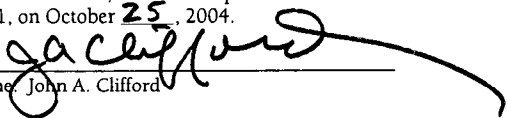


IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

_____)
Nash-Finch Company,)
Opposer,) Opposition No. _____
v.)
C.B. Fleet Investment Corporation,)
Applicant.)
_____)
Serial No.: 76/561,923
Mark: VALUE CHOICE

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited in the United States Postal Service, as first class mail, in an envelope addressed to: Assistant Commissioner for Trademarks, Box TTAB, P.O. Box 1451 Alexandria, Virginia 22313-1451, on October 25, 2004.
By: 
Name: John A. Clifford

NOTICE OF OPPOSITION

To The Assistant Commissioner for
Trademarks
ATTN: BOX TTAB
P.O. Box 0120
Alexandria, Virginia 22313-1451

Dear Sir:

Opposer, Nash-Finch Company, a corporation duly organized and existing under the laws of Delaware, with a mailing address of 7600 France Avenue South; Minneapolis, Minnesota 55435, believes that it will be damaged by the registration of the mark shown in Application Serial No. 76/561,923 filed November 25, 2003 by Applicant, C.B. Fleet Investment Corporation, a corporation duly organized and existing under the laws of Delaware, with a mailing address of 300 Delaware Avenue; Suite 900; Wilmington, Delaware 19801 , and hereby opposes registration of the mark. The grounds for opposition are as follows,

1. By the application herein opposed, Applicant is seeking to obtain under the provisions of the Trademark Act of 1946 as amended, registration on the Principal Register of the Trademark VALUE CHOICE for laxatives and bowel cleansing preparations, namely, enemas, capsules, tablets, oral solutions, suppositories, and other dosage forms (International Class 05). No Amendment to Allege Use has been filed. The application is

based only on Section 1 (b) of the Trademark Act, Applicant claiming only to have an intention to use the mark.

2. Opposer is a large wholesaler, distributor, and retailer of grocery and pharmacy products. Opposer provides a full line of shelf stable groceries to grocery store operators throughout a large portion of the United States. Opposer provides pharmacy products to grocers who operate pharmacies in or near their grocery stores. Opposer also operates its own grocery stores, many of which sell pharmacy products, or include pharmacies.
3. Opposer is the owner of U.S. Trademark Application No. 76/357,486, filed on January 10, 2002, for the mark VALUE CHOICE for:

pine oil cleaner, fabric softener, automatic dishwasher detergent, ammonia cleaner, dry bleach (int. cl. 4) charcoal briquettes, charcoal lighter fluid (int. cl. 16) disposable diapers, plastic wrap, plastic garbage bags, plastic picnic plates (int. cl. 21) hot beverage cups of paper and foam, foam picnic plates, paper plates, bowls, plastic cups, paper cups (int. cl. 29) American cheese slices, shredded cheese substitute, frozen vegetables, canned mushrooms, margarine, chili, mixed roasted nuts, jellies, potato chips, salmon for human consumption, pickles, shoestring potatoes (int. cl. 30) ice cream, flour, sugar, garlic salt, cookies, crackers, canned milk, bar-b-que sauce, hot sauce, spaghetti sauce, relish, pancake syrup, vanilla extract, chocolate syrup, taco seasoning, salad dressing, black pepper (int. cl. 31) cat litter, dog biscuits

and U.S. trademark Application No. 76/301,420 filed on August 17, 2001 for the mark VALUE CHOICE for:

int. cl. 3) dishwashing detergent, laundry detergent, bleach (int. cl. 6) aluminum foil (int. cl. 16) paper towels, napkins, bath tissue, facial tissue, paper plates (int. cl. 29) meals consisting of meat, fish or poultry in ready to cook portions, peanut butter, pickles, canned fruit and canned vegetables (int. cl. 30) macaroni, noodles, spaghetti, rice, coffee, spaghetti sauce, tea, pretzels, nacho chips, cocoa, catsup, mustard (int. cl. 31) pet food (int. cl. 32) fruit juice and fruit drink

4. Opposer's mark VALUE CHOICE has been in use in interstate commerce since at least 2002, has been advertised and promoted by Opposer, and has developed and represents valuable goodwill inuring to the benefit of Opposer. Opposer's mark has trademark significance to purchasers and potential purchasers. At no time has Opposer ceased use of its mark with no intent to resume use, and at no time did Opposer abandon its mark. Opposer's VALUE CHOICE line is a private label brand for a full line of grocery products.

