/2011**

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                                  | Whataburger Partnership   |
| Granted to Date of previous extension | 10/09/2011  |
| Address                               | 300 Concord Plaza Drive<br>San Antonio, TX 78216<br>UNITED STATES |

|                      |   |
|----------------------|---|
| Attorney information | William G. Barber<br>Pirkey Barber LLP<br>600 Congress Ave., Suite 2120<br>Austin, TX 78701<br>UNITED STATES<br>bbarber@pirkeybarber.com, wlarson@pirkeybarber.com,<br>jmcdaniel@dmtechlaw.com, eolson@pirkeybarber.com,<br>tmcentral@pirkeybarber.com Phone:512.322.5200 |
|----------------------|---|

**Applicant Information**

|                        |  |                        |            |
|------------------------|--|------------------------|------------|
| Application No         | 85018316   | Publication date       | 04/12/2011 |
| Opposition Filing Date | 10/07/2011   | Opposition Period Ends | 10/09/2011 |
| Applicant              | What a Pizza What a Price Franchising, LLC<br>P.O. Box 540<br>Vanceburg, KY 41179<br>UNITED STATES |                        |            |

**Goods/Services Affected by Opposition**

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|--|
| Class 043. First Use: 2007/01/31 First Use In Commerce: 2007/01/31<br>All goods and services in the class are opposed, namely: Restaurant services; Take-out restaurant services |
|--|

**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. | 652137     | Application Date      | 06/07/1954 |
| Registration Date     | 09/24/1957 | Foreign Priority Date | NONE       |

|                     |  |
|---------------------|--|
| Word Mark           | WHATABURGER  |
| Design Mark         |    |
| Description of Mark | NONE   |
| Goods/Services      | Class U046 (International Class 030). First use: First Use: 1950/01/01 First Use In Commerce: 1953/02/10<br>HAMBURGER SANDWICH |

|                       |  |                       |            |
|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 891082   | Application Date      | 02/20/1968 |
| Registration Date     | 05/12/1970   | Foreign Priority Date | NONE       |
| Word Mark             | WHATABURGER  |                       |            |
| Design Mark           |   |                       |            |
| Description of Mark   | NONE   |                       |            |
| Goods/Services        | Class U100 (International Class 042). First use: First Use: 1950/01/01 First Use In Commerce: 1953/02/10<br>RESTAURANT SERVICES AND DRIVE IN RESTAURANT SERVICES |                       |            |

|                       |  |                       |            |
|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 1011927  | Application Date      | 11/29/1972 |
| Registration Date     | 05/27/1975   | Foreign Priority Date | NONE       |
| Word Mark             | WHATABURGER  |                       |            |
| Design Mark           |    |                       |            |
| Description of Mark   | NONE   |                       |            |
| Goods/Services        | Class U045 (International Class 032). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28<br>SOFT DRINKS<br>Class U046 (International Class 029, 030). First use: First Use: 1972/07/18 First |                       |            |

|  |  |
|--|--|
|  | <p>Use In Commerce: 1972/07/28</p> <p>HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, [ POTATO CHIPS, CORN CHIPS, ] FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANKFURTER SANDWICHES</p> <p>Class U100 (International Class 042). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28</p> <p>RESTAURANT AND DRIVE-IN RESTAURANT SERVICES</p> |
|--|--|

|                       |            |                       |            |
|-----------------------|------------|-----------------------|------------|
| U.S. Registration No. | 1011928    | Application Date      | 11/29/1972 |
| Registration Date     | 05/27/1975 | Foreign Priority Date | NONE       |

|           |               |
|-----------|---------------|
| Word Mark | W WHATABURGER |
|-----------|---------------|

|             |   |
|-------------|---|
| Design Mark |  |
|-------------|---|

|                     |      |
|---------------------|------|
| Description of Mark | NONE |
|---------------------|------|

