

ESTTA Tracking number: **ESTTA483977**

Filing date: **07/17/2012**

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	Amy's Kitchen, Inc.
Granted to Date of previous extension	07/18/2012
Address	1650 Corporate Circle Suite 200 Petaluma, CA 94954 UNITED STATES

Correspondence information	Donald L. Beeson Beeson Skinner Beverly, LLP One Kaiser Plaza Suite 750 Oakland, CA 94612 UNITED STATES BSB@bsblp.com, dbeeson@bsblp.com Phone: 510-832-8700
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Applicant Information

Application No	85127037	Publication date	03/20/2012
Opposition Filing Date	07/17/2012	Opposition Period Ends	07/18/2012
Applicant	Amy's Ice Creams, Inc. 2109 Northland Drive Austin, TX 78756 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. First Use: 1984/10/09 First Use In Commerce: 1986/02/00 All goods and services in the class are opposed, namely: Shirts
Class 043. First Use: 1984/10/09 First Use In Commerce: 1986/02/00 All goods and services in the class are opposed, namely: Restaurant services featuring ice cream, fruit ice, candy, chocolates and beverages; catering

Applicant Information

Application No	85127071	Publication date	03/20/2012
Opposition Filing Date	07/17/2012	Opposition Period Ends	
Applicant	Amy's Ice Creams, Inc. 2109 Northland Drive Austin, TX 78756 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. First Use: 2000/02/00 First Use In Commerce: 2000/02/00
All goods and services in the class are opposed, namely: Shirts

Class 043. First Use: 2000/02/00 First Use In Commerce: 2000/02/00
All goods and services in the class are opposed, namely: Restaurant services featuring ice cream, fruit ice, candy, chocolates and beverages; catering

Grounds for Opposition

Priority and likelihood of confusion

Trademark Act section 2(d)

Marks Cited by Opposer as Basis for Opposition

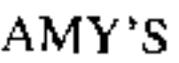
U.S. Registration No.	1885120	Application Date	12/07/1993
Registration Date	03/21/1995	Foreign Priority Date	NONE
Word Mark	AMY'S KITCHEN		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 029. First use: First Use: 1990/10/00 First Use In Commerce: 1990/10/00 frozen vegetarian meals, namely veggie burgers and country dinners consisting primarily of a vegetarian Salisbury steak</p> <p>Class 030. First use: First Use: 1988/06/00 First Use In Commerce: 1988/06/00 frozen vegetarian meals consisting primarily of pasta and bulgur wheat, namely macaroni and cheese dinners, vegetable lasagna, and tofu vegetarian lasagna; meatless shephard pies, vegetable pot pies, broccoli cheese pot pies, pocket pizzas, ravioli, cheese enchiladas, black beans and vegetable enchiladas, burritos, tamale pies, and apple pies</p>		

U.S. Registration No.	1885121	Application Date	12/07/1993
Registration Date	03/21/1995	Foreign Priority Date	NONE
Word Mark	AMY'S		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 029. First use: First Use: 1990/10/00 First Use In Commerce: 1990/10/00 frozen vegetarian meals, namely veggie burgers and country dinners consisting primarily of a vegetarian salisbury steak</p> <p>Class 030. First use: First Use: 1988/06/00 First Use In Commerce: 1988/06/00 frozen vegetarian meals consisting primarily of pasta and bulgur wheat, namely macaroni and cheese dinners, vegetable lasagna, and tofu vegetarian lasagna; meatless shepard pies, vegetable pot pies, broccoli cheese pot pies, pocket pizzas, ravioli, cheese enchiladas, black beans and vegetable enchiladas, burritos, tamale pies, and apple pies</p>		

U.S. Registration No.	1893229	Application Date	12/20/1993
Registration Date	05/09/1995	Foreign Priority	NONE

		Date	
Word Mark	AMY'S		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 029. First use: First Use: 1990/10/00 First Use In Commerce: 1990/10/00 frozen vegetarian meals, namely veggie burgers and country dinners consisting primarily of a vegetarian Salisbury steak</p> <p>Class 030. First use: First Use: 1988/06/00 First Use In Commerce: 1993/12/20 frozen vegetarian meals consisting primarily of pasta and bulgur wheat, namely macaroni and cheese dinners, vegetable lasagna, and tofu vegetarian lasagna; meatless shepard pies, vegetable pot pies, broccoli cheese pot pies, pocket pizzas, ravioli, cheese enchiladas, black beans and vegetable enchiladas, burritos, tamale pies, and apple pies</p>		

U.S. Registration No.	2459724	Application Date	05/26/2000
Registration Date	06/12/2001	Foreign Priority Date	NONE

Word Mark	AMY'S		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 029. First use: First Use: 1999/10/00 First Use In Commerce: 1999/10/00 soups; frozen vegetarian meals consisting primarily of vegetables, cheese and/or beans</p> <p>Class 030. First use: First Use: 1990/10/00 First Use In Commerce: 1990/10/00 tomato sauce; pizza; frozen vegetarian meals consisting primarily of noodles, pasta and/or rice</p>		

U.S. Registration No.	2465620	Application Date	05/26/2000
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Registration Date	07/03/2001	Foreign Priority Date	NONE
Word Mark	AMY'S KITCHEN		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 029. First use: First Use: 1990/10/00 First Use In Commerce: 1990/10/00 soups; frozen vegetarian meals consisting primarily of vegetables, cheese and/or beans</p> <p>Class 030. First use: First Use: 1990/10/00 First Use In Commerce: 1990/10/00 tomato sauce; pizza; frozen vegetarian meals consisting primarily of noodles, pasta and/or rice</p>		

U.S. Registration No.	2946026	Application Date	12/05/2003
Registration Date	05/03/2005	Foreign Priority Date	NONE
Word Mark	AMY'S		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 029. First use: First Use: 2000/06/14 First Use In Commerce: 2000/06/14 Vegetarian refried beans, vegetarian processed beans, namely, canned beans, and meatless chili</p> <p>Class 030. First use: First Use: 1996/04/11 First Use In Commerce: 1996/04/11 Frozen vegetarian meals in a bowl consisting primarily of pasta, rice or corn meal, namely, stuffed pasta shells in a bowl, rice and vegetable combinations in a bowl, enchiladas in a bowl, pasta and vegetable combinations in a bowl, tortellini in a bowl; frozen pocket sandwiches consisting of a grain based shells with various fillings; frozen toaster pastries with various fillings; frozen snack grain-based foods consisting of miniature grain based shells with various fillings; and salsa</p>		

U.S. Registration No.	2954885	Application Date	12/05/2003
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Registration Date	05/24/2005	Foreign Priority Date	NONE
Word Mark	AMY'S KITCHEN		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 029. First use: First Use: 2000/06/14 First Use In Commerce: 2000/06/14 Vegetarian refried beans, vegetarian processed beans, namely, canned beans, and meatless chili</p> <p>Class 030. First use: First Use: 1996/04/11 First Use In Commerce: 1996/04/11 Frozen vegetarian meals in a bowl consisting primarily of pasta, rice or corn meal, namely, stuffed pasta shells in a bowl, rice and vegetable combinations in a bowl, enchiladas in a bowl, pasta and vegetable combinations in a bowl, tortellini in a bowl; frozen pocket sandwiches consisting of a grain based shells with various fillings; frozen toaster pastries with various fillings; frozen snack grain-based foods consisting of miniature grain based shells with various fillings; and salsa</p>		

Attachments	<p>74471211#TMSN.gif (1 page)(bytes) 76057945#TMSN.gif (1 page)(bytes) 76057946#TMSN.gif (1 page)(bytes) 78337343#TMSN.jpeg (1 page)(bytes) 78337338#TMSN.jpeg (1 page)(bytes) 2012-07-17 notice of opposition word mark 85127037.pdf (14 pages)(537609 bytes) 2012-07-17 notice of opposition Design mark 85127071.pdf (14 pages)(537414 bytes) 2946026 TESS AMY'S.pdf (2 pages)(38253 bytes) 2954885 TESS AMY'S KITCHEN.pdf (2 pages)(40720 bytes)</p>
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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	/Kathleen A. Skinner/
Name	Amy's Kitchen, Inc.
Date	07/17/2012

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

Atty Docket: D332-299.8A)	
)	
AMY'S KITCHEN, INC.	)	OPPOSITION NO. _____
)	
Opposer,	)	Appln. Serial No. 85127037
)	
v.	)	MARK: AMY'S ICE CREAMS
)	
AMY'S ICE CREAMS, INC.	)	Publication Date: 3/20/12
)	
Applicant.	)	Ext. To Oppose Granted to 7/18/12
_____)	

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

NOTICE OF OPPOSITION

Opposer, Amy's Kitchen, Inc., a California corporation (hereinafter "Opposer"), with its principal offices at 1650 Corporate Circle, Suite 200, Petaluma, CA 94954, believes it will be damaged by the registration on the Principal Register of application Serial No. 85/127,037 for the mark AMY'S ICE CREAMS in Classes 25 and 43, filed by Amy's Ice Creams, Inc., a Texas corporation (hereinafter "Applicant"), located at 2109 Northland Drive, Austin, Texas, and hereby opposes the same. As grounds for this opposition, Opposer alleges:

1. The Applicant seeks to register AMY'S ICE CREAMS as a trademark in class 25 for "shirts," and class 43 for "restaurant services featuring ice cream, fruit ice, candy, chocolates and beverages; catering" as evidenced by the publication of said mark in the Official Gazette on

March 20, 2012.

2. Since long before Applicant's filing date, Opposer has continuously used and is using the marks AMY'S and AMY'S KITCHEN on and in connection with a broad range of vegetarian food products. Food products currently sold by Opposer under the AMY'S and AMY'S KITCHEN marks include, without limitation, frozen vegetarian entrees, ethnic meals (including Asian and Indian foods and dishes), pocket sandwiches, pizzas, burritos, pot pies, snack foods, and a variety of dessert items, including pies, cakes and shortbread cookies. Non-frozen food products sold by Opposer under the AMY'S and AMY'S KITCHEN marks include, without limitation, soups, chilli, beans, salsa, and pasta sauces. Since its inception in the 1980's, Opposer has continually expanded its AMY'S and AMY'S KITCHEN branded consumer food product line and continues to do so.

3. Opposer's organic food products are sold under the AMY'S and AMY'S KITCHEN marks through a variety of retail outlets, including specialty food outlets and major retail grocery chains, and have achieved a high degree of commercial success in the United States. As a result of this commercial success, the AMY'S and AMY'S KITCHEN marks are now widely recognized among the purchasing public as the source of Opposer's products.

