

ESTTA Tracking number: **ESTTA127359**

Filing date: **02/28/2007**

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 parties oppose registration of the indicated application.

Opposers Information

Name	The Federated Group, Inc.
Granted to Date of previous extension	03/07/2007
Address	3025 West Salt Creek Lane Arlington Heights, IL 60005 UNITED STATES

Name	Red & White Foundation
Granted to Date of previous extension	03/07/2007
Address	231 South LaSalle Street Chicago, IL 60697 UNITED STATES

Attorney information	Joseph T. Nabor Fitch, Even, Tabin & Flannery 120 S. LaSalle Street Suite 1600 Chicago, IL 60603-3406 UNITED STATES Trademark@fitcheven.com Phone:312.577.7000
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Applicant Information

Application No	78849223	Publication date	11/07/2006
Opposition Filing Date	02/28/2007	Opposition Period Ends	03/07/2007
Applicant	Red White & Bubbly LLC 230 Flatbush Avenue Brooklyn, NY 11217 UNITED STATES		

Goods/Services Affected by Opposition

Class 016. First Use: 2001/03/31 First Use In Commerce: 2001/03/31
All goods and services in the class are opposed, namely: Catalogs in the field of wine, food and related goods; newsletters in the field of wine, food and related goods

Applicant Information

Application No	78849205	Publication date	11/07/2006
Opposition Filing Date	02/28/2007	Opposition Period Ends	

Applicant	Red White & Bubbly LLC 230 Flatbush Avenue Brooklyn, NY 11217 UNITED STATES
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Goods/Services Affected by Opposition

Class 035. First Use: 2001/02/16 First Use In Commerce: 2001/02/16 All goods and sevicees in the class are opposed, namely: Retail shops featuring wine, liquors and spirits

Applicant Information

Application No	78849182	Publication date	10/31/2006
Opposition Filing Date	02/28/2007	Opposition Period Ends	
Applicant	Red White & Bubbly LLC 230 Flatbush Avenue Brooklyn, NY 11217 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. First Use: 2001/02/16 First Use In Commerce: 2001/02/16 All goods and sevicees in the class are opposed, namely: Clothing namely, short-sleeved or long-sleeved t-shirts, aprons, smocks, polo shirts, sweatshirts, shirts, sweaters, jackets, pullovers and hats

Applicant Information

Application No	78849175	Publication date	10/31/2006
Opposition Filing Date	02/28/2007	Opposition Period Ends	
Applicant	Red White & Bubbly LLC 230 Flatbush Avenue Brooklyn, NY 11217 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. First Use: 2001/02/16 First Use In Commerce: 2001/02/16 All goods and sevicees in the class are opposed, namely: Retail shops featuring wine, liquor and spirits
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Applicant Information

Application No	78849159	Publication date	10/31/2006
Opposition Filing Date	02/28/2007	Opposition Period Ends	
Applicant	Red White & Bubbly LLC 230 Flatbush Avenue Brooklyn, NY 11217 UNITED STATES		

Goods/Services Affected by Opposition

Class 016. First Use: 2001/03/31 First Use In Commerce: 2001/03/31 All goods and sevicees in the class are opposed, namely: Catalogs in the field of wine, food and related goods; newsletters in the field of wine, food and related goods
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Applicant Information

Application No	78849230	Publication date	11/07/2006
Opposition Filing Date	02/28/2007	Opposition Period Ends	
Applicant	Red White & Bubbly LLC 230 Flatbush Avenue Brooklyn, NY 11217 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. First Use: 2001/02/16 First Use In Commerce: 2001/02/16
All goods and services in the class are opposed, namely: Clothing namely, short-sleeved or long-sleeved t-shirts, aprons, smocks, polo shirts, sweatshirts, shirts, sweaters, jackets, pullovers and hats