|                |   |
|----------------|---|
| Goods/Services | <p>Class U045 (International Class 032). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28</p> <p>SOFT DRINKS</p> <p>Class U046 (International Class 029, 030). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28</p> <p>HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, [ POTATO CHIPS, CORN CHIPS, ] FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANKFURTER SANDWICHES</p> <p>Class U100 (International Class 042). First use: First Use: 1972/07/28 First Use In Commerce: 1972/07/28</p> <p>RESTAURANT AND DRIVE-IN RESTAURANT SERVICES</p> |
|----------------|---|

|                       |            |                       |            |
|-----------------------|------------|-----------------------|------------|
| U.S. Registration No. | 2335590    | Application Date      | 04/05/1999 |
| Registration Date     | 03/28/2000 | Foreign Priority Date | NONE       |

|           |             |
|-----------|-------------|
| Word Mark | WHATABURGER |
|-----------|-------------|

|             |  |
|-------------|--|
| Design Mark |  |
|-------------|--|

|                     |      |
|---------------------|------|
| Description of Mark | NONE |
|---------------------|------|

|                |   |
|----------------|---|
| Goods/Services | Class 042. First use: First Use: 1950/01/01 First Use In Commerce: 1953/02/10 |
|----------------|---|

|                       |  |                       |            |
|-----------------------|--|-----------------------|------------|
|                       | restaurant services  |                       |            |
| U.S. Registration No. | 2757109  | Application Date      | 10/31/2001 |
| Registration Date     | 08/26/2003   | Foreign Priority Date | NONE       |
| Word Mark             | WHATABURGER  |                       |            |
| Design Mark           | <b>WHATABURGER</b>   |                       |            |
| Description of Mark   | NONE   |                       |            |
| Goods/Services        | Class 036. First use: First Use: 2001/10/05 First Use In Commerce: 2001/10/05 Charitable fundraising services  |                       |            |
| U.S. Registration No. | 1014196  | Application Date      | 11/26/1973 |
| Registration Date     | 06/24/1975   | Foreign Priority Date | NONE       |
| Word Mark             | WHATABURGER JR.  |                       |            |
| Design Mark           |  |                       |            |
| Description of Mark   | NONE   |                       |            |
| Goods/Services        | Class 029. First use: First Use: 1973/04/01 First Use In Commerce: 1973/08/29 PREPARED HAMBURGER SANDWICH FOR CONSUMPTION ON OR OFF THE PREMISES   |                       |            |
| U.S. Registration No. | 1116918  | Application Date      | 01/20/1978 |
| Registration Date     | 04/24/1979   | Foreign Priority Date | NONE       |
| Word Mark             | WHATAMEAL  |                       |            |
| Design Mark           |  |                       |            |
| Description of Mark   | NONE   |                       |            |
| Goods/Services        | Class 030. First use: First Use: 1975/07/01 First Use In Commerce: 1975/07/01 PREPARED MEAL CONSISTING OF A HAMBURGER SANDWICH, FRENCH FRIES AND A BEVERAGE FOR CONSUMPTION ON OR OFF THE PREMISES |                       |            |
| U.S. Registration No. | 1206344  | Application Date      | 08/10/1979 |
| Registration Date     | 08/24/1982   | Foreign Priority Date | NONE       |
| Word Mark             | WHATACATCH   |                       |            |
| Design Mark           |  |                       |            |

|                     |  |
|---------------------|--|
| Description of Mark | NONE   |
| Goods/Services      | Class 029. First use: First Use: 1978/10/14 First Use In Commerce: 1979/04/01<br>Breaded Fish Fillets Suitable for Fish Sandwiches<br>Class 030. First use: First Use: 1978/10/14 First Use In Commerce: 1979/04/01<br>Prepared Fish Sandwich for Consumption On or Off the Premises |

|                       |   |                       |            |
|-----------------------|---|-----------------------|------------|
| U.S. Registration No. | 2160285   | Application Date      | 03/24/1997 |
| Registration Date     | 05/26/1998  | Foreign Priority Date | NONE       |
| Word Mark             | WHATACHICK'N  |                       |            |
| Design Mark           |   |                       |            |
| Description of Mark   | NONE  |                       |            |
| Goods/Services        | Class 030. First use: First Use: 1984/01/01 First Use In Commerce: 1984/01/01<br>chicken sandwich |                       |            |

