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Filing date: **09/04/2015**

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

Proceeding	91222051
Party	Plaintiff Kraft Foods Group Brands LLC
Correspondence Address	BARBARA A SOLOMON FROSS ZELNICK LEHRMAN & ZISSU PC 866 UNITED NATIONS PLAZA NEW YORK, NY 10017 UNITED STATES bsolomon@fzlz.com, ykarzoan@fzlz.com
Submission	Other Motions/Papers
Filer's Name	Barbara A. Solomon
Filer's e-mail	bsolomon@fzlz.com, ykarzoan@fzlz.com
Signature	/Barbara A. Solomon/
Date	09/04/2015
Attachments	Consented Motion to Amend Notice of Opposition 91222051.pdf(2507903 bytes)

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

KRAFT FOODS GROUP BRANDS LLC,

Opposer,

-against-

IT'S A 10. INC.,

Applicant.

Opposition No. 91222051

**CONSENTED MOTION TO AMEND NOTICE
OF OPPOSITION AND EXTEND DEADLINES**

Opposer Kraft Foods Group Brands LLC (“Opposer”) with the consent of Applicant It’s a 10, Inc. (“Applicant”), pursuant to Fed. R. Civ. P. 15(a) and Trademark Rule of Practice 2.107(a), 37 C.F.R. § 2.107(a), hereby moves for leave to file the First Amended Notice of Opposition attached as **Exhibit A**. Attached as **Exhibit B** is a redlined version of the First Amended Notice of Opposition showing the amendments made to the original filing.

Pursuant to Fed. R. Civ. P. 15(a)(2), a party may amend its pleading with the opposing party’s written consent. The Trademark Rules of Practice state that pleadings in an opposition proceeding may be amended in the same manner and to the same extent as in a civil action in a United States district court. 37 C.F.R. §2.107. *See also* Trademark Rule of Practice 507.02 (“a party may amend its pleading only by written consent of every adverse party” or the court’s leave. The proposed amended pleading does not violate settled law. Further, the filing of the amended pleading is not prejudicial to the rights of Applicant. Proceedings have only recently commenced and discovery is not scheduled to close until January 26, 2016. As of the submission of this consented motion, neither party has served discovery.

In connection with the filing of the First Amended Notice of Opposition, Opposer requests that the Board set the due date for Applicant's response to the amended pleading for September 28, 2015 or such later date as the Board may order and that all subsequent discovery and trial dates, other than the date for the discovery conference (which has already been conducted), be re-set accordingly.

Opposer further requests that the filing of this Motion shall constitute the filing and service of the First Amended Notice of Opposition.

Applicant has consented to this Motion in the interest of judicial economy and the conservation of the respective parties' resources without prejudice to Applicant's rights to answer and/or otherwise move against the substance of the allegations of Opposer's First Amended Notice of Opposition and to all of the requests contained here, as indicated by the signature of Applicant's counsel below.

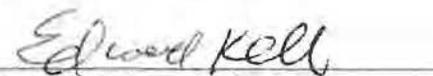
Respectfully submitted,

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By: 
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Attorneys for Opposer

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Attorneys for Applicant

Dated: New York, New York
September 4, 2015

EXHIBIT A

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

KRAFT FOODS GROUP BRANDS LLC,

Opposer,

Opposition No. 91222051

-against-

IT'S A 10, INC.,

Applicant.

FIRST AMENDED NOTICE OF OPOSITION

In the matter of the trademark application of It's a 10, Inc., for registration of the mark MIRACLE WHIPPED in Classes 3 for "A full line of hair care products, namely, shampoos, conditioners, hair rinses, hair cream, hair cream rinse, hair balms, hair styling balms and creams, hair gels, and hair sprays," Application No 86-346128, filed July 23, 2014, and published in the Official Gazette of February 17, 2015:

Opposer, Kraft Foods Group Brands LLC, a Delaware Limited Liability Company, believes it will be damaged by registration of the mark shown in the application and, therefore, opposes the registration of this trademark.

As grounds for this opposition, Opposer states as follows:

1. For many years prior to Applicant's filing date, Opposer has been engaged in the manufacture and sale of food products throughout the United States under the MIRACLE WHIP trademark. Opposer's date of first use of the MIRACLE WHIP mark extends back to 1933.

2. Opposer's MIRACLE WHIP branded products are available throughout the United States in thousands of stores: from mom-and-pop stores to grocery stores to convenience stores to club stores.

3. Opposer's yearly sales of products bearing or sold under the MIRACLE WHIP mark in the United States are approximately \$460MM. Products bearing the MIRACLE WHIP mark are of high quality and are identified and recognized as being exclusively from Opposer.

4. The MIRACLE WHIP mark appears on the packaging of Opposer's product as well as being featured prominently in print, TV and digital advertisements that are distributed nationally and are seen by hundreds of millions of people.

5. For many years, Opposer has maintained the website at www.miraclewhip.com that advertises and promotes MIRACLE WHIP branded products and is visited by consumers nationwide. The MIRACLE WHIP brand is also on many social media platforms, including FACEBOOK, TWITTER, TUMBLR, and INSTAGRAM.

6. By virtue of the excellence of Opposer's products and long history of extensive promotional activities and sales thereof, the MIRACLE WHIP mark has gained a tremendous amount of goodwill such that the public has come to identify the business and products designated by the MIRACLE WHIP marks as those of Opposer. The MIRACLE WHIP mark acquired this goodwill long before any date on which Applicant may rely.

7. By virtue of Opposer's long use, extensive sales, advertising, and promotional efforts, Opposer's MIRACLE WHIP trademark is distinctive and famous. The MIRACLE WHIP trademark achieved that distinctiveness and fame prior to any date on which Applicant may rely,

8. Opposer owns all right, title and interest in and to the following registrations in the United States Patent and Trademark Office for the MIRACLE WHIP trademark, including:

Mark	Reg. No.	Date of Registration	Goods/Services
MIRACLE WHIP	2103423	10/07/1997	Salad Dressing
MIRACLE WHIP (Stylized)	308260	11/28/1933	Salad Dressing and Salad Spread

Said registrations in the name of Opposer are maintained on the Principal Register by the United States Patent and Trademark Office and are valid, in full force and effect, and constitute prima facie evidence of the validity of the mark shown and of Opposer's exclusive right to use it on the goods identified in the registrations, pursuant to §7(b) of the Lanham Act, 15 U.S.C. § 1057(b). Attached as **Exhibit 1** are printouts from the USPTO database showing status and title of the identified registrations.

9. Opposer's Registration Nos. 308260 and 2103423 have become incontestable under 15 U.S.C. §1065 and the certificates of registration thereof constitute "conclusive evidence of the validity of the registered marks[s] and of the registration of the marks[s], of the registrant's ownership of the mark[s], and of the registrant's exclusive right to use the registered mark[s] in commerce" pursuant to 15 U.S.C. §1065(b).

10. As a result of Opposer's over 80 years of use in commerce in the United States, the MIRACLE WHIP mark has acquired enormous value and has become famous and well-known to the consuming public and the trade as identifying and distinguishing goods exclusively from, or authorized by, Opposer.

