

ESTTA Tracking number: **ESTTA773893**

Filing date: **09/30/2016**

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	Target Brands, Inc.
Granted to Date of previous extension	10/01/2016
Address	1000 Nicollet Mall Minneapolis, MN 55403 UNITED STATES

Attorney information	Dianna L. Gould Faegre Baker Daniels LLP 90 South Seventh Street 2200 Wells Fargo Center Minneapolis, MN 55402-3901 UNITED STATES tmpls@FaegreBD.com, Dianna.Gould@FaegreBD.com, James.Steffen@FaegreBD.com Phone:612-766-7000
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Applicant Information

Application No	86936951	Publication date	08/02/2016
Opposition Filing Date	09/30/2016	Opposition Period Ends	10/01/2016
Applicants	York, Sharon 7041 Via Mariposa Sur Bonsall, CA 92003 UNITED STATES York, Carrie 7041 Via Mariposa Sur Bonsall, CA 92003 UNITED STATES		

Goods/Services Affected by Opposition

Class 031. First Use: 2015/04/21 First Use In Commerce: 2015/05/19 All goods and services in the class are opposed, namely: Animal foodstuffs
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3833070	Application Date	06/20/2008
Registration Date	08/10/2010	Foreign Priority	NONE

		Date	
Word Mark	SIMPLY BALANCED		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2009/08/09 First Use In Commerce: 2009/08/09 Food and beverage products in the class, namely, frozen, prepared and packaged entrees consisting primarily of pasta orrice; pasta; rice; tortillas; breads; pizza; oatmeal; breakfast cereals; crackers		

U.S. Registration No.	3865915	Application Date	06/20/2008
Registration Date	10/19/2010	Foreign Priority Date	NONE
Word Mark	SIMPLY BALANCED		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2009/08/09 First Use In Commerce: 2009/08/09 Food and beverage products in the class, namely; frozen, prepared and packaged entrees and meals consisting primarily of meat, fish, poultry or vegetables; frozen prepared and packaged vegetable-based entrees; processed and canned beans; chili; soup and soup mix		

U.S. Registration No.	4115211	Application Date	06/20/2008
Registration Date	03/20/2012	Foreign Priority Date	NONE
Word Mark	SIMPLY BALANCED		

Design Mark	SIMPLY BALANCED		
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2009/08/09 First Use In Commerce: 2009/08/09 Food and beverage products in the class, namely, dried and preserved fruits; fruit-based snack foods; potato chips and potato-based snack foods		

U.S. Registration No.	4023084	Application Date	06/20/2008
Registration Date	09/06/2011	Foreign Priority Date	NONE

Word Mark	SIMPLY BALANCED		
Design Mark	SIMPLY BALANCED		
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2009/09/00 First Use In Commerce: 2009/09/00 Beverages, namely, fruit juices, fruit drinks, smoothies, bottled water including mineral, drinking, sparkling and flavored water		

U.S. Application No.	87067735	Application Date	06/10/2016
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	SIMPLY BALANCED		