5. Applicant's mark is confusingly similar to Opposer's mark. The two are identical in pronunciation, spelling, and meaning, and both have the same appearance.
6. Due to the similarity between Applicant's claimed mark, and Opposer's previously used mark, and the closely related nature of the goods, customers are likely to view Applicant's goods as Opposer's goods or as a line extension of Opposer's goods marketed under the same mark.
7. The goods and services sold and intended to be sold by Opposer are closely related to the goods to be sold by Applicant.
8. Opposer's and Applicant's goods are sold in the same channels of trade to the same customers or class of consumers.
9. Due to the confusing similarity of Opposer's previously used trademark with Applicant's proposed trademark and the closely related nature of the goods of the respective parties, customers and potential customers are likely to believe that Applicant's goods originate from Opposer, resulting in a likelihood of confusion in the marketplace and damage to Opposer.
10. The use or registration by Applicant of the mark VALUE CHOICE is likely to cause confusion or to cause mistake or deception in the trade, and among purchasers and potential purchasers, with Opposer's previously used mark VALUE CHOICE again resulting in damage to Opposer.
11. Because of the closely related nature of the goods, and the identical nature of the marks, use of the mark VALUE CHOICE by Applicant is likely to cause confusion, mistake, or deception that Applicant's goods and services are those of Opposer, or are otherwise endorsed, sponsored, or approved by Opposer causing further damage to Opposer.
12. Registration of the mark shown in Application Serial No. 76/561,923 will result in damage to Opposer under the provisions of Section 2(a) and 2(d) of the U.S. Trademark Act, 15 U.S.C. Section 1052, pursuant to the allegations stated above.

WHEREFORE, Opposer asks that its opposition to this application be sustained and that the registration of the term VALUE CHOICE as set forth therein be refused.

Please direct all correspondence to the attention of:

John A. Clifford
Merchant & Gould P.C.
PO Box 2910
Minneapolis, MN 55402
612.336.4616

Opposer hereby appoints Allen W. Hinderaker, Kristina M. Foudray; Brian H. Batzli, Reg. No. 32,960; John L. Beard, Reg. No. 27,612; John A. Clifford, Reg. No. 30,247; Sandra Epp Ryan, Reg. No. 39,667; Gregory C. Golla; John D. Gould, Reg. No. 18,223; Curtis B. Hamre, Reg. No. 29,165; Scott W. Johnston, Reg. No. 39,721; D. Randall King; Anna W. Manville; and Paul A. Welter, Reg. No. 20,890 of Merchant & Gould P.C. as its attorneys with the full power to represent the Opposer in connection with this application.

Accompanying the duplicate signed copies of this Notice of Opposition is the required fee of \$300.00. Please charge any excess fees or credit any overpayment to Deposit Account No. 13-2725 of Opposer's counsel noted above.


Respectfully submitted,

Nash-Finch Company.

By its attorneys,

Date:

25 Oct. 2004


John A. Clifford

Merchant & Gould

An Intellectual Property Law Firm

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612.336.4616

A Professional Corporation

Nash-Finch Company,)
Opposer,)
v.) Opposition No. _____
C.B. Fleet Investment Corporation,)
Applicant.)
)

TTAB

Mark: VALUE CHOICE
Serial No.: 76/561,923
Docket Number: 1183.173-US-TC
Publication Date: August 24, 2004

Due Date: October 23, 2004
Filing Date: November 25, 2003

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this Transmittal Letter and the paper, as described herein, are being deposited in the United States Postal Service, as first class mail, in an envelope addressed to: Commissioner for Trademarks P.O. Box 1451 Alexandria, Virginia 22313-1451, on October 25, 2004

By: 
Name: John A. Clifford


Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

Dear Commissioner:

We are transmitting herewith the attached:

- Return postcard.
- Transmittal Sheet in duplicate containing Certificate Under 37 C.F.R. 1.8
- Notice of Opposition (1 Original and 1 Copy)
- Check in the amount of \$300.00 to cover Filing Fee.

Please charge any additional fees or credit overpayment to Deposit Account No. 13-2725. A duplicate copy of this sheet is enclosed.

By: 
Name: John A. Clifford
Reg. No.: 30,247
JAC/aes



(CONTESTED MATTER)

10-28-2004

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #74