

ESTTA Tracking number: **ESTTA774791**

Filing date: **10/05/2016**

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	Frontier Distribution LLC		
Entity	Corporation	Citizenship	Iowa
Address	PO Box 799 Norway, IA 52318 UNITED STATES		

Correspondence information	Sarah J. Gayer Nyemaster Goode, P.C. 625 First Street SE Suite 400 Cedar Rapids, IA 52401 UNITED STATES ptocr@nyemaster.com, sjgayer@nyemaster.com Phone:319-286-7000		
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Applicant Information

Application No	87003967	Publication date	09/13/2016
Opposition Filing Date	10/05/2016	Opposition Period Ends	10/13/2016
Applicant	Mount Olive Pickle Company, Inc. Corner of Cucumber & Vine Mt. Olive, NC 28365 UNITED STATES		

Goods/Services Affected by Opposition

Class 029. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Organic pickles
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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.	4086989	Application Date	05/12/2011
Registration Date	01/17/2012	Foreign Priority Date	NONE
Word Mark	SIMPLY ORGANIC		

Design Mark	SIMPLY ORGANIC
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 2002/12/31 First Use In Commerce: 2002/12/31 On-line retail store services featuring organic products, namely, spices, seasonings, baking mixes, chili mixes, dip mixes, flavors, extracts, gravy mixes, sauce mixes, pasta sauce mixes, and salad dressing mixes, as well as recipes for organic meals and in-store coupons

U.S. Registration No.	2883350	Application Date	01/16/2001
Registration Date	09/07/2004	Foreign Priority Date	NONE
Word Mark	SIMPLY ORGANIC		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2001/08/00 First Use In Commerce: 2001/08/00 VANILLA, EXTRACTS USED AS FLAVORINGS, [PACKAGED ENTREES CONSISTING PRIMARILY OF PASTA OR RICE,] GRAVY MIXES, AND SALAD DRESSING		

U.S. Registration No.	2850654	Application Date	12/21/2000
Registration Date	06/08/2004	Foreign Priority Date	NONE
Word Mark	SIMPLY ORGANIC		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1991/04/00 First Use In Commerce: 1991/04/00 SPICES AND SEASONINGS		

U.S. Registration No.	3402333	Application Date	05/09/2002
Registration Date	03/25/2008	Foreign Priority Date	NONE
Word Mark	SIMPLY ORGANIC		

Design Mark	SIMPLY ORGANIC
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 1991/04/00 First Use In Commerce: 1991/04/00 VANILLA, EXTRACTS USED AS FLAVORINGS[, CAKE MIXES, FROZEN AND PACKAGED ENTREES CONSISTING PRIMARILY OF PASTA OR RICE,] GRAVY MIXES, SALAD DRESSING, [HERBAL TEA, MACARONI AND CHEESE,] SLOPPY JOE SEASONING MIX, SEASONINGS, AND SALAD DRESSING

U.S. Registration No.	3828585	Application Date	05/09/2002
Registration Date	08/03/2010	Foreign Priority Date	NONE
Word Mark	SIMPLY ORGANIC		
Design Mark	SIMPLY ORGANIC		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2000/08/01 First Use In Commerce: 2000/08/01 [PANCAKE MIXES, BROWNIE MIXES, AND] SPICES		

Attachments	85319165#TMSN.png(bytes) 76978759#TMSN.png(bytes) 76405437#TMSN.png(bytes) 87003967_NoticeOpposition_20161005.PDF(287520 bytes) 87003967_NoticeOpposition_ExA_20161005.PDF(383220 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	/Sarah J. Gayer/
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Name	Sarah J. Gayer
Date	10/05/2016

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

FRONTIER DISTRIBUTION LLC)	
)	Opposition No. _____
)	
Opposer,)	
)	Serial No.: 87003967
v.)	
)	Mark: SIMPLY ORGANIC PICKLES
)	
)	Published: September 13, 2016
)	
MOUNT OLIVE PICKLE)	
COMPANY, INC.)	
)	
Applicant.)	
)	
)	

NOTICE OF OPPOSITION

Opposer Frontier Distribution LLC believes it would be damaged by the issuance of a registration for the trademark "SIMPLY ORGANIC PICKLES" as applied for by Mount Olive Pickle Company, Inc. ("Applicant") in Application Serial No. 87003967 filed under Section 1(b) of the Trademark Act on April 18, 2016 for goods identified as "Organic pickles" in International Class 029.

Opposer Frontier Distribution LLC is a Delaware limited liability company with its principal place of business at PO Box 299, Norway, Iowa 52318.

Upon information and belief, Applicant is a corporation of North Carolina, with a mailing address of Corner of Cucumber & Vine, P.O. Box 609, Mt. Olive, North Carolina 28365.