4. Opposer is the owner of the following United States trademark registrations in classes 29 and 30 for the word mark AMY'S, the stylized mark AMY'S, and the mark AMY'S KITCHEN:

[CONTINUED ON NEXT PAGE]

<u>Reg. No.</u>	<u>Mark</u>	<u>Reg. Date</u>	<u>Goods</u>
1,885,120	AMY'S KITCHEN	3/21/95	Cl.29: frozen vegetarian meals, namely veggie burgers and country dinners consisting primarily of a vegetarian Salisbury steak Cl.30: frozen vegetarian meals consisting primarily of pasta and bulgur wheat, namely macaroni and cheese dinners, vegetable lasagna, and tofu vegetarian lasagna; meatless shephard pies, vegetable pot pies, broccoli cheese pot pies, pocket pizzas, ravioli, cheese enchiladas, black beans and vegetable enchiladas, burritos, tamale pies, and apple pies
1,885,121	AMY'S	3/21/95	Cl.29: frozen vegetarian meals, namely veggie burgers and country dinners consisting primarily of a vegetarian salisbury steak Cl.30: frozen vegetarian meals consisting primarily of pasta and bulgur wheat, namely macaroni and cheese dinners, vegetable lasagna, and tofu vegetarian lasagna; meatless shepard pies, vegetable pot pies, broccoli cheese pot pies, pocket pizzas, ravioli, cheese enchiladas, black beans and vegetable enchiladas, burritos, tamale pies, and apple pies
1,893,229	AMY'S (stylized)	5/09/95	Cl.29: frozen vegetarian meals, namely veggie burgers and country dinners consisting primarily of a vegetarian Salisbury steak Cl.30: frozen vegetarian meals consisting primarily of pasta and bulgur wheat, namely macaroni and cheese dinners, vegetable lasagna, and tofu vegetarian lasagna; meatless shepard pies, vegetable pot pies, broccoli cheese pot pies, pocket pizzas, ravioli, cheese enchiladas, black beans and vegetable enchiladas, burritos, tamale pies, and apple pies
2,459,724	AMY'S	6/12/01	Cl.29: soups, frozen vegetarian meals consisting primarily of vegetables, cheese and/or beans Cl.30: tomato sauce, pizza; frozen vegetarian meals consisting primarily of noodles, pasta and/or rice
2,465,620	AMY'S KITCHEN	7/03/01	Cl.29: soups; frozen vegetarian meals consisting primarily of vegetables, cheese and/or beans Cl.30: tomato sauce; pizza; frozen vegetarian meals consisting primarily of noodles, pasta and/or rice

<u>Reg. No.</u>	<u>Mark</u>	<u>Reg. Date</u>	<u>Goods</u>
2,946,026	AMY'S	5/03/05	Cl.29: vegetarian refried beans, vegetarian processed beans, namely, canned beans, and meatless chili Cl.30: Frozen vegetarian meals in a bowl consisting primarily of pasta, rice or corn meal, namely, stuffed pasta shells in a bowl, rice and vegetable combinations in a bowl, enchiladas in a bowl, pasta and vegetable combinations in a bowl, tortellini in a bowl; frozen pocket sandwiches consisting of a grain based shells with various fillings; frozen toaster pastries with various fillings; frozen snack grain-based foods consisting of miniature grain based shells with various fillings; and salsa
2,954,885	AMY'S KITCHEN	5/24/05	Cl.29: Vegetarian refried beans, vegetarian processed beans, namely, canned beans, and meatless chili Cl.30: Frozen vegetarian meals in a bowl consisting primarily of pasta, rice or corn meal, namely, stuffed pasta shells in a bowl, rice and vegetable combinations in a bowl, enchiladas in a bowl, pasta and vegetable combinations in a bowl, tortellini in a bowl; frozen pocket sandwiches consisting of a grain based shells with various fillings; frozen toaster pastries with various fillings; frozen snack grain-based foods consisting of miniature grain based shells with various fillings; and salsa

5. True and correct printouts of records from the electronic database of the USPTO showing current status and title for the above-listed registrations owned by Opposer are attached hereto as Exhibit A. All of the above-listed trademark registrations are valid and subsisting, are incontestible, and have subsisted for more than five years before the filing date of Applicant's application Serial No. 85/127,037.

6. On June 6, 2011, Opposer filed U.S. Trademark Application Nos. 85/339,258 and 85/339,245 under Section 1(b) of the Act for, respectively, the marks AMY'S and AMY'S KITCHEN for candy bars and cookies in class 30. Candy bars and cookies represent a natural

extension of a continually expanding product line sold by Opposer under the AMY'S and AMY'S KITCHEN marks.

7. Opposer's pending applications Nos. 85/339,258 and 85/339,245 have been suspended by the examining attorney in part because of Applicant's prior application No. 85/127,037 for AMY'S ICE CREAMS. In his notices of suspension, the Examining Attorney states that if application No. 85/127,037 proceeds to registration as to the class 43 restaurant services recited therein, registration of applicant's AMY'S and AMY'S KITCHEN marks for candy bars and cookies may be refused under Section 2(d) of the Act because of a likelihood of confusion with the registered AMY'S ICE CREAMS mark. Thus, Applicant's application No. 85/127,037 for AMY'S ICE CREAMS threatens to prevent Opposer from registering its previously registered and well known AMY'S and AMY'S KITCHEN marks for goods that are a natural expansion of its product line, in this case, for candy bars and cookies. Opposer would be harmed by the registration of Applicant's AMY'S ICE CREAMS mark in class 43, in that, such registration would impair and be inconsistent with Opposer's right to use and register its AMY'S and AMY'S KITCHEN marks, including its right to use and register its marks for new products added to its product line.