11. Upon information and belief, It's a 10, Inc. is a Florida Corporation located at 153

Nurmi Drive, Fort Lauderdale, Florida 33301.

12. Applicant is not connected to Opposer in any way.

13. According to the records of the United States Patent and Trademark Office, on July 23, 2014, Applicant applied to register MIRACLE WHIPPED for “A full line of hair care products, namely, shampoos, conditioners, hair rinses, hair cream, hair cream rinse, hair balms, hair styling balms and creams, hair gels, and hair sprays” in Class 3.

14. Applicant’s mark incorporates in its entirety Opposer’s recognized MIRACLE WHIP trademark.

15. As a matter of law, Applicant was on constructive notice of Opposer’s rights in the MIRACLE WHIP mark based on Opposer’s registrations that were in existence prior to the application filing date, and Applicant had such constructive notice before adopting the mark and filing the application.

CLAIM 1
DILUTION UNDER 15 U.S.C. §§ 1052(f), 1063

16. Opposer repeats and realleges paragraphs 1 through 15 as if fully set forth herein.

17. Pursuant to 15 U.S.C. §§ 1052(f) and 1063, trademark applications may be opposed on grounds of dilution.

18. Opposer’s MIRACLE WHIP mark is extraordinarily famous and well-known throughout the United States having been used, advertised and publicized extensively for over 80 years. The MIRACLE WHIP mark is inherently distinctive, has acquired secondary meaning such that it has become associated exclusively with Opposer by reason of Opposer’s extensive advertising and use of the mark for decades, is the subject of incontestable federal trademark registrations, and is widely recognized by the general consuming public as a

designation of source of Opposer's goods.

19. Applicant's filing date for MIRACLE WHIPPED in July 2014 is long after Opposer's MIRACLE WHIP trademark became famous.

20. Applicant's applied-for-mark MIRACLE WHIPPED incorporates "MIRACLE WHIP" which is identical to Opposer's famous, registered, and long-used MIRACLE WHIP mark and that calls to mind Opposer's famous MIRACLE WHIP mark. By virtue of the similarity between the mark shown in the application and the MIRACLE WHIP mark, the fame of the MIRACLE WHIP mark, and the exclusive association between the MIRACLE WHIP mark and Opposer, registration of the mark at issue would dilute or is likely to dilute Opposer's MIRACLE WHIP mark by impairing the distinctiveness of Opposer's MIRACLE WHIP mark to identify exclusively goods from Opposer in violation of Section 2(f) of the Lanham Act, 15 U.S.C. § 1052(f).

21. Registration of the mark shown in the application herein opposed would be inconsistent with Opposer's prior rights in the MIRACLE WHIP mark and with Opposer's statutory grant of exclusive rights in the MIRACLE WHIP mark, and would destroy Opposer's investment and goodwill in its MIRACLE WHIP mark.

22. By reason of the foregoing, Opposer is likely to be harmed by registration of the mark shown in the application.

CLAIM 2

LIKELIHOOD OF CONSUMER CONFUSION UNDER 15 U.S.C. § 1052(d)

23. Opposer repeats and realleges paragraphs 1 through 15 as if fully set forth herein.

24. Applicant filed its application to register MIRACLE WHIPPED on July 23, 2014 based on an intent to use the mark. The application filing date, and the date on which Applicant

actually commenced use of the mark MIRACLE WHIPPED in connection with hair products, are long after Opposer first used and registered the MIRACLE WHIP mark.

25. Upon information and belief, prior to Applicant's adoption of MIRACLE WHIPPED as a mark for hair care products, and prior to Applicant's filing of the application opposed herein, Applicant was on actual notice of Opposer's prior rights in and to the MIRACLE WHIP mark.

26. Opposer's rights in the MIRACLE WHIP mark pre-date and are superior to any rights Applicant may claim in the mark MIRACLE WHIPPED.

27. The marks MIRACLE WHIP and MIRACLE WHIPPED are virtually identical in sound, meaning and commercial impression.

28. Although the primary use of Opposer's MIRACLE WHIP mark is in connection with dressings and spreads, there are other known uses of Opposer's MIRACLE WHIP brand of product. Opposer's MIRACLE WHIP brand product has been widely touted as an effective do-it-yourself hair and skin moisturizing treatment. *See, e.g.,* <https://www.facebook.com/miraclewhip> (Opposer's post: "Miracle Whip can be many things. A condiment or an ingredient, for example. What else can Miracle Whip be?" Comment "Hair treatment" (6/9/11; 6/10/11); Comment: "my mother used to put miracle whip in our hair" (4/5/13)); <http://lipglossnheels.blogspot.com/2011/06/diy-beauty-fridays-miracle-of.html> (recipe for "Miracle Whip Deep Conditioner"); http://www.healthrecipes.com/homemade_beauty_recipes.htm ("Miracle Whip Exfoliator").

29. The use of MIRACLE WHIP branded products by consumers for hair and skin care makes the goods offered under Applicant's mark at least viably related to the goods sold under Opposer's mark.

30. It is not unusual, and the TTAB has noted, that there is and can be a relationship between cosmetic products and food and beverage products. Indeed, numerous companies have registered the identical mark for goods in both categories.

31. Applicant's application is unrestricted with respect to classes of consumers. Applicant's goods are therefore presumed to be sold in all channels of trade, which would include the same mass market stores, grocery stores and other retailers that carry Opposer's MIRACLE WHIP products. As such, the trade channels for the parties' products overlap.

32. Applicant's application is unrestricted as to consumers. As such, Applicant's consumers would cover all consumers who purchase hair care products, a broad category that would overlap with general consumers for Opposer's products and would specifically overlap with those consumers who have used or are aware of the use of Opposer's products as a do-it-yourself hair conditioner.

33. Given that consumers already recognize that MIRACLE WHIP branded products can be used for hair care, and in light of the general recognition of the MIRACLE WHIP mark, Applicant's registration of MIRACLE WHIPPED, which adopts in its entirety the MIRACLE WHIP trademark for goods that have a viable relationship to Opposer's goods is likely to cause confusion among consumers who are likely to believe that Applicant's goods come from or are otherwise associated with or endorsed by Opposer or otherwise believe that there is some relationship between Applicant and Opposer.

34. Registration of the mark MIRACLE WHIPPED in connection with the goods set forth in Application Serial No. 86/346,128 violates Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

35. Registration of Applicant's mark would be inconsistent with Opposer's prior rights in its MIRACLE WHIP mark and with Opposer's statutory grant of exclusive rights in the

MIRACLE WHIP mark, and would harm Opposer's investment and goodwill in the MIRACLE WHIP mark.

36. By reason of the foregoing, Opposer is likely to be harmed by registration of the mark shown in the opposed application.