|                       |   |                       |            |
|-----------------------|---|-----------------------|------------|
| U.S. Registration No. | 2372372   | Application Date      | 03/05/1999 |
| Registration Date     | 08/01/2000  | Foreign Priority Date | NONE       |
| Word Mark             | WHATAKIDS   |                       |            |
| Design Mark           | <b>WHATAKIDS</b>  |                       |            |
| Description of Mark   | NONE  |                       |            |
| Goods/Services        | Class 025. First use: First Use: 1998/11/00 First Use In Commerce: 1999/02/15<br>Clothing for children, namely, shirts, polo shirts, t-shirts, dresses, overalls, onesies, baseball caps and hats |                       |            |

|                       |                  |                       |            |
|-----------------------|------------------|-----------------------|------------|
| U.S. Registration No. | 2432191          | Application Date      | 02/22/1999 |
| Registration Date     | 02/27/2001       | Foreign Priority Date | NONE       |
| Word Mark             | WHATAKIDS        |                       |            |
| Design Mark           | <b>WHATAKIDS</b> |                       |            |
| Description of        | NONE             |                       |            |

|                |   |
|----------------|---|
| Mark           |   |
| Goods/Services | Class 042. First use: First Use: 1999/04/01 First Use In Commerce: 1999/04/01 restaurant services |

|                       |            |                       |            |
|-----------------------|------------|-----------------------|------------|
| U.S. Registration No. | 2424846    | Application Date      | 09/16/1999 |
| Registration Date     | 01/30/2001 | Foreign Priority Date | NONE       |

|           |                 |
|-----------|-----------------|
| Word Mark | WHATA LOTTA HOT |
|-----------|-----------------|

|             |                        |
|-------------|------------------------|
| Design Mark | <b>WHATA LOTTA HOT</b> |
|-------------|------------------------|

|                     |      |
|---------------------|------|
| Description of Mark | NONE |
|---------------------|------|

|                |   |
|----------------|---|
| Goods/Services | Class 042. First use: First Use: 1995/02/00 First Use In Commerce: 1995/02/00 Restaurant services |
|----------------|---|

|                       |            |                       |            |
|-----------------------|------------|-----------------------|------------|
| U.S. Registration No. | 2418380    | Application Date      | 05/06/1999 |
| Registration Date     | 01/02/2001 | Foreign Priority Date | NONE       |

|           |          |
|-----------|----------|
| Word Mark | WHATAGUY |
|-----------|----------|

|             |                 |
|-------------|-----------------|
| Design Mark | <b>WHATAGUY</b> |
|-------------|-----------------|

|                     |      |
|---------------------|------|
| Description of Mark | NONE |
|---------------------|------|

|                |   |
|----------------|---|
| Goods/Services | Class 042. First use: First Use: 2000/01/01 First Use In Commerce: 2000/01/01 restaurant services |
|----------------|---|

|                       |            |                       |            |
|-----------------------|------------|-----------------------|------------|
| U.S. Registration No. | 3376301    | Application Date      | 11/24/2004 |
| Registration Date     | 01/29/2008 | Foreign Priority Date | NONE       |

|           |           |
|-----------|-----------|
| Word Mark | WHATAPALS |
|-----------|-----------|

|                     |  |  |  |
|---------------------|--|--|--|
| Design Mark         | <b>WHATAPALS</b>   |  |  |
| Description of Mark | NONE   |  |  |
| Goods/Services      | Class 043. First use: First Use: 2003/01/04 First Use In Commerce: 2003/01/04<br>Restaurant services |  |  |