As grounds for its opposition, Opposer alleges as follows:

1. By the Application herein opposed, Applicant is seeking to obtain registration of the mark SIMPLY ORGANIC PICKLES for Organic pickles, with ORGANIC PICKLES disclaimed apart from the mark as shown.

2. Opposer has for many years, and long prior to any date for first use upon which Applicant can rely, adopted and continuously used the “SIMPLY ORGANIC” trademark on and in connection with the manufacture and sale of a whole host of natural and organic foods and related on-line retail store services, and is the owner of multiple U.S. registrations for its SIMPLY ORGANIC mark, as follows:

	Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead
1	85319165	4086989	SIMPLY ORGANIC IC 035. US 100 101 102. G & S: On-line retail store services featuring organic products, namely, spices, seasonings, baking mixes, chili mixes, dip mixes, flavors, extracts, gravy mixes, sauce mixes, pasta sauce mixes, and salad dressing mixes, as well as recipes for organic meals and in-store coupons. FIRST USE: 20021231. FIRST USE IN COMMERCE: 20021231	TARR	LIVE
2	78975502	2883350	SIMPLY ORGANIC IC 030. US 046. G & S: VANILLA, EXTRACTS USED AS FLAVORINGS, [PACKAGED ENTREES CONSISTING PRIMARILY OF PASTA OR RICE,] GRAVY MIXES, AND SALAD DRESSING. FIRST USE: 20010800. FIRST USE IN COMMERCE: 20010800	TARR	LIVE
3	78040327	2850654	SIMPLY ORGANIC IC 030. US 046. G & S: SPICES AND SEASONINGS. FIRST USE: 19910400. FIRST USE IN COMMERCE: 19910400	TARR	LIVE
4	76978759	3402333	SIMPLY ORGANIC IC 030. US 046. G & S: VANILLA, EXTRACTS USED AS FLAVORINGS[, CAKE MIXES, FROZEN AND PACKAGED ENTREES CONSISTING PRIMARILY OF PASTA OR RICE,] GRAVY MIXES, SALAD DRESSING, [HERBAL TEA, MACARONI AND CHEESE,] SLOPPY JOE SEASONING MIX, SEASONINGS, AND SALAD DRESSING. FIRST USE: 19910400. FIRST USE IN COMMERCE: 19910400	TARR	LIVE

5	76405437	3828585	SIMPLY ORGANIC IC 030. US 046. G & S: [PANCAKE MIXES, BROWNIE MIXES, AND] SPICES. FIRST USE: 20000801. FIRST USE IN COMMERCE: 20000801	TARR	LIVE
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A true and accurate copy of each of these registrations, as downloaded from Trademark Electronic Search System (TESS) found at uspto.gov, is attached hereto as Exhibit A.

3. In addition, Opposer has, prior to any date for first use upon which Applicant can rely, adopted and continuously used the “SIMPLY” trademark for closely related goods, and is the owner of U.S. Reg. No. 5,022,785 for “Spices; seasonings; chili mixes in the nature of seasonings; gravy mixes; pasta sauce mixes.”

4. Opposer has expended significant resources to promote its products and services under the SIMPLY and SIMPLY ORGANIC marks throughout the United States. As a consequence, Opposer has established common law rights in these marks.

5. By virtue of Opposer's extensive sales, advertising, and promotion of its goods and services under the SIMPLY and SIMPLY ORGANIC marks, they have become recognizable by the public as exclusively denoting Opposer and its products and services. In addition, these marks have come to symbolize the high quality of Opposer's products and services. As a result of Opposer's substantial effort and investment on behalf of its brand, the goodwill inherent in the SIMPLY and SIMPLY ORGANIC marks are valuable assets of Opposer.

6. Upon information and belief, Opposer's first use in commerce of its SIMPLY and SIMPLY ORGANIC marks precedes any priority date on which Applicant may rely.

7. Applicant's proposed SIMPLY ORGANIC PICKLES mark has a virtually identical sound, meaning, appearance and commercial impression as Opposer's SIMPLY ORGANIC mark with the addition of the generic term PICKLES for pickles.

8. Applicant's Application Serial No. 87003967 disclaims the generic term PICKLES apart from the mark as shown, making SIMPLY ORGANIC the dominant portion of the mark, which is identical to Opposer's SIMPLY ORGANIC mark.

9. The goods and services in connection with which Opposer uses and has registered its SIMPLY and SIMPLY ORGANIC marks are closely related to the goods claimed in Applicant's application.

10. Upon information and belief, the classes of customers for Applicant's goods and Opposer's goods and services are identical or substantially overlapping.

11. Upon information and belief, the channels of trade for Applicant's goods and Opposer's goods and services are identical or substantially overlapping.

