

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: November 2, 2005

ROSE AUSLANDER
SMITH LANDMEIER & ELDERS, P.C.
2 WALL STREET
Geneva, 60134

Re: Application Serial No. **76577847**
Registration No. **0000000**
Mark: **ALTIFOODS**

Helen Johnson, Legal Assistant

On August 2, 2005 and August 30, 2005, **Aldi Inc.** filed extensions of time to oppose with a caption which mis-identified the subject application as application Serial No. **78577847**. The serial number of the application which Aldi Inc. intended to file an extension of time to oppose against was Serial No. **76577847**. As a result of the serial number of the application not being properly identified in the extension of time to oppose, on September 27, 2005 the notice of allowance issued for application Serial No. **76577847** in accordance with Section 13(b)(2) of the Trademark Act.

On October 12, 2005, Aldi Inc. filed a notice of opposition against application Serial No. **76577847**.¹

The Commissioner for Trademarks will cancel a notice of allowance that issues inadvertently. A notice of allowance will be deemed to have been issued inadvertently if a notice of opposition, or a request for extension of time to file an opposition, was timely and properly filed at the Board but

¹ The notice of opposition was not timely filed and must be denied. The matter will be referred to the Finance Branch of the Office for the refund of the \$300.00 opposition fee.

was inadvertently overlooked by the Board. See Trademark Trial and Appeal Board Manual of Procedure (TBMP) §219.

However, a notice of allowance will not be found to have been issued inadvertently if (1) the notice of opposition, or request for extension of time to oppose, was defective in some manner and if (2) that defect prevented the Office from identifying the application in question, and from withholding the issuance of a notice of allowance. In the instant case, **the extensions of time to oppose were defective because they mis-identified the serial number for the application, and that defect prevented the Office from identifying the subject application before the notice of allowance issued.**

These circumstances resulted from an error made by the potential opposer, not from an inadvertent act by the Office. Thus, issuance of the notice of allowance was not inadvertent. See Patent and Trademark Office Rule 1.5(c) ("A letter about a trademark application should identify the serial number, the name of the applicant, and the mark."); and *Quality S. Manufacturing, Inc. v. Tork Lift Central Welding of Kent, Inc.*, 2000 Commr. Pat. LEXIS 66 (April 19, 2000)(issuance of registration held not to be inadvertent where would-be opposer mis-identified the serial number associated with application).²

The potential opposer is not without remedy inasmuch as it is free to petition to cancel application Serial No. 76577847 if and when it matures into a registration.

² This decision is not marked citable as precedent. The Board refers to it only for informational purposes.