

ESTTA Tracking number: **ESTTA732238**

Filing date: **03/09/2016**

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	Whole Foods Market IP, L.P.
Granted to Date of previous extension	03/09/2016
Address	550 Bowie Street, 6th Floor Austin, TX 78703 UNITED STATES
Attorney information	Wendy C. Larson Pirkey Barber PLLC 600 Congress Avenue, Suite 2120 Austin, TX 78701 UNITED STATES tmcentral@pirkeybarber.com, wlarson@pirkeybarber.com, eco-mbs@pirkeybarber.com, kschuttler@pirkeybarber.com Phone:512-322-5200

Applicant Information

Application No	86666613	Publication date	11/10/2015
Opposition Filing Date	03/09/2016	Opposition Period Ends	03/09/2016
Applicant	Rocha, Joseph Suite 106 Plano, TX 75074 UNITED STATES		

Goods/Services Affected by Opposition

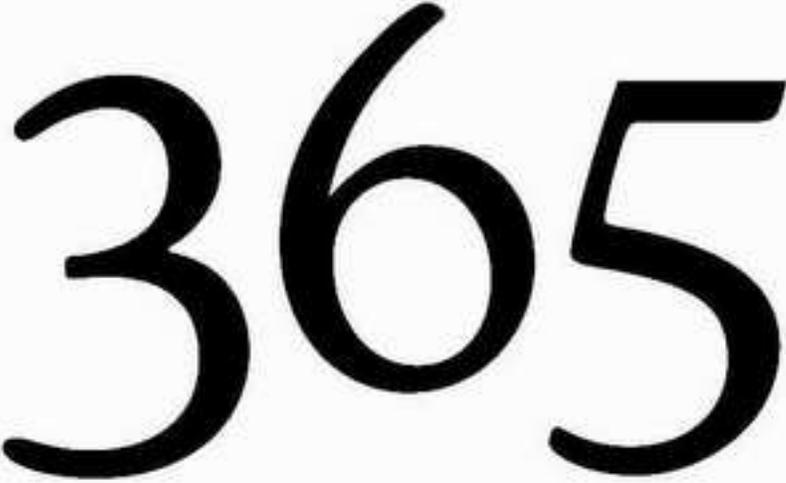
Class 003. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Cosmetic preparations; Hair conditioner; Hand cleaners; Hand cream; Shampoos
Class 029. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Edible oil, namely, avocado oil

Grounds for Opposition

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

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2062177	Application Date	09/14/1995
Registration Date	05/13/1997	Foreign Priority Date	NONE

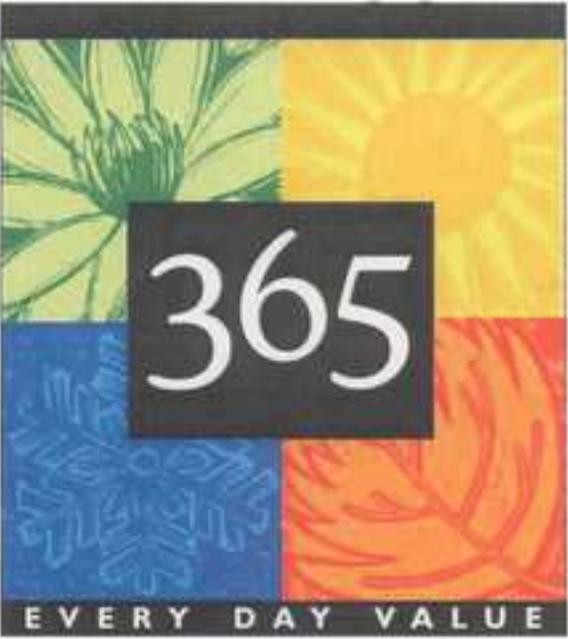
Word Mark	365
Design Mark	
Description of Mark	NONE
Goods/Services	Class 003. First use: First Use: 1996/01/00 First Use In Commerce: 1996/01/00 skin and hair care products, namely, hair shampoo, hair conditioner, skin cleanser, [facial scrub, skin astringent, skin moisturizer and night cream,] skin moisturizing lotion, [bath oil][and bubble bath]

U.S. Registration No.	2864719	Application Date	07/24/2000
Registration Date	07/20/2004	Foreign Priority Date	NONE