CLAIM 3
DECEPTIVE UNDER 15 U.S.C. 1052(a) OR DESCRIPTIVELY MISDESCRIPTIVE
UNDER 15 U.S.C. § 1052(e)

37. Opposer repeats and realleges Paragraphs 1 through 15 as if fully set forth herein.

38. Applicant has alleged in its answer to the Notice of Opposition that "WHIP" is generic. However, in response to an Office Action requiring a disclaimer of "WHIPPED", Applicant has argued that WHIPPED does not describe a quality, characteristic or function of Applicant's hair products and that the majority of the goods identified in its Application "would not even be conceivable to sell" with a whipped consistency and that none of the products on which it uses the mark has a whipped texture. Based on these statements made by Applicant, Applicant's mark, when applied to the goods recited in the opposed application, consist of deceptive matter in violation of Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a), because the products in fact are not whipped and do not have a whipped consistency.

39. In the alternative, based on Applicant's statements, Applicant's MIRACLE WHIPPED mark, when applied to the goods recited in the opposed application, is deceptively misdescriptive of those goods, as it misdescribes the consistency or characteristics of the identified products and thus the mark is in violation of Section 2(e) of the Lanham Act, 15 U.S.C. § 1052(e).

WHEREFORE, it is respectfully requested that Opposer's Opposition be sustained and that the mark sought to be registered by Applicant in Application Serial No. 86/346128 be denied.

Opposer has already paid the requisite fee for institution of these proceedings.

Dated: New York, New York
September 4, 2015

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By: 

Barbara A. Solomon
Leo Kittay

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New York, New York 10017

Tel: (212) 813-5900

Email: bsolomon@frosszelnick.com
lkittay@frosszelnick.com

Attorneys for Opposer

EXHIBIT 1

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Mark: MIRACLE WHIP

US Serial Number: 75184663
US Registration Number: 2103423
Register: Principal
Mark Type: Trademark
Status: The registration has been renewed.
Status Date: Oct. 29, 2007
Publication Date: Jul. 15, 1997
Application Filing Date: Oct. 21, 1996
Registration Date: Oct. 07, 1997

Mark Information

Mark Literal Elements: MIRACLE WHIP
Standard Character Claim: No
Mark Drawing Type: 1 - TYPESET WORD(S) /LETTER(S) /NUMBER(S)

Related Properties Information

Claimed Ownership of US Registrations: 0308260 and others

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks "*" identify additional (new) wording in the goods/services.

For: salad dressing

International Class(es): 030 - Primary Class

U.S Class(es): 046

Class Status: ACTIVE

Basis: 1(a)

First Use: Jan. 24, 1933

Use in Commerce: Jan. 24, 1933

Basis Information (Case Level)

Filed Use: Yes	Currently Use: Yes	Amended Use: No
Filed ITU: No	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: KRAFT FOODS GROUP BRANDS LLC
Owner Address: THREE LAKES DRIVE
NORTHFIELD, ILLINOIS 60093
UNITED STATES
Legal Entity Type: LIMITED LIABILITY COMPANY
State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record
Attorney Name: SUSAN HANAWAY FROHLING Docket Number: 57547 Enhanc
Attorney Primary Email Address: trademark@kraft.com Attorney Email Authorized: Yes

Correspondent
Correspondent Name/Address: SUSAN HANAWAY FROHLING
KRAFT FOODS HOLDINGS, INC
THREE LAKES DRIVE
NORTHFIELD, ILLINOIS 60093
UNITED STATES
Phone: 8476465657 Fax: 8476465101
Correspondent e-mail: trademark@kraft.com Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Mar. 27, 2013	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Oct. 17, 2012	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Oct. 29, 2008	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Oct. 29, 2007	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	61619
Oct. 29, 2007	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	
Oct. 18, 2007	ASSIGNED TO PARALEGAL	61619
Oct. 03, 2007	REGISTERED - COMBINED SECTION 8 (10-YR) & SEC. 9 FILED	
Oct. 03, 2007	TEAS SECTION 8 & 9 RECEIVED	
Mar. 01, 2007	CASE FILE IN TICRS	
Dec. 03, 2002	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	
Oct. 14, 2002	REGISTERED - SEC. 8 (6-YR) & SEC. 15 FILED	
Oct. 14, 2002	TEAS SECTION 8 & 15 RECEIVED	
Oct. 07, 1997	REGISTERED-PRINCIPAL REGISTER	
Jul. 15, 1997	PUBLISHED FOR OPPOSITION	
Jun. 13, 1997	NOTICE OF PUBLICATION	
Apr. 25, 1997	APPROVED FOR PUB - PRINCIPAL REGISTER	
Apr. 19, 1997	ASSIGNED TO EXAMINER	69233

Maintenance Filings or Post Registration Information

Affidavit of Continued Use: Section 8 - Accepted
Affidavit of Incontestability: Section 15 - Accepted
Renewal Date: Oct. 07, 2007

TM Staff and Location Information

TM Staff Information - None
File Location
Current Location: POST REGISTRATION Date in Location: Oct. 29, 2007

Assignment Abstract Of Title Information

Summary

Total Assignments: 3

Registrant: Kraft Foods, Inc.

Assignment 1 of 3

Conveyance: ASSIGNS THE ENTIRE INTEREST

Reel/Frame: [2040/0212](#)

Pages: 59

Date Recorded: Jan. 27, 2000

Supporting Documents: No Supporting Documents Available

Name: KRAFT FOODS, INC.
Legal Entity Type: CORPORATION

Assignor

Execution Date: Dec. 26, 1999
State or Country Where Organized: DELAWARE

Name: KRAFT FOODS HOLDINGS, INC.
Legal Entity Type: CORPORATION

Assignee

State or Country Where Organized: DELAWARE

Address: THREE LAKES DRIVE
NORTHFIELD, ILLINOIS 60093

Correspondent

Correspondent Name: KRAFT FOODS
Correspondent Address: JACQUELINE A. LEIMER
THREE LAKES DRIVE NF-356
NORTHFIELD, IL 60093

Domestic Representative - Not Found

Assignment 2 of 3

Conveyance: MERGER EFFECTIVE 08042008

Reel/Frame: 3877/0870

Pages: 9

Date Recorded: Oct. 28, 2008

Supporting Documents: assignment-tm-3877-0870.pdf

Name: KRAFT FOODS HOLDINGS, INC.
Legal Entity Type: CORPORATION

Assignor

Execution Date: Aug. 01, 2008
State or Country Where Organized: DELAWARE

Name: KRAFT FOODS GLOBAL BRANDS LLC
Legal Entity Type: LIMITED LIABILITY COMPANY

Assignee

State or Country Where Organized: DELAWARE

Address: THREE LAKES DRIVE
NF 584
NORTHFIELD, ILLINOIS 60093

Correspondent

Correspondent Name: KRAFT FOODS GLOBAL BRANDS LLC
Correspondent Address: THREE LAKES DRIVE
NF 584
NORTHFIELD, IL 60093

Domestic Representative - Not Found

Assignment 3 of 3

Conveyance: ASSIGNS THE ENTIRE INTEREST

Reel/Frame: 4877/0862

Pages: 40

Date Recorded: Oct. 10, 2012

Supporting Documents: assignment-tm-4877-0862.pdf

Name: KRAFT FOODS GLOBAL BRANDS LLC
Legal Entity Type: LIMITED LIABILITY COMPANY

Assignor

Execution Date: Sep. 29, 2012
State or Country Where Organized: DELAWARE

Name: KRAFT FOODS GROUP BRANDS LLC
Legal Entity Type: LIMITED LIABILITY COMPANY

Assignee

State or Country Where Organized: DELAWARE

Address: THREE LAKES DRIVE
NORTHFIELD, ILLINOIS 60093

Correspondent

Correspondent Name: SUSAN H. FROHLING
Correspondent Address: THREE LAKES DRIVE
KRAFT FOODS LAW DEPARTMENT
NORTHFIELD, IL 60093

Domestic Representative - Not Found

Proceedings

Summary

Number of Proceedings: 1

Type of Proceeding: Opposition

Proceeding Number: 91222051

Filing Date: May 21, 2015

Status: Pending

Status Date: May 21, 2015

Interlocutory Attorney: WENDY COHEN

Defendant

Name: It's a 10, Inc.