|                       |  |                       |            |
|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 2534527  | Application Date      | 03/10/1999 |
| Registration Date     | 01/29/2002   | Foreign Priority Date | NONE       |
| Word Mark             | WHATAPLACE! WHATATASTE!  |                       |            |
| Design Mark           | <b>WHATAPLACE! WHATATASTE!</b>   |                       |            |
| Description of Mark   | NONE   |                       |            |
| Goods/Services        | Class 042. First use: First Use: 1998/10/11 First Use In Commerce: 1998/10/11<br>restaurant services |                       |            |

|                       |  |                       |            |
|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 2519854  | Application Date      | 01/02/2001 |
| Registration Date     | 12/18/2001   | Foreign Priority Date | NONE       |
| Word Mark             | WHATACOMIX   |                       |            |
| Design Mark           | <b>WHATACOMIX</b>  |                       |            |
| Description of Mark   | NONE   |                       |            |
| Goods/Services        | Class 016. First use: First Use: 2000/01/01 First Use In Commerce: 2000/01/01<br>comic books and children's activity books |                       |            |

|                       |         |                  |            |
|-----------------------|---------|------------------|------------|
| U.S. Registration No. | 2846139 | Application Date | 12/06/2002 |
|-----------------------|---------|------------------|------------|

|                     |   |                       |      |
|---------------------|---|-----------------------|------|
| Registration Date   | 05/25/2004  | Foreign Priority Date | NONE |
| Word Mark           | WHATABLENDER  |                       |      |
| Design Mark         | <b>WHATABLENDER</b>   |                       |      |
| Description of Mark | NONE  |                       |      |
| Goods/Services      | Class 030. First use: First Use: 2002/09/04 First Use In Commerce: 2002/11/04 milk shake drinks, bases for milk shake drinks and candy flavored toppings therefor |                       |      |

|                       |   |                       |            |
|-----------------------|---|-----------------------|------------|
| U.S. Registration No. | 3185230   | Application Date      | 01/07/2005 |
| Registration Date     | 12/19/2006  | Foreign Priority Date | NONE       |
| Word Mark             | WHATASIZE   |                       |            |
| Design Mark           | <b>WHATASIZE</b>  |                       |            |
| Description of Mark   | NONE  |                       |            |
| Goods/Services        | Class 043. First use: First Use: 1998/00/00 First Use In Commerce: 1998/00/00 Restaurant services featuring a prepared meal containing french fries and a soft drink for consumption on or off the premises |                       |            |

|                       |  |                       |            |
|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 3926573  | Application Date      | 10/23/2009 |
| Registration Date     | 03/01/2011   | Foreign Priority Date | NONE       |
| Word Mark             | W WHATABURGER SERVES   |                       |            |
| Design Mark           |   |                       |            |
| Description of Mark   | The mark consists of a simulated hand painted orange heart with a white Flying "W" and with the stylized letters "WHATABURGER SERVES" in orange. |                       |            |
| Goods/Services        | Class 043. First use: First Use: 2009/10/23 First Use In Commerce: 2009/10/23 fast-food restaurants  |                       |            |

|                       |  |                       |            |
|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 3188132  | Application Date      | 03/31/2005 |
| Registration Date     | 12/19/2006   | Foreign Priority Date | NONE       |
| Word Mark             | WHATABURGER FIELD  |                       |            |
| Design Mark           |    |                       |            |
| Description of Mark   | NONE   |                       |            |
| Goods/Services        | Class 041. First use: First Use: 2005/04/06 First Use In Commerce: 2005/04/06 providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts |                       |            |

|                       |  |                       |            |
|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 3188136  | Application Date      | 04/01/2005 |
| Registration Date     | 12/19/2006   | Foreign Priority Date | NONE       |
| Word Mark             | WHATABURGER FIELD CORPUS CHRISTI   |                       |            |
| Design Mark           |    |                       |            |
| Description of Mark   | NONE   |                       |            |
| Goods/Services        | Class 041. First use: First Use: 2005/04/06 First Use In Commerce: 2005/04/06 providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts |                       |            |