8. Opposer further alleges that Applicant's mark AMY'S ICE CREAMS so resembles Opposer's previously registered marks AMY'S and AMY'S KITCHEN, as to likely cause confusion, mistake, or deception within the meaning of Section 2(d) of the Trademark Act, when used on the goods in class 25 and in connection with the services in class 43 set forth in Applicant's application. As to the goods in class 25, use of Applicant's mark on the wearing apparel recited in Applicant's application is likely confuse the consuming public into believing that such wearing apparel is a promotional item for Opposer or is otherwise affiliated with

Opposer. As to the services in class 43, use of Applicant's mark on restaurant services featuring items that are related to the goods of Opposer's pending applications is likely to confuse the public as to an affiliation between Opposer and Applicant.

9. Applicant's registration and use of AMY'S ICE CREAMS for the goods recited in Applicant's application, and the likelihood of confusion caused thereby, is likely to damage, dilute, and destroy the distinctiveness, goodwill, and reputation of Opposer's marks AMY'S and AMY'S KITCHEN.

10. By reason of the foregoing, Opposer will be damaged by the registration of the mark AMY'S ICE CREAMS to Applicant.

WHEREFORE, Opposer prays that application Serial No. 85/127,037 be rejected, and that no registration be issued to Applicant on such application, and that this opposition be sustained in favor of Opposer.

Respectfully submitted,

AMY'S KITCHEN, INC.

Dated: July 17, 2012

By



Donald L. Beeson
Kathleen A. Skinner
Beeson Skinner Beverly, LLP
Attorneys for Opposer
One Kaiser Plaza, Suite 750
Oakland, California 94612
Telephone (510) 832-8700
Fax: (510) 836-2595
Email: bsb@bsbllp.com

CERTIFICATE OF MAILING

I hereby certify that a copy of this Notice of Opposition was served on counsel for Applicant on the date below by mailing the same via first class mail, postage prepaid, to:

William G. Barber
Pirkey Barber LLP
600 Congress Ave.
Suite 2120
Austin, TX 78701-2973

DATED: July 17, 2012



Kathleen A. Skinner

EXHIBIT A



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Word Mark AMY'S KITCHEN
Goods and Services IC 029. US 046. G & S: frozen vegetarian meals, namely veggie burgers and country dinners consisting primarily of a vegetarian Salisbury steak. FIRST USE: 19901000. FIRST USE IN COMMERCE: 19901000
 IC 030. US 046. G & S: frozen vegetarian meals consisting primarily of pasta and bulgur wheat, namely macaroni and cheese dinners, vegetable lasagna, and tofu vegetarian lasagna; meatless shephard pies, vegetable pot pies, broccoli cheese pot pies, pocket pizzas, ravioli, cheese enchiladas, black beans and vegetable enchiladas, burritos, tamale pies, and apple pies. FIRST USE: 19880600. FIRST USE IN COMMERCE: 19880600
Mark Drawing Code (1) TYPED DRAWING
Serial Number 74466418
Filing Date December 7, 1993
Current Basis 1A
Original Filing Basis 1A
Published for Opposition December 27, 1994
Registration Number 1885120
Registration Date March 21, 1995
Owner (REGISTRANT) Amy's Kitchen, Inc. CORPORATION CALIFORNIA P.O. Box 449 Petaluma CALIFORNIA 949530449
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record Donald L. Beeson
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20040922.
Renewal 1ST RENEWAL 20040922
Other Data The name "AMY" identifies a living individual whose consent is of record.
Live/Dead Indicator LIVE

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Typed Drawing

Word Mark AMY'S

Goods and Services IC 029. US 046. G & S: frozen vegetarian meals, namely veggie burgers and country dinners consisting primarily of a vegetarian salisbury steak. FIRST USE: 19901000. FIRST USE IN COMMERCE: 19901000

IC 030. US 046. G & S: frozen vegetarian meals consisting primarily of pasta and bulgur wheat, namely macaroni and cheese dinners, vegetable lasagna, and tofu vegetarian lasagna; meatless shepard pies, vegetable pot pies, broccoli cheese pot pies, pocket pizzas, ravioli, cheese enchiladas, black beans and vegetable enchiladas, burritos, tamale pies, and apple pies. FIRST USE: 19880600. FIRST USE IN COMMERCE: 19880600

Mark Drawing Code (1) TYPED DRAWING

Serial Number 74466425

Filing Date December 7, 1993

Current Basis 1A

Original Filing Basis 1A

Published for Opposition December 27, 1994

Registration Number 1885121

Registration Date March 21, 1995

Owner (REGISTRANT) Amy's Kitchen, Inc. CORPORATION CALIFORNIA P.O. Box 449 Petaluma CALIFORNIA 949530449

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record Donald L. Beeson

Type of Mark TRADEMARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20040922.

Renewal 1ST RENEWAL 20040922

Other Data The name "AMY" identifies a living individual whose consent is of record.

Live/Dead Indicator LIVE



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Word Mark AMY'S

Translations The name "AMY" identifies a living individual whose consent is of record.

Goods and Services IC 029. US 046. G & S: frozen vegetarian meals, namely veggie burgers and country dinners consisting primarily of a vegetarian Salisbury steak. FIRST USE: 19901000. FIRST USE IN COMMERCE: 19901000

IC 030. US 046. G & S: frozen vegetarian meals consisting primarily of pasta and bulgur wheat, namely macaroni and cheese dinners, vegetable lasagna, and tofu vegetarian lasagna; meatless shepard pies, vegetable pot pies, broccoli cheese pot pies, pocket pizzas, ravioli, cheese enchiladas, black beans and vegetable enchiladas, burritos, tamale pies, and apple pies. FIRST USE: 19880600. FIRST USE IN COMMERCE: 19931220

Mark Drawing Code (5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Serial Number 74471211

Filing Date December 20, 1993

Current Basis 1A

Original Filing Basis 1A

Published for Opposition February 14, 1995

Registration Number **1893229**

Registration Date May 9, 1995

Owner (REGISTRANT) Amy's Kitchen, Inc. CORPORATION CALIFORNIA P.O. Box 449 Petaluma CALIFORNIA 949530449

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record Donald L. Beeson

Type of Mark TRADEMARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20040922.