Correspondent Address: MERRY L BIGGERSTAFF
TIAJOLOFF & KELLY LLP
405 LEXINGTON AVE
NEW YORK NY , 10174-0002
UNITED STATES

Correspondent e-mail: mbiggerstaff@tkiplaw.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
MIRACLE WHIPPED	Opposition Pending Plaintiff(s)	<u>86346128</u>	

Name: Kraft Foods Group Brands LLC

Correspondent Address: BARBARA A SOLOMON
FROSS ZELNICK LEHRMAN & ZISSU PC
866 UNITED NATIONS PLAZA
NEW YORK NY , 10017
UNITED STATES

Correspondent e-mail: bsolomon@fzlz.com , ykarzoan@fzlz.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
MIRACLE WHIP	Renewed	<u>71340290</u>	<u>308260</u>
MIRACLE WHIP	Renewed	<u>75184663</u>	<u>2103423</u>

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	May 21, 2015	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	May 21, 2015	Jun 30, 2015
3	PENDING, INSTITUTED	May 21, 2015	
4	ANSWER	Jun 30, 2015	
5	P APPEARANCE / POWER OF ATTORNEY	Aug 20, 2015	

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Mark: MIRACLE WHIP

Miracle Whip

US Serial Number: 71340290

Application Filing Date: Aug. 01, 1933

US Registration Number: 308260

Registration Date: Nov. 28, 1933

Register: Principal

Mark Type: Trademark

Status: The registration has been renewed.

Status Date: Dec. 12, 2013

Mark Information

Mark Literal Elements: MIRACLE WHIP

Standard Character Claim: No

Mark Drawing Type: 5 - AN ILLUSTRATION DRAWING WITH WORD(S) /LETTER(S)/ NUMBER(S) INSTYLIZED FORM

Disclaimer: THE WORD "WHIP" IS DISCLAIMED APART FROM THE MARK AS SHOWN IN THE DRAWING.

Related Properties Information

Publish Previously: Yes

Registered Mark:

Previously Registered: Jul. 06, 1948

Mark Publication Date:

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((.)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks "*" identify additional (new) wording in the goods/services.

For: SALAD DRESSING AND SALAD SPREAD

International Class(es): 029

U.S. Class(es): 046 - Primary Class

Class Status: ACTIVE

Basis: 1(a)

First Use: Jan. 24, 1933

Use in Commerce: Jan. 24, 1933

Basis Information (Case Level)

Filed Use: Yes	Currently Use: Yes	Amended Use: No
Filed ITU: No	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: KRAFT FOODS GROUP BRANDS LLC

Owner Address: THREE LAKES DRIVE
NORTHFIELD, ILLINOIS 60093
UNITED STATES

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Matthew A. Griffin

Docket Number: 71294/Enhanc

Attorney Primary Email trademark@kraftfoods.com
Address:

Attorney Email Yes
Authorized:

Correspondent

Correspondent Name/Address: Matthew A. Griffin
Three Lakes Drive
Kraft Foods Law Department
NORTHFIELD, ILLINOIS 60093-2758
UNITED STATES

Phone: 847-646-4872

Correspondent e-mail: trademark@kraftfoods.com

Correspondent e-mail Yes
Authorized:

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Dec. 12, 2013	NOTICE OF ACCEPTANCE OF SEC. 8 & 9 - E-MAILED	
Dec. 12, 2013	REGISTERED AND RENEWED (FIFTH RENEWAL - 10 YRS)	69471
Dec. 12, 2013	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	69471
Nov. 27, 2013	REGISTERED - COMBINED SECTION 8 (10-YR) & SEC. 9 FILED	69471
Dec. 12, 2013	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	69471
Nov. 27, 2013	TEAS SECTION 8 & 9 RECEIVED	
Mar. 27, 2013	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Oct. 17, 2012	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Oct. 29, 2008	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Oct. 02, 2008	CASE FILE IN TICRS	
May 27, 2003	REGISTERED AND RENEWED (FOURTH RENEWAL - 10 YRS)	
May 27, 2003	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	
Mar. 19, 2003	REGISTERED - COMBINED SECTION 8 (10-YR) & SEC. 9 FILED	
Mar. 19, 2003	TEAS SECTION 8 & 9 RECEIVED	
May 19, 1994	REGISTERED AND RENEWED (THIRD RENEWAL - 10 YRS)	
May 12, 1994	POST REGISTRATION ACTION CORRECTION	
Mar. 10, 1994	REGISTERED - SEC. 9 FILED/CHECK RECORD FOR SEC. 8	
Nov. 28, 1973	REGISTERED AND RENEWED (SECOND RENEWAL - 20 YRS)	

Maintenance Filings or Post Registration Information

Affidavit of Continued Use: Section 8 - Accepted

Affidavit of Incontestability: Section 15 - Accepted

Renewal Date: Nov. 28, 2013

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: GENERIC WEB UPDATE

Date in Location: Dec. 12, 2013

Assignment Abstract Of Title Information

Summary

Total Assignments: 9

Registrant: KRAFT-PHENIX CHEESE CORPORATION

Assignment 1 of 9

Conveyance: MERGER 19570531DE

Reel/Frame: [0031/0580](#)

Pages: 3

Date Recorded: Jul. 30, 1957

Supporting Documents: No Supporting Documents Available

Assignor

Name: KRAFT FOODS COMPANY

Execution Date: May 31, 1957

Legal Entity Type: UNKNOWN

State or Country Where Organized: No Place Where Organized Found

Assignee

Name: NATIONAL DAIRY PRODUCTS CORPORATION

Legal Entity Type: UNKNOWN

State or Country Where Organized: No Place Where Organized Found

Address: No Assignee Address Found

Correspondent

Correspondent Name: NATIONAL DAIRY PRODUCTS CORP.

