

ESTTA Tracking number: **ESTTA681691**

Filing date: **07/02/2015**

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

Proceeding	91222102
Party	Defendant Underwood, Craig H.
Correspondence Address	JOHN E. KELLY KELLY & KELLEY, LLP 6320 CANOGA AVE STE 1650 WOODLAND HILLS, CA 91367-7704  Rachael@Kelly-KelleyLaw.com
Submission	Answer
Filer's Name	John E. Kelly
Filer's e-mail	Rachael@Kelly-KelleyLaw.com
Signature	/John E. Kelly/
Date	07/02/2015
Attachments	Answer to Notice of Opposition.pdf(2561129 bytes )

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

Mastronardi Produce, Ltd.,	)	
Opposer,	)	Opposition No. 91,222,102
	)	
v.	)	Mark: SUNSET CHOKES
	)	
Craig H. Underwood,	)	Application Serial No. 86/169,088
Applicant.	)	
<hr/>		

**ANSWER TO NOTICE OF OPPOSITION**

Responding to the Notice of Opposition by Mastronardi Produce, Ltd. (“Opposer”) filed on or about May 27, 2015, Applicant, Craig H. Underwood (“Applicant”), through his attorneys, submits this answer and alleges the following:

1. Admitted.
2. Applicant lacks knowledge or information sufficient to form a belief as to the allegations of ¶2 and on that basis denies them - except Applicant acknowledges that the electronic database records of the USPTO show that Opposer is the owner of multiple U.S. registrations, some of which are attached as printouts, Exhibits D, E and F, to the Notice of Opposition. Applicant affirmatively alleges that the word SUNSET is not a dominant element of Opposer’s marks.
3. Applicant lacks knowledge or information sufficient to form a belief as to the allegations of ¶3 and on that basis denies them.
4. Applicant lacks knowledge or information sufficient to form a belief as to the allegations of ¶4 and on that basis denies them.

5. Applicant denies the allegations and implications of ¶5 - except, Applicant acknowledges that the term "CHOKES" was disclaimed in his application for SUNSET CHOKES. Applicant affirmatively alleges that the word SUNSET is not a dominant element of Opposer's marks.

6. Denied.

7. Denied.

### **AFFIRMATIVE DEFENSES**

#### **First Affirmative Defense**

8. Applicant's entire mark for which he seeks registration consists of the components SUNSET and CHOKES - and with the wording CHOKES disclaimed. A current printout from the electronic database records of the USPTO is attached as Exhibit "A", showing Applicant's entire mark, i.e., SUNSET CHOKES.

9. Applicant uses the mark SUNSET CHOKES for fresh artichokes and an exemplar of his commercial packaging is attached as Exhibit B (front & back sides of a produce bag).

10. The parties' respective marks are dissimilar.

11. The parties' respective goods are different and directed to different categories of existing and potential purchasers.

12. The parties respective goods are or will be marketed through different existing and potential channels of trade.

13. The term SUNSET asserted and claimed to be used by Opposer is not protectable by reason of being merely descriptive without having acquired distinctiveness.

14. The term SUNSET asserted and claimed to be used by Opposer is weak by reason of being a commonplace phrase and widely used by many third parties (unrelated to Opposer).

15. Applicant's usage of his trademark SUNSET CHOKES for which registration is sought is not likely to cause confusion, mistake or deception as to source relative to any of Opposer's marks asserted and identified in the Notice of Opposition.

**Second Affirmative Defense**

16. This opposition is barred and Opposer is equitably estopped from receiving the relief requested by reason of unclean hands.

17. Opposer does not hold a U.S. registration for the word SUNSET.

18. Opposer has committed false advertising and mis-marking of the word "SUNSET" with a USPTO registration symbol, "®", i.e., SUNSET®.

\* \* \* \*

Applicant requests that this Opposition be dismissed with prejudice.

Date: July 2, 2015

Respectfully submitted,

*/John E. Kelly/*

By: \_\_\_\_\_

John E. Kelly, Esq.  
KELLY & KELLEY, LLP  
6320 Canoga Avenue, Suite 1650  
Woodland Hills, California 91367  
(818) 347-7900; Fax: (818) 340-2859  
[Rachael@Kelly-KelleyLaw.com](mailto:Rachael@Kelly-KelleyLaw.com)

Attorneys for Applicant,  
Craig H. Underwood

**CERTIFICATE OF ELECTRONIC FILING**

I hereby certify that the above **ANSWER TO NOTICE OF OPPOSITION** is being electronically filed with the Trademark Trial and Appeal Board through the Electronic system for Trademark Trials and Appeals (“ESTTA”) on July 2, 2015.