Renewal 1ST RENEWAL 20040922
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Word Mark AMY'S
Goods and Services IC 029. US 046. G & S: soups; frozen vegetarian meals consisting primarily of vegetables, cheese and/or beans. FIRST USE: 19991000. FIRST USE IN COMMERCE: 19991000
 IC 030. US 046. G & S: tomato sauce; pizza; frozen vegetarian meals consisting primarily of noodles, pasta and/or rice. FIRST USE: 19901000. FIRST USE IN COMMERCE: 19901000
Mark Drawing Code (1) TYPED DRAWING
Serial Number 76057945
Filing Date May 26, 2000
Current Basis 1A
Original Filing Basis 1A
Published for Opposition March 20, 2001
Registration Number **2459724**
Registration Date June 12, 2001
Owner (REGISTRANT) Amy's Kitchen, Inc. CORPORATION CALIFORNIA 2330 Northpoint Parkway Santa Rosa CALIFORNIA 95407
Attorney of Record Donald L. Beeson
Prior Registrations 1885120;1885121
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20110413.
Renewal 1ST RENEWAL 20110413
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Word Mark AMY'S KITCHEN

Goods and Services IC 029. US 046. G & S: soups; frozen vegetarian meals consisting primarily of vegetables, cheese and/or beans. FIRST USE: 19901000. FIRST USE IN COMMERCE: 19901000

IC 030. US 046. G & S: tomato sauce; pizza; frozen vegetarian meals consisting primarily of noodles, pasta and/or rice. FIRST USE: 19901000. FIRST USE IN COMMERCE: 19901000

Mark Drawing Code (1) TYPED DRAWING

Serial Number 76057946

Filing Date May 26, 2000

Current Basis 1A

Original Filing Basis 1A

Published for Opposition April 10, 2001

Registration Number **2465620**

Registration Date July 3, 2001

Owner (REGISTRANT) Amy's Kitchen, Inc. CORPORATION CALIFORNIA 2330 Northpoint Parkway Santa Rosa CALIFORNIA 95407

Attorney of Record Donald L. Beeson

Prior Registrations 1885120;1885121

Type of Mark TRADEMARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20110419.

Renewal 1ST RENEWAL 20110419

Live/Dead Indicator LIVE

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

Atty Docket: D332-299.8A)	
)	
AMY'S KITCHEN, INC.	)	OPPOSITION NO. _____
)	
Opposer,	)	Appln. Serial No. 85127071
)	
v.	)	MARK: AMY'S ICE CREAMS
	)	and Design
)	
AMY'S ICE CREAMS, INC.	)	Publication Date: 3/20/12
)	
Applicant.	)	Ext. To Oppose Granted to 7/18/12
_____)	

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

NOTICE OF OPPOSITION

Opposer, Amy's Kitchen, Inc., a California corporation (hereinafter "Opposer"), with its principal offices at 1650 Corporate Circle, Suite 200, Petaluma, CA 94954, believes it will be damaged by the registration on the Principal Register of application Serial No. 85/127,071 for the mark AMY'S ICE CREAMS and Design in Classes 25 and 43, filed by Amy's Ice Creams, Inc., a Texas corporation (hereinafter "Applicant"), located at 2109 Northland Drive, Austin, Texas, and hereby opposes the same. As grounds for this opposition, Opposer alleges:

1. The Applicant seeks to register AMY'S ICE CREAMS and Design as a trademark in class 25 for "shirts," and class 43 for "restaurant services featuring ice cream, fruit ice, candy, chocolates and beverages; catering" as evidenced by the publication of said mark in the Official

Gazette on March 20, 2012. Applicant's mark consists of the literal elements AMY'S ICE CREAMS, written in a stylized font overtop a shaded oval shape.

2. Since long before Applicant's filing date, Opposer has continuously used and is using the marks AMY'S and AMY'S KITCHEN on and in connection with a broad range of vegetarian food products. Food products currently sold by Opposer under the AMY'S and AMY'S KITCHEN marks include, without limitation, frozen vegetarian entrees, ethnic meals (including Asian and Indian foods and dishes), pocket sandwiches, pizzas, burritos, pot pies, snack foods, and a variety of dessert items, including pies, cakes and shortbread cookies. Non-frozen food products sold by Opposer under the AMY'S and AMY'S KITCHEN marks include, without limitation, soups, chilli, beans, salsa, and pasta sauces. Since its inception in the 1980's, Opposer has continually expanded its AMY'S and AMY'S KITCHEN branded consumer food product line and continues to do so.

3. Opposer's organic food products are sold under the AMY'S and AMY'S KITCHEN marks through a variety of retail outlets, including specialty food outlets and major retail grocery chains, and have achieved a high degree of commercial success in the United States. As a result of this commercial success, the AMY'S and AMY'S KITCHEN marks are now widely recognized among the purchasing public as the source of Opposer's products.