|                      |              |                       |            |
|----------------------|--------------|-----------------------|------------|
| U.S. Application No. | 77494179     | Application Date      | 06/09/2008 |
| Registration Date    | NONE         | Foreign Priority Date | NONE       |
| Word Mark            | WHATTA WING! |                       |            |

|                     |   |
|---------------------|---|
| Design Mark         |                 |
| Description of Mark | The mark consists of the words "WHATTA WING!" in yellow stylized font.                            |
| Goods/Services      | Class 043. First use: First Use: 2007/11/14 First Use In Commerce: 2008/01/12 restaurant services |

|                     |  |
|---------------------|--|
| Related Proceedings | The parties are also involved in Cancellation No. 92052943 involving the same mark in different classes. |
|---------------------|--|

|             |  |
|-------------|--|
| Attachments | 71667794#TMSN.gif ( 1 page )( bytes )<br>72291496#TMSN.gif ( 1 page )( bytes )<br>72442464#TMSN.gif ( 1 page )( bytes )<br>72442465#TMSN.gif ( 1 page )( bytes )<br>75674147#TMSN.gif ( 1 page )( bytes )<br>76332382#TMSN.gif ( 1 page )( bytes )<br>75654525#TMSN.gif ( 1 page )( bytes )<br>75647561#TMSN.gif ( 1 page )( bytes )<br>75802439#TMSN.gif ( 1 page )( bytes )<br>75698642#TMSN.gif ( 1 page )( bytes )<br>76621979#TMSN.gif ( 1 page )( bytes )<br>75657290#TMSN.gif ( 1 page )( bytes )<br>76188399#TMSN.gif ( 1 page )( bytes )<br>76473190#TMSN.jpeg ( 1 page )( bytes )<br>76627124#TMSN.gif ( 1 page )( bytes )<br>77856341#TMSN.jpeg ( 1 page )( bytes )<br>78598999#TMSN.jpeg ( 1 page )( bytes )<br>78599894#TMSN.jpeg ( 1 page )( bytes )<br>77494179#TMSN.jpeg ( 1 page )( bytes )<br>noo 009.pdf ( 7 pages )(660437 bytes ) |
|-------------|--|

### 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 | /WCL/           |
| Name      | Wendy C. Larson |
| Date      | 10/07/2011      |

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

|   |   |                      |
|---|---|----------------------|
| In Re Serial No. 85/018,316                           | § |                      |
| Filed: April 20, 2010                                 | § |                      |
| Mark: <b>WHAT A PIZZA WHAT A PRICE<br/>and Design</b> | § |                      |
| Published: April 12, 2011                             | § |                      |
| Whataburger Partnership,                              | § |                      |
|   | § | Opposition No. _____ |
| Opposer,  | § |                      |
|   | § |                      |
| v.  | § |                      |
|   | § |                      |
| What a Pizza What a Price Franchising, LLC,           | § |                      |
|   | § |                      |
| Applicant.  | § |                      |

**NOTICE OF OPPOSITION**

Whataburger Partnership (“Opposer”) believes that it will be damaged by registration of the mark identified above for the services recited in Class 43, and hereby opposes same under the provisions of 15 U.S.C. § 1063. As grounds for opposition, Opposer asserts that:

1. Opposer is a Texas general partnership having its principal place of business at 300 Concord Plaza Drive, San Antonio, Texas 78216.
2. Since Opposer opened the first WHATABURGER restaurant in Corpus Christi, Texas in 1950, Opposer has continuously and extensively used the mark WHATABURGER (the “WHATABURGER Mark”) for an array of restaurant services and food products, among other goods and services.
3. From its beginnings with a single restaurant in Corpus Christi, Opposer (itself and through its licensees) has expanded its operations to include more than 700 restaurants in the United States, all operating under the WHATABURGER Mark.

4. In addition to its extensive use and promotion of the WHATABURGER Mark, Opposer has adopted and used a family of WHATA marks for a variety of goods and services, including restaurant services and clothing. Opposer's WHATA family of marks includes at least the following marks (collectively, the "WHATA Marks"):

**Restaurant Services**

WHATABURGER  
WHATAPLACE! WHATATASTE!  
WHATASIZE  
WHATAKIDS  
WHATAPALS  
WHATAGUY  
WHATA LOTTA HOT  
WHATABURGER SERVES  
WHATTA WING!