Word Mark	WHOLE FOODS MARKET 365 EVERY DAY VALUE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1999/06/00 First Use In Commerce: 1999/06/00		

	<p>Laundry detergent, liquid and dry dishwashing soap, all purpose cleaning preparations, [glass cleaning preparations, scouring cleaning preparations, and essential oil extracts for personal use, toothpaste, hair shampoo,] skin soap [, skin and moisturizing lotion and hair conditioners, bath and shower gels]</p> <p>Class 016. First use: First Use: 1997/10/00 First Use In Commerce: 1997/10/00</p> <p>Paper towels, toilet paper, paper napkins [, paper coffee filters]</p>
--	---

U.S. Registration No.	3066319	Application Date	03/24/2003
Registration Date	03/07/2006	Foreign Priority Date	NONE
Word Mark	365 EVERYDAY VALUE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 029. First use: First Use: 1997/03/00 First Use In Commerce: 1997/03/00</p> <p>Frozen boxed dinners consisting primarily of meat, fish, poultry or vegetables, soups, jams, frozen fruits, frozen vegetables, dried fruit, [marmalade,] potato and fruit-based snack foods, potato and fruit-based chips, vegetable-based chips, processed potatoes, processed vegetables, processed fruits, tomato paste, frozen potato dishes, processed beans, processed nuts, trail snack mix consisting primarily of processed fruits, processed nuts and/or raisins, nut butters, fruit spreads, olive oil, canola oil, cooking oil, canned tuna, milk, cream, half and half, cream cheese, cheeses, yogurt, butter; [soy-based food bars]</p>		

U.S. Registration No.	3081074	Application Date	07/24/2000
Registration Date	04/18/2006	Foreign Priority Date	NONE
Word Mark	365 EVERY DAY VALUE		
Design Mark			
Description of Mark	NONE		

Goods/Services	<p>Class 005. First use: First Use: 1998/06/00 First Use In Commerce: 1998/06/00 Vitamins, vitamin supplements, mineral supplements, nutritional supplements, herbal supplements, [nutritional drink mix for use as a meal replacement or supplement, meal replacement powders, nutritional food bars,] dietary food supplements, [baby food,] all free of artificial ingredients and preservatives</p> <p>Class 029. First use: First Use: 1997/03/00 First Use In Commerce: 1997/03/00 [Frozen boxed dinners consisting primarily of meat, fish, poultry or vegetables, soups, fruit sauces, potato and fruit-based chips, frozen fruits, processed tomatoes, tomato sauce and paste, chili, frozen potato dishes,] processed beans,[been dip, dried fruit, processed nuts, trail snack mix consisting primarily of processed fruits, processed nuts and/or raisins, nut butters, jams, marmalade,] fruit spreads, [olive oil,] cookingoil, [margarine, canned tuna,] milk, half and half, [cream cheese, cheeses, soy-based and rice-based food beverages used as a milk substitute, cheese,] yogurt, processed vegetables and processed fruits, all free of artificial ingredients and preservatives</p> <p>Class 030. First use: First Use: 1997/03/00 First Use In Commerce: 1997/03/00 [Processed cereals, processed grains, pasta,] macaroni and cheese, [granola,ready to eat cereal-based food bar, rice-based food bars, wheat-based food bars, processed popcorn, corn-based chips, flour-based chips, cheese flavored puffedcorn snacks,] confectionery chips for baking, [pretzels,] crackers, [salad dressing,] mayonnaise, [ketchup, mustard,] relish, [hot sauce,] spices, natural sweeteners, honey, [extracts used as flavoring,] coffee, [pasta sauce, marinades, chocolate syrup,] chocolate chips, [barbecue sauces, vinegar, cheese-sauce,] salsas, [pizza, cereal-based snack foods, rice-based snack foods, wheat-based snack foods,] whole grain and dry fruit bar, [candy, frozen yogurt, frozen fruit bars, ice cream, sorbet, cookies,] frozen boxed dinners consisting primarily of pasta or rice, [waffles] and processed herbs, all free of artificial ingredients and preservatives</p> <p>Class 031. First use: First Use: 1997/12/00 First Use In Commerce: 1997/12/00 [Unprocessed cereals, unprocessed popcorn, unprocessed fruit,] unprocessed vegetables, [unprocessed herbs, unprocessed beans and rice, unprocessed grains for eating,] and pet food, all free of artificial ingredients and preservatives, and pesticides</p> <p>Class 032. First use: First Use: 1997/03/00 First Use In Commerce: 1997/03/00 Fresh and concentrated fruit juices, [fresh and concentrated vegetable juices,fresh and concentrated fruit and vegetable juice combinations, soft drinks, sports drinks, aloe vera drinks,] sparkling water, and bottle drinking water, all free of artificial ingredients and preservatives</p>
----------------	---

