

ESTTA Tracking number: **ESTTA673176**

Filing date: **05/19/2015**

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	The Big Green Egg, Inc.
Granted to Date of previous extension	05/20/2015
Address	3786 DeKalb Tech Parkway Atlanta, GA 30340 UNITED STATES
Attorney information	Dana Schwind Thrasher Worth LLC Five Concourse Parkway Suite 2600 Atlanta, GA 30328 UNITED STATES trademarks@thrasherworth.com, dschwind@thrasherworth.com Phone:404-760-6013

Applicant Information

Application No	86379274	Publication date	01/20/2015
Opposition Filing Date	05/19/2015	Opposition Period Ends	05/20/2015
Applicants	Spear, Philip 241-G Amboy Ave Metuchen, NJ 08840 UNITED STATES Spear, Lynn 241-G Amboy Ave Metuchen, NJ 08840 UNITED STATES		

Goods/Services Affected by Opposition

Class 043. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Restaurant services; Pizza restaurant

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.	4037333	Application Date	08/17/2010
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Registration Date	10/11/2011	Foreign Priority Date	NONE
Word Mark	BIG GREEN EGG		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 011. First use: First Use: 1981/11/21 First Use In Commerce: 1981/11/21 Barbecue smoker and grill		

U.S. Registration No.	4263121	Application Date	03/04/2011
Registration Date	12/25/2012	Foreign Priority Date	NONE
Word Mark	BIG GREEN EGG		
Design Mark			
Description of Mark	The mark consists of the words "BIG GREEN EGG" in green text next to an open green ceramic grill; the legs and top handle of the grill are black, there is a brown rectangular shaped handle on the front of the top portion, gray is on the label at the bottom and beige and white are on the inside of the grill.		
Goods/Services	Class 011. First use: First Use: 2011/03/00 First Use In Commerce: 2011/03/00 Barbecue smokers and grills		

U.S. Registration	3046614	Application Date	07/16/2003
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No.			
Registration Date	01/17/2006	Foreign Priority Date	NONE
Word Mark	EGG		
Design Mark	<i>EGG</i>		
Description of Mark	NONE		
Goods/Services	Class 011. First use: First Use: 2004/04/00 First Use In Commerce: 2004/04/00 Barbeque smokers and grills		

U.S. Registration No.	4145282	Application Date	04/08/2011
Registration Date	05/22/2012	Foreign Priority Date	NONE
Word Mark	EGGCESSORIES		
Design Mark	EGGCESSORIES		
Description of Mark	NONE		
Goods/Services	Class 021. First use: First Use: 1999/01/01 First Use In Commerce: 1999/01/01 Cooking utensils, namely, long-handled spatulas, grilling tongs, grilling forks, basting brushes, racks, meat flippers, porcelain rack cleaner, grid cleaner, ash tool, grill brush, extenders, cast iron grids, plate setters and baking stones, corn-on-the-cob holders, meat thermometers, chicken roaster, turkey roaster and cutting boards		

Attachments	85108979#TMSN.png(bytes) 85258049#TMSN.png(bytes) 76533297#TMSN.png(bytes) 85290209#TMSN.png(bytes) Notice of Opposition - Green Eggs and Pizza.pdf(163690 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	/Dana Schwind/
Name	Dana Schwind
Date	05/19/2015

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

THE BIG GREEN EGG, INC.)	Opposition No. _____
)	
Opposer)	Application Serial No. 86/379,274
)	
v.)	Mark: GREEN EGGS AND PIZZA
)	
)	Filed: August 28, 2014
Philip Spear)	
Lynn Spear)	Published: January 20, 2015
Applicants)	

NOTICE OF OPPOSITION

THE BIG GREEN EGG, INC., by and through its undersigned attorneys, believes it will be damaged by the registration of Trademark Application Serial Number 86/379,274 for the mark **GREEN EGGS AND PIZZA** in International Class 43 and hereby opposes the same. As grounds for opposition, it is alleged that:

1. Upon information and belief, Applicants Philip Spear and Lynn Spear (hereinafter “Applicants”) are individuals with an address of 241-G Amboy Ave, Metuchen, New Jersey 08840.
2. Upon information and belief, the Applicants seek to register the mark **GREEN EGGS AND PIZZA** for the following services in International Class 43: “Restaurant services; Pizza restaurant.”
3. Upon information and belief, the Applicants' trademark application was filed on August 28, 2014.
4. Upon information and belief, the Applicants' trademark application was assigned Serial Number 86/379,274, and was published for opposition on January 20, 2015.
5. Opposer The Big Green Egg, Inc. (hereinafter “Opposer”) is a Georgia corporation having a principal place of business at 3786 DeKalb Technology Parkway, Atlanta, Georgia 30340.
6. Opposer timely filed one request for extension to oppose the Applicants' trademark application, and the request was granted by the Trademark Trial and Appeal Board. The deadline to oppose the Applicants' trademark application is May 20, 2015.

