

ESTTA Tracking number: **ESTTA233015**

Filing date: **08/27/2008**

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	SWH Corporation
Granted to Date of previous extension	08/27/2008
Address	17852 East 17th Street South Building Suite 108 Tustin, CA 92780 UNITED STATES

Attorney information	Cory M. Amron Vorys, Sater, Seymour and Pease LLP 1828 L Street, NW 11th Floor Washington, DC 20036 UNITED STATES behogue@vorys.com, iplaw@vorys.com, wholdach@vorys.com Phone:202-467-8810
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Applicant Information

Application No	76684178	Publication date	04/29/2008
Opposition Filing Date	08/27/2008	Opposition Period Ends	08/27/2008
Applicant	NAC Foods, Inc. 235 Commercial Avenue Palisades Park, NJ 07650 UNITED STATES		

Goods/Services Affected by Opposition

Class 030. First Use: 2000/02/01 First Use In Commerce: 2000/02/01 All goods and services in the class are opposed, namely: Processed spices and condiments for use as seasonings, namely, garlic, bay leaves, oregano, salt, paprika, adobo, pepper and sugar

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2132534	Application Date	02/05/1997
Registration Date	01/27/1998	Foreign Priority Date	NONE
Word Mark	MIMIS CAFE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 042. First use: First Use: 1996/06/00 First Use In Commerce: 1996/06/00 coffeeshop services

U.S. Registration No.	3052780	Application Date	01/25/2005
Registration Date	01/31/2006	Foreign Priority Date	NONE
Word Mark	MIMIS CAFE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 1996/06/00 First Use In Commerce: 1996/06/00 Restaurant services, coffee shop services, bar services		

U.S. Registration No.	3052781	Application Date	01/25/2005
Registration Date	01/31/2006	Foreign Priority Date	NONE
Word Mark	MIMIS CAFE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 1978/12/19 First Use In Commerce: 1978/12/19 Restaurant services, coffee shop services, bar services		

U.S. Registration No.	1306490	Application Date	01/14/1983
Registration Date	11/20/1984	Foreign Priority Date	NONE
Word Mark	MIMIS CAFE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1978/12/19 First Use In Commerce: 1978/12/19 Coffeeshop Services		

Attachments	SWH.PDF (5 pages)(153309 bytes) 75236938#TMSN.gif (1 page)(bytes) 76628691#TMSN.gif (1 page)(bytes) 76628692#TMSN.gif (1 page)(bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/cory m amron/
Name	Cory M. Amron
Date	08/27/2008

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

In the matter of Trademark Application Serial No. 76/684,178

For the mark: MIMI'S PRODUCTS

Filing date: November 19, 2007

SWH CORPORATION,

Opposer,

v.

NAC FOODS, INC.,

Applicant.

Opposition No. _____

NOTICE OF OPPOSITION

SWH Corporation ("Opposer") is a California corporation located at 17852 East 17th Street, South Building, Suite 108, Tustin, California 92780.

On information and belief, the owner of U.S. Trademark Application Serial No. 2,758,645 (the "Application") for MIMI'S PRODUCTS ("Applicant's Mark") is NAC Foods, Inc. ("Applicant"), a New Jersey corporation located at 235 Commercial Avenue, Palisades Park, New Jersey 07650.

Opposer believes that it will be damaged by registration of Applicant's Mark and opposes the Application as set forth below.

COUNT I: LIKELIHOOD OF CONFUSION

1. Opposer owns and operates the "Mimis Cafe" chain of restaurants with more than 130 restaurants throughout the United States.

2. Since at least as early as December 19, 1978, Opposer has used the mark MIMIS CAFE (“Opposer’s Mark”) for its *restaurant services, coffee shop services, bar services* (collectively, “Opposer’s Services”).