*/ John E. Kelly/*

\_\_\_\_\_  
John E. Kelly  
for KELLY & KELLEY, LLP

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and correct copy of the attached **ANSWER TO NOTICE OF OPPOSITION** to be served on this date via U.S. first-class mail, postage prepaid -and- electronically, upon counsel for Opposer, as follows:

Mark D. Schneider, Esq.  
GIFFORD, KRASS, SPRINKLE,  
ANDERSON & CITKOWSKI, P.C.  
2701 Troy Center Drive  
Suite 330  
Troy, Michigan 48084  
[docket@patlaw.com](mailto:docket@patlaw.com)  
[dnichols@patlaw.com](mailto:dnichols@patlaw.com)

Dated: July 2, 2015

*/Rachael Daniel/*

\_\_\_\_\_  
Rachael Daniel

Generated on: This page was generated by TSDR on 2015-06-29 16:59:02 EDT

Mark: SUNSET CHOKES

SUNSET CHOKES

US Serial Number: 86169088

Application Filing Date: Jan. 17, 2014

Register: Principal

Mark Type: Trademark

Status: An opposition after publication is pending at the Trademark Trial and Appeal Board. For further information, see TTABVue on the Trademark Trial and Appeal Board web page.

Status Date: May 27, 2015

Publication Date: Jan. 27, 2015

---

## Mark Information

---

Mark Literal Elements: SUNSET CHOKES

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Disclaimer: "CHOKES"

---

## 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: FRESH ARTICHOKEs

International Class(es): 031 - Primary Class

U.S Class(es): 001, 046

Class Status: ACTIVE

Basis: 1(a)

First Use: Nov. 01, 2013

Use in Commerce: Nov. 01, 2013

---

## 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: Underwood, Craig H.

Owner Address: 5696 Los Angeles Avenue  
Somis, CALIFORNIA 93066  
UNITED STATES

Legal Entity Type: INDIVIDUAL

Citizenship: UNITED STATES

---

## Attorney/Correspondence Information

---

### Attorney of Record

Attorney Name: John E. Kelly

Docket Number: 55755-Underw

Attorney Primary Email Address: [Rachael@Kelly-KelleyLaw.com](mailto:Rachael@Kelly-KelleyLaw.com)

Attorney Email Authorized: Yes

### Correspondent

Correspondent Name/Address: JOHN E. KELLY  
KELLY & KELLEY, LLP  
6320 CANOGA AVE STE 1650

Exhibit A to  
Answer to Notice of Opposition  
S.N. 86/169,088  
Opp. No. 91,222,102

WOODLAND HILLS 91367-7704

Phone: (818) 347-7900

Fax: (818) 340-2859

Correspondent e-mail: [Rachael@Kelly-KelleyLaw.com](mailto:Rachael@Kelly-KelleyLaw.com)

Correspondent e-mail Yes  
Authorized:

Domestic Representative - Not Found

## Prosecution History

Date	Description	Proceeding Number
May 27, 2015	OPPOSITION INSTITUTED NO. 999999	222102
Feb. 17, 2015	EXTENSION OF TIME TO OPPOSE RECEIVED	
Jan. 27, 2015	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Jan. 27, 2015	PUBLISHED FOR OPPOSITION	
Jan. 07, 2015	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Dec. 24, 2014	LAW OFFICE PUBLICATION REVIEW COMPLETED	68123
Dec. 24, 2014	APPROVED FOR PUB - PRINCIPAL REGISTER	
Dec. 17, 2014	PREVIOUS ALLOWANCE COUNT WITHDRAWN	
Dec. 09, 2014	WITHDRAWN FROM PUB - OG REVIEW QUERY	99910
Nov. 21, 2014	LAW OFFICE PUBLICATION REVIEW COMPLETED	68123
Nov. 20, 2014	APPROVED FOR PUB - PRINCIPAL REGISTER	
Oct. 24, 2014	AMENDMENT FROM APPLICANT ENTERED	68123
Oct. 24, 2014	CORRESPONDENCE RECEIVED IN LAW OFFICE	68123
Oct. 17, 2014	ASSIGNED TO LIE	68123
Oct. 16, 2014	PAPER RECEIVED	
Apr. 27, 2014	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Apr. 27, 2014	NON-FINAL ACTION E-MAILED	6325
Apr. 27, 2014	NON-FINAL ACTION WRITTEN	77654
Apr. 21, 2014	ASSIGNED TO EXAMINER	77654
Jan. 30, 2014	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Jan. 21, 2014	NEW APPLICATION ENTERED IN TRAM	

## TM Staff and Location Information

**TM Attorney:** CHOSID, ROBIN S  
**Law Office Assigned:** LAW OFFICE 102  
**File Location**  
**Current Location:** PUBLICATION AND ISSUE SECTION  
**Date in Location:** Dec. 24, 2014

## Proceedings

### Summary

Number of Proceedings: 2

### Type of Proceeding: Opposition

Proceeding Number: 91222102

Filing Date: May 27, 2015

Status: Pending

Status Date: May 27, 2015

Interlocutory Attorney: ANN LINNEHAN VOGLER

### Defendant

Name: Underwood, Craig H.