12. Accordingly, purchasers are likely to believe and would be justified in believing that Applicant's goods originate from Opposer or from an entity in some way associated with, endorsed by, or sponsored by Opposer.

13. The registration of Applicant's applied-for mark is inconsistent with Opposer's prior rights in its SIMPLY and SIMPLY ORGANIC marks.

CLAIM FOR RELIEF UNDER SECTION

2(D)

14. Opposer repeats and re-alleges each and every allegation contained in paragraphs 1 through 13 as if fully set forth herein.

15. Opposer has used the SIMPLY and SIMPLY ORGANIC marks continually since a date prior to any date on which Applicant may rely.

16. The SIMPLY and SIMPLY ORGANIC marks are exclusively associated with Opposer.

17. Applicant's SIMPLY ORGANIC PICKLES mark takes the totality of Opposer's SIMPLY and SIMPLY ORGANIC marks and merely adds a generic term that is identical to the goods for which Applicant has applied for registration. Minus this generic term, Applicant's mark is identical to Opposer's SIMPLY ORGANIC mark.

18. Because Applicant's SIMPLY ORGANIC PICKLES mark has a virtually identical sound, meaning, appearance and commercial impression as Opposer's SIMPLY and SIMPLY ORGANIC mark for goods related to those offered by Opposer under its SIMPLY and SIMPLY ORGANIC marks, consumers are likely to believe that Applicant's SIMPLY ORGANIC PICKLES mark is Opposer's SIMPLY or SIMPLY ORGANIC mark.

19. The registration by Applicant of SIMPLY ORGANIC PICKLES for goods similar or related to the goods and services provided by Opposer under its SIMPLY and SIMPLY ORGANIC marks is likely to cause confusion or cause mistake or to deceive the purchasing public into mistakenly believing that Applicant's goods offered under the SIMPLY ORGANIC PICKLES mark originate from or are otherwise associated with Opposer or that Applicant's goods are endorsed, sponsored or in some way connected with Opposer in violation of Section 2(d) of the Lanham Act, 15 U.S.C. Section 1052(d). Registration of the mark SIMPLY ORGANIC PICKLES by Applicant is therefore likely to cause confusion, cause mistake or to deceive.

20. By reason of the forgoing, Opposer is likely to be harmed by registration of

Application Serial No. 87003967 for the mark SIMPLY ORGANIC PICKLES.

WHEREFORE, it is respectfully requested that this Opposition be sustained and that the registration sought by Applicant in Application Serial No. 87003967 be refused.

Opposer appoints Robert Hoke, Sarah Gayer, Glenn Johnson, Ryan Carter, Wendy Marsh, and Jeff Harty of the firm Nyemaster Goode, P.C. as its attorneys to prosecute and to transact all business in the Patent and Trademark Office connected therewith.

Please direct all correspondence to the attention of:

Robert W. Hoke
Nyemaster Goode, P.C.
625 First Street SE, Suite 400
Cedar Rapids, IA 52401
Phone: 319-286-7001
Fax: 319-286-7050
Email: rwhoke@nyemaster.com

Respectfully submitted,

FRONTIER DISTRIBUTION LLC

Date: 10-5-2016

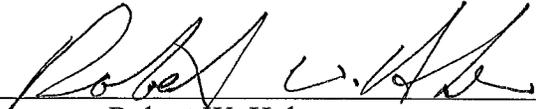
By



Robert W. Hoke
Sarah J. Gayer
Attorneys for Opposer
Nyemaster Goode, P.C.
625 First Street SE, suite 400
Cedar Rapids, IA 52401
Phone: (319) 286-7001
Fax: (319) 286-7050
Email: rwhoke@nyemaster.com

ELECTRONIC MAILING CERTIFICATE

I hereby certify that the NOTICE OF OPPOSITION is being submitted electronically through the Electronic System for the Trademark Trial and Appeal Board (ESTTA) on this 5th day of October, 2016.



Robert W. Hoke

CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing NOTICE OF OPPOSITION to be emailed and deposited with the United States Postal Service with sufficient postage as first-class mail this 5th day of October, 2016 in an envelope addressed to the following attorney of record for the Applicant:

Julia C. Archer
ENNS & ARCHER LLP
939 BURKE STREET
WINSTON-SALEM
NORTH CAROLINA 27101
Email: jarcher@ennsandarcher.com



Robert W. Hoke

EXHIBIT A



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SIMPLY ORGANIC

Word Mark	SIMPLY ORGANIC
Goods and Services	IC 035. US 100 101 102. G & S: On-line retail store services featuring organic products, namely, spices, seasonings, baking mixes, chili mixes, dip mixes, flavors, extracts, gravy mixes, sauce mixes, pasta sauce mixes, and salad dressing mixes, as well as recipes for organic meals and in-store coupons. FIRST USE: 20021231. FIRST USE IN COMMERCE: 20021231
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85319165
Filing Date	May 12, 2011
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	November 1, 2011
Registration Number	4086989
Registration Date	January 17, 2012
Owner	(REGISTRANT) Frontier Distribution LLC LIMITED LIABILITY COMPANY DELAWARE P.O. Box 299 Norway IOWA 52318
Attorney of Record	Robert W. Hoke
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ORGANIC" APART FROM THE MARK AS SHOWN