Design Mark	<h1>SIMPLY BALANCED</h1>
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Description of Mark	NONE
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Goods/Services	<p>Class 029. First use: First Use: 2009/08/00 First Use In Commerce: 2009/08/00 Butter, almond butter, cashew butter, peanut butter; chia seeds; yogurt; snack mix consisting primarily of dried fruit,nuts and chocolate; fruit and vegetable pur- ee; eggs; prepared pumpkin; frozen, dried and canned fruit; canned tuna and sardines; canned vegetables; applesauce;cooking oil and cooking spray; coconut oil; fish, not live, shrimp, poultry, turkey, beef; nuts; hot dogs; milk</p> <p>Class 030. First use: First Use: 2009/08/00 First Use In Commerce: 2009/08/00 Wheat germ; quinoa; flax seeds; granola; pizza sauce; pasta sauce; tomato sauce; pizza crust; ketchup; honey; agave syrup; nectar syrup; molasses; kamut wheat;couscous; tea; sorbet, ice cream; breadcrumbs; tortilla chips, bean chips, popcorn; salad dressing; spices and seasonings; salsa; chocolate; sugar; flour; cookies; yogurt covered fruit; chocolate covered nuts and fruit</p> <p>Class 031. First use: First Use: 2012/08/00 First Use In Commerce: 2012/08/00 Fresh fruits and vegetables; raw nuts; fresh herbs; potatoes</p>
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U.S. Application No.	87067732	Application Date	06/10/2016
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Registration Date	NONE	Foreign Priority Date	NONE
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Word Mark	SIMPLY BALANCED
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Description of Mark	The mark consists of the words "Simply Balanced" stacked inside of a circle. The word "Simply" is in cursive writing and the word "balanced" is in lower-case letters.
Goods/Services	<p>Class 029. First use: First Use: 2009/08/09 First Use In Commerce: 2009/08/09 Food and beverage products in the class, namely, dried and preserved fruits; fruit-based snack foods; potato chips and potato-based snack foods; food and beverage products in the class, namely; frozen, prepared and packaged entrees and meals consisting primarily of meat, fish, poultry or vegetables; frozen prepared and packaged vegetable-based entrees; processed and canned beans; chili; soup and soup mix; butter, almond butter, cashew butter, peanut butter; chia seeds; yogurt; snack mix consisting primarily of dried fruit, nuts and chocolate; fruit and vegetable puree; eggs; prepared pumpkin; frozen, dried and canned fruit; canned tuna and sardines; canned vegetables; applesauce; cooking oil and cooking spray; coconut oil; fish, not live, shrimp, poultry, turkey, beef; nuts; hot dogs; milk</p> <p>Class 030. First use: First Use: 2009/08/09 First Use In Commerce: 2009/08/09 Food and beverage products in the class, namely, frozen, prepared and packaged entrees consisting primarily of pasta or rice; pasta; rice; tortillas; breads; pizza; oatmeal; breakfast cereals; crackers; wheat germ; quinoa; flax seeds; granola; pizza sauce; pasta sauce; tomato sauce; pizza crust; ketchup; honey; agave syrup; nectar syrup; molasses; kamut wheat; couscous; tea; sorbet, ice cream; breadcrumbs; tortilla chips, bean chips, popcorn; salad dressing; spices and seasonings; salsa; chocolate; sugar; flour; cookies; yogurt covered fruit; chocolate covered nuts and fruit</p> <p>Class 031. First use: First Use: 2012/08/00 First Use In Commerce: 2012/08/00 Fresh fruit and vegetables; raw nuts; fresh herbs</p> <p>Class 032. First use: First Use: 2009/09/30 First Use In Commerce: 2009/09/30 Beverages, namely, fruit juices, fruit drinks, smoothies, bottled water including mineral, drinking, sparkling and flavored water</p>

Attachments	77979847#TMSN.png(bytes) 77980198#TMSN.png(bytes) 77504210#TMSN.png(bytes) 77504191#TMSN.png(bytes) 87067735#TMSN.png(bytes) 87067732#TMSN.png(bytes) Notice of Opposition - SIMPLE BALANCE.pdf(152139 bytes)
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Certificate of Service

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

Signature	/Dianna L. Gould/
Name	Dianna L. Gould
Date	09/30/2016

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

In the Matter of Serial No: 86/936,951
For the Mark: SIMPLE BALANCE
Filed: March 11, 2016
Published: August 2, 2016

_____)	Opposition No. _____
TARGET BRANDS, INC.)	
)	
Opposer,)	
)	
v.)	<u>NOTICE OF OPPOSITION</u>
)	
Sharon York and Carrie York, Individuals)	
)	
Applicant.)	
_____)	

Opposer Target Brands, Inc. (“TBI”) is a Minnesota corporation having its principal place of business at 1000 Nicollet Mall, Minneapolis, MN 55403.

TBI believes that it will be damaged by the registration of the mark in Trademark Application Serial No. 86/936,951 (the “951 Application”), and hereby opposes the same.