Applicant Information

Application No	78849144	Publication date	10/31/2006
Opposition Filing Date	02/28/2007	Opposition Period Ends	
Applicant	Red White & Bubbly LLC 230 Flatbush Avenue Brooklyn, NY 11217 UNITED STATES		

Goods/Services Affected by Opposition

Class 021. First Use: 2001/02/16 First Use In Commerce: 2001/02/16
All goods and services in the class are opposed, namely: Cork screws and drinking glasses

Attachments	Red & White v. Red White & Bubbly Notice of Opposition.pdf (9 pages)(342214 bytes)
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Signature	/Joseph T. Nabor/
Name	Joseph T. Nabor
Date	02/28/2007

“Federated”) believe, individually and together, that they will be damaged by the registration of the RED WHITE & BUBBLY marks, namely, Application Nos. 78/849223, 78/849205, 78/849182, 78/849175, 78/849159, 78/849230, and 78/849144 filed by Red White & Bubbly LLC (hereinafter referred to as “Applicant”) and hereby oppose the same upon the following grounds:

COUNT 1: LIKELIHOOD OF CONFUSION

1. Red & White is the owner of the RED & WHITE trademark in connection with retail grocery store services, food products, beverages and household products based on its use and use by its predecessors in interest beginning at least as early as 1910, long before the Applicant can make any claim to its RED WHITE & BUBBLY marks.

2. Federated is and has been the exclusive licensee of Red & White for the RED & WHITE trademark, beginning long before the Applicant can make any claim to its RED WHITE & BUBBLY marks.

3. Based on Red & White’s, along with its predecessors’ longstanding, continuous and extensive use of the RED & WHITE mark in commerce, the United States Patent and Trademark Office has issued numerous trademark registrations for the RED & WHITE mark to Red & White covering retail grocery store services, food products, beverages and household products, namely, Registration Nos. 203,957, 719,835, 720,012, 720,117, 727,335, 728,904, 1,028,823, 1,265,469, 1,267,565, and 1,308,548, Patent and Trademark Office online records of which are attached as Exhibit A (hereinafter the use-based rights in the RED & WHITE mark and registered marks are collectively referred to as “RED & WHITE Mark”).

4. Red & White is the owner of the active, valid and incontestable Registration No. 203,957 for the RED & WHITE Mark, which the Patent and Trademark Office issued September 29, 1925 and which specifies “wheat flour, macaroni, food-flavoring extracts, egg

noodles, cocoa, catchup, peanut butter, canned fruits-namely, apples apricots, cherries, peaches, pears, canned vegetables-namely, beets, corn, lima beans, peas, tomatoes, wax beans; coffee.”

5. Red & White is the owner of the active, valid and incontestable Registration No. 719,835 for the RED & WHITE Mark, which the Patent and Trademark Office issued August 15, 1961 and which specifies “bleach.”

6. Red & White is the owner of the active, valid and incontestable Registration No. 720,012 for the RED & WHITE Mark, which the Patent and Trademark Office issued August 15, 1961 and which specifies “paper towels, facial tissues, toilet paper, and napkins.”

7. Red & White is the owner of the active, valid and incontestable Registration No. 720,117 for the RED & WHITE Mark, which the Patent and Trademark Office issued August 15, 1961 and which specifies “Household Detergent.”

8. Red & White is the owner of the active, valid and incontestable Registration No. 727,335 for the RED & WHITE Mark, which the Patent and Trademark Office issued February 6, 1962 and which specifies “Retail Grocery Service.”

9. Red & White is the owner of the active, valid and incontestable Registration No. 728,904 for the RED & WHITE Mark, which the Patent and Trademark Office issued March 20, 1962 and which specifies “wheat flour, macaroni, food flavoring extracts, egg noodles, cocoa, catsup, peanut butter, canned fruits, canned vegetables, fats, shortening and cooking oils of vegetable origin, baking mixtures-namely, pie crust mix, pancake mix, buckwheat mix and biscuit mix, food flavoring syrup, olives, pickles, unpopped popcorn, rice, vinegar, canned fish, canned soup, canned meat, canned fruit juices and fruit nectar, condimental and other sauces, condiments-namely, tomato paste, prepared mustard, mayonnaise dressing and seasoning salts, spices, dried fruits, dehydrated vegetables and edible herbs, salad dressing, gelatine dessert

powders, candy, tea, butter, fresh eggs, cheese, ice cream, frozen meat pie dinners, frozen fruits, frozen vegetables and frozen fruit juices.”

