

ESTTA Tracking number: **ESTTA494041**

Filing date: **09/12/2012**

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	Harris Teeter, Inc.
Granted to Date of previous extension	09/12/2012
Address	701 Crestdale Drive Matthews, NC 28105 UNITED STATES
Attorney information	Jayne Conway Hunter McGuire Woods, LLP 201 North Tryon Street Charlotte, NC 28202 UNITED STATES jhunter@mcguirewoods.com Phone:704-343-2042

Applicant Information

Application No	85482283	Publication date	05/15/2012
Opposition Filing Date	09/12/2012	Opposition Period Ends	09/12/2012
Applicant	Fresca Corp. 244 Fifth Avenue, Ste. 2607 New York, NY 10001 UNITED STATES		

Goods/Services Affected by Opposition

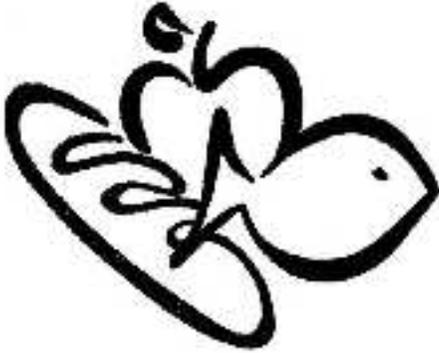
Class 021. All goods and services in the class are opposed, namely: Dessert plates; Dishes and plates; Disposable table plates; Paper plates; Paper plates and paper cups; Plastic plates; Plates
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2905200	Application Date	11/24/2003
Registration Date	11/23/2004	Foreign Priority Date	NONE
Word Mark	NONE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 1995/06/21 First Use In Commerce: 1996/06/19 Retail grocery store services

U.S. Registration No.	2926384	Application Date	11/24/2003
Registration Date	02/15/2005	Foreign Priority Date	NONE
Word Mark	HARRIS TEETER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1995/06/21 First Use In Commerce: 1996/06/19 Retail grocery stores		

U.S. Registration No.	2906745	Application Date	11/25/2003
Registration Date	11/30/2004	Foreign Priority Date	NONE
Word Mark	HARRIS TEETER YOUR NEIGHBORHOOD FOOD MARKET		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1999/10/31 First Use In Commerce: 1999/10/31 Retail grocery stores		

U.S. Registration No.	3495913	Application Date	03/17/2008
Registration Date	09/02/2008	Foreign Priority Date	NONE

Word Mark	MY EARTH
Design Mark	
Description of Mark	The mark consists of the colors light green, medium green, and white, with white appearing in the wording "MY EARTH" and in the logo depicting bread, fruit and fish, the color light green appearing in the outline of the oval background, and the color medium green appearing in the oval background.
Goods/Services	Class 035. First use: First Use: 2008/01/02 First Use In Commerce: 2008/01/02 retail store services in the field of groceries and household items featuring a program for promoting environmentally friendly items

Attachments	78332357#TMSN.jpeg (1 page)(bytes) 78332313#TMSN.jpeg (1 page)(bytes) 78332658#TMSN.jpeg (1 page)(bytes) 77423326#TMSN.jpeg (1 page)(bytes) NOTICE OF OPPOSITION.pdf (12 pages)(422914 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	/Jayne Conway Hunter/
Name	Jayne Conway Hunter
Date	09/12/2012

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

Harris Teeter, Inc.,

Opposer,

v.

Fresca Corp.

Applicant.

Opposition No.

Serial No.: 85/482283

Mark: FRESCA GOURMET MARKET
PLUS DESIGN

NOTICE OF OPPOSITION

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

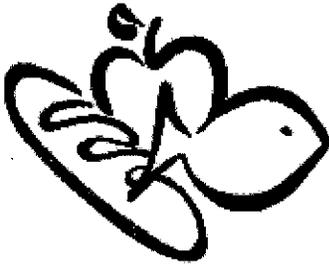
Dear Sir or Madam:

Harris Teeter, Inc., a North Carolina corporation with its principal place of business at, 701 Crestdale Drive, Matthews, North Carolina, believes it will be damaged by the registration of the mark FRESCA GOURMET MARKET plus DESIGN as showing in the Trademark Application Serial No. 85/482283 filed on November 29, 2011 for use in connection with goods in International Class 21, and published for opposition in the Official Gazette of May 15, 2012. Opposer Harris Teeter, Inc. ("Harris Teeter") operates a nationally recognized chain of retail grocery stores, and offers many of its own branded products, including disposable plates and other items in Class 21, in addition to those of other providers, in its stores.

