

ESTTA Tracking number: **ESTTA101374**

Filing date: **09/27/2006**

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	PomWonderful LLC		
Entity	limited liability company	Citizenship	Delaware
Address	11444 W. Olympic Blvd. Los Angeles, CA 90064 UNITED STATES		

Attorney information	Christine L. Lofgren Jeffer, Mangels, Butler & Marmaro LLP 1900 Avenue of the Stars, 7th Floor Los Angeles, CA 90067 UNITED STATES trademarkdocket@jmbm.com Phone:310-203-8080		
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Applicant Information

Application No	78829152	Publication date	08/29/2006
Opposition Filing Date	09/27/2006	Opposition Period Ends	09/28/2006
Applicant	Jarrow Formulas, Inc. 1824 South Robertson Blvd. Los Angeles, CA 900354317 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Dietary supplements; Nutritional supplements; Vitamin supplements; Vitamins
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Attachments	651000025.pdf (7 pages)(251784 bytes)
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Signature	/christine l lofgren/
Name	Christine L. Lofgren
Date	09/27/2006

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

PomWonderful LLC,

 Opposer,

 v.

Jarrow Formulas, Inc.,

 Applicant.

Opposition No. _____

Appl. Serial No.: 78/829,152

Mark: POMOPTIMIZER

Published for Opposition:
August 29, 2006

Atty Ref. No.: 65100-0025

NOTICE OF OPPOSITION

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

Opposer PomWonderful LLC, a Delaware limited liability company, located at 11444 W. Olympic Blvd., Los Angeles, California 90064 ("Opposer"), believes that it is and will be damaged by the registration on the Principal Register of POMOPTIMIZER ("Applicant's Mark" or the "POMOPTIMIZER mark") in connection with all of the goods in Int. Class 5 identified in Application Serial No. 78/829,152 ("Applicant's Application") in the name of Jarrow Formulas, Inc. ("Applicant"), and Opposer hereby opposes the registration of Applicant's Application.

As grounds for this Opposition, it is alleged that:

1. On information and belief, Applicant is a California corporation with a principal place of business at 1824 South Robertson Blvd., Los Angeles, California 90035.

2. Applicant filed Applicant's Application on or about March 3, 2006 based on an intent to use the POMOPTIMIZER mark in connection with "dietary supplements; nutritional supplements; vitamin supplements; vitamins" in Int. Class. 5.

3. Applicant's Application for the POMOPTIMIZER mark was published for opposition on August 29, 2006 in connection with "dietary supplements; nutritional supplements; vitamin supplements; vitamins" in Int. Class 5 (collectively, "Applicant's Goods").

4. Opposer is the largest grower and distributor of pomegranates and pomegranate juice (collectively, "Opposer's Goods") in the United States. Opposer has sold fresh pomegranate fruit under the distinctive trademarks POM and POM WONDERFUL and related trademarks containing the distinctive element POM (collectively, the "POM Marks") since at least as early as October 2001. Opposer has sold pomegranate juice under the POM Marks since at least as early as April 2002. Opposer's use of the POM Marks has been continuous since the date of first use.

5. Opposer is the owner of a family POM Marks and registrations thereof in the U.S. Patent and Trademark Office, including, but not limited to the following (collectively, the "POM Registrations" and also, collectively, the "POM Marks"):

(a) POM (in standard characters), Reg. No. 2,637,053 issued on October 15, 2002 in connection with "fruit juices" in Int. Class 32;

(b) POM WONDERFUL (in standard characters), Reg. No. 2,640,835 issued on October 22, 2002 in connection with "fresh fruits" in Int. Class 31;

- (c) POM WONDERFUL (stylized with color claimed), Reg. No. 2,780,314 issued on November 4, 2003 in connection with "fresh fruits" in Int. Class 31 and "fruit juices and fruit juice concentrates" in Int. Class 32;
- (d) POM WONDERFUL (stylized), Reg. No. 2,864,641 issued on July 20, 2004 in connection with "fresh fruits" in Int. Class 31 and "fruit juices and fruit juice concentrates" in Int. Class 32;
- (e) POM WONDERFUL and Design, Reg. No. 2,644,365 issued on October 29, 2002 in connection with "fresh fruits" in Int. Class 31;
- (f) POM PASSION, Reg. No. 2,944,482 issued on April 26, 2005 in connection with "fruit smoothies" in Int. Class 32;
- (g) POM POWER, Reg. No. 2,944,481 issued on April 26, 2005 in connection with "fruit smoothies" in Int. Class 32;
- (h) POM BEACH, Reg. No. 3,013,614 issued on November 8, 2005 in connection with "fruit juice" in Int. Class 32;
- (i) POMARITA, Reg. No. 2,981,525 issued on August 2, 2005 in connection with "fruit juice for use in connection with prepared alcoholic cocktails" in Int. Class 32;
- (j) POMTINI, Reg. No. 2,981,524 issued on August 2, 2005 in connection with fruit juice for use in connection with prepared alcoholic cocktails,
- (k) POMTINI, Reg. No. 2,960,193 issued on June 7, 2005 in connection with "prepared alcoholic cocktail" in Int. Class 33;

(l) POMARITA, Reg. No. 2,960,192 issued on June 7, 2005 in connection with "prepared alcoholic cocktail" in Int. Class 33; and

(m) POM (Stylized), Reg. No. 3,047,447 issued on January 24, 2006 in connection with "fresh fruits" in Int. Class 31 and "fruit juices and fruit juice concentrates" in Int. Class 32.

