

ESTTA Tracking number: **ESTTA80752**

Filing date: **05/15/2006**

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	Hardee's Food Systems, Inc.
Granted to Date of previous extension	05/14/2006
Address	505 N. 7th Street, Suite 2000 St. Louis, MO 63101 UNITED STATES

Attorney information	Kevin J. McDevitt Neal & McDevitt, LLC 1776 Ash Street Northfield, IL 60093 UNITED STATES pto@nealmcdevitt.com Phone:847-441-9100
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**Applicant Information**

Application No	78569654	Publication date	11/15/2005
Opposition Filing Date	05/15/2006	Opposition Period Ends	05/14/2006
Applicant	Yardee's Inc. 20420 NE 10 Place North Miami Beach, FL 33179 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 030. First Use: 2004/05/12 First Use In Commerce: 2004/05/12 All goods and sevicees in the class are opposed, namely: Food products, namely, vinegar, salt, sauces and spices
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Attachments	statement of claim.pdf ( 3 pages )(72296 bytes )
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Signature	/Kevin J. McDevitt/
Name	Kevin J. McDevitt
Date	05/15/2006

Grounds for opposition to registration are as follows:

1. Opposer, through itself, its franchisees, subsidiaries and predecessors-in-interest, is using and has used the mark HARDEE'S since at least as early as 1960 for a wide variety of goods and services. Opposer's HARDEE'S mark is well known throughout the United States and many parts of the world.

2. Opposer, through itself, its franchisees, subsidiaries and predecessors-in-interest, is engaged and for many years has been engaged in the extensive promotion and sale of a broad variety of goods and services in the food product and restaurant service fields.

Opposer's goods and services include, but are not limited to, food products, clothing and restaurant services ("Opposer's goods and services").



3. Opposer, its franchisees, subsidiaries and predecessors-in-interest have expended substantial resources to advertise and promote Opposer's goods and services under Opposer's HARDEE'S mark.

4. Since long prior to Applicant's filing of its application to register the mark YARDEE'S, Opposer, through itself, its franchisees, subsidiaries and predecessors-in-interest, has used Opposer's HARDEE'S mark in interstate commerce in connection with Opposer's goods and services.

5. By reason of Opposer's, its franchisees', subsidiaries' and predecessors-in-interest's advertisement and extensive promotion and use, as well as the wide distribution of Opposer's goods and services, Opposer's HARDEE'S mark has come to be well recognized as signifying Opposer and identifying Opposer's goods and services.

6. Opposer, through itself, its franchisees, subsidiaries and predecessors-in-interest, has built up extensive goodwill in connection with Opposer's HARDEE'S mark.

7. Opposer owns among other federal registrations and applications, the following federal registrations for its HARDEE'S mark:

Mark	Reg. No.	ID of Goods/Services
HARDEE'S	741,048	Restaurant services
HARDEE'S	1,729,627	Hot dogs, chili, mayonnaise, beefsteaks, cheese, hamburgers, cheeseburgers, french fries, milk, vegetable-derived shortening, pickle chips, garden salads, eggs, sausage, bacon, chicken wings, processed potatoes, fried chicken and roast beef in Class 29 and mustard, milk shakes, apple turnovers, cherry turnovers, coffee, tartar sauce, meat sauce, tea, ketchup, fish sandwiches, steak sandwiches, hamburger sandwiches, hot chocolate, ham sandwiches, chicken sandwiches, ice cream, frozen confections, frozen yogurt, biscuits, pancakes, gravy, tortillas, cookies and pizza in Class 30 and carbonated and non-carbonated soft drinks and orange juice in Class 32
HARDEE'S	1,825,221	Clothing; namely, sweaters, shirts, caps, hats, visors, shoes, sweatshirts, sweat pants, jackets and shorts
	1,774,336	Hot dogs, chili, mayonnaise, beefsteaks, cheese, hamburgers, cheeseburgers, french fries, milk, vegetable-derived shortening, pickle chips, eggs, sausage, bacon, chicken wings, processed potatoes, fried chicken, roast beef and salads except macaroni, rice and pasta salad in Class 29 and mustard, milk shakes, apple turnovers, cherry turnovers, coffee, tea, hot chocolate, tartar sauce, meat sauce, catsup, fish sandwiches, steak sandwiches, hamburger sandwiches, ham sandwiches, turkey sandwiches, chicken sandwiches, ice cream, frozen yogurt, biscuits, muffins, pancakes, gravy, tortillas, cookies and pizza in Class 30 and carbonated and non-carbonated soft drinks and orange juice in Class 32 and restaurant services in Class 42
	1,817,990	Clothing; namely, sweaters, shirts, caps, hats, visors, shoes, sweatshirts, sweat pants, jackets and shorts

8. Notwithstanding Opposer's prior rights in and to Opposer's HARDEE'S mark, Applicant filed Application Serial No. 78/569,654 for registration of the mark YARDEE'S for "food products, namely, vinegar, salt, sauces and spices" in International Class 30. This application was published in the November 15, 2005 edition of the *Official Gazette*

*(Trademarks)* of the United States Patent and Trademark Office, and Opposer has filed Requests for Extension of Time to File Notice of Opposition until May 14, 2006.

9. Applicant's alleged YARDEE'S mark is confusingly similar to Opposer's HARDEE'S mark. Applicant's use and attempted registration of the mark YARDEE'S in connection with "food products, namely, vinegar, salt, sauces and spices" is likely to cause confusion, deception, and mistake among purchasers.

10. Applicant's use and registration of the mark YARDEE'S will cause dilution of the distinctive quality of Opposer's famous HARDEE'S mark.

11. Applicant's registration of the YARDEE'S mark will interfere with Opposer's rights in Opposer's HARDEE'S mark and will seriously damage Opposer, its business and its goodwill.

WHEREFORE, Opposer respectfully prays that this opposition be sustained, that U.S. Trademark Application Serial No. 78/569,654 for the mark YARDEE'S be rejected, and that registration by Applicant be denied.