

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

Hickory Farms, Inc.,)	
)	
Opposer,)	Opposition No.: _____
)	
v.)	Mark: DEL MONTE HONEY GOLD
)	
Del Monte Corporation,)	Serial No.: 78/299,975
)	
Applicant.)	Published in the <i>Official Gazette</i> of
)	June 15, 2004, at TM 444
)	

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NOTICE OF OPPOSITION

In the matter of the Application to register DEL MONTE HONEY GOLD (identified by the Serial Number 78/299,975) (hereinafter the Application) in International Class 31, currently in the name of Del Monte Corporation (hereinafter, Applicant), filed on September 12, 2003, which was published in the June 15, 2004, *Official Gazette*, at TM 444, Hickory Farms, Inc., a Delaware corporation, having its principal place of business at 1505 Holland Road, Maumee, Ohio, 43537 (hereinafter, Opposer), believes it would be damaged by the registration of the mark shown in the Application, and hereby opposes the Application. The enclosed check for \$300 is believed to cover the statutory filing fees for the opposition. If this amount is insufficient, for any reason, please charge any shortfall, missing or excess fees to Deposit Account No. 12-0400.

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The grounds for opposition are as follows:

1. The Application was filed on September 12, 2003, based upon an asserted *bona fide* intention to use the mark shown in the Application in connection with "fresh pineapple" in class 31.



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2. Opposer holds prior rights in the mark HoneyGold based upon its prior continuous use in commerce of HoneyGold, and its existing registration (U.S. Registration Number 2,764,977) for the mark HoneyGold.

3. Opposer owns U.S. Reg. No. 2,764,977 for the mark HoneyGold for “ham and poultry”, in International Class 29, which was registered on the Principal Register September 16, 2003, issued upon an application filed in the U.S. Patent and Trademark Office on May 2, 2001 and supported by a claim of first use at least as early as January 2001 and first use in commerce at least as early as August 2002, all three dates being long prior to the filing of the subject Application.

4. Opposer’s registration for HoneyGold (Reg. No. 2,764,977) is valid and subsisting, is in full force and effect, and is *prima facie* evidence of Opposer’s exclusive right to use that mark in commerce on, or in connection with, the services identified in the registration.

5. Opposer has used its HoneyGold mark in commerce continuously since at least as early as August 2002 in connection with the goods identified in its registration (2,764,977), and Opposer has, extensively promoted such goods under its HoneyGold mark to the relevant trade and to the consuming public.

6. By reason of Opposer’s: aforesaid registration for, lengthy and continuous use of, and extensive promotion and sale of goods under the HoneyGold mark, Opposer’s HoneyGold mark is recognized by the relevant trade and public as identifying Opposer.

7. Applicant's claimed DEL MONTE HONEY GOLD mark as indicated in the Application, is virtually identical, or similar, to Opposer's HoneyGold mark.

8. Upon information and belief that, the goods covered by the Application are: similar, closely related, and/or complementary, to the goods in connection with which Opposer's HoneyGold mark is, has been, and will be, used and promoted.

9. Upon information and belief that, the goods covered by the Application are likely to travel in the same or similar trade channels as those in connection with which Opposer's HoneyGold mark are, have been, and will be, used and promoted.

10. Upon information and belief that the goods covered by the Application will be promoted, sold, offered or provided for sale, to the same potential customers, consumers or end-users, as those to whom the goods in connection with which Opposer's HoneyGold mark are, have been, and will be, promoted, sold, offered or provided.

11. In view of the similar, related and/or complementary nature of the goods of the respective parties, it is alleged that the mark covered by the Application so resembles Opposer's registered mark HoneyGold (Reg. No. 2,764,977), as to be likely, when registered or used on or in connection with the goods identified in the Application, as to cause a likelihood of confusion, mistake, or deception.

12. In addition to its registration for HoneyGold, Opposer has, since long prior to the filing date of the Application, used its HoneyGold mark on, or in connection with, its goods. Opposer's use of its HoneyGold mark has been valid and continuous and has not been abandoned, and has included use on goods which are similar, related, and/or complementary, to, those covered by the Application.

13. Opposer has extensively promoted various goods under Opposer's HoneyGold mark to the relevant trade and to the consuming public.

14. Opposer's HoneyGold mark has, through such use and promotion, come to be associated with such goods, and is recognized as identifying Opposer.

15. As a result of Opposer's extensive use of its HoneyGold mark, as well as the expenditure of significant time and effort in advertising and promoting the HoneyGold mark, Opposer's HoneyGold mark has achieved overwhelming recognition, and evidences significant goodwill for Opposer.

16. In view of the similar, related and/or complementary nature of the goods and services of the respective parties, it is alleged that, the mark covered by the Application so resembles Opposer's HoneyGold mark, previously used in the United States, and not abandoned, as to be likely, when registered or used on or in connection with the goods identified in the Application to cause a likelihood of confusion, mistake or deception.

17. In view of the foregoing, and the virtual identicalness of the respective marks, and the similarity of the respective goods, it is alleged that the Applicant's use and/or registration of the mark covered by the Application to identify or designate the goods identified in the Application, is likely to cause confusion, or to cause mistake, or to deceive as to: the affiliation, connection, or association of the Applicant or the Applicant's activities, with the Opposer; or as to origin, sponsorship, or approval of the Applicant or the Applicant's goods, services or commercial activities, by the Opposer.

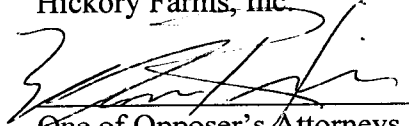
18. Opposer has not consented to the registration or the use of the mark covered by the Application, and in view of the foregoing, Opposer alleges that, it will be damaged by the issuance of a registration based upon the Application.

WHEREFORE, Opposer prays that the Application (Ser. No. 78/299,975) be rejected and that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

This Notice of Opposition is being filed in triplicate. A check for \$300 to cover statutory filing fees for the Opposition is enclosed. If this amount is insufficient for any reason, please charge any shortfall, missing or excess fees to Deposit Account No. 12-0400.

Please address all correspondence to Maureen R. Smith, at Ladas & Parry, 224 South Michigan Avenue, Chicago, Illinois 60604.

Respectfully submitted,
Hickory Farms, Inc.



One of Opposer's Attorneys
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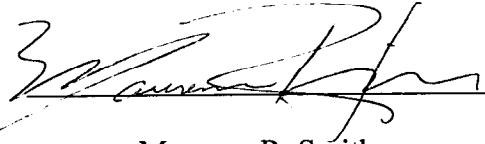
Date: October 12, 2004

CERTIFICATE OF FIRST CLASS MAILING

I hereby certify that the foregoing Notice of Opposition (to Application No. 78/299,975) (along with a check for \$300) is being deposited (in triplicate), with the United States Postal Service, as First Class Mail, postage prepaid, in an envelop addressed as follows:

Commissioner for Trademarks
Attn: TTAB
P.O. Box 1451
Arlington, Virginia 22313-1451

on this, the 12th day of October, 2004.

A handwritten signature in black ink, appearing to read 'Maureen R. Smith', written over a horizontal line.

Maureen R. Smith