

ESTTA Tracking number: **ESTTA709749**

Filing date: **11/20/2015**

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 Wonderful Company LLC  |
| Granted to Date of previous extension                       | 11/22/2015   |
| Address   | 11444 W. Olympic Blvd.<br>Los Angeles, CA 90064<br>UNITED STATES                       |
| Party who filed Extension of time to oppose                 | POM Wonderful LLC  |
| Relationship to party who filed Extension of time to oppose | The cited marks have been assigned to Opposer. See Reel/Frames 5616/0759 and 5616/0767 |

|                      |   |
|----------------------|---|
| Attorney information | Darya P. Laufer<br>Roll Law Group PC<br>11444 W. Olympic Blvd. 7th Floor<br>Los Angeles, CA 90064<br>UNITED STATES<br>darya.laufer@roll.com, ipdocketing@roll.com Phone: 3109668824 |
|----------------------|---|

**Applicant Information**

|                        |  |                        |            |
|------------------------|--|------------------------|------------|
| Application No         | 86490160   | Publication date       | 05/26/2015 |
| Opposition Filing Date | 11/20/2015   | Opposition Period Ends | 11/22/2015 |
| Applicant              | ICheer Brands, LLC<br>1 Industrial Drive<br>Windham, NH 03087<br>UNITED STATES |                        |            |

**Goods/Services Affected by Opposition**

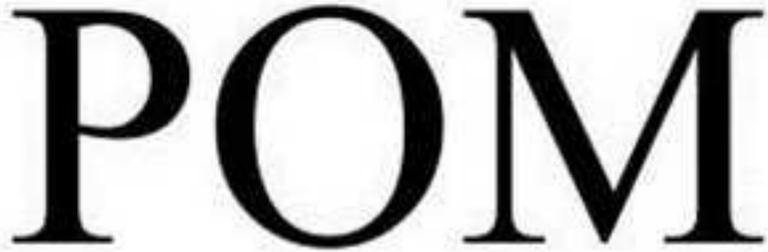
|  |
|--|
| Class 030. First Use: 0 First Use In Commerce: 0<br>All goods and services in the class are opposed, namely: Cookies |
|--|

**Grounds for Opposition**

|                                      |                            |
|--------------------------------------|----------------------------|
| Priority and likelihood of confusion | Trademark Act section 2(d) |
|--------------------------------------|----------------------------|

**Marks Cited by Opposer as Basis for Opposition**

|                   |         |                  |            |
|-------------------|---------|------------------|------------|
| U.S. Registration | 4739684 | Application Date | 06/04/2012 |
|-------------------|---------|------------------|------------|

|                     |  |                       |      |
|---------------------|--|-----------------------|------|
| No.                 |  |                       |      |
| Registration Date   | 05/19/2015   | Foreign Priority Date | NONE |
| Word Mark           | POM  |                       |      |
| Design Mark         |    |                       |      |
| Description of Mark | NONE   |                       |      |
| Goods/Services      | Class 029. First use: First Use: 2011/07/00 First Use In Commerce: 2011/07/00<br>dried fruits, namely, pomegranate arils<br>Class 030. First use: First Use: 2006/02/01 First Use In Commerce: 2014/09/08<br>Beverages made of tea; iced tea; flavorings for beverages; flavorings of tea; fruit teas; tea; tea-based beverages withfruit flavoring; green tea |                       |      |

|                       |   |                       |            |
|-----------------------|---|-----------------------|------------|
| U.S. Registration No. | 2637053   | Application Date      | 04/24/2001 |
| Registration Date     | 10/15/2002  | Foreign Priority Date | NONE       |
| Word Mark             | POM   |                       |            |
| Design Mark           |           |                       |            |
| Description of Mark   | NONE  |                       |            |
| Goods/Services        | Class 032. First use: First Use: 2002/04/11 First Use In Commerce: 2002/04/11<br>FRUIT JUICES |                       |            |

|                       |            |                       |            |
|-----------------------|------------|-----------------------|------------|
| U.S. Registration No. | 3047447    | Application Date      | 10/06/2003 |
| Registration Date     | 01/24/2006 | Foreign Priority Date | NONE       |
| Word Mark             | POM        |                       |            |