Type of Mark SERVICE MARK
Register PRINCIPAL
Live/Dead
Indicator LIVE

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Typed Drawing

Word Mark	SIMPLY ORGANIC
Goods and Services	IC 030. US 046. G & S: VANILLA, EXTRACTS USED AS FLAVORINGS, [PACKAGED ENTREES CONSISTING PRIMARILY OF PASTA OR RICE,] GRAVY MIXES, AND SALAD DRESSING. FIRST USE: 20010800. FIRST USE IN COMMERCE: 20010800
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	78975502
Filing Date	January 16, 2001
Current Basis	1A
Original Filing Basis	1B
Published for Opposition	February 10, 2004
Registration Number	2883350
Registration Date	September 7, 2004
Owner	(REGISTRANT) Frontier Cooperative Herbs DBA Frontier Natural Products Co-op Co-Operative Association IOWA 2990 Wilderness Place, Suite 200 Boulder COLORADO 80301 (LAST LISTED OWNER) Frontier Distribution LLC LIMITED LIABILITY COMPANY DELAWARE P.O. Box 299 Norway IOWA 52318
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Robert W. Hoke
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ORGANIC" APART FROM THE MARK AS SHOWN
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20140819.
Renewal	1ST RENEWAL 20140819

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Word Mark	SIMPLY ORGANIC
Goods and Services	IC 030. US 046. G & S: SPICES AND SEASONINGS. FIRST USE: 19910400. FIRST USE IN COMMERCE: 19910400
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	78040327
Filing Date	December 21, 2000
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	March 16, 2004
Registration Number	2850654
Registration Date	June 8, 2004
Owner	(REGISTRANT) FRONTIER NATURAL BRANDS, INC. CORPORATION DELAWARE 2990 WILDERNESS PLACE, SUITE 200 BOULDER COLORADO 80301 (LAST LISTED OWNER) FRONTIER DISTRIBUTION LLC LIMITED LIABILITY COMPANY DELAWARE P.O. Box 299 Norway IOWA 52318
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Robert W. Hoke
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ORGANIC" APART FROM THE MARK AS SHOWN
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20140317.
Renewal	1ST RENEWAL 20140317
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[TSDR](#)[ASSIGN Status](#)[TTAB Status](#)*(Use the "Back" button of the Internet Browser to return to TESS)***SIMPLY ORGANIC**

Word Mark SIMPLY ORGANIC

Goods and Services IC 030, US 046. G & S: VANILLA, EXTRACTS USED AS FLAVORINGS[, CAKE MIXES, FROZEN AND PACKAGED ENTREES CONSISTING PRIMARILY OF PASTA OR RICE,] GRAVY MIXES, SALAD DRESSING, [HERBAL TEA, MACARONI AND CHEESE,] SLOPPY JOE SEASONING MIX, SEASONINGS, AND SALAD DRESSING. FIRST USE: 19910400. FIRST USE IN COMMERCE: 19910400

Mark Drawing Code (1) TYPED DRAWING

Serial Number 76978759

Filing Date May 9, 2002

Current Basis 1A

Original Filing Basis 1B

Published for Opposition March 20, 2007

Registration Number 3402333

Registration Date March 25, 2008

Owner (REGISTRANT) FRONTIER DISTRIBUTION LLC LIMITED LIABILITY COMPANY DELAWARE P.O. BOX 299 NORWAY IOWA 52318

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record ROBERT W. HOKE

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ORGANIC" APART FROM THE MARK AS SHOWN

Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).
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SIMPLY ORGANIC

Word Mark	SIMPLY ORGANIC
Goods and Services	IC 030. US 046. G & S: [PANCAKE MIXES, BROWNIE MIXES, AND] SPICES. FIRST USE: 20000801. FIRST USE IN COMMERCE: 20000801
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	76405437
Filing Date	May 9, 2002
Current Basis	1A
Original Filing Basis	1B
Published for Opposition	March 20, 2007
Registration Number	3828585
Registration Date	August 3, 2010
Owner	(REGISTRANT) FRONTIER DISTRIBUTION LLC LIMITED LIABILITY COMPANY DELAWARE P.O. BOX 299 NORWAY IOWA 52318
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Robert W. Hoke
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ORGANIC" APART FROM THE MARK AS SHOWN
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Affidavit Text	SECT 15. SECT 8 (6-YR).
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