10. Red & White is the owner of the active, valid and incontestable Registration No. 1,028,823 for the RED & WHITE Mark, which the Patent and Trademark Office issued December 30, 1975 and which specifies “sugar.”

11. Red & White is the owner of the active, valid and incontestable Registration No. 1,265,469 for the RED & WHITE Mark, which the Patent and Trademark Office issued January 31, 1984 and which specifies “pork and beans, blueberry preserves, margarine, and dairy products excluding ice cream, ice milk and frozen yogurt, breakfast cereal, cat food and dog food, canned vegetable juice.”

12. Red & White is the owner of the active, valid and incontestable Registration No. 1,267,565 for the RED & WHITE Mark, which the Patent and Trademark Office issued February 21, 1984 and which specifies “vegetable based non-dairy whipped topping and frozen turkey, frozen waffles, snack crackers, pasta and refrigerated biscuits.”

13. Red & White is the owner of the active, valid and incontestable Registration No. 1,308,548 for the RED & WHITE Mark, which the Patent and Trademark Office issued December 11, 1984 and which specifies “cheese flavored snacks.”

14. In addition to its use and registration of the word RED & WHITE Mark, Red & White has used the RED & WHITE Design appearing below in connection with its retail grocery store services, food products, beverages and household products (hereinafter referred to the RED & WHITE Design Mark).



15. Red & White and Federated have enjoyed continuous and substantial sales of goods and services in connection with the RED & WHITE Mark and RED & WHITE Design Mark.

16. The Opposer's goods and services in connection with which the RED & WHITE mark is used are regularly advertised and promoted in print media as well as other mediums.

17. In its Application Nos. 78/849,223, 78/849,205, 78/849,182, 78/849,175, 78/849,159, 78/849,230, and 78/849,144, all of which were filed March 29, 2006, Applicant seeks registration on the Principal Register for RED WHITE & BUBBLY word as well as word and design marks in connection with specifications identifying "Retail shops featuring wine, liquors and spirits," "Catalogs in the field of wine, food and related goods; newsletters in the field of wine, food and related goods," "Cork screws and drinking glasses," and "Clothing namely, short-sleeved or long-sleeved t-shirts, aprons, smocks, polo shirts, sweatshirts, shirts, sweaters, jackets, pullovers and hats" (hereinafter referred to collectively as "RED WHITE & BUBBLY Marks").

18. Upon information and belief, Applicant cannot claim priority in its RED WHITE & BUBBLY Marks for goods or services specified in its applications earlier than February 16, 2001, the earliest first use date alleged in any of its trademark applications.

19. By reason of Red & White's, its predecessors' and Federated's longstanding and extensive marketing, advertising and promotion of goods and services in connection with the RED & WHITE Mark and RED & WHITE Design Mark, and the high quality of those goods and services, the RED & WHITE Mark and RED & WHITE Design Mark have developed extremely valuable goodwill, are famous and have a reputation associated and identified with Red & White long before the Applicant can assert any claim in the RED WHITE & BUBBLY Marks.

20. On information and belief, Applicant's adoption and use of the RED WHITE & BUBBLY Marks has been with actual or constructive knowledge of Red & White's prior use of, application for, and registration of its RED & WHITE Mark and prior use of its RED & WHITE Design Mark in connection with its goods and services.

21. Applicant's adoption and use of the RED WHITE & BUBBLY Marks has been without the consent or permission of Red & White or Federated.