Correspondent Address: 260 MADISON AVE.
NEW YORK 16, NY

Domestic Representative - Not Found

Assignment 2 of 9

Conveyance: CHANGE OF NAME 19690418

Reel/Frame: 0183/0152

Pages: 1

Date Recorded: Jun. 09, 1969

Supporting Documents: No Supporting Documents Available

Assignor

Name: NATIONAL DAIRY PRODUCTS CORPORATION

Execution Date: May 06, 1969

Legal Entity Type: UNKNOWN

State or Country Where Organized: No Place Where Organized Found

Assignee

Name: KRAFTCO CORPORATION

Legal Entity Type: UNKNOWN

State or Country Where Organized: No Place Where Organized Found

Address: No Assignee Address Found

Correspondent

Correspondent Name: ANDERSON, LUEDEKA, FITCH, EVEN & TABIN

Correspondent Address: 2157 FIELD BLDG.
135 SOUTH LA SALLE ST.
CHICAGO, IL 60603

Domestic Representative - Not Found

Assignment 3 of 9

Conveyance: CERTIFICATE BY THE SECRETARY OF STATE OF DELAWARE, SHOWING CHANGES OF NAMES ON APRIL 18, 1969 AND OCT. 27, 1976, RESPECTIVELY.

Reel/Frame: 0299/0273

Pages: 1

Date Recorded: Dec. 08, 1976

Supporting Documents: No Supporting Documents Available

Assignor

Name: NATIONAL DAIRY PRODUCTS CORPORATION
-CHANGED TO-

Execution Date: Nov. 17, 1976

Legal Entity Type: UNKNOWN

State or Country Where Organized: No Place Where Organized Found

Name: KRAFTCO CORPORATION -CHANGED TO-

Execution Date: Not Found

Legal Entity Type: UNKNOWN

State or Country Where Organized: No Place Where Organized Found

Assignee

Name: KRAFT, INC.

Legal Entity Type: UNKNOWN

State or Country Where Organized: No Place Where Organized Found

Address: No Assignee Address Found

Correspondent

Correspondent Name: KRAFTCO CORPORATION

Correspondent Address: KRAFTCO COURT
GLENVIEW, IL 60025

Domestic Representative - Not Found

Assignment 4 of 9

Conveyance: MERGER AND CHANGE OF NAME 19861121

Reel/Frame: 0581/0737

Pages: 4

Date Recorded: Nov. 05, 1987

Supporting Documents: No Supporting Documents Available

Name: KRAFT, INC., MERGED INTO
Legal Entity Type: CORPORATION

Name: DART & KRAFT, INC. CHANGED TO
Legal Entity Type: CORPORATION

Name: DART & KRAFT, INC. CHANGED TO
Legal Entity Type: CORPORATION

Address: No Assignee Address Found

Name: KRAFT, INC.
Legal Entity Type: UNKNOWN

Address: No Assignee Address Found

Correspondent Name: KRAFT INC.
Correspondent Address: KRAFT COURT
GLENVIEW, IL 60025

Assignor

Execution Date: Nov. 22, 1986

State or Country Where Organized: DELAWARE

Execution Date: Not Found

State or Country Where Organized: DELAWARE

Assignee

State or Country Where Organized: DELAWARE

State or Country Where Organized: No Place Where Organized Found

Correspondent

Domestic Representative - Not Found

Assignment 5 of 9

Conveyance: CHANGE OF NAME (SEE DOCUMENT FOR DETAILS.)

Reel/Frame: 1290/0260

Pages: 33

Date Recorded: Jan. 17, 1995

Supporting Documents: No Supporting Documents Available

Name: KRAFT GENERAL FOODS, INC.
Legal Entity Type: CORPORATION

Name: KRAFT FOODS, INC.
Legal Entity Type: CORPORATION

Address: THREE LAKES DRIVE
NORTHFIELD, ILLINOIS 60093

Correspondent Name: KRAFT FOODS, INC.
Correspondent Address: MARY LOU HAFLINGER
NF351
THREE LAKES DRIVE
NORTHFIELD, IL 60093

Assignor

Execution Date: Jan. 04, 1995

State or Country Where Organized: DELAWARE

Assignee

State or Country Where Organized: DELAWARE

Correspondent

Domestic Representative - Not Found

Assignment 6 of 9

Conveyance: ASSIGNS THE ENTIRE INTEREST

Reel/Frame: 2040/0212

Pages: 59

Date Recorded: Jan. 27, 2000

Supporting Documents: No Supporting Documents Available

Name: KRAFT FOODS, INC.
Legal Entity Type: CORPORATION

Name: KRAFT FOODS HOLDINGS, INC.
Legal Entity Type: CORPORATION

Address: THREE LAKES DRIVE

Assignor

Execution Date: Dec. 26, 1999

State or Country Where Organized: DELAWARE

Assignee

State or Country Where Organized: DELAWARE

NORTHFIELD, ILLINOIS 60093

Correspondent

Correspondent Name: KRAFT FOODS
Correspondent Address: JACQUELINE A. LEIMER
THREE LAKES DRIVE NF-356
NORTHFIELD, IL 60093

Domestic Representative - Not Found

Assignment 7 of 9

Conveyance: MERGER EFFECTIVE 08042008

Reel/Frame: 3877/0870

Pages: 9

Date Recorded: Oct. 28, 2008

Supporting Documents: assignment-tm-3877-0870.pdf

Assignor

Name: KRAFT FOODS HOLDINGS, INC.
Legal Entity Type: CORPORATION

Execution Date: Aug. 01, 2008

State or Country Where Organized: DELAWARE

Assignee

Name: KRAFT FOODS GLOBAL BRANDS LLC
Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: DELAWARE

Address: THREE LAKES DRIVE
NF 584
NORTHFIELD, ILLINOIS 60093

Correspondent

Correspondent Name: KRAFT FOODS GLOBAL BRANDS LLC
Correspondent Address: THREE LAKES DRIVE
NF 584
NORTHFIELD, IL 60093

Domestic Representative - Not Found

Assignment 8 of 9

Conveyance: ASSIGNS THE ENTIRE INTEREST

Reel/Frame: 4877/0862

Pages: 40

Date Recorded: Oct. 10, 2012

Supporting Documents: assignment-tm-4877-0862.pdf

Assignor

Name: KRAFT FOODS GLOBAL BRANDS LLC
Legal Entity Type: LIMITED LIABILITY COMPANY

Execution Date: Sep. 29, 2012

State or Country Where Organized: DELAWARE

Assignee

Name: KRAFT FOODS GROUP BRANDS LLC
Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: DELAWARE

Address: THREE LAKES DRIVE
NORTHFIELD, ILLINOIS 60093

Correspondent

Correspondent Name: SUSAN H. FROHLING
Correspondent Address: THREE LAKES DRIVE
KRAFT FOODS LAW DEPARTMENT
NORTHFIELD, IL 60093

Domestic Representative - Not Found

Assignment 9 of 9

Conveyance: MERGER AND CHANGE OF NAME 19891229DE

Reel/Frame: 0712/0439

Pages: 0

Date Recorded: Mar. 29, 1990

Supporting Documents: No Supporting Documents Available

Assignor

Name: GENERAL FOODS CORPORATION, (MERGED INTO)
Legal Entity Type: CORPORATION

Execution Date: Not Found

State or Country Where Organized: DELAWARE

Name: KRAFT, INC., (CHANGED TO)

Execution Date: Not Found

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Name: KRAFT, INC., (CHANGED TO)

Assignee

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Address: No Assignee Address Found

Name: KRAFT GENERAL FOODS, INC.