U.S. Registration No.	3098711	Application Date	03/14/2003
Registration Date	05/30/2006	Foreign Priority Date	NONE
Word Mark	365 EVERYDAY VALUE		

Design Mark	
Description of Mark	<p>The mark consists of the numeral "365" in large stylized font adjacent to four square icons depicting the four seasons, all on a rectangular background with the words "EVERYDAY VALUE" in smaller block letters along the bottom of the rectangular background.</p>
Goods/Services	<p>Class 003. First use: First Use: 1999/06/00 First Use In Commerce: 1999/06/00 Laundry detergent, liquid and dry dishwashing soap, all purpose cleaning preparations, [glass cleaning preparations,] and essential oil extracts for personal use, hair shampoo, skin soap, skin and moisturizing lotion, hair conditioners, and bath and shower gels</p> <p>Class 004. First use: First Use: 1997/12/00 First Use In Commerce: 1997/12/00 [Candles and] charcoal briquettes</p> <p>Class 005. First use: First Use: 1998/12/00 First Use In Commerce: 1998/12/00 Vitamins, vitamin supplements, mineral supplements, nutritional supplements, herbal supplements, dietary food supplements, nutritional drink mix for use as a meal replacement or supplement, [meal replacement powders, nutritional food bars]</p> <p>Class 016. First use: First Use: 1997/10/00 First Use In Commerce: 1997/10/00 Paper towels, toilet paper, paper napkins, [and paper coffee filters]</p> <p>Class 021. First use: First Use: 2005/11/00 First Use In Commerce: 2005/11/00 [Plastic food storage containers]</p> <p>Class 029. First use: First Use: 1997/03/00 First Use In Commerce: 1997/03/00 Frozen boxed dinners consisting primarily of meat, fish, poultry or vegetables, soups, jams, frozen fruits, frozen vegetables, dried fruit, [marmalade,] potato and fruit-based snack foods, potato and fruit-based chips, vegetable-based chips, processed potatoes, processed vegetables, processed fruits, tomato paste, frozen potato dishes, processed beans, processed nuts, trail snack mix consisting primarily of processed fruits, processed nuts and/or raisins, nut butters, fruit spreads, olive oil, [canola oil,] cooking oil, canned tuna, milk, [cream,] half and half, cream cheese, cheeses, yogurt, butter, [soy-based food bars]</p> <p>Class 030. First use: First Use: 1997/03/00 First Use In Commerce: 1997/03/00 Processed cereals, processed grains, pasta, macaroni and cheese, [ready to eat cereal-based food bars,] whole grain and dry fruit bars, [wheat-based food</p>

bars, chocolate-based food bars,] corn-based chips, tortilla chips, cheese flavored puffed corn snacks, flour-based chips, crackers, cereal-based snack foods, corn-based snack foods, [rice-based snackfoods,] wheat-based snack foods, cookies, [confectionery chips for baking, chocolate chips,] pizza, whole grain and dry fruit bars, frozen fruit bars, ice cream, frozen confections, [flour,] mayonnaise, coffee, ketchup, relish, vinegar, spices, natural sweeteners, sauces, pasta sauce, processed herbs, and tomato sauce

Class 031. First use: First Use: 1997/12/00 First Use In Commerce: 1997/12/00 [Pet food]

Class 032. First use: First Use: 1997/03/00 First Use In Commerce: 1997/03/00 Fresh and concentrated fruit juices, [fresh and concentrated vegetable juices,] soft drinks, lemonade, [sparkling water,] spring water and bottled drinkingwater

Class 033. First use: First Use: 2001/11/00 First Use In Commerce: 2001/11/00 Wine

U.S. Registration No.	3098712	Application Date	03/14/2003
Registration Date	05/30/2006	Foreign Priority Date	NONE

Word Mark 365 EVERYDAY VALUE



Description of Mark The mark consists of the colors green, yellow, orange and blue appearing in the four squares depicting the four seasons adjacent to the white numeral "365" in large stylized font, all on a black rectangular background with the words "EVERYDAY VALUE" in smaller, white block letters along the bottom of the rectangular background.