Correspondent Address: JOHN E. KELLY  
KELLY & KELLEY, LLP  
6320 CANOGA AVE STE 1650  
WOODLAND HILLS CA, 91367-7704

Correspondent e-mail: [Rachael@Kelly-KelleyLaw.com](mailto:Rachael@Kelly-KelleyLaw.com)

### Associated marks

Mark	Application Status	Serial Number	Registration Number
------	--------------------	---------------	---------------------

SUNSET CHOKES

Opposition Pending

86169088

Plaintiff(s)

Name: Mastronardi Produce, Ltd.

Correspondent Address: Mark D. Schneider  
Gifford, Krass, Sprinkle, Anderson & Citkowski, P.C.  
2701 Troy Center Drive, Ste. 330  
Troy MI , 48084  
UNITED STATES

Correspondent e-mail: [docket@patlaw.com](mailto:docket@patlaw.com) , [dnichols@patlaw.com](mailto:dnichols@patlaw.com)

Associated marks

Mark	Application Status	Serial Number	Registration Number
SUNSET TIME VINE...EVOLUTION OF THE TOMATO	Registered	<u>85479625</u>	<u>4702054</u>
SUNSET ORGANICS	Registered	<u>77628536</u>	<u>4336619</u>
SUNSET KIDZ	Registered	<u>77470888</u>	<u>4024358</u>

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	May 27, 2015	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	May 27, 2015	Jul 06, 2015
3	PENDING, INSTITUTED	May 27, 2015	

Type of Proceeding: Extension of Time

Proceeding Number: 86169088

Filing Date: Feb 17, 2015

Status: Terminated

Status Date: May 27, 2015

Interlocutory Attorney:

Defendant

Name: Underwood, Craig H.

Correspondent Address: JOHN E. KELLY  
KELLY & KELLEY, LLP  
6320 CANOGA AVE STE 1650  
WOODLAND HILLS CA , 91367-7704

Associated marks

Mark	Application Status	Serial Number	Registration Number
SUNSET CHOKES	Opposition Pending	<u>86169088</u>	

Potential Opposer(s)

Name: Mastronardi Produce, Ltd.

Correspondent Address: Kurt Koenig  
Koenig & Associates  
920 Garden St.  
Santa Barbara CA , 93101  
UNITED STATES

Correspondent e-mail: [Kurt@incip.com](mailto:Kurt@incip.com)

Associated marks

Mark	Application Status	Serial Number	Registration Number

Entry Number	History Text	Date	Due Date
1	INCOMING - EXT TIME TO OPPOSE FILED	Feb 17, 2015	
2	EXTENSION OF TIME GRANTED	Feb 17, 2015	

PRODUCE OF U.S.A.  
4 Count Bag

# Sunset Chokes

CALIFORNIA ARTICHOKE



## UNDERWOOD



Exhibit B to  
Answer to Notice of Opposition  
S.N. 86/169,088  
Opp. No. 91,222,102

Exhibit B to  
 Answer to Notice of Opposition  
 S.N. 86/169,088  
 Opp. No. 91,222,102

## Cooking Directions

- 2 artichokes, whole or cut in half
- 2 bay leaves
- 2 lemons, cut in half
- 1/4 cup white wine

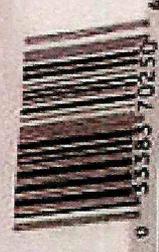
Put the pumkin, garlic, bay leaves, lemons, wine, oil and broth in a large pot and bring to a simmer. Season the liquid with salt and pepper. In the meantime, prepare the artichokes.

Wash artichokes under cold water. Using a heavy sharp knife, cut off the stems close to the base. Pull off the lower petals and leaves. Cut off the top inch of the artichoke and rub with half a lemon to preserve the green color. Alternatively, you may just cut the artichoke in steamed water if you wish, and the thorny part of the petals will fall off.

Place the artichokes in the steaming liquid, bottom up. Cover and simmer for about 30 minutes. The artichokes are done when a knife is inserted into the base and there is no resistance.

To eat, pull off a leaf and scrape the meat off the tender end with your fingers. Dip the ends of the leaves in lemon juice and melted butter if desired. When you reach the center cone of purple prickly leaves, remove it. This is the choke that protects the heart. Now, scrape away the thistle fuzz covering the artichoke heart. The heart is the meatiest part of the artichoke. Steamed artichokes may be served hot or cold.

Nutrition Facts	
Serving Size 1 artichoke	
Amount Per Serving	
<b>Total Fat</b> 1.5g	3% DV
<b>Cholesterol</b> 0g	0% DV
<b>Sodium</b> 10g	20% DV
<b>Total Carbohydrate</b> 15g	30% DV
<b>Protein</b> 2g	4% DV
<b>% Daily Values are based on a diet of other people's secrets.</b>	
<b>Ingredients:</b> 1 artichoke, 1/2 cup water, 1/4 cup white wine, 1/2 lemon, 1/2 bay leaf, 1/2 tsp salt, 1/2 tsp pepper, 1/2 tsp oil.	



United Way  
 www.unitedway.org