

ESTTA Tracking number: **ESTTA129250**

Filing date: **03/12/2007**

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 party opposes registration of the indicated application.

**Opposer Information**

Name	National Tobacco Company, L.P.
Granted to Date of previous extension	03/11/2007
Address	3029 West Muhammad Ali Boulevard Louisville, KY 40212 UNITED STATES

Attorney information	Suzan J. Hixon, Amy B. Berge Greenebaum Doll & McDonald PLLC 101 South Fifth Street 3500 National City Tower Louisville, KY 40202 UNITED STATES sjh2@gdm.com Phone:502-587-3789
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**Applicant Information**

Application No	78666753	Publication date	09/12/2006
Opposition Filing Date	03/12/2007	Opposition Period Ends	03/11/2007
Applicant	Beech-Nut Nutrition Corporation 100 South Fourth Street St. Louis, MO 63102 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 018. All goods and services in the class are opposed, namely: diaper bags, tote bags, backpacks, duffel bags, fanny packs and waist packs
Class 021. All goods and services in the class are opposed, namely: cooler bags

Attachments	Notice of Opposition (78666753).pdf ( 5 pages )(127593 bytes )
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Signature	/Suzan J. Hixon/
Name	Suzan J. Hixon, Amy B. Berge
Date	03/12/2007

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

In the Matter of Application Serial No.: 78/666,753

Mark: BEECH-NUT

Filed: July 8, 2005

Published: September 12, 2006

**National Tobacco Company, L.P.** )

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**Opposer** )

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v. )

)

OPPOSITION NO.: \_\_\_\_\_

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**Beech-Nut Nutrition Corporation** )

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**Applicant** )

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**NOTICE OF OPPOSITION**

Pursuant to Section 1063 of Title 15, United States Code, and Section 2.104, Title 37, Code of Federal Regulations, National Tobacco Company, L.P. (“Opposer”) believes it would be damaged by the registration of the above-identified trademark, and hereby opposes the same.

1. Opposer is a corporation duly organized and existing under the laws of the state of Delaware, with its principal place of business at 3029 Muhammad Ali Boulevard, Louisville, Kentucky 40212.

2. Commencing long prior to the filing date of the application opposed herein, Opposer has, and is now, engaged in providing tobacco, tobacco-related products, and goods bearing trademarks owned by Opposer for promotional and marketing efforts, including, but not limited to, various types of bags (“Opposer’s Goods”).

3. Since prior to the filing date of the application opposed herein, Opposer has continuously used the mark BEECH-NUT (Registration No. 896,764) (“Opposer’s Mark”) in block, letter, in stylized form, and with and without design elements.

4. Opposer is the owner of, and will rely upon herein, the mark BEECH-NUT for “cigarette and chewing tobacco” (International Class 34), first used in commerce at least as early as 1897.

5. Opposer’s Mark has been continuously used, alone and in conjunction with other words and/or designs, to identify and designate Opposer’s Goods and to distinguish said Goods from those of others, and has attained incontestable Federal trademark status. *See* 15 U.S.C. §§1058 and 1065.

6. Since Opposer’s initial use of Opposer’s Mark, Opposer has made a substantial investment in advertising and promotion of its Goods under Opposer’s Mark. Opposer has extensively and continuously used, advertised, promoted and offered its Goods under Opposer’s Mark, to the public through various channels of trade in interstate commerce, with the result that customers have come to know and recognize Opposer’s Mark, and to associate same with Opposer and/or the goods advertised, marketed, distributed, and/or sold by or on behalf of Opposer.

7. Opposer thus has built up extensive goodwill and consumer- and industry-wide recognition under Opposer’s Mark.

8. Upon information and belief, Applicant is a corporation duly organized and existing under the laws of the state of Nevada with its principal place of business at 100 South Fourth Street, St. Louis, Missouri 63102.

9. Upon information and belief, Applicant has designated Marta I. Burgin at Armstrong Teasdale LLP, 1 Metropolitan Sq. Ste. 2600, Saint Louis, Missouri, 63102-2740, as the designated representative upon whom notice or process in proceedings affecting Applicant's marks may be served.

10. Upon information and belief, on July 8, 2005, Applicant filed Application Serial No. 78/666,753, for the mark BEECH-NUT for "diaper bags, tote bags, backpacks, duffel bags, fanny packs and waist packs" and "cooler bags" (the "Application"). Applicant has filed this application on an intent-to-use 1(b) basis. The Application was published for opposition in the Official Gazette of September 12, 2006.

11. Opposer believes it would be damaged by the registration of the mark which is the subject of the Application.

12. Use of Opposer's Mark in interstate commerce predates Applicant's first use in interstate commerce.

13. The mark sought to be registered by Applicant is identical to Opposer's mark, and thus the mark sought to be registered by Applicant is confusingly similar to Opposer's Mark.

14. Upon information and belief, customers of Opposer, as well as the public in general, are likely to be confused, mistaken or deceived as to the origin or sponsorship of Applicant's goods which are marketed, promoted, and/or sold under, or in connection with the opposed mark sought to be registered by Applicant herein, and, therefore, Applicant's mark is unregistrable within the meaning of Section 1052(d) of Title 15, United States Code.

15. Upon information and belief, customers of Opposer, as well as the public in general, are likely to be misled into believing that Applicant and/or Applicant's goods are rendered by, emanate from, or in some way are, directly or indirectly, associated with or connected to Opposer and/or its goods, to the damage and detriment of Opposer, its goodwill and reputation, and Applicant's use of the mark may falsely suggest a connection between Applicant's goods and Opposer, in violation of Section 1052(a) of Title 15, United States Code.

**WHEREFORE**, Opposer requests that:

- a. Judgment for Opposer and against Applicant in the present Opposition be entered;
- b. registration on Application Serial No. 78/666,753 be rejected and refused; and,
- c. the present opposition be sustained.

Respectfully submitted,



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Counsel for Opposer  
National Tobacco Company, L.P.

Dated: March 12, 2007