Goods/Services Class 003. First use: First Use: 1999/06/00 First Use In Commerce: 1999/06/00 Laundry detergent, liquid and dry dishwashing soap, all purpose cleaning preparations, [glass cleaning preparations,] and essential oil extracts for personal use, hair shampoo, skin soap, skin and moisturizing lotion, hair conditioners, and bath and shower gels

Class 004. First use: First Use: 1997/12/00 First Use In Commerce: 1997/12/00 [Candles and] charcoal briquettes

	<p>Class 005. First use: First Use: 1998/12/00 First Use In Commerce: 1998/12/00 Vitamins, vitamin supplements, mineral supplements, nutritional supplements, herbal supplements, dietary food supplements, nutritional drink mix for use as a meal replacement or supplement, [meal replacement powders, nutritional food bars]</p> <p>Class 016. First use: First Use: 1997/10/00 First Use In Commerce: 1997/10/00 Paper towels, toilet paper, paper napkins, [and paper coffee filters]</p> <p>Class 021. First use: First Use: 2005/11/00 First Use In Commerce: 2005/11/00 [Plastic food storage containers]</p> <p>Class 029. First use: First Use: 1997/03/00 First Use In Commerce: 1997/03/00 Frozen boxed dinners consisting primarily of meat, fish, poultry or vegetables, soups, jams, frozen fruits, frozen vegetables, dried fruit, [marmalade,] potato and fruit-based snack foods, potato and fruit-based chips, vegetable-based chips, processed potatoes, processed vegetables, processed fruits, tomato paste, frozen potato dishes, processed beans, processed nuts, trail snack mix consisting primarily of processed fruits, processed nuts and/or raisins, nut butters, fruit spreads, olive oil, [canola oil,] cooking oil, canned tuna, milk, [cream,] half and half, cream cheese, cheese, yogurt, butter, [soy-based food bars]</p> <p>Class 030. First use: First Use: 1997/03/00 First Use In Commerce: 1997/03/00 Processed cereals, processed grains, pasta, macaroni and cheese, [ready to eat cereal-based food bars,] whole grain and dry fruit bars, [wheat-based food bars, chocolate-based food bars,] corn-based chips, tortilla chips, cheese flavored puffed corn snacks, flour-based chips, crackers, cereal-based snack foods, corn-based snack foods, [rice-based snack foods,] wheat-based snack foods, cookies, [confectionary chips for baking, chocolate chips,] pizza, whole grain and dry fruit bars, frozen fruit bars, ice cream, frozen confections, [flour,] mayonnaise, coffee, ketchup, relish, vinegar, spices, natural sweeteners, sauces, pasta sauce, processed herbs, and tomato sauce</p> <p>Class 031. First use: First Use: 1997/12/00 First Use In Commerce: 1997/12/00 [Pet food]</p> <p>Class 032. First use: First Use: 1997/03/00 First Use In Commerce: 1997/03/00 Fresh and concentrated fruit juices, [fresh and concentrated vegetable juices, soft drinks,] lemonade, [sparkling water,] spring water and bottled drinking water</p> <p>Class 033. First use: First Use: 2001/11/00 First Use In Commerce: 2001/11/00 Wine</p>
--	--

