

ESTTA Tracking number: **ESTTA552011**

Filing date: **08/02/2013**

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	Morton Salt, Inc.
Granted to Date of previous extension	08/03/2013
Address	123 N. Wacker Drive Chicago, IL 60606 UNITED STATES

Attorney information	Jeffrey Morgan Novak Druce Connolly Bove + Quigg LLP 1000 Louisiana St., 53rd Floor Houston, TX 77002 UNITED STATES trademark@novakdruce.com Phone:713.571.3400
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Applicant Information

Application No	85890796	Publication date	06/04/2013
Opposition Filing Date	08/02/2013	Opposition Period Ends	08/03/2013
Applicants	Chip Borkenhagen 201 West Laurel Street Brainerd, MN 56401 UNITED STATES Jean Borkenhagen 201 West Laurel Street Brainerd, MN 56401 UNITED STATES		

Goods/Services Affected by Opposition

Class 030. First Use: 2013/03/22 First Use In Commerce: 2013/03/24 All goods and services in the class are opposed, namely: Seasonings; Spice blends; Spices

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	824532	Application Date	01/06/1966
Registration Date	02/21/1967	Foreign Priority	NONE

		Date	
Word Mark	SEASON-ALL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U046 (International Class 030). First use: First Use: 1955/07/01 First Use In Commerce: 1955/07/01 SEASONING AND FLAVOR INTENSIFIER FOR FOOD, CONSISTING OF SALT, MONOSODIUM GLUTAMATE, SPICES, AND MAGNESIUM CARBONATE		

Attachments	8.3.13 Notice of Opposition.pdf(14870 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	/jeffrey morgan/
Name	Jeffrey Morgan
Date	08/02/2013

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

Morton Salt, Inc.,)	
)	
Opposer,)	Serial No.: 85/890,796
)	
v.)	Mark: SEASONALITIES
)	
Chip Borkenhagen and Jean)	Opposition No. _____
Borkenhagen,)	
)	
Applicants.)	

NOTICE OF OPPOSITION

Opposer, Morton Salt, Inc. (“Morton”) believes it will be damaged by registration of the mark SEASONALITIES (the “Opposed Mark”) claimed in Application Serial No. 85/890,796 (the “Application”) filed by Chip and Jean Borkenhagen (“Applicants”) on March 29, 2013 and published for opposition on June 4, 2013. Morton timely filed a request for extension of time to oppose the Application, which was granted until August 3, 2013.

As grounds for opposition, Morton alleges as follows:

1. For over 100 years, long prior to the filing date of the Application, Morton has been in the business of producing, selling and/or offering salt and salt-based products for home and industrial uses, including a full line of culinary salts and seasonings in U.S. commerce.
2. Morton is the owner by assignment of U.S. Trademark Registration No. 824,532 for the mark SEASON-ALL, which issued on February 21, 1967 in connection with “seasoning and flavor intensifier for food, consisting of salt, monosodium glutamate, spices, and magnesium carbonate” in Class 30 (the “SEASON-ALL Mark”).

3. Morton's Reg. No. 824,532 for SEASON-ALL is incontestable pursuant to 15 U.S.C. § 1065 and provides conclusive evidence of Morton's ownership of the mark therein, of the validity of the mark therein, and of Morton's exclusive right to use the mark in commerce in connection with the goods identified in the registration.

4. The SEASON-ALL Mark has been in use in continuous use in commerce since at least as early as 1955 by Morton or its predecessor-in-interest, McCormick & Company, long prior to Applicants' filing of the Application on March 29, 2013. Through this use, valuable goodwill has been established in the SEASON-ALL Mark, and the relevant public has come to recognize the SEASON-ALL Mark as an indication of quality products that emanate from Morton.

5. Morton is the owner of all right, title, and interest in and to the SEASON-ALL Mark, in connection with its goods.

6. Morton and its predecessor-in-interest, McCormick & Company, have spent substantial sums of money to widely and extensively advertise and promote the goods that are sold under the SEASON-ALL Mark.