6. Opposer's POM Registrations are unrevoked and uncanceled, and Opposer is the owner of each registration and mark shown therein, as well as all of the business and goodwill connected therewith. Opposer's POM Registrations are *prima facie* evidence of Opposer's exclusive right to use the POM Marks in commerce in connection with the goods specified in the respective registrations.

7. Opposer has used the POM Marks in connection with Opposer's Goods since prior to March 3, 2006, the filing date of Applicant's Application for the POMOPTIMIZER mark based on intent to use.

8. The filing dates of Opposer's federal trademark applications that matured into the POM Registrations each predate March 3, 2006, the filing date of Applicant's Application for the POMOPTIMIZER mark based on intent to use.

9. Since prior to March 3, 2006, the filing date of Applicant's Application for the POMOPTIMIZER mark based on intent to use, Opposer and its affiliates have widely advertised and promoted the POM Marks in connection with Opposer's Goods, with the result that the POM Marks, and, in particular, the word POM, by itself or joined with a suffix or followed by another word, have become famous marks associated with Opposer in the United States. Because of these efforts, and by virtue of the excellence and tremendous commercial

success of Opposer's Goods sold under the POM Marks, Opposer has built up a valuable reputation and tremendous goodwill in the POM Marks belonging exclusively to Opposer.

10. Opposer and its affiliates have invested substantial resources in research regarding the beneficial effects of pomegranates and pomegranate byproducts. The efforts of Opposer and its affiliates have resulted in opening a market for a wider range of pomegranate products, which products and market did not exist when Opposer first began selling Opposer's Goods under the POM Marks in 2001 and 2002.

11. As a result of the research and development efforts of Opposer and its affiliates and the market that Opposer has developed for pomegranate products, Opposer intends to expand its use of the POM Marks into additional consumer goods in the field of dietary and nutritional supplements, extracts for use in pharmaceutical products, beverages, and other goods and services. Opposer has filed numerous trademark applications in the U.S. patent and Trademark Office for the POM Marks and additional variations thereof containing the distinctive element POM in connection with goods that are a natural expansion of Applicant's use of the POM Marks, including, but not limited to the following applications and goods as representative examples: POM POWERFUL (in standard characters), App. Serial No. 78/628,747, POM-ED (in standard characters) and POM-ED (Stylized), App. Serial Nos. 78/628,819 and 78/636,622, POM-CV (in standard characters) and POM-CV (Stylized), App. Serial Nos. 78/628,853 and 78/636,621, POM-PC (in standard characters) and POM-PC (Stylized), App. Serial Nos. 78/634,393 and 78/636,613, POM TONIC (in standard characters), App. Serial No. 78/780,514, POMx TONIC (in standard characters), App. Serial No. 78/780,512, POM SHOTS (in standard characters), App. Serial No.

78/780,511, POMx SHOTS (in standard characters), App. Serial No. 78/780,508, POMx (stylized) and POMx (in standard characters), App. Serial Nos. 78/779,896 and 78/779,894, POMo (in standard characters), App. Serial No. 78/780,529, POM (stylized) and POM (in standard characters), App. Serial Nos. 78/772,696 and 78/772,692, each application including goods in Int. Class 5.

12. Pursuant to Section 13(a) of the Trademark Act (15 U.S.C. § 1063(a)), Opposer believes it will be damaged by the registration of the POMOPTIMIZER mark in connection with Applicant's Goods in Int. Class 5.

13. Applicant's Mark POMOPTIMIZER so resembles Opposer's POM Marks as to be likely, when used in connection with Applicant's Goods, to cause confusion, or to cause mistake, or to deceive. Consumers will incorrectly believe that Applicant's use of the POMOPTIMIZER mark in connection with Applicant's Goods is in some way associated or connected with or sponsored, authorized or approved by Opposer. Any objection or fault found with Applicant's Goods offered and provided under the POMOPTIMIZER mark would reflect upon and seriously injure the reputation that Opposer has established in the POM Marks.

14. Applicant's Mark POMOPTIMIZER is applied for in connection with goods in Int. Class 5 that are related to Opposer's Goods and are also among the natural scope of expansion of Opposer's Goods.

15. Registration of Applicant's Mark POMOPTIMIZER in connection with Applicant's Goods will cause the distinctiveness of Opposer's famous POM Marks to be diluted and would thereby be a source of damage and injury to Opposer.

16. Registration of Applicant's Mark POMOPTIMIZER will falsely suggest a connection with Opposer.

17. If Applicant is granted the registration herein opposed, Applicant would thereby obtain at least a *prima facie* exclusive right to use of the POMOPTIMIZER mark in connection with the goods in Int. Class 5 identified in Application Serial No. 78/829,152. Such registration would be a source of damage and injury to Opposer.

WHEREFORE, and in accordance with Section 13 of the Trademark Act (15 U.S.C. § 1063), Opposer prays that this Opposition be sustained and that Application Serial No. 78/829,152 be refused registration.

The required fee of three hundred dollars (\$300) is submitted herewith. Please charge any deficiency or credit any overpayment to Deposit Account No. 10-0440.

Respectfully submitted,

Dated: September 27, 2006

By: Christine L. Lofgren

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