22. The goods and services specified in the Applicant's trademark applications for the RED WHITE & BUBBLY Marks are identical or highly related to the goods and services for which Red & White uses its RED & WHITE Mark and RED & WHITE Design Mark, and has registered its RED & WHITE Mark.

23. The Applicant's RED WHITE & BUBBLY Marks in connection with the specified goods and services are promoted in the same channels of trade, to the same potential purchasers, and use the same advertising media and channels as those in connection with the RED & WHITE Mark and RED & WHITE Design Mark.

24. The Applicant's RED WHITE & BUBBLY Marks wholly incorporate the RED & WHITE Mark, and each and every one of the RED WHITE & BUBBLY Marks is confusingly similar to the RED & WHITE Mark and RED & WHITE Design Mark.

25. If Applicant is granted registration of its RED WHITE & BUBBLY Marks as set forth in Application Serial Nos. 78/849223, 78/849205, 78/849182, 78/849175, 78/849159, 78/849230, 78/849144, 78/804,281 and 78/804,282, Applicant will thereby obtain the *prima facie* exclusive right to use such marks, and such registrations will damage, impair, diminish, and dilute Red & White's goodwill and rights in its RED & WHITE Mark and RED & WHITE Design Mark causing irreparable injury to Red & White and Federated.

26. Applicant's RED WHITE & BUBBLY Mark are likely to cause confusion, mistake, or deception that Applicant's goods and services are those of Red & White or are otherwise endorsed, sponsored, or approved by Red & White, resulting in damage to Red & White and Federated.

COUNT II: DILUTION

27. The Opposers, individually and together, reallege and incorporate herein the allegations of paragraph nos. 1-26, inclusive.

28. The RED & WHITE Mark and RED & WHITE Design Mark became famous and distinctive long before the Applicant can assert any claim in the RED WHITE & BUBBLY Marks.

29. The RED & WHITE Mark and RED & WHITE Design Mark are distinctive and famous marks within the meaning of the Lanham Act and are entitled to the protection of the anti-dilution provisions of the Lanham Act, including 15 U.S.C. 1125(c).

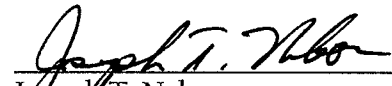
30. If Applicant is granted registration of its RED WHITE & BUBBLY Marks as set forth in Application Serial Nos. 78/849223, 78/849205, 78/849182, 78/849175, 78/849159, 78/849230, 78/849144, 78/804,281 and 78/804,282, Applicant will thereby obtain the prima facie exclusive right to use such marks, and such registrations will damage, impair, tarnish, diminish, and dilute the distinctive quality of the RED & WHITE Mark and RED & WHITE Design Mark causing irreparable injury to Red & White and Federated.

PRAYER FOR RELIEF

WHEREFORE, Red & White and Federated, individually and together, respectfully request that Application Serial Nos. 78/849223, 78/849205, 78/849182, 78/849175, 78/849159, 78/849230, 78/849144, 78/804,281 and 78/804,282 be rejected; and, that registration of the Applicant's RED WHITE & BUBBLY Marks be refused.

Respectfully submitted,

February 28, 2007



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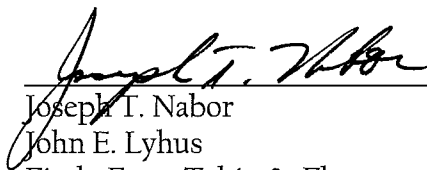
Attorneys for Opposers

CERTIFICATE OF OPPOSER'S ATTORNEYS

We hereby certify that we are trademark attorneys for the Red & White Foundation and The Federated Group, Opposers herein, and that we have been instructed to file the foregoing Opposition. We are, therefore, filing this Opposition under Section 13 of the Trademark Act of 1946 and under Trademark Rule 2.101.

FITCH, EVEN, TABIN & FLANNERY

February 28, 2007



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