3. On January 14, 1983, Opposer filed its first trademark application for Opposer’s Mark for use with *coffeeshop services* and that application matured to U.S. Trademark Registration No. 1,306,490 on November 20, 1984. Applicant also owns U.S. Trademark Registration Nos. 2,132,534, 3,052,780 and 3,052,781, all for Opposer’s Mark for use with Opposer’s Services. Registration Nos. 1,306,490 and 2,132,534 are now incontestable.

4. Opposer has superior rights to MIMIS CAFE throughout the United States against any entity that later adopts that mark or a confusingly similar variant after January 14, 1983.

5. The public recognizes Opposer’s Mark as exclusively identifying Opposer’s Services and Opposer’s Mark embodies the goodwill and reputation that Opposer has developed over the years.

6. On November 19, 2007, Applicant filed Application Serial No. 76/460,121 (the “Application”) for Applicant’s Mark for *spices and condiments, namely: garlic, bay leaves, oregano, salt, paprika, adobo, pepper and sugar*, claiming February 1, 2000 as its first use date.

7. The Application was published for opposition on April 29, 2008 for the amended goods, *processed spices and condiments for use as seasonings, namely, garlic, bay leaves, oregano, salt, paprika, adobo, pepper and sugar* (“Applicant’s Goods”).

8. Opposer had used Opposer's Mark in connection with Opposer's Services for at least twenty-nine (29) years before Applicant filed the Application and for at least twenty-two (22) years before Applicant began using Applicant's Mark with Applicant's Goods.

9. Opposer filed its first federal application for Opposer's Mark nearly seventeen (17) years before Applicant first used Applicant's Mark with Applicant's Goods and Opposer filed its most recent federal application for Opposer's Mark five years (5) before Applicant first used Applicant's Mark with Applicant's Goods.

10. Opposer's Mark had become distinctive of Opposer's Services before Applicant first used Applicant's Mark and before Applicant filed its federal application for Applicant's Mark.

11. Applicant's Mark is confusingly similar to Opposer's Mark and Applicant's Goods are closely related to Opposer's Services.

12. Allowing Applicant's Mark to register would damage Opposer by interfering with Opposer's exclusive right to use Opposer's Mark in connection with Opposer's Services.

13. Because of the confusing similarity between Opposer's Mark and Applicant's Mark, and the relatedness of Opposer's Services and Applicant's Goods, the Registration is likely to cause confusion, cause mistake or deceive the public in the United States, and cause the public in the United States to believe, incorrectly, that Applicant's Goods emanate from, are authorized or endorsed by, or are otherwise connected with Opposer in violation of Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d).

COUNT II: FRAUD

14. Upon information and belief, Applicant was not using the mark MIMI'S PRODUCTS in commerce in the United States in connection with each of the goods identified in the Application as of the filing date.

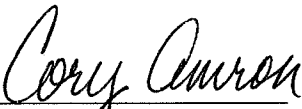
WHEREFORE, Opposer prays that the Trademark Trial and Appeal Board sustain this Opposition refuse to register application Serial No. 76/684,178 for MIMI'S PRODUCTS.

This Petition is accompanied by the required fee. Please charge any additional fees to Deposit Account No. 22-0585.

Please recognize Cory M. Amron, William H. Oldach III, Christopher M. Ott, and Richard S. Donnell, all members of the bar of the District of Columbia, with the firm of Vorys, Sater, Seymour and Pease, LLP, as Opposer's attorneys to prosecute this Notice of Opposition and to transact all related business in the Patent and Trademark Office.

Respectfully submitted,

Date: Aug 27, 2008

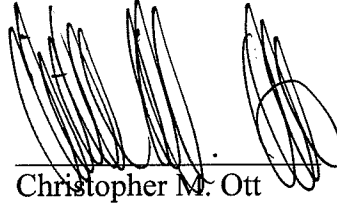

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Attorney for Opposer
SWH CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that the a copy of this Notice of Opposition was served this 27th day of August, 2008 via first-class mail, postage prepaid, upon the following:

NAC Foods, Inc.
235 Commercial Avenue
Palisades Park, NJ 07650



Christopher M. Ott