1. Since it began operations in 1960, Opposer has adopted and used a number of trademarks, and has registered many of them with the United States Patent and Trademark Office ("PTO"). In particular, Opposer has applied to the U.S. Patent & Trademark Office (the "PTO")

to register, and has received registrations for, a family marks which incorporate a logo consisting of a stylized apple, a loaf of bread and a fish (“the apple loaf fish logo”), as set forth below:

- a. U.S. Registration No. 2,905,200 for “retail grocery store services” in Class 35;



- b. HARRIS TEETER & Design, U.S. Reg. No. 2,926,384 for “retail grocery stores” in Class 35;



c. HARRIS TEETER YOUR NEIGHBORHOOD FOOD MARKET &

Design, U.S. Reg. No. 2,906,745 for “retail grocery stores” in Class 35;



d. MY EARTH, U.S. Reg. No. 3,495,913 for “retail store services in the field

of groceries and household items featuring a program for promoting environmentally friendly items”



2. Each of these registrations and applications is valid and continuing, and copies of each are attached hereto as **Exhibit A**.

3. Through Opposer’s long and continuous use of the apple loaf fish logo and its substantial investment in marketing and promotion, the apple loaf fish logo marks have come to be known, recognized, and identified as originating with Opposer, and therefore Opposer has acquired substantial, invaluable good will in the apple loaf fish logo marks.

4. Opposer's use and promotion of its trademarks pre-dates the application for registration of Applicant's mark.

5. Applicant's application for its mark FRESCA GOURMET MARKET plus DESIGN, shown below,



was filed on the basis of intent to use on November 29, 2011 for use in connection with the following goods in Class 21:

Dessert plates; Dishes and plates; Disposable table plates; Paper plates; Paper plates and paper cups; Plastic plates; Plates

6. The design element of Applicant's mark is highly similar to Opposer's family of marks incorporating the apple loaf fish logo. The use of Applicant's mark in connection with goods commonly sold at a grocery store under a store's own brand could create confusion with a similar mark such as Opposer's.

7. In Application Serial No. 85482279, Applicant has also applied for use of the same mark for use on the following services in Class 35:

Retail and on-line grocery store services featuring home delivery service; Retail grocery stores featuring phone-in orders; Retail grocery stores; Supermarkets.

The examiner has refused registration of this application on the grounds of likelihood of confusion with Opposer's registered trademarks cited herein.

8. Applicant's use and registration of the mark FRESCA GOURMET MARKET PLUS DESIGN is likely to cause confusion in the marketplace among consumers.

9. Applicant's use and registration of the mark FRESCA GOURMET MARKET PLUS DESIGN will diminish the goodwill that Opposer has established in its family of marks using the logo.

10. Applicant's use and registration of mark FRESCA GOURMET MARKET PLUS DESIGN in connection with the services listed in its application are likely to cause confusion, mistake, or deception among the consumers as to the source, sponsorship, or approval of Applicant's goods in that consumers are likely to be misled to believe that Applicant is in some way affiliated with, sponsored by, licensed by, or otherwise related to, Opposer.

11. Any such confusion in the trade could seriously injure Opposer to the extent that any objection or fault found with Applicant's goods marketed under its mark would necessarily reflect upon the reputation which Opposer has established through the use of the family of marks using the logo.

12. If Applicant were granted registration for its mark, it would obtain at least a *prima facie* exclusive right to use its mark in connection with the goods. Such registration and use would be a source of damage and injury to Opposer, and the consuming public.

WHEREFORE, Opposer believes and avers that it is being and will continue to be damaged by registration of the mark FRESCA GOURMET MARKET PLUS DESIGN for use

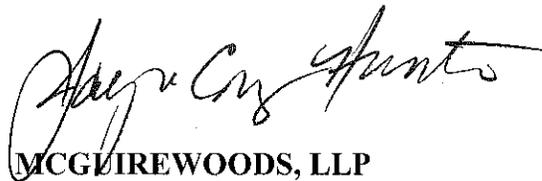
on the goods listed in the application and prays that Application Serial No. 85/482283 be rejected, that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

Opposer has appointed Jayne Conway Hunter of the law firm McGuire Woods, LLP, to prosecute this opposition proceeding and to transact all business in and before the United States Patent and Trademark Office in connection herewith. Please address all correspondence to:

Jayne Conway Hunter
McGuireWoods LLP
201 North Tryon Street
Charlotte, NC 28202
704-343-2042 (telephone)
704-805-5069 (facsimile)
jhunter@mcguirewoods.com

The proper filing fees for this opposition are submitted herewith.