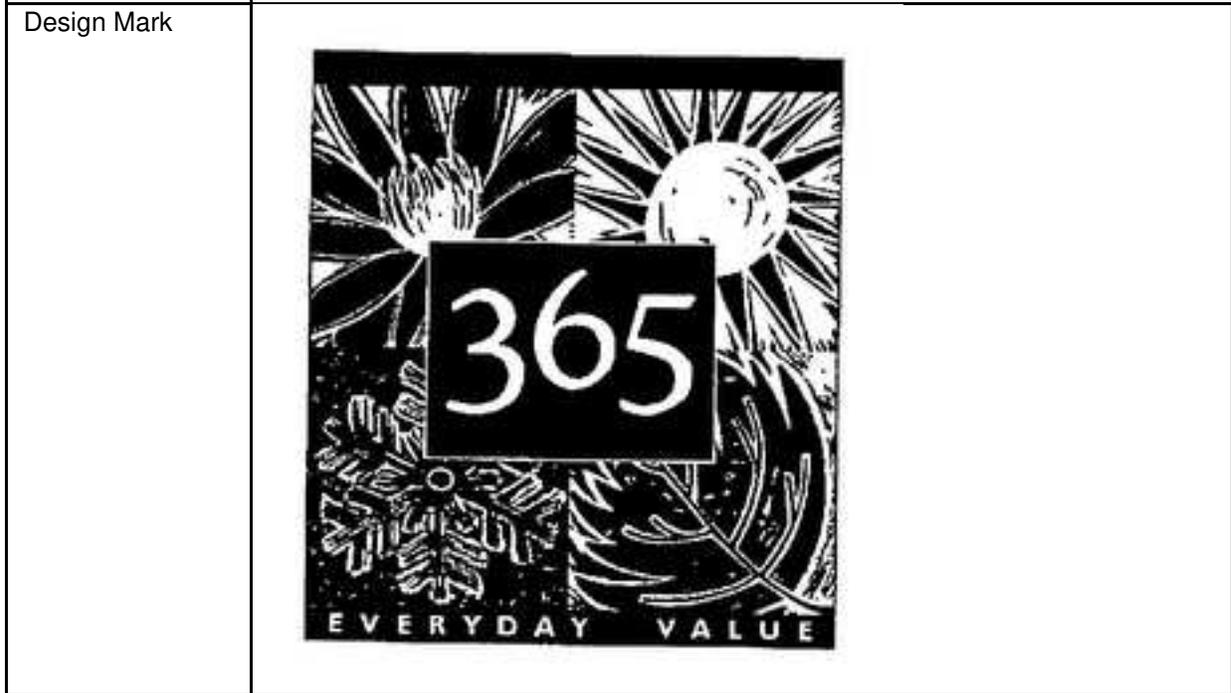
U.S. Registration No.	3151177	Application Date	05/02/1997
Registration Date	10/03/2006	Foreign Priority Date	NONE
Word Mark	365 EVERY DAY VALUE		

Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 029. First use: First Use: 1997/03/00 First Use In Commerce: 1997/03/00 [frozen boxed dinners consisting primarily of meat, fish, poultry or vegetables, soups, fruit sauces, potato and fruit-based chips, frozen fruits, processed tomatoes, tomato sauce and paste, frozen potato dishes,] processed beans, [dried fruit, processed nuts, trail snack mix consisting primarily of processed fruits, processed nuts and/or raisins, nut butters, jams, marmalade,] fruit spreads, [olive oil,] cooking oil, [canned tuna,] milk, half and half, [cream cheese, cheeses, soy-based and cheese,] yogurt, processed vegetables and processed fruits, all free of artificial ingredients and preservatives</p> <p>Class 030. First use: First Use: 1997/03/00 First Use In Commerce: 1997/03/00 [processed cereals, processed grains, pasta,] macaroni and cheese, [ready to eat cereal-based food bar, wheat-based food bars, corn-based chips, flour-based chips, cheese flavored puffed corn snacks,] confectionery chips for baking, crackers, mayonnaise, [ketchup,] relish, spices, natural sweeteners, coffee, [pasta sauce,] chocolate chips, [vinegar, pizza, cereal-based snack foods, rice-based snack foods, wheat-based snack foods,] whole grain and dry fruit bar, [candy, frozen fruit bars, ice cream, cookies,] and processed herbs, all free of artificial ingredients and preservatives</p> <p>Class 031. First use: First Use: 1997/12/00 First Use In Commerce: 1997/12/00 [unprocessed beans and rice,] unprocessed pet food, all free of artificial ingredients and preservatives, and pesticides</p> <p>Class 032. First use: First Use: 1997/03/00 First Use In Commerce: 1997/03/00 [fresh and concentrated fruit juices,] fresh and concentrated vegetable juices, [fresh and concentrated sports drinks,] sparkling water, and bottled drinking water, all free of artificial ingredients and preservatives</p>		
U.S. Registration No.	3318923	Application Date	03/24/2003
Registration Date	10/23/2007	Foreign Priority Date	NONE
Word Mark	365 EVERYDAY VALUE		

