



02-22-2002

U.S. Patent & TMO/TM Mail Rept. Dt. #40

TTAB

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

In the Matter of Application Serial No. 76/093288
Published in the *Official Gazette* of January 29, 2002

Del Monte Corporation)
Opposer,)
vs.)
Belmont Produce Sales, Inc.)
Applicant,)

Opposition No.

TAMARA HEAD

do hereby certify that the foregoing documents
are being deposited with the United States
Postal Service as Express Mail, postage
prepaid, in an envelope addressed to the
Assistant Commissioner for Trademarks,
2900 Crystal Drive, Arlington, Virginia
22207-2513, on this date of 2/22/02

ET 131272338 US

BOX TTAB: FEE
ASSISTANT COMMISSIONER FOR TRADEMARKS
2900 CRYSTAL DRIVE
ARLINGTON, VA 22202-3513

February 22, 2002
Post Office Deposit

Notice of Opposition

Del Monte Corporation, (hereinafter referred to as "Del Monte"), a corporation organized and existing under the laws of the State of New York, having its principal place of business at One Market Plaza, San Francisco, CA 94105, believes that it will be damaged by the registration of the mark BELMONT shown in Serial Number 76/093288 in Class 31 for "fresh fruit, namely grapes" (hereinafter referred to as the Goods) and hereby opposes same.

As grounds of opposition, it is alleged that:

1. Applicant seeks to register BELMONT as a trademark for the aforementioned Goods in International Class 31, Based on Use in Commerce since July of 1989, as evidenced by the publication of said mark in the Official Gazette on January 29, 2002.

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300.00 OP

2. Opposer has, since October 1, 1891, used the mark DEL MONTE and variations thereof as a trademark and house mark on a variety of goods in Classes 29, 30, 31 and 32, namely "fresh and canned vegetables, fresh and canned fruits, canned fruit and vegetable juices, canned fish, dried fruits, pickles, vegetables relishes, hot peppers and catsup." Opposer has obtained ownership of Registration No. 881339 (issued on November 25, 1969). Opposer is submitting herewith as part hereof and marked Exhibit A, a copy of the registration certificate.
3. There is no issue as to priority. The filing date of the Application No. 76/093288 is subsequent to the first use date of Opposer's trademark and subsequent to the issuance dates of Opposer's federal registration.
4. Opposer has sold the goods listed in the aforesaid registrations under the mark DEL MONTE and family marks containing DEL MONTE in interstate commerce in the United States. Thus, Opposer has, over the years, developed an exceedingly valuable goodwill with respect to the marks covered by the aforesaid registration.
5. By virtue of its efforts and the expenditure of considerable sums for promotional activities and advertising, and by virtue of the excellence of its products, Opposer has gained for its above-identified marks a most valuable reputation.
6. The trademark proposed for registration by the Applicant, namely, BELMONT is similar to Opposer's mark in appearance, connotation and commercial impression and is intended to be applied to similar goods that are sold by Opposer, and so nearly resembles Opposer's mark as to be likely to be confused therewith and mistaken therefor. Applicant's mark is deceptively similar to Opposer's mark so as to cause

confusion and lead to deception as to the origin of Applicant's goods bearing Applicant's mark.

7. The mark of Applicant is likely to cause confusion and mistake in the minds of the consumer and will therefore cause Opposer to suffer detriment and damage. Opposer has continuously and extensively used the mark DEL MONTE and the family marks containing DEL MONTE since 1891 and such usage has lead them to be regarded by the general public as identifying Opposer as a source of its products. Applicant's intended use of a confusingly similar mark, BELMONTE, on similar goods, will diminish Opposer's goodwill established in the mark as well as cause confusion to the public.
8. Persons familiar with Opposer's mark are likely to buy Applicant's goods as and for a product made and sold by Opposer. Any such confusion in trade inevitably would result in the loss of sales to Opposer. Furthermore, any defect, objection or fault found with Applicant's products marketed under the BELMONT mark would necessarily reflect upon and seriously injure the reputation which Opposer has established for it's products merchandised under the mark DEL MONTE and the family marks containing DEL MONTE.
9. If Applicant is granted the registration herein opposed it would thereby obtain at least a *prima facie* exclusive right to the use of its mark. Such registration would be a source of damage and injury to Opposer.

WHEREFORE, Opposer prays that this opposition may be sustained and that Application Number 76/093288 be refused, and for such other and further relief as the

Commissioner of Patents and Trademarks shall deem proper and required by the
Principals of Equity and Good Conscience.

Opposer hereby gives notice under Rule 2.122(d) of the Rules of Practice that
after hearing and in any appeal on this opposition proceeding, it will rely on its
registration which is annexed as an exhibit to this Notice of Opposition as evidence in
support of this Notice of Opposition.

A duplicate copy of this Notice of Opposition and the fee required in Section
2.6(a)(17) in the amount of \$300.00 per class are enclosed herewith.