Respectfully submitted,



MCGUIREWOODS, LLP
Jayne Conway Hunter
201 North Tryon Street
(704)343-2042
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jhunter@mcguirewoods.com

Attorney for Opposer
Harris Teeter, Inc.
Dated: September 12, 2012

EXHIBIT A

Int. Cl.: 35

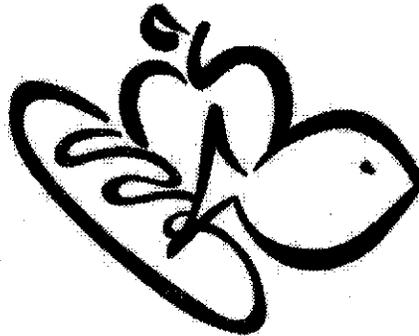
Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office

Reg. No. 2,905,200

Registered Nov. 23, 2004

**SERVICE MARK
PRINCIPAL REGISTER**



HARRIS TEETER, INC. (NORTH CAROLINA
CORPORATION)
701 CRESTDALE DRIVE
MATTHEWS, NC 28105

FIRST USE 6-21-1995; IN COMMERCE 6-19-1996.

SER. NO. 78-332,357, FILED 11-24-2003.

FOR: RETAIL GROCERY STORE SERVICES, IN
CLASS 35 (U.S. CLS. 100, 101 AND 102).

TARAH HARDY, EXAMINING ATTORNEY

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office

Reg. No. 2,926,384

Registered Feb. 15, 2005

**SERVICE MARK
PRINCIPAL REGISTER**



HARRIS TEETER, INC. (NORTH CAROLINA
CORPORATION)
701 CRESTDALE DRIVE
MATTHEWS, NC 28105

OWNER OF U.S. REG. NOS. 1,515,980 AND
2,102,870.

FOR: RETAIL GROCERY STORES, IN CLASS 35
(U.S. CLS. 100, 101 AND 102).

SER. NO. 78-332,313, FILED 11-24-2003.

FIRST USE 6-21-1995; IN COMMERCE 6-19-1996.

TARAH HARDY, EXAMINING ATTORNEY

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office

Reg. No. 2,906,745

Registered Nov. 30, 2004

SERVICE MARK
PRINCIPAL REGISTER



HARRIS TEETER, INC. (NORTH CAROLINA
CORPORATION)
701 CRESTDALE DRIVE
MATTHEWS, NC 28105

OWNER OF U.S. REG. NOS. 1,515,980, 1,527,658,
AND 2,102,870.

FOR: RETAIL GROCERY STORES, IN CLASS 35
(U.S. CLS. 100, 101 AND 102).

SER. NO. 78-332,658, FILED 11-25-2003.

FIRST USE 10-31-1999; IN COMMERCE 10-31-1999.

CAROLINE WOOD, EXAMINING ATTORNEY

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office

Reg. No. 3,495,913

Registered Sep. 2, 2008

SERVICE MARK
PRINCIPAL REGISTER



HARRIS TEBTER, INC. (NORTH CAROLINA CORPORATION)
701 CRESTDALE ROAD
MATTHEWS, NC 28105

FOR: RETAIL STORE SERVICES IN THE FIELD OF GROCERIES AND HOUSEHOLD ITEMS FEATURING A PROGRAM FOR PROMOTING ENVIRONMENTALLY FRIENDLY ITEMS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 1-2-2008; IN COMMERCE 1-2-2008.

OWNER OF U.S. REG. NOS. 2,905,200, 2,926,384 AND OTHERS.

THE COLOR(S) LIGHT GREEN, MEDIUM GREEN, AND WHITE IS/ARE CLAIMED AS A FEATURE OF THE MARK.

THE MARK CONSISTS OF THE COLORS LIGHT GREEN, MEDIUM GREEN, AND WHITE, WITH WHITE APPEARING IN THE WORDING "MY EARTH" AND IN THE LOGO DEPICTING BREAD, FRUIT AND FISH, THE COLOR LIGHT GREEN APPEARING IN THE OUTLINE OF THE OVAL BACKGROUND, AND THE COLOR MEDIUM GREEN APPEARING IN THE OVAL BACKGROUND.

SER. NO. 77-423,326, FILED 3-17-2008.

CARRIE GENOVESE, EXAMINING ATTORNEY

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Notice of Opposition has been served on Applicant Fresca Corp. by mailing said copy on September 12, 2012, via First Class Mail, postage prepaid to its attorney:

K. Clyde Vanel
Vanel Law Firm
234 Fifth Avenue, 4th Floor
New York, NY 10010



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Attorney for Opposer
Harris Teeter, Inc.
Dated: September 12, 2012