|                     |   |
|---------------------|---|
| Design Mark         |   |
| Description of Mark | The mark contains the word POM with a heart design in place of the letter "O".  |
| Goods/Services      | Class 031. First use: First Use: 2001/10/15 First Use In Commerce: 2001/10/15<br>FRESH FRUITS<br>Class 032. First use: First Use: 2002/09/16 First Use In Commerce: 2003/01/13<br>FRUIT JUICES and FRUIT JUICE CONCENTRATES |

|                       |            |                       |            |
|-----------------------|------------|-----------------------|------------|
| U.S. Registration No. | 3411595    | Application Date      | 08/07/2007 |
| Registration Date     | 04/15/2008 | Foreign Priority Date | NONE       |

|                     |   |
|---------------------|---|
| Word Mark           | POM TEA   |
| Design Mark         |   |
| Description of Mark | NONE  |
| Goods/Services      | Class 030. First use: First Use: 2006/02/01 First Use In Commerce: 2006/03/06<br>Iced teas and tea-based beverages with pomegranate flavoring<br>Class 032. First use: First Use: 2006/02/01 First Use In Commerce: 2006/03/06<br>Non-alcoholic fruit extracts used in the preparation of beverages, preparations for making fruit drinks, fruit flavored beverages, non-alcoholic beverages containing fruit juices, non-alcoholic beverages with tea flavor, low calorie fruit flavored beverages, low calorie tea flavored beverages, all made in whole or significant part of pomegranate juice |

|                                    |                         |                  |      |
|------------------------------------|-------------------------|------------------|------|
| U.S. Application/ Registration No. | NONE                    | Application Date | NONE |
| Registration Date                  | NONE                    |                  |      |
| Word Mark                          | POM POMS                |                  |      |
| Goods/Services                     | fresh pomegranate arils |                  |      |

|                                    |      |                  |      |
|------------------------------------|------|------------------|------|
| U.S. Application/ Registration No. | NONE | Application Date | NONE |
|------------------------------------|------|------------------|------|

|                   |                         |  |  |
|-------------------|-------------------------|--|--|
| tion No.          |                         |  |  |
| Registration Date | NONE                    |  |  |
| Word Mark         | POM POMS WONDERFUL      |  |  |
| Goods/Services    | fresh pomegranate arils |  |  |

|                                    |   |                  |      |
|------------------------------------|---|------------------|------|
| U.S. Application/ Registration No. | NONE  | Application Date | NONE |
| Registration Date                  | NONE  |                  |      |
| Word Mark                          | POM POMS (& design -- had technical issues uploading image) |                  |      |
| Goods/Services                     | fresh pomegranate arils                                     |                  |      |

|                                    |  |                  |      |
|------------------------------------|--|------------------|------|
| U.S. Application/ Registration No. | NONE   | Application Date | NONE |
| Registration Date                  | NONE   |                  |      |
| Word Mark                          | POM POMS WONDERFUL (& design - had technical issues uploading image) |                  |      |
| Goods/Services                     | fresh pomegranate arils  |                  |      |

|             |   |
|-------------|---|
| Attachments | 85976358#TMSN.png( bytes )<br>76245687#TMSN.png( bytes )<br>76553991#TMSN.png( bytes )<br>77249106#TMSN.png( bytes )<br>pom poms NOA 2498672_3.pdf(118709 bytes ) |
|-------------|---|

### 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 | /Darya P. Laufer/ |
| Name      | Darya P. Laufer   |
| Date      | 11/20/2015        |



produces and markets pomegranate and pomegranate products such as pomegranate juice and pomegranate juice blends, teas, concentrates, extracts and dietary supplements.

3. POM Wonderful sells consumer products to the general consuming public and ingredients to manufacturers in several different industries.

4. Opposer and POM Wonderful are collectively referred to as “Wonderful.”

5. Since long prior to the December 24, 2014 filing date of the POM POMS Application, Wonderful has extensively marketed fresh pomegranate fruit, processed fruit (arils), pomegranate juice, and other goods containing fruit juices and fruit extracts, including pomegranate concentrate, pomegranate extracts, ingredients for a variety of foods and dietary supplements, in interstate commerce under or in connection with Opposer’s distinctive POM®, POM WONDERFUL® and POM POMS™ marks, along with other marks comprised of the distinctive term POM®.