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Address: No Assignee Address Found

Correspondent

Correspondent Name: MARY LOUISE RYAN

Correspondent Address: KRAFT GENERAL FOODS, INC.
LAW DEPT. - C-4W - KRAFT COURT
GLENVIEW, IL 60025

Domestic Representative - Not Found

Proceedings

Summary

Number of Proceedings: 5

Type of Proceeding: Opposition

Proceeding Number: 91222051

Filing Date: May 21, 2015

Status: Pending

Status Date: May 21, 2015

Interlocutory Attorney: WENDY COHEN

Defendant

Name: It's a 10, Inc.

Correspondent Address: MERRY L BIGGERSTAFF
TIAJOLOFF & KELLY LLP
405 LEXINGTON AVE
NEW YORK NY , 10174-0002
UNITED STATES

Correspondent e-mail: mbiggerstaff@tkiplaw.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
MIRACLE WHIPPED	Opposition Pending Plaintiff(s)	<u>86346128</u>	

Name: Kraft Foods Group Brands LLC

Correspondent Address: BARBARA A SOLOMON
FROSS ZELNICK LEHRMAN & ZISSU PC
866 UNITED NATIONS PLAZA
NEW YORK NY , 10017
UNITED STATES

Correspondent e-mail: bsolomon@fziz.com , ykarzoan@fziz.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
MIRACLE WHIP	Renewed	<u>71340290</u>	<u>308260</u>
MIRACLE WHIP	Renewed	<u>75184663</u>	<u>2103423</u>

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	May 21, 2015	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	May 21, 2015	Jun 30, 2015
3	PENDING, INSTITUTED	May 21, 2015	
4	ANSWER	Jun 30, 2015	
5	P APPEARANCE / POWER OF ATTORNEY	Aug 20, 2015	

Type of Proceeding: Opposition

Proceeding Number: 91097128

Filing Date: May 03, 1995

Status: Terminated

Status Date: Dec 02, 1997

Interlocutory Attorney:

Defendant

Name: J.W. ALLEN & CO.

Correspondent Address: JOHN J. ARADO
WILDMAN, HARROLD, ALLEN & DIXON
225 W. WACKER DRIVE, SUITE 3000
CHICAGO IL , 60606-1229
UNITED STATES

Associated marks

Mark	Application Status	Serial Number	Registration Number
WONDER WHIP	Renewed	<u>74415873</u>	<u>2200008</u>

Plaintiff(s)

Name: KRAFT FOODS, INC.,

Correspondent Address: PAULA M. TAFFE
KRAFT FOODS, INC.
THREE LAKES DRIVE, NF351
NORTHFIELD IL , 60093
UNITED STATES

Associated marks

Mark	Application Status	Serial Number	Registration Number
MIRACLE WHIP	Renewed	<u>71340290</u>	<u>308260</u>

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	May 03, 1995	
2	NOTICE SENT; ANSWER DUE (DUE DATE)	Jun 02, 1995	Jul 11, 1995
3	PENDING, INSTITUTED	Jun 02, 1995	
4	PL'S AMENDED NOTICE OF OPP	May 15, 1995	
5	DEF ALLOWED 20 DAYS TO ANSWER	Jun 20, 1995	
6	DELETE ENTRY	Jul 08, 1995	
7	ANSWER	Aug 03, 1995	
8	TRIAL DATES SET	Aug 18, 1995	
9	D'S MOT FOR EXTEN. OF TIME W/ CONSENT	Dec 15, 1995	
10	TRIAL DATES RESET	Feb 08, 1996	
11	P'S MOT FOR EXTEN. OF TIME W/ CONSENT	Jun 03, 1996	
12	P'S MOT FOR EXTEN. OF TIME W/ CONSENT	Jul 22, 1996	
13	P'S MOT FOR EXTEN. OF TIME W/ CONSENT	Nov 04, 1996	
14	P'S MOT FOR EXTEN. OF TIME W/ CONSENT	Nov 22, 1996	
15	P'S MOT FOR EXTEN. OF TIME W/ CONSENT	Dec 26, 1996	
16	P'S MOT FOR EXTEN. OF TIME W/ CONSENT	Jan 29, 1997	
17	P'S MOT FOR EXTEN. OF TIME W/ CONSENT	Feb 25, 1997	
18	P'S MOT FOR EXTEN. OF TIME W/ CONSENT	Mar 25, 1997	
19	P'S MOT FOR EXTEN. OF TIME W/ CONSENT	Apr 23, 1997	
20	P'S MOT FOR EXTEN. OF TIME W/ CONSENT	May 29, 1997	
21	P'S MOT FOR EXTEN. OF TIME W/ CONSENT	Jun 27, 1997	
22	P'S MOT FOR EXTEN. OF TIME W/ CONSENT	Aug 01, 1997	
23	P'S MOT FOR EXTEN. OF TIME W/ CONSENT	Aug 01, 1997	
24	P'S MOT FOR EXTEN. OF TIME W/ CONSENT	Sep 02, 1997	
25	AMNDT OF SN 415873 & W/D OF OPP	Oct 14, 1997	
26	BOARD'S DECISION: DISMISSED	Dec 02, 1997	
27	TERMINATED	Dec 02, 1997	

Type of Proceeding: Cancellation

Proceeding Number: 92019483

Filing Date: Nov 21, 1990

Status: Terminated

Status Date: Feb 05, 1992

Interlocutory Attorney: TERRY E HOLTZMAN

Defendant

Name: BORDEN, INC.

Correspondent Address: 180 E. BROAD STREET
COLUMBUS, OHIO 43215

Associated marks

Mark	Application Status	Serial Number	Registration Number
MIRACLE MELT	Expired	<u>72444432</u>	<u>982034</u>

Plaintiff(s)

Name: KRAFT GENERAL FOODS, INC.

Correspondent Address: AMANDA LAURA NYE
DARBY & DARBY
805 THIRD AVENUE
NEW YORK NY, 10022
UNITED STATES

Associated marks

Mark	Application Status	Serial Number	Registration Number
MIRACLE WHIP	Renewed	<u>71340290</u>	<u>308260</u>

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Nov 21, 1990	
2	NOTICE SENT; ANSWER DUE (DUE DATE)	Feb 19, 1991	Apr 01, 1991
3	PENDING, INSTITUTED	Feb 19, 1991	
4	STIP TO SUSPEND RE C/A	Mar 20, 1991	
5	SUSPENDED PENDING DISP OF CIVIL ACTION	Apr 18, 1991	
6	STIP TO DISMISS W/PREJUDICE	Sep 25, 1991	
7	BOARD'S DECISION: DISMISSED W/ PREJUDICE	Oct 25, 1991	
8	TERMINATED	Feb 05, 1992	

Type of Proceeding: Opposition

Proceeding Number: 91066649

Filing Date: Sep 22, 1982

Status: Terminated

Status Date: May 18, 1984

Interlocutory Attorney:

Defendant

Name: HENRI'S FOOD PRODUCTS CO., INC.

Associated marks

Mark	Application Status	Serial Number	Registration Number
HENRI'S YOGOWHIP	Cancelled - Section 8	<u>73327205</u>	<u>1286160</u>

Plaintiff(s)

Name: KRAFT, INC.