Del Monte Corporation,

By and through its attorney



Linda J. Nowlin

DINEFF TRADEMARK LAW LIMITED

820 West Jackson Blvd.

Suite 370

Chicago, Illinois 60607

(312) 831-9800

Dated: February 22, 2002

EXHIBIT "A"

N^o 881339

THE UNITED STATES OF AMERICA

This is to certify that from the records of the Patent Office it appears that an application was filed in said Office for registration of the Mark shown herein, a copy of said Mark and pertinent data from the Application being annexed hereto and made a part hereof,

And there having been due compliance with the requirements of the law and with the regulations prescribed by the Commissioner of Patents,

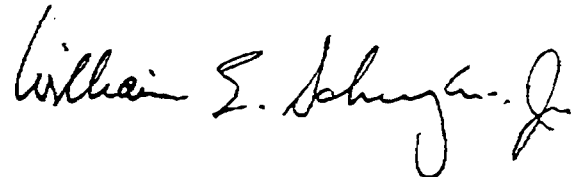
Upon examination, it appeared that the applicant was entitled to have said Mark registered under the Trademark Act of 1946, and the said Mark has been duly registered this day in the Patent Office on the

PRINCIPAL REGISTER

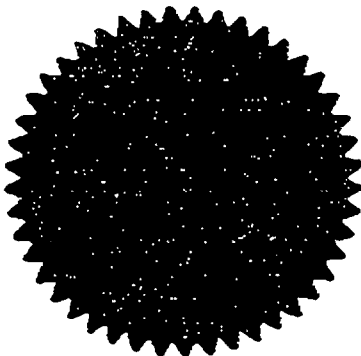
to the registrant named herein.

This registration shall remain in force for Twenty Years unless sooner terminated as provided by law.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed this twenty-fifth day of November, 1969.

A handwritten signature in cursive script, reading "William S. Schuyler, Jr.".

COMMISSIONER OF PATENTS



United States Patent Office

881,339

Registered Nov. 25, 1969

PRINCIPAL REGISTER Trademark

Ser. No. 325,278, filed Apr. 23, 1969

DEL MONTE

Del Monte Corporation (New York corporation)
215 Fremont St.
San Francisco, Calif. 94119

For: SOFT DRINKS, in CLASS 45 (INT. CL. 32).
First use Apr. 23, 1964; in commerce Apr. 24, 1964.

For: FRESH AND CANNED VEGETABLES,
FRESH AND CANNED FRUITS, CANNED FRUIT

AND VEGETABLE JUICES, CANNED FISH, DRIED
FRUITS, PICKLES, VEGETABLE RELISHES, HOT
PEPPERS, AND CATSUP, in CLASS 46 (INT. CLS. 29,
30, 31, and 32).

First use Oct. 1, 1891; in commerce Oct. 1, 1891.
Owner of Reg. Nos. 75,958, 827,921, and others.

D. E. FREED, Examiner

The United States of America



CERTIFICATE OF RENEWAL

The registration shown in this certificate has been renewed in the United States Patent and Trademark Office to the named registrant.

The records of the United States Patent and Trademark Office show that an application for renewal of the registration for the mark shown in this certificate was filed in the Office, that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Commissioner of Patents and Trademarks, and that the registrant is entitled to renewal of the registration for the mark under the Trademark Act of 1946, as Amended.

A copy of the mark and pertinent data from the registration are a part of this certificate.

This registration shall remain in force for TEN (10) years, unless terminated earlier as provided by law.

SEAL

Acting Commissioner of Patents and Trademarks

Int. Cls.: 29, 30, 31 and 32

Prior U.S. Cls.: 45 and 46

United States Patent and Trademark Office

10 Year Renewal

Reg. No. 881,339

Registered Nov. 25, 1969

Renewal Term Begins Nov. 25, 1999

**TRADEMARK
PRINCIPAL REGISTER**

DEL MONTE

DEL MONTE CORPORATION (NEW YORK CORPORATION)
ONE MARKET PLAZA
P.O. BOX 193575
SAN FRANCISCO, CA 941193575, BY MERGER WITH AND CHANGE OF NAME FROM DEL MONTE CORPORATION (NEW YORK CORPORATION) SAN FRANCISCO, CA

OWNER OF U.S. REG. NOS. 75,958, 827,921 AND OTHERS.

FOR: SOFT DRINKS, IN CLASS 45 (INT. CL. 32).

FIRST USE 4-23-1964; IN COMMERCE 4-24-1964.

FOR: FRESH AND CANNED VEGETABLES, FRESH AND CANNED FRUITS, CANNED FRUIT AND VEGETABLE JUICES, CANNED FISH, DRIED FRUITS, PICKLES, VEGETABLE RELISHES, HOT PEPPERS, AND CATSUP, IN CLASS 46 (INT. CLS. 29, 30, 31 AND 32).

FIRST USE 10-1-1891; IN COMMERCE 10-1-1891.

SER. NO. 72-325,278, FILED 4-23-1969.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Feb. 1, 2000.