**Other Services**

WHATABURGER  
WHATASTORE  
WHATABURGER SERVES  
WHATABURGER FIELD

**Food Products**

WHATABURGER  
WHATABURGER JR.  
WHATACHICK'N  
WHATACATCH  
WHATABLENDER  
WHATAMEAL

**Other Products**

WHATABURGER  
WHATAKIDS  
WHATAPALS  
WHATAGUY  
WHATACOMIX

5. Opposer has widely advertised and promoted its goods and services under the WHATA Marks, and has received significant publicity for such goods and services. Opposer also has established and maintains an official website at [www.whataburger.com](http://www.whataburger.com) that makes extensive use of the WHATA Marks.

6. Opposer's WHATA Marks are inherently distinctive, serving to identify and indicate the source of Opposer's goods and services to the consuming public, and to distinguish Opposer's goods and services from those of others.

7. Additionally, as a result of Opposer's use and promotion of its WHATA Marks, the marks have become distinctive and are recognized by consumers. Opposer has invested significant effort and resources in advertising and promoting its WHATA Marks and the goods and

services sold under these marks, with the result that the purchasing public has come to know, rely on, and recognize the goods and services of Opposer by these marks. Opposer has established valuable goodwill in its WHATA Marks.

8. The WHATABURGER Mark is famous pursuant to 15 U.S.C. § 1125(c).

9. In addition to the strong common law rights Opposer has developed in the WHATA Marks, Opposer is the owner of the following United States Trademark Registrations and Applications, among others:

| <b>MARK</b>   | <b>REG./<br/>SERIAL<br/>NO.</b> | <b>INTERNATIONAL CLASS/<br/>GOODS AND SERVICES</b>   |
|---|---------------------------------|--|
| WHATABURGER (Stylized)  | 652,137                         | 030 - Hamburger sandwich   |
| WHATABURGER (Stylized)  | 891,082                         | 042 - Restaurant services and drive in restaurant services   |
| WHATABURGER (Stylized)  | 1,011,927                       | 029 - Hamburgers, cheeseburgers, french fried potatoes, fried pies, onion rings, malt and shake<br>beverages, and frankfurter sandwiches<br>032 - Soft drinks<br>042 - Restaurant and drive-in restaurant services |
| WHATABURGER & W and Design<br> | 1,011,928                       | 029 - Hamburgers, cheeseburgers, french fried potatoes, fried pies, onion rings, malt and shake<br>beverages, and frankfurter sandwiches<br>032 - Soft drinks<br>042 - Restaurant and drive-in restaurant services |
| WHATABURGER   | 2,335,590                       | 042 - Restaurant services  |
| WHATABURGER   | 2,757,109                       | 036 - Charitable fundraising services  |
| WHATABURGER JR.   | 1,014,196                       | 029 - Prepared hamburger sandwich for consumption on or off the premises   |
| WHATAMEAL   | 1,116,918                       | 030 - Prepared meal consisting of a hamburger sandwich, french fries and a beverage for consumption on or off the premises   |
| WHATACATCH  | 1,206,344                       | 029 - Breaded fish fillets suitable for fish sandwiches<br>030 - Prepared fish sandwiches for  |