6. Opposer owns numerous trademarks containing the term POM® for various fruit-related goods which have been registered with the United States Patent and Trademark Office (“USPTO”) or are held at Common Law (collectively, the “POM® Marks”), are licensed to POM Wonderful and the use of which inure to the benefit of Opposer. Opposer’s relevant registrations include, but are not limited to:

| <b>Mark</b> | <b>Image</b>  | <b>Serial No.</b> | <b>Reg. No.</b> | <b>Classes</b>          |
|-------------|---|-------------------|-----------------|-------------------------|
| POM         | Std. Char.  | 85976358          | 4739684         | 29, 30                  |
| POM         | Std. Char.  | 76245687          | 2637053         | 32                      |
| POM         |  | 76553991          | 3047447         | 31, 32                  |
| POM TEA     | Std. Char.  | 77249106          | 3411595         | 30, 32                  |
| POM POMS    | Std. Char.  |                   | Common Law      | fresh pomegranate arils |

|                             |   |          |            |                         |
|-----------------------------|---|----------|------------|-------------------------|
| POM POMS & Design           |  |          | Common Law | fresh pomegranate arils |
| POM POMS WONDERFUL & Design |  |          | Common Law | fresh pomegranate arils |
| POM WONDERFUL               | Std. Char.  | 76244362 | 2640835    | 31                      |
| POM WONDERFUL               | Std. Char.  | 85975947 | 4739683    | 29                      |
| POM WONDERFUL               |  | 76534468 | 2864641    | 31, 32                  |

7. Opposer’s registrations are valid, subsisting, owned by Opposer.

8. Opposer’s Registration Nos. 2,637,053, 2,864,641 and 3,047,447 are incontestable pursuant to 15 U.S.C. §§1064 and 1115(b).

9. In connection with the licensed POM® Marks, Wonderful has sold millions of dollars’ worth of goods.

10. Wonderful has spent millions of dollars advertising and promoting its products in connection with the POM® Marks throughout the United States, including two series of television commercials and sponsorship of Season 7 of the prime-time network television show American Ninja Warrior.

11. The POM POMS Application for “cookies” in International Class 30 (“Applicant’s Goods”) is without Opposer’s consent or permission.

12. Upon information and belief, neither Applicant nor any predecessor or related company of Applicant made actual use of “POM POMS” in commerce prior to the first use in commerce of Opposer’s POM® marks, nor has Applicant or any predecessor or related company of Applicant claimed a priority date prior to the December 24, 2014, filing date of the POM POMS

Application.

**COUNT I – LIKELIHOOD OF CONFUSION**

13. Opposer incorporates its allegations of Paragraphs 1 through 12 herein by reference.

14. Applicant's use of the POM POMS mark, which is identical to Opposer's POM POMS™ mark and incorporates Opposer's entire POM® Mark for use in connection with Applicant's Goods is likely to cause confusion, mistake, or deception in that consumers are likely to believe Applicant's Goods are Wonderful's goods, contain Wonderful's goods, or are the goods of a person or entity that is sponsored, authorized or licensed by, or in some other way legitimately connected with, Wonderful.

WHEREFORE, Opposer respectfully requests that this Opposition be sustained and that Application Serial No. 86/490160 be denied registration.

Please debit our Deposit Account No. 502934 for the \$300 filing fee per class and for any additional necessary fees.

Please address all correspondence to Darya P. Laufer, Esq., Intellectual Property Counsel at Roll Law Group P.C., 11444 West Olympic Boulevard, Los Angeles, CA 90064.

Respectfully Submitted,

The Wonderful Company LLC

Date: November 20, 2015

By: /s/ Darya P. Laufer /s/  
Darya P. Laufer, Esq.  
Danielle M. Criona, Esq.  
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Email [darya.lafer@roll.com](mailto:darya.lafer@roll.com)  
*Attorneys for Opposer*

**CERTIFICATE OF SERVICE**

I, Carla Crichlow, hereby certify that a copy of this **NOTICE OF OPPOSITION** has been served upon Counsel for Applicant:

Daniel J. Bourque  
Bourque & Associates PA  
835 Hanover Street, Suite 301  
Manchester, NH 03104

by first class mail, postage prepaid, with a courtesy copy to the email address on file with the USPTO, [tmfilings@nhpatlaw.com](mailto:tmfilings@nhpatlaw.com) and [dbourque@nhpatlaw.com](mailto:dbourque@nhpatlaw.com), on this 20th day of November, 2015.

By: /s/ Carla Crichlow /s/  
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