4. Opposer is the owner of the following United States trademark registrations in classes 29 and 30 for the word mark AMY'S, the stylized mark AMY'S, and the mark AMY'S KITCHEN:

[CONTINUED ON NEXT PAGE]

<u>Reg. No.</u>	<u>Mark</u>	<u>Reg. Date</u>	<u>Goods</u>
1,885,120	AMY'S KITCHEN	3/21/95	Cl.29: frozen vegetarian meals, namely veggie burgers and country dinners consisting primarily of a vegetarian Salisbury steak Cl.30: frozen vegetarian meals consisting primarily of pasta and bulgur wheat, namely macaroni and cheese dinners, vegetable lasagna, and tofu vegetarian lasagna; meatless shepard pies, vegetable pot pies, broccoli cheese pot pies, pocket pizzas, ravioli, cheese enchiladas, black beans and vegetable enchiladas, burritos, tamale pies, and apple pies
1,885,121	AMY'S	3/21/95	Cl.29: frozen vegetarian meals, namely veggie burgers and country dinners consisting primarily of a vegetarian salisbury steak Cl.30: frozen vegetarian meals consisting primarily of pasta and bulgur wheat, namely macaroni and cheese dinners, vegetable lasagna, and tofu vegetarian lasagna; meatless shepard pies, vegetable pot pies, broccoli cheese pot pies, pocket pizzas, ravioli, cheese enchiladas, black beans and vegetable enchiladas, burritos, tamale pies, and apple pies
1,893,229	AMY'S (stylized)	5/09/95	Cl.29: frozen vegetarian meals, namely veggie burgers and country dinners consisting primarily of a vegetarian Salisbury steak Cl.30: frozen vegetarian meals consisting primarily of pasta and bulgur wheat, namely macaroni and cheese dinners, vegetable lasagna, and tofu vegetarian lasagna; meatless shepard pies, vegetable pot pies, broccoli cheese pot pies, pocket pizzas, ravioli, cheese enchiladas, black beans and vegetable enchiladas, burritos, tamale pies, and apple pies
2,459,724	AMY'S	6/12/01	Cl.29: soups, frozen vegetarian meals consisting primarily of vegetables, cheese and/or beans Cl.30: tomato sauce, pizza; frozen vegetarian meals consisting primarily of noodles, pasta and/or rice
2,465,620	AMY'S KITCHEN	7/03/01	Cl.29: soups; frozen vegetarian meals consisting primarily of vegetables, cheese and/or beans Cl.30: tomato sauce; pizza; frozen vegetarian meals consisting primarily of noodles, pasta and/or rice

<u>Reg. No.</u>	<u>Mark</u>	<u>Reg. Date</u>	<u>Goods</u>
2,946,026	AMY'S	5/03/05	Cl.29: vegetarian refried beans, vegetarian processed beans, namely, canned beans, and meatless chili Cl.30: Frozen vegetarian meals in a bowl consisting primarily of pasta, rice or corn meal, namely, stuffed pasta shells in a bowl, rice and vegetable combinations in a bowl, enchiladas in a bowl, pasta and vegetable combinations in a bowl, tortellini in a bowl; frozen pocket sandwiches consisting of a grain based shells with various fillings; frozen toaster pastries with various fillings; frozen snack grain-based foods consisting of miniature grain based shells with various fillings; and salsa
2,954,885	AMY'S KITCHEN	5/24/05	Cl.29: Vegetarian refried beans, vegetarian processed beans, namely, canned beans, and meatless chili Cl.30: Frozen vegetarian meals in a bowl consisting primarily of pasta, rice or corn meal, namely, stuffed pasta shells in a bowl, rice and vegetable combinations in a bowl, enchiladas in a bowl, pasta and vegetable combinations in a bowl, tortellini in a bowl; frozen pocket sandwiches consisting of a grain based shells with various fillings; frozen toaster pastries with various fillings; frozen snack grain-based foods consisting of miniature grain based shells with various fillings; and salsa

5. True and correct printouts of records from the electronic database of the USPTO showing current status and title for the above-listed registrations owned by Opposer are attached hereto as Exhibit A. All of the above-listed trademark registrations are valid and subsisting, are incontestable, and have subsisted for more than five years before the filing date of Applicant's application Serial No. 85/127,071.

6. On June 6, 2011, Opposer filed U.S. Trademark Application Nos. 85/339,258 and 85/339,245 under Section 1(b) of the Act for, respectively, the marks AMY'S and AMY'S KITCHEN for candy bars and cookies in class 30. Candy bars and cookies represent a natural

extension of a continually expanding product line sold by Opposer under the AMY'S and AMY'S KITCHEN marks.

7. Opposer's pending applications Nos. 85/339,258 and 85/339,245 have been suspended by the examining attorney in part because of Applicant's prior application No. 85/127,071 for AMY'S ICE CREAMS and Design. In his notices of suspension, the Examining Attorney states that if application No. 85/127,071 proceeds to registration as to the class 43 restaurant services recited therein, registration of applicant's AMY'S and AMY'S KITCHEN marks for candy bars and cookies may be refused under Section 2(d) of the Act because of a likelihood of confusion with the registered AMY'S ICE CREAMS and Design mark. Thus, Applicant's application No. 85/127,071 for AMY'S ICE CREAMS and Design threatens to prevent Opposer from registering its previously registered and well known AMY'S and AMY'S KITCHEN marks for goods that are a natural expansion of its product line, in this case, for candy bars and cookies. Opposer would be harmed by the registration of Applicant's AMY'S ICE CREAMS and Design mark in class 43, in that, such registration would impair and be inconsistent with Opposer's right to use and register its AMY'S and AMY'S KITCHEN marks, including its right to use and register its marks for new products added to its product line.