Associated marks

Mark	Application Status	Serial Number	Registration Number
MIRACLE WHIP	Renewed	<u>71340290</u>	<u>308260</u>

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED	Sep 22, 1982	
2	PENDING, INSTITUTED	Oct 27, 1982	
3	BD'S DECISION: DISMISSED W/O PREJUDICE	Apr 24, 1984	
4	TERMINATED	May 18, 1984	

Type of Proceeding: Opposition

Proceeding Number: 91059641

Filing Date: May 17, 1977

Status: Terminated

Status Date: Oct 29, 1984

Interlocutory Attorney: PAULA T HAIRSTON

Defendant

Name: HENRI'S FOOD PRODUCTS COMPANY

Associated marks

Mark

Application Status

Serial
Number

Registration
Number

Abandoned - Failure to Respond

73092664

Plaintiff(s)

Name: KRAFT, INC.

Associated marks

Mark

Application Status

Serial Number

Registration
Number

MIRACLE WHIP

Renewed

71340290

308260

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED	May 17, 1977	
2	PENDING, INSTITUTED	Aug 09, 1977	
3	ANSWER AND COUNTERCLAIM	Aug 22, 1977	
4	WITHDRAWAL OF COUNTERCLAIM	Mar 01, 1984	
5	COUNTERCLAIM DISMISSED W/O PREJUDICE; APPLICATION REMANDED TO EXMR. RE AMEND.	May 22, 1984	
6	BOARD'S DECISION: DISMISSED	May 22, 1984	
7	TERMINATED	Oct 29, 1984	

EXHIBIT B

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

KRAFT FOODS GROUP BRANDS LLC,

Opposer,

Opposition No. 91222051

-against-

IT'S A 10, INC.,

Applicant.

FIRST AMENDED NOTICE OF OPOSITION

In the matter of the trademark application of It's a 10, Inc., for registration of the mark MIRACLE WHIPPED in Classes 3 for "A full line of hair care products, namely, shampoos, conditioners, hair rinses, hair cream, hair cream rinse, hair balms, hair styling balms and creams, hair gels, and hair sprays," Application No 86-346128, filed July 23, 2014, and published in the Official Gazette of February 17, 2015:

Opposer, Kraft Foods Group Brands LLC, a Delaware Limited Liability Company, believes it will be damaged by registration of the mark shown in the application and, therefore, opposes the registration of this trademark.

As grounds for this opposition, Opposer states as follows:

1. For many years prior to Applicant's filing date, Opposer has been engaged in the manufacture and sale of food products throughout the United States under the MIRACLE WHIP trademark. Opposer's date of first use of the MIRACLE WHIP mark extends back to 1933.

2. Opposer's MIRACLE WHIP branded products are available throughout the United States in thousands of stores: from mom-and-pop stores to grocery stores to convenience stores to club stores.

3. Opposer's yearly sales of products bearing or sold under the MIRACLE WHIP mark in the United States are approximately \$460MM. Products bearing the MIRACLE WHIP mark are of high quality and are identified and recognized as being exclusively from Opposer.

4. The MIRACLE WHIP mark appears on the packaging of Opposer's product as well as being featured prominently in print, TV and digital advertisements that are distributed nationally and are seen by hundreds of millions of people.

5. For many years, Opposer has maintained the website at www.miraclewhip.com that advertises and promotes MIRACLE WHIP branded products and is visited by consumers nationwide. The MIRACLE WHIP brand is also on many social media platforms, including FACEBOOK, TWITTER, TUMBLR, and INSTAGRAM.

6. By virtue of the excellence of Opposer's products and long history of extensive promotional activities and sales thereof, the MIRACLE WHIP mark has gained a tremendous amount of goodwill such that the public has come to identify the business and products designated by the MIRACLE WHIP marks as those of Opposer. The MIRACLE WHIP mark acquired this goodwill long before any date on which Applicant may rely.

7. By virtue of Opposer's long use, extensive sales, advertising, and promotional efforts, Opposer's MIRACLE WHIP trademark is distinctive and famous. The MIRACLE WHIP trademark achieved that distinctiveness and fame prior to any date on which Applicant may rely.

8. Opposer owns all right, title and interest in and to the following registrations in the United States Patent and Trademark Office for the MIRACLE WHIP trademark, including:

Mark	Reg. No.	Date of Registration	Goods/Services
MIRACLE WHIP	2103423	10/07/1997	Salad Dressing
MIRACLE WHIP (Stylized)	308260	11/28/1933	Salad Dressing and Salad Spread

Said registrations in the name of Opposer are maintained on the Principal Register by the United States Patent and Trademark Office and are valid, in full force and effect, and constitute prima facie evidence of the validity of the mark shown and of Opposer's exclusive right to use it on the goods identified in the registrations, pursuant to §7(b) of the Lanham Act, 15 U.S.C. § 1057(b). Attached as **Exhibit I** are printouts from the USPTO database showing status and title of the identified registrations.

9. Opposer's Registration Nos. 308260 and 2103423 have become incontestable under 15 U.S.C. §1065 and the certificates of registration thereof constitute "conclusive evidence of the validity of the registered marks[s] and of the registration of the marks[s], of the registrant's ownership of the mark[s], and of the registrant's exclusive right to use the registered mark[s] in commerce" pursuant to 15 U.S.C. §1065(b).

10. As a result of Opposer's over 80 years of use in commerce in the United States, the MIRACLE WHIP mark has acquired enormous value and has become famous and well-known to the consuming public and the trade as identifying and distinguishing goods exclusively from, or authorized by, Opposer.

11. Upon information and belief, It's a 10, Inc. is a Florida Corporation located at 153

Nurmi Drive, Fort Lauderdale, Florida 33301.

12. Applicant is not connected to Opposer in any way.

13. According to the records of the United States Patent and Trademark Office, on July 23, 2014, Applicant applied to register MIRACLE WHIPPED for “A full line of hair care products, namely, shampoos, conditioners, hair rinses, hair cream, hair cream rinse, hair balms, hair styling balms and creams, hair gels, and hair sprays” in Class 3.

14. Applicant’s mark incorporates in its entirety Opposer’s recognized MIRACLE WHIP trademark.

15. As a matter of law, Applicant was on constructive notice of Opposer’s rights in the MIRACLE WHIP mark based on Opposer’s registrations that were in existence prior to the application filing date, and Applicant had such constructive notice before adopting the mark and filing the application.

CLAIM 1
DILUTION UNDER 15 U.S.C. §§ 1052(f), 1063

16. Opposer repeats and realleges paragraphs 1 through 15 as if fully set forth herein.

17. Pursuant to 15 U.S.C. §§ 1052(f) and 1063, trademark applications may be opposed on grounds of dilution.

18. Opposer’s MIRACLE WHIP mark is extraordinarily famous and well-known throughout the United States having been used, advertised and publicized extensively for over 80 years. The MIRACLE WHIP mark is inherently distinctive, has acquired secondary meaning such that it has become associated exclusively with Opposer by reason of Opposer’s extensive advertising and use of the mark for decades, is the subject of incontestable federal trademark registrations, and is widely recognized by the general consuming public as a

designation of source of Opposer's goods.