7. As a result of the same, the SEASON-ALL Mark has acquired a highly favorable reputation among members of the purchasing public and the trade and has become a valuable symbol of Morton's goodwill.

8. By virtue of the high degree of inherent and acquired distinctiveness of the SEASON-ALL Mark, the long duration and extensive use of the SEASON-ALL Mark, the long duration and extensive advertising and promotion of the SEASON-ALL Mark, the expansive trading area in which the SEASON-ALL Mark has been used and the high degree of recognition of the SEASON-ALL Mark, the SEASON-ALL Mark has become

well-known and famous as a distinctive indicator of the origin of Morton's goods, and was famous before the date of first use of the Opposed Mark and/or the filing date of the Application.

9. Notwithstanding Morton's prior rights in the SEASON-ALL Mark, on March 29, 2013 Applicants filed the Application in the United States Patent and Trademark Office for registration of the mark SEASONALITIES for "Seasonings; Spice blends; Spices" in Class 30 (the "Opposed Goods").

10. On information and belief, Applicants knew or had reason to know of Morton's prior rights in the SEASON-ALL Mark when Applicants filed the Application.

11. Morton's Registration No. 824,532 for SEASON-ALL issued prior to the filing date of the Application and prior to any claimed use by Applicants of the Opposed Mark in the United States.

12. The SEASON-ALL Mark and the Opposed Mark are confusingly similar in sight, sound, and meaning.

13. Applicants' Class 30 goods are virtually identical to Morton's registered SEASON-ALL goods. Therefore, the relevant consumers are likely to be confused, to be deceived, and to assume erroneously that Applicants and the Opposed Goods are in some way connected with, sponsored by, or affiliated with Morton, all to Morton's substantial detriment.

14. Likelihood of confusion in this case is increased by the fame and high degree of recognition of the SEASON-ALL Mark as a distinctive indicator of the origin of Morton's registered goods.

15. The Opposed Goods identified in the Application are not limited in any

way as to prospective customers or channels of trade. Therefore, Applicants' goods and Morton's goods are presumed to be targeted, offered, and sold to the same classes of prospective consumers, namely, all consumers, and to flow in all channels of trade.

16. Registration of the Opposed Mark will support and assist Applicants in the confusing and misleading use of the Opposed Mark, will give color of exclusive statutory right to Applicants in derogation of the pre-existing and superior rights of Morton, and will cause Morton to lose control over the good and valuable reputation represented by and derived from the SEASON-ALL Mark, all causing irreparable harm and injury to Morton.

17. Moreover, Applicants' Opposed Mark, when applied to Applicants' goods for use in commerce, causes dilution of the distinctive quality of the SEASON-ALL Mark and lessens the capacity of the famous SEASON-ALL Mark to identify and distinguish Morton's goods.

WHEREFORE, Morton respectfully prays that Application Serial No. 85/890,796 for SEASONALITIES be refused and that no registration issue thereon to Applicants, and, further that this Opposition be sustained in favor of Morton.

Respectfully submitted,

/Jeffrey J. Morgan/

Jeffrey J. Morgan
William R. Towns
Novak Druce Connolly Bove + Quigg LLP
1000 Louisiana Street, 53rd Floor
Houston, Texas 77002
(713) 571-3400

Attorneys for Opposer
Morton Salt, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing NOTICE OF OPPOSITION was sent by U.S. First Class Mail, postage prepaid, to the following on this 3rd day of August, 2013:

Chip Borkenhagen
Jean Borkenhagen
201 West Laurel Street
Brainerd, Minnesota 56401

Jay Erstling TMCP-WML
William Mitchell College of Law
Intellectual Property Law Clinic
875 Summit Avenue
Saint Paul, Minnesota 55105-3076

/Jeffrey J. Morgan/
Novak Druce Connolly Bove+ Quigg LLP
1000 Louisiana Street, 53rd Floor
Houston, Texas 77002