8. Opposer further alleges that Applicant's mark AMY'S ICE CREAMS and Design so resembles Opposer's previously registered marks AMY'S and AMY'S KITCHEN, as to likely cause confusion, mistake, or deception within the meaning of Section 2(d) of the Trademark Act, when used on the goods in class 25 and in connection with the services in class 43 set forth in Applicant's application. As to the goods in class 25, use of Applicant's mark on the wearing apparel recited in Applicant's application is likely confuse the consuming public into believing that such wearing apparel is a promotional item for Opposer or is otherwise affiliated with

Opposer. As to the services in class 43, use of Applicant's mark on restaurant services featuring items that are related to the goods of Opposer's pending applications is likely to confuse the public as to an affiliation between Opposer and Applicant.

9. Applicant's registration and use of AMY'S ICE CREAMS and Design for the goods recited in Applicant's application, and the likelihood of confusion caused thereby, is likely to damage, dilute, and destroy the distinctiveness, goodwill, and reputation of Opposer's marks AMY'S and AMY'S KITCHEN.

10. By reason of the foregoing, Opposer will be damaged by the registration of the mark AMY'S ICE CREAMS and Design to Applicant.

WHEREFORE, Opposer prays that application Serial No. 85/127,071 be rejected, and that no registration be issued to Applicant on such application, and that this opposition be sustained in favor of Opposer.

Respectfully submitted,

AMY'S KITCHEN, INC.

Dated: July 17, 2012

By  _____

Donald L. Beeson
Kathleen A. Skinner
Beeson Skinner Beverly, LLP
Attorneys for Opposer
One Kaiser Plaza, Suite 750
Oakland, California 94612
Telephone (510) 832-8700
Fax: (510) 836-2595
Email: bsb@bsblp.com

CERTIFICATE OF MAILING

I hereby certify that a copy of this Notice of Opposition was served on counsel for Applicant on the date below by mailing the same via first class mail, postage prepaid, to:

William G. Barber
Pirkey Barber LLP
600 Congress Ave.
Suite 2120
Austin, TX 78701-2973

DATED: July 17, 2012



Kathleen A. Skinner

EXHIBIT A

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Typed Drawing

Word Mark AMY'S KITCHEN

Goods and Services IC 029. US 046. G & S: frozen vegetarian meals, namely veggie burgers and country dinners consisting primarily of a vegetarian Salisbury steak. FIRST USE: 19901000. FIRST USE IN COMMERCE: 19901000

IC 030. US 046. G & S: frozen vegetarian meals consisting primarily of pasta and bulgur wheat, namely macaroni and cheese dinners, vegetable lasagna, and tofu vegetarian lasagna; meatless shephard pies, vegetable pot pies, broccoli cheese pot pies, pocket pizzas, ravioli, cheese enchiladas, black beans and vegetable enchiladas, burritos, tamale pies, and apple pies. FIRST USE: 19880600. FIRST USE IN COMMERCE: 19880600

Mark Drawing Code (1) TYPED DRAWING

Serial Number 74466418

Filing Date December 7, 1993

Current Basis 1A

Original Filing Basis 1A

Published for Opposition December 27, 1994

Registration Number 1885120

Registration Date March 21, 1995

Owner (REGISTRANT) Amy's Kitchen, Inc. CORPORATION CALIFORNIA P.O. Box 449 Petaluma CALIFORNIA 949530449

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record Donald L. Beeson

Type of Mark TRADEMARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20040922.

Renewal 1ST RENEWAL 20040922

Other Data The name "AMY" identifies a living individual whose consent is of record.

Live/Dead Indicator LIVE

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Typed Drawing

Word Mark AMY'S
Goods and Services IC 029. US 046. G & S: frozen vegetarian meals, namely veggie burgers and country dinners consisting primarily of a vegetarian salisbury steak. FIRST USE: 19901000. FIRST USE IN COMMERCE: 19901000
 IC 030. US 046. G & S: frozen vegetarian meals consisting primarily of pasta and bulgur wheat, namely macaroni and cheese dinners, vegetable lasagna, and tofu vegetarian lasagna; meatless shepard pies, vegetable pot pies, broccoli cheese pot pies, pocket pizzas, ravioli, cheese enchiladas, black beans and vegetable enchiladas, burritos, tamale pies, and apple pies. FIRST USE: 19880600. FIRST USE IN COMMERCE: 19880600
Mark Drawing Code (1) TYPED DRAWING
Serial Number 74466425
Filing Date December 7, 1993
Current Basis 1A
Original Filing Basis 1A
Published for Opposition December 27, 1994
Registration Number 1885121
Registration Date March 21, 1995
Owner (REGISTRANT) Amy's Kitchen, Inc. CORPORATION CALIFORNIA P.O. Box 449 Petaluma CALIFORNIA 949530449
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record Donald L. Beeson
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20040922.
Renewal 1ST RENEWAL 20040922
Other Data The name "AMY" identifies a living individual whose consent is of record.
Live/Dead Indicator LIVE



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Word Mark AMY'S

Translations The name "AMY" identifies a living individual whose consent is of record.