As grounds of this opposition, it is alleged that:

1. TBI is a wholly-owned subsidiary of Target Corporation (“Target”).
2. Target operates, among other things, a chain of retail department stores, now numbering more than 1,700 stores in 49 states. Target’s stores in the United States offer, and long have offered, retail department store services offering a wide variety of goods and services. Target also offers at www.target.com on-line retail department store services.

3. Target has since at least as early as 2009 used, and is today using, the mark SIMPLY BALANCED in connection with, among many other goods, beef, turkey, eggs, tea, honey, pasta sauce, fresh fruit and vegetables; raw nuts; fresh herbs. Through extensive use and promotion of the SIMPLY BALANCED mark by Target, substantial and valuable goodwill and public recognition have been built up in the SIMPLY BALANCED mark.

4. TBI is the owner of United States Registration No. 3,833,070, registered August 10, 2010, for the mark SIMPLY BALANCED for use in connection with various goods identified in the registration. Registration No. 3,833,070 is incontestable.

5. TBI is the owner of United States Registration No. 3,865,915, registered October 19, 2010, for the mark SIMPLY BALANCED for use in connection with various goods identified in the registration.

6. TBI is the owner of United States Registration No. 4,115,211, registered March 20, 2012, for the mark SIMPLY BALANCED for use in connection with various goods identified in the registration.

7. TBI is the owner of United States Registration No. 4,023,084, registered September 6, 2011, for the mark SIMPLY BALANCED for use in connection with various goods identified in the registration.

8. TBI is the owner of United States Application Serial No. 87/067,735, a use-based application filed June 10, 2016, for the mark SIMPLY BALANCED for use in connection with various goods identified in the application.

9. TBI is the owner of United States Application Serial No. 87/067,732, a use-based application filed June 10, 2016, for the mark SIMPLY BALANCED and Design for use in connection with various goods identified in the application.

10. Upon information and belief, applicant Sharon York and Carrie York are individuals with an address at 7041 Via Mariposa Sur, Bonsall, California 92003.

11. On March 11, 2016, Applicant filed the '951 Application, a use-based application to register the mark SIMPLE BALANCE for use in connection with "animal foodstuffs."

12. The actual, continuous, and continuing use of TBI's SIMPLY BALANCED mark began prior to the filing of Applicant's '951 Application. Upon information and belief, the actual, continuous, and continuing use of TBI's SIMPLY BALANCED mark began prior to any use by Applicant of the mark shown in the '951 Application.

13. U.S. consumers are accustomed to animal foodstuffs and foods for humans sold under common brands. For example, animal foodstuffs, tea and pasta, among other food goods, have been sold under the BEST CHOICE mark. See United States Registration No. 2,550,300.

14. The SIMPLE BALANCE mark claimed in Applicant's '951 Application so resembles the TBI's SIMPLY BALANCED mark as to be likely, when used in connection with the goods identified in the '951 Application, to cause confusion, to cause mistake, and/or to deceive.

15. The mark in Applicant's '951 Application cannot be registered consistent with Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

WHEREFORE, TBI believes that it would be damaged by registration of the mark shown in Applicant's '951 Application, prays that Application Serial No. 86/936,951 be rejected, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of TBI.

The requisite filing fee of \$300.00 is submitted herewith. If the amount submitted is determined to be incorrect, the Commissioner may charge any additional fees or to credit any over payment to Deposit Account No. 06-0029.

Please address all correspondence to:

Dianna L. Gould
Faegre Baker Daniels LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

Dated: September 30, 2016

FAEGRE BAKER DANIELS LLP

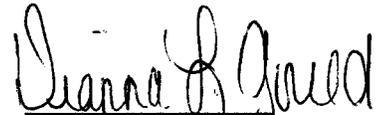
By: Dianna L. Gould
James R. Steffen
Dianna L. Gould
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402
Telephone: (612) 766-7000
Facsimile: (612) 766-1600

Certificate of Service

I hereby certify that a true and complete copy of the foregoing *Notice of Opposition* has been served on Sharon York and Carrie York by mailing said copy on September 30, 2016, via First Class Mail, postage prepaid, to:

Sharon York
Carrie York
7041 Via Mariposa Sur
Bonsall, California 92003

on this 30th day of September, 2016


Dianna L. Gould