Design Mark	365 EVERYDAY VALUE
Description of Mark	NONE
Goods/Services	Class 003. First use: First Use: 1999/06/00 First Use In Commerce: 1999/06/00 Laundry detergent, liquid and dry dishwashing soap, all purpose cleaning preparations, [glass cleaning preparations] and essential oil extracts for personal use, hair shampoo, skin soap, skin and moisturizing lotion, hair conditioners, and bath and shower gels

U.S. Registration No.	3543922	Application Date	01/02/2004
Registration Date	12/09/2008	Foreign Priority Date	NONE

Word Mark 365 EVERYDAY VALUE



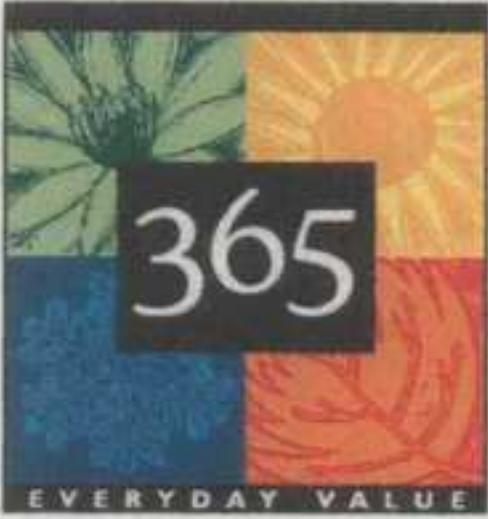
Description of Mark NONE

Goods/Services Class 029. First use: First Use: 2000/04/30 First Use In Commerce: 2000/04/30
butter; meats; dairy products, excluding ice cream, ice milk and frozen yogurt; processed meat, namely, bacon[, sausagelinks]
Class 030. First use: First Use: 2002/10/31 First Use In Commerce: 2002/10/31
Bread, bakery products, bakery desserts

U.S. Registration No.	3543923	Application Date	01/02/2004
-----------------------	---------	------------------	------------

Registration Date	12/09/2008	Foreign Priority Date	NONE
-------------------	------------	-----------------------	------

Word Mark 365 EVERYDAY VALUE

Design Mark	
Description of Mark	NONE
Goods/Services	<p>Class 029. First use: First Use: 2000/04/30 First Use In Commerce: 2000/04/30 butter; meats; dairy products, excluding ice cream, ice milk and frozen yogurt; processed meat, namely, bacon[, sausagelinks]</p> <p>Class 030. First use: First Use: 2002/10/31 First Use In Commerce: 2002/10/31 Bread, bakery products, bakery desserts</p>

U.S. Registration No.	3663962	Application Date	01/02/2004
Registration Date	08/04/2009	Foreign Priority Date	NONE
Word Mark	365 EVERYDAY VALUE		
Design Mark	365 EVERYDAY VALUE		
Description of Mark	NONE		
Goods/Services	<p>Class 029. First use: First Use: 2000/04/30 First Use In Commerce: 2000/04/30 Eggs, butter; meats; fish; seafood; poultry; dairy products excluding ice cream, ice milk and frozen yogurt; ((luncheon meats;)) processed meat, namely, bacon, beef, chicken, ((ham,)) [sausage links,] and turkey</p> <p>Class 030. First use: First Use: 2002/10/31 First Use In Commerce: 2002/10/31 Bread, bakery products, bakery desserts</p>		

U.S. Registration No.	4094216	Application Date	02/20/2008
Registration Date	01/31/2012	Foreign Priority Date	NONE