|   |            |   |
|---|------------|---|
|   |            | consumption on or off the premises  |
| WHATA CHICK'N   | 2,160,285  | 030 – Chicken sandwich  |
| WHATA KIDS  | 2,372,372  | 025 - Clothing for children, namely, shirts, polo shirts, t-shirts, dresses, overalls, onesies, baseball caps and hats              |
| WHATA KIDS  | 2,432,191  | 042 – Restaurant services   |
| WHATA LOTTA HOT   | 2,424,846  | 042 – Restaurant services   |
| WHATA GUY   | 2,418,380  | 042 – Restaurant services   |
| WHATA PALS  | 3,376,301  | 042 – Restaurant services   |
| WHATA PLACE! WHATA TASTE!   | 2,534,527  | 042 – Restaurant services   |
| WHATA COMIX   | 2,519,854  | 016 - Comic books and children's activity books   |
| WHATA BLENDER   | 2,846,139  | 030 - Milk shake drinks, bases for milk shake drinks and candy flavored toppings therefor   |
| WHATA SIZE  | 3,185,230  | 043 - Restaurant services featuring a prepared meal containing french fries and a soft drink for consumption on or off the premises |
| WHATABURGER SERVES & W<br>and Design<br>         | 3,926,573  | 043 - Fast food restaurants   |
| WHATABURGER FIELD   | 3,188,132  | 041 - Providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts            |
| WHATABURGER FIELD<br>CORPUS CHRISTI & Design<br> | 3,188,136  | 041 - Providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts            |
| WHATA WING! stylized<br>                         | 77/494,179 | 043 – Restaurant services   |

Each of the registrations listed in the chart above is valid and subsisting. Further, nearly all of the above registrations have become incontestable pursuant to 15 U.S.C. § 1065.

10. Applicant What a Pizza What a Price Franchising, LLC (“Applicant”) is a Kentucky limited liability company with an address of P.O. Box 540, Vanceburg, Kentucky 41179.

11. Applicant filed Application Serial No. 85/018,316 (the “Application”) on a use-in-commerce basis pursuant to 15 U.S.C. § 1051(a) on April 20, 2010 for the mark WHAT A PIZZA



WHAT A PRICE and Design (“Applicant’s Mark”) for “Restaurant services; Take-out restaurant services” in International Class 43. In the Application, Applicant claims a first use date of January 31, 2007.

12. Opposer has priority based on its prior use and registration of its WHATA Marks in the United States.

13. Opposer’s WHATABURGER Mark became famous long prior to the date Applicant first used or applied to register Applicant’s Mark.

14. Applicant’s Mark is confusingly similar to Opposer’s WHATA Marks.

15. The services covered in the Application directly compete with, or are similar or related to, the services for which Opposer uses and has registered its WHATA Marks.

16. Opposer has not given Applicant permission or approval to use or register Applicant’s Mark.

17. Applicant’s Mark so resembles Opposer’s WHATA Marks as to be likely, when used on or in connection with the identified services in the Application, to cause confusion, or to cause mistake, or to deceive. Purchasers or prospective purchasers are likely to believe that the services of

Applicant sold under Applicant's Mark are sponsored, endorsed, or approved by Opposer, or are in some way affiliated, connected, or associated with Opposer or its marks or goods or services. Registration therefore should be refused under 15 U.S.C. §§ 1052(d) and 1063.

18. Applicant's Mark is likely to cause dilution by blurring of Opposer's famous WHATABURGER Mark, and registration should also be refused under 15 U.S.C. § 1125(c).

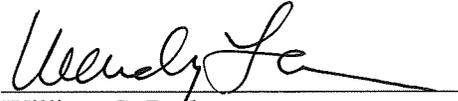
19. Registration of Applicant's Mark on the Principal Register would be inconsistent with Opposer's rights under the aforementioned registrations and common law and would be damaging to Opposer.

WHEREFORE, Opposer prays that Application Serial No. 85/018,316 be rejected, and that registration of the mark therein be refused.

This Notice of Opposition is being filed electronically, along with the filing fee required by 37 C.F.R. § 2.6(a)(17). The Commissioner is authorized to draw on the Deposit Account of Pirkey Barber LLP, Account No. 50-3924/WHAT:009/WGB, if there is any problem with the processing of the electronically submitted fee.

Respectfully submitted,

Date: October 7, 2011



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ATTORNEYS FOR OPPOSER

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing NOTICE OF OPPOSITION was served by first class mail on October 7, 2011 on Applicant's attorney of record:

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