Goods and Services IC 029. US 046. G & S: frozen vegetarian meals, namely veggie burgers and country dinners consisting primarily of a vegetarian Salisbury steak. FIRST USE: 19901000. FIRST USE IN COMMERCE: 19901000

IC 030. US 046. G & S: frozen vegetarian meals consisting primarily of pasta and bulgur wheat, namely macaroni and cheese dinners, vegetable lasagna, and tofu vegetarian lasagna; meatless shepard pies, vegetable pot pies, broccoli cheese pot pies, pocket pizzas, ravioli, cheese enchiladas, black beans and vegetable enchiladas, burritos, tamale pies, and apple pies. FIRST USE: 19880600. FIRST USE IN COMMERCE: 19931220

Mark Drawing Code (5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Serial Number 74471211

Filing Date December 20, 1993

Current Basis 1A

Original Filing Basis 1A

Published for Opposition February 14, 1995

Registration Number **1893229**

Registration Date May 9, 1995

Owner (REGISTRANT) Amy's Kitchen, Inc. CORPORATION CALIFORNIA P.O. Box 449 Petaluma CALIFORNIA 949530449

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record Donald L. Beeson

Type of Mark TRADEMARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20040922.

Renewal 1ST RENEWAL 20040922
Live/Dead Indicator LIVE

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Word Mark AMY'S
Goods and Services IC 029. US 046. G & S: soups; frozen vegetarian meals consisting primarily of vegetables, cheese and/or beans. FIRST USE: 19991000. FIRST USE IN COMMERCE: 19991000
 IC 030. US 046. G & S: tomato sauce; pizza; frozen vegetarian meals consisting primarily of noodles, pasta and/or rice. FIRST USE: 19901000. FIRST USE IN COMMERCE: 19901000
Mark Drawing Code (1) TYPED DRAWING
Serial Number 76057945
Filing Date May 26, 2000
Current Basis 1A
Original Filing Basis 1A
Published for Opposition March 20, 2001
Registration Number **2459724**
Registration Date June 12, 2001
Owner (REGISTRANT) Amy's Kitchen, Inc. CORPORATION CALIFORNIA 2330 Northpoint Parkway Santa Rosa CALIFORNIA 95407
Attorney of Record Donald L. Beeson
Prior Registrations 1885120;1885121
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20110413.
Renewal 1ST RENEWAL 20110413
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Word Mark AMY'S KITCHEN
Goods and Services IC 029. US 046. G & S: soups; frozen vegetarian meals consisting primarily of vegetables, cheese and/or beans. FIRST USE: 19901000. FIRST USE IN COMMERCE: 19901000
 IC 030. US 046. G & S: tomato sauce; pizza; frozen vegetarian meals consisting primarily of noodles, pasta and/or rice. FIRST USE: 19901000. FIRST USE IN COMMERCE: 19901000
Mark Drawing Code (1) TYPED DRAWING
Serial Number 76057946
Filing Date May 26, 2000
Current Basis 1A
Original Filing Basis 1A
Published for Opposition April 10, 2001
Registration Number **2465620**
Registration Date July 3, 2001
Owner (REGISTRANT) Amy's Kitchen, Inc. CORPORATION CALIFORNIA 2330 Northpoint Parkway Santa Rosa CALIFORNIA 95407
Attorney of Record Donald L. Beeson
Prior Registrations 1885120;1885121
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20110419.
Renewal 1ST RENEWAL 20110419
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AMY'S

Word Mark	AMY'S
Goods and Services	IC 029. US 046. G & S: Vegetarian refried beans, vegetarian processed beans, namely, canned beans, and meatless chili. FIRST USE: 20000614. FIRST USE IN COMMERCE: 20000614 IC 030. US 046. G & S: Frozen vegetarian meals in a bowl consisting primarily of pasta, rice or corn meal, namely, stuffed pasta shells in a bowl, rice and vegetable combinations in a bowl, enchiladas in a bowl, pasta and vegetable combinations in a bowl, tortellini in a bowl; frozen pocket sandwiches consisting of a grain based shells with various fillings; frozen toaster pastries with various fillings; frozen snack grain-based foods consisting of miniature grain based shells with various fillings; and salsa. FIRST USE: 19960411. FIRST USE IN COMMERCE: 19960411
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	78337343
Filing Date	December 5, 2003
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	February 8, 2005
Registration Number	2946026
Registration Date	May 3, 2005
Owner	(REGISTRANT) Amy's Kitchen, Inc. CORPORATION CALIFORNIA 2330 Northpoint Parkway Santa Rosa CALIFORNIA 95407
Attorney of Record	Donald L. Beeson
Prior Registrations	1885120;1885121;1893229;AND OTHERS

Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).
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AMY'S KITCHEN

Word Mark AMY'S KITCHEN

Goods and Services IC 029. US 046. G & S: Vegetarian refried beans, vegetarian processed beans, namely, canned beans, and meatless chili. FIRST USE: 20000614. FIRST USE IN COMMERCE: 20000614

IC 030. US 046. G & S: Frozen vegetarian meals in a bowl consisting primarily of pasta, rice or corn meal, namely, stuffed pasta shells in a bowl, rice and vegetable combinations in a bowl, enchiladas in a bowl, pasta and vegetable combinations in a bowl, tortellini in a bowl; frozen pocket sandwiches consisting of a grain based shells with various fillings; frozen toaster pastries with various fillings; frozen snack grain-based foods consisting of miniature grain based shells with various fillings; and salsa. FIRST USE: 19960411. FIRST USE IN COMMERCE: 19960411

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 78337338

Filing Date December 5, 2003

Current Basis 1A

Original Filing Basis 1A

Published for Opposition March 1, 2005

Registration Number 2954885

Registration Date May 24, 2005

Owner (REGISTRANT) Amy's Kitchen, Inc. CORPORATION CALIFORNIA 2330 Northpoint Parkway Santa Rosa CALIFORNIA 95407

Attorney of Record Donald L. Beeson

Prior Registrations 1885120;1885121;1893229;AND OTHERS

Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).
Live/Dead Indicator LIVE

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