19. Applicant's filing date for MIRACLE WHIPPED in July 2014 is long after Opposer's MIRACLE WHIP trademark became famous.

20. Applicant's applied-for-mark MIRACLE WHIPPED incorporates "MIRACLE WHIP" which is identical to Opposer's famous, registered, and long-used MIRACLE WHIP mark and that calls to mind Opposer's famous MIRACLE WHIP mark. By virtue of the similarity between the mark shown in the application and the MIRACLE WHIP mark, the fame of the MIRACLE WHIP mark, and the exclusive association between the MIRACLE WHIP mark and Opposer, registration of the mark at issue would dilute or is likely to dilute Opposer's MIRACLE WHIP mark by impairing the distinctiveness of Opposer's MIRACLE WHIP mark to identify exclusively goods from Opposer in violation of Section 2(f) of the Lanham Act, 15 U.S.C. § 1052(f).

21. Registration of the mark shown in the application herein opposed would be inconsistent with Opposer's prior rights in the MIRACLE WHIP mark and with Opposer's statutory grant of exclusive rights in the MIRACLE WHIP mark, and would destroy Opposer's investment and goodwill in its MIRACLE WHIP mark.

22. By reason of the foregoing, Opposer is likely to be harmed by registration of the mark shown in the application.

CLAIM 2
LIKELIHOOD OF CONSUMER CONFUSION UNDER 15 U.S.C. § 1052(d)

23. Opposer repeats and realleges paragraphs 1 through 15 as if fully set forth herein.

24. Applicant filed its application to register MIRACLE WHIPPED on July 23, 2014 based on an intent to use the mark. The application filing date, and the date on which Applicant

actually commenced use of the mark MIRACLE WHIPPED in connection with hair products, are long after Opposer first used and registered the MIRACLE WHIP mark.

25. Upon information and belief, prior to Applicant's adoption of MIRACLE WHIPPED as a mark for hair care products, and prior to Applicant's filing of the application opposed herein, Applicant was on actual notice of Opposer's prior rights in and to the MIRACLE WHIP mark.

26. Opposer's rights in the MIRACLE WHIP mark pre-date and are superior to any rights Applicant may claim in the mark MIRACLE WHIPPED.

27. The marks MIRACLE WHIP and MIRACLE WHIPPED are virtually identical in sound, meaning and commercial impression.

28. Although the primary use of Opposer's MIRACLE WHIP mark is in connection with dressings and spreads, there are other known uses of Opposer's MIRACLE WHIP brand of product. Opposer's MIRACLE WHIP brand product has been widely touted as an effective do-it-yourself hair and skin moisturizing treatment. See, e.g., <https://www.facebook.com/miraclewhip> (Opposer's post: "Miracle Whip can be many things. A condiment or an ingredient, for example. What else can Miracle Whip be?" Comment "Hair treatment" (6/9/11; 6/10/11); Comment: "my mother used to put miracle whip in our hair" (4/5/13)); <http://lipglossnheels.blogspot.com/2011/06/diy-beauty-fridays-miracle-of.html> (recipe for "Miracle Whip Deep Conditioner"); http://www.healthrecipes.com/homemade_beauty_recipes.htm ("Miracle Whip Exfoliator").

29. The use of MIRACLE WHIP branded products by consumers for hair and skin care makes the goods offered under Applicant's mark at least viably related to the goods sold under Opposer's mark.

30. It is not unusual, and the TTAB has noted, that there is and can be a relationship between cosmetic products and food and beverage products. Indeed, numerous companies have registered the identical mark for goods in both categories.

31. Applicant's application is unrestricted with respect to classes of consumers. Applicant's goods are therefore presumed to be sold in all channels of trade, which would include the same mass market stores, grocery stores and other retailers that carry Opposer's MIRACLE WHIP products. As such, the trade channels for the parties' products overlap.

32. Applicant's application is unrestricted as to consumers. As such, Applicant's consumers would cover all consumers who purchase hair care products, a broad category that would overlap with general consumers for Opposer's products and would specifically overlap with those consumers who have used or are aware of the use of Opposer's products as a do-it-yourself hair conditioner.

33. Given that consumers already recognize that MIRACLE WHIP branded products can be used for hair care, and in light of the general recognition of the MIRACLE WHIP mark, Applicant's registration of MIRACLE WHIPPED, which adopts in its entirety the MIRACLE WHIP trademark for goods that have a viable relationship to Opposer's goods is likely to cause confusion among consumers who are likely to believe that Applicant's goods come from or are otherwise associated with or endorsed by Opposer or otherwise believe that there is some relationship between Applicant and Opposer.

34. Registration of the mark MIRACLE WHIPPED in connection with the goods set forth in Application Serial No. 86/346,128 violates Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

35. Registration of Applicant's mark would be inconsistent with Opposer's prior rights in its MIRACLE WHIP mark and with Opposer's statutory grant of exclusive rights in the

MIRACLE WHIP mark, and would harm Opposer's investment and goodwill in the MIRACLE WHIP mark.

36. By reason of the foregoing, Opposer is likely to be harmed by registration of the mark shown in the opposed application.

CLAIM 3
DECEPTIVE UNDER 15 U.S.C. 1052(a) OR DESCRIPTIVELY MISDESCRIPTIVE
UNDER 15 U.S.C. § 1052(e)

37. Opposer repeats and realleges Paragraphs 1 through 15 as if fully set forth herein.

38. Applicant has alleged in its answer to the Notice of Opposition that "WHIP" is generic. However, in response to an Office Action requiring a disclaimer of "WHIPPED", Applicant has argued that WHIPPED does not describe a quality, characteristic or function of Applicant's hair products and that the majority of the goods identified in its Application "would not even be conceivable to sell" with a whipped consistency and that none of the products on which it uses the mark has a whipped texture. Based on these statements made by Applicant, Applicant's mark, when applied to the goods recited in the opposed application, consist of deceptive matter in violation of Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a), because the products in fact are not whipped and do not have a whipped consistency.

39. In the alternative, based on Applicant's statements, Applicant's MIRACLE WHIPPED mark, when applied to the goods recited in the opposed application, is deceptively misdescriptive of those goods, as it misdescribes the consistency or characteristics of the identified products and thus the mark is in violation of Section 2(e) of the Lanham Act, 15 U.S.C. § 1052(e).

WHEREFORE, it is respectfully requested that Opposer's Opposition be sustained and that the mark sought to be registered by Applicant in Application Serial No. 86/346128 be denied.

Opposer has already paid the requisite fee for institution of these proceedings.

Dated: New York, New York
September , 2015

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By:

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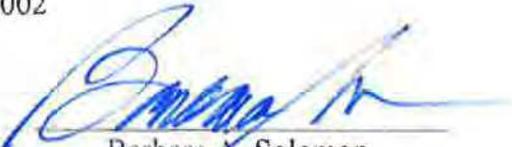
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Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **CONSENTED MOTION TO AMEND NOTICE OF OPPOSITION AND EXTEND DEADLINES and the Exhibits thereto** was served, on consent, by mail to Applicant's attorney, this 4th day of September, 2015, to:

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