7. Opposer is the exclusive owner in the United States, *inter alia*, of the following federally registered trademarks for or that incorporate GREEN and/or EGG (collectively, the “BGE Marks”):

U.S. Registration No.	Registration Date	Mark
4037333	October 11, 2011	BIG GREEN EGG
2627587	October 1, 2002	BIG GREEN EGG (& design)
4263121	Dec. 25, 2012	BIG GREEN EGG (& design)
3046614	January 17, 2006	EGG
4145282	May 22, 2012	EGGCESSORIES
4141337	May 15, 2012	EGGFEST
4134257	May 1, 2012	EGGTOBERFEST
4038719	October 11, 2011	EGGCELERATOR
4259981	December 18, 2012	EGGHEAD

8. The above registrations are valid and enforceable, and Opposer’s exclusive rights in the registered marks BIG GREEN EGG (& design) (Registration No. 2627587) and EGG (Registration No. 3046614) are incontestable.

9. The filing date for each of Opposer's above trademark registrations and first use dates are well prior to the filing date of the Applicants' trademark application. Opposer's use of said marks has been valid and continuous, and has not been abandoned. Opposer continues to use the BGE Marks in commerce.

10. Opposer’s BGE Marks are of significant value to Opposer as an identification of source in connection with the promotion and offering of its goods and services and in connection with its business. Said marks of Opposer are symbolic of extensive and valuable good will and consumer recognition built up by Opposer through continuous, extensive and exclusive use, as well as substantial amounts of time and effort in advertising and promotion. Accordingly, the BGE Marks have achieved widespread recognition by the general consuming public and outstanding reputation among consumers and the trade, and have become famous.

11. Opposer's goods and services include, but are not limited to, barbeque smokers and grills, accessories therefor, and related product and service offerings. Pizza is a popular item cooked on Opposer's grills and smokers, and Opposer's EGGCESSORIES® products include a number of tools for cooking pizza on Opposer's BIG GREEN EGG® grill. In addition, many restaurants utilize and feature Opposer's barbeque smokers and grills in their restaurants.

12. When used in connection with the Applicants' goods/services, the Applicants' applied for mark GREEN EGGS AND PIZZA so resembles the BGE Marks (and especially Opposer’s registered marks BIG GREEN EGG and EGG) as to be likely to cause confusion, mistake, and/or deception in that the public will wrongly assume that Opposer has approved of the Applicants, is affiliated with the Applicants, or has otherwise sanctioned or sponsored the goods/services of the Applicants.

13. In view of the similarity of the respective marks and of the goods/services of the respective parties, it is alleged that the Applicants' applied for mark GREEN EGGS AND PIZZA so resembles the BGE Marks, previously used in the United States and not abandoned, as to be likely to cause confusion, to cause mistake or to deceive.

14. The Applicants' use of the mark GREEN EGGS AND PIZZA with "Restaurant services; Pizza restaurant" will result in confusion, mistake and/or deception in that the public will wrongly assume that Opposer has approved of the Applicants, is affiliated with the Applicants, or has otherwise sanctioned or sponsored the goods/services of the Applicants.

15. Opposer would be damaged by the registration of the Applicants' applied for mark GREEN EGGS AND PIZZA as the registration will result in confusion, mistake and/or deception, and the Applicants will be able to trade on Opposer's goodwill and reputation.

16. The BGE Marks are inherently distinctive mark and famous. They are widely recognized by the general consuming public of the United States and elsewhere as a designation of source of the goods and services of Opposer. Said marks were famous long before the Applicants' filing date of August 28, 2014.

17. The Applicants' mark GREEN EGGS AND PIZZA would dilute the distinctive quality of the BGE Marks.

18. The registration of the Applicants' mark GREEN EGGS AND PIZZA would be inconsistent with Opposer's rights in its BGE Marks and will cause damage to Opposer.

WHEREFORE, Opposer prays that the Applicants' Trademark Application Serial No. 86/379,274 for GREEN EGGS AND PIZZA be rejected, that no registration be issued thereon to the Applicants, and that this opposition be sustained in favor of Opposer.

Respectfully submitted,

The Big Green Egg, Inc.

By: /Dana A. Schwind/
Dana A Schwind, Attorney for
Opposer

Date: May 19, 2015

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