Word Mark	365 EVERYDAY VALUE
Design Mark	
Description of Mark	<p>The mark consists of the colors green, yellow, orange and blue appear in the four squares depicting the four seasons along the top of the mark. The color black appears as background to the lettering and numerals, which are depicted in white.</p>
Goods/Services	<p>Class 003. First use: First Use: 2009/08/00 First Use In Commerce: 2009/08/00 A full line of personal care products, namely, hair shampoo, skin soap, facial and skin lotions, hair conditioners, bath and shower gels, essential oils for personal use, facial and skin moisturizers, skin cleansers, liquid soap, bar soap, body and skin creams</p> <p>Class 005. First use: First Use: 2008/07/00 First Use In Commerce: 2008/07/00 A full line of vitamins and supplements for human consumption, nutritional drink mix for use as a meal replacement or supplement, dietary food supplements</p> <p>Class 029. First use: First Use: 2008/12/00 First Use In Commerce: 2008/12/00 Dairy products excluding ice cream, ice milk and frozen yogurt; a full line of food products, namely, meat, fish, seafood, cheese, processed, canned, dried and preserved fruits and vegetables, soups, fruit sauces, namely, applesauce and cranberry sauce, potato and fruit-based snack foods, potato and fruit-based chips, frozen fruits, processed tomatoes, frozen potato dishes, processed beans, eggs, dried fruit, processed nuts, trail snack mix made primarily of nuts, nut butters, jams, fruit spreads, olive oil, cooking oil, canned tuna, milk, half and half, cream cheese, soy-based and rice-based food beverages used as a milk substitute, cheese, yogurt, fruit or vegetable based snack foods, and prepared, packaged and frozen meals consisting primarily of meat, fish, poultry, or vegetables</p> <p>Class 030. First use: First Use: 2008/09/00 First Use In Commerce: 2008/09/00 Confectionery, namely, bakery desserts, chocolates and chocolate based ready to eat candies and snacks, cookies, frozen confections; bread, pasta, confectionery, coffee, cocoa, tea, processed herbs, spices and seasonings, processed cereals, processed grains, macaroni and cheese, processed popcorn, corn-based chips, flour-based chips, cheese flavored puffed corn snacks, pretzels, crackers, salad dressing, mayonnaise, ketchup, mustard, relish, natural sweeteners, honey, pasta sauce, vinegar, salsas, pizza, cereal-based snack foods, wheat-based snack foods, whole grain and dry fruit bar, frozen fruit bars, ice cream, sorbet, cookies, waffles and frozen dinners consisting primarily of pasta or rice,</p>

	<p>tomato paste; trail snack mix made primarily of chocolate; tomato sauce; unpopped popcorn; tea and coffee based beverages, namely, tea, coffee, teas flavored with fruit juice</p> <p>Class 031. First use: First Use: 2008/04/00 First Use In Commerce: 2008/04/00 A full line of unprocessed cereals, fresh fruits and vegetables, unprocessed beans and rice, unprocessed grains for eating</p> <p>Class 032. First use: First Use: 2008/08/00 First Use In Commerce: 2008/08/00 Non-alcoholic beverages with tea flavor; non-alcoholic carbonated, malt, and fruit juice beverages; fresh and concentrated fruit juices, aloe vera drinks, sparkling water, juice, and spring water and bottled drinking water</p>
--	---

Attachments	<p>74729006#TMSN.png(bytes) 76975201#TMSN.png(bytes) 76094375#TMSN.png(bytes) 76977929#TMSN.png(bytes) 76977931#TMSN.png(bytes) 75977258#TMSN.png(bytes) 76499844#TMSN.png(bytes) 76567976#TMSN.png(bytes) 76567977#TMSN.png(bytes) 76568026#TMSN.png(bytes) 77982625#TMSN.png(bytes) Notice of Opposition.pdf(968727 bytes)</p>
-------------	--

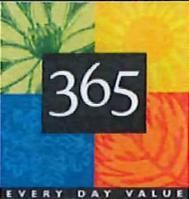
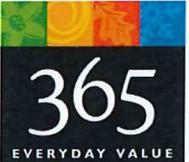
Certificate of Service

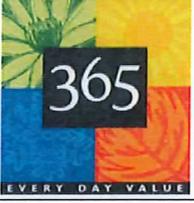
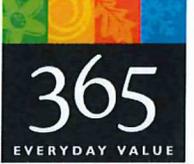
The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/WCL/
Name	Wendy C. Larson
Date	03/09/2016

4. Opposer's 365 Marks are inherently distinctive. Additionally, as a result of Opposer's extensive use and promotion of its 365 Marks, the marks have become distinctive and are widely recognized by consumers. Opposer has invested significant effort and resources in advertising and promoting its 365 Marks and the goods sold under those marks, with the result that the purchasing public has come to know, rely on, and recognize the goods of Opposer by those marks. Opposer has established significant goodwill in its 365 Marks.

5. In addition to its extensive common law rights, Opposer is the owner of numerous United States Trademark Registrations covering its 365 Marks, including the following:

Mark	U.S. Reg. No.
365 (stylized)	2,062,177
	2,864,719
365 EVERYDAY VALUE	3,066,319
	3,081,074
	3,098,711
	3,098,712
	3,151,177
365 EVERYDAY VALUE	3,318,923

	3,543,922
	3,543,923
365 EVERYDAY VALUE	3,663,962
	4,094,216

Each of the registrations listed in the chart above are valid and subsisting, and many are incontestable pursuant to 15 U.S.C. § 1065.

6. On information and belief, Joseph Rocha (the “Applicant”) is an individual with an address of 520 Central Parkway East, Suite 106, Plano, Texas 75074. Applicant filed U.S. Serial No. 86/666,613 (the “Application”) pursuant to 15 U.S.C. § 1051(b) on June 18, 2015 for the mark AVO365 (the “Applicant’s Mark”). The Application covers “Cosmetic preparations; Hair conditioner; Hand cleaners; Hand cream; Shampoos” in Class 3, and “Edible oil, namely, avocado oil” in Class 29.

7. The Application was published in the *Official Gazette* on November 10, 2015.

8. There is no issue as to Opposer’s priority. Opposer’s first use in commerce of its 365 Marks precedes Applicant’s first use of Applicant’s Mark and the filing date of the Application.

9. Applicant’s Mark so resembles Opposer’s 365 Marks as to be likely, when used in connection with Applicant’s goods, to cause confusion, or to cause mistake, or to deceive. Purchasers and prospective purchasers are likely to believe that the goods offered under

Applicant's Mark are sponsored, endorsed, or approved by Opposer, or are in some way affiliated, connected, or associated with Opposer or its goods and services. Registration should therefore be refused under 15 U.S.C. § 1052(d).

10. Opposer has not given Applicant permission or approval to use or register Applicant's Mark.

11. Registration of Applicant's Mark would damage Opposer because purchasers are likely to attribute the source or sponsorship of Applicant's goods offered under that mark to Opposer.

12. In addition, registration of Applicant's Mark would damage Opposer because it would confer upon Applicant statutory presumptions to which it is not entitled in view of Opposer's prior use and registration of its 365 Marks.

WHEREFORE, Opposer prays that U.S. Serial No. 86/666,613 be rejected, and that registration of the mark therein be refused.

This Notice of Opposition is being filed electronically, along with the filing fee required by 37 C.F.R. § 2.6(a)(17). The Commissioner is authorized to draw on the Deposit Account of Pirkey Barber PLLC, Account No. 50-3924/WFMV:5868/WCL, if there is any problem with the processing of the electronically submitted fee.

Respectfully submitted,



Wendy C. Larson
S. Erik Combs IV
PIRKEY BARBER PLLC
600 Congress Avenue, Suite 2120
Austin, TX 78701
(512) 322-5200

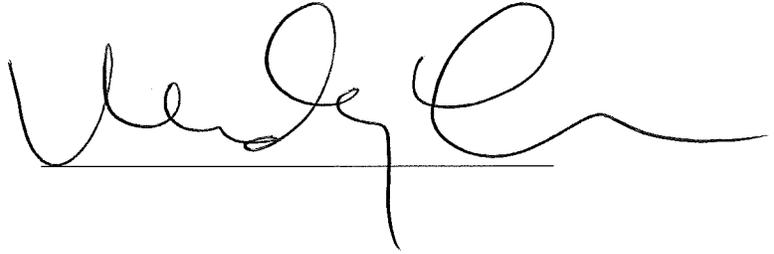
ATTORNEYS FOR OPPOSER

Date: March 9, 2016

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing NOTICE OF OPPOSITION was served via first-class mail, postage prepaid, on March 9, 2016 on Applicant's attorney of record at the address below:

Sophilia H. Wu
Mullin Law PC
2425 N. Central Expy., Suite 200
Richardson, Texas 75080

A handwritten signature in black ink, appearing to read 'Sophilia H. Wu', is written over a horizontal line. The signature is cursive and stylized.