

ESTTA Tracking number: **ESTTA240358**

Filing date: **10/02/2008**

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	Guttenplan's Frozen Dough, Inc.
Granted to Date of previous extension	10/04/2008
Address	100 Highway 36 Middletown, NJ 07748 UNITED STATES

Attorney information	Robert Cohen Lerner David Littenberg Krumholz and Mentlik 600 South Avenue West Westfield, NJ 07090 UNITED STATES rcohen@ldlkm.com, LitigationDocket@ldlkm.com Phone:908-518-6316
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Applicant Information

Application No	77398916	Publication date	08/05/2008
Opposition Filing Date	10/02/2008	Opposition Period Ends	10/04/2008
Applicant	Ultimate Start, LLC 17226 N. 47th St. Phoenix, AZ 85032 UNITED STATES		

Goods/Services Affected by Opposition

Class 030. First Use: 2007/05/01 First Use In Commerce: 2007/06/01 All goods and services in the class are opposed, namely: Muffins
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1608413	Application Date	09/13/1989
Registration Date	07/31/1990	Foreign Priority Date	NONE
Word Mark	GOOD FOR YOU BREADS!		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 030. First use: First Use: 1989/08/17 First Use In Commerce: 1989/08/17 BAKERY PRODUCTS, NAMELY FROZEN BAKED, PARTIALLY BAKED AND UNBAKED BREAD, DANISH, BUNS, PASTRIES, BAGELS, [CAKES,] DONUTS, [PIES] COOKIES MUFFINS [AND CROISSANTS]		
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U.S. Registration No.	1610697	Application Date	09/13/1989
Registration Date	08/21/1990	Foreign Priority Date	NONE
Word Mark	GOOD FOR YOU ROLLS!		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1989/08/17 First Use In Commerce: 1989/08/17 BAKERY PRODUCTS, NAMELY FROZEN BAKED, PARTIALLY BAKED AND UNBAKED BREAD, DANISH, BUNS, PASTRIES, BAGELS, [CAKES,] DONUTS, [PIES,] COOKIES MUFFINS [AND CROISSANTS]		

U.S. Registration No.	1931494	Application Date	11/10/1994
Registration Date	10/31/1995	Foreign Priority Date	NONE
Word Mark	GOOD FOR YOU BAGELS!		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1994/10/04 First Use In Commerce: 1994/10/04 dough; and bakery products, namely frozen, partially baked and unbaked bagels		

U.S. Registration No.	1942507	Application Date	11/10/1994
Registration Date	12/19/1995	Foreign Priority Date	NONE
Word Mark	GOOD FOR YOU!		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1994/10/04 First Use In Commerce: 1994/10/04 dough; and bakery products, namely frozen bread, partially baked and unbaked bread, Danish, buns, pastries, bagels, cakes, donuts, pies, cookies, muffins and croissants		

U.S. Registration No.	2139060	Application Date	03/19/1997
Registration Date	02/24/1998	Foreign Priority Date	NONE
Word Mark	GOOD FOR YOU ROLLS!		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 030. First use: First Use: 1997/02/26 First Use In Commerce: 1997/02/26 bakery products, namely, rolls and buns		
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U.S. Registration No.	2139061	Application Date	03/19/1997
Registration Date	02/24/1998	Foreign Priority Date	NONE
Word Mark	GOOD FOR YOU BREAD!		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1997/01/29 First Use In Commerce: 1997/01/29 bakery products, namely, bread		

Attachments	927774_1.PDF (6 pages)(175657 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	/Robert Cohen/
Name	Robert Cohen
Date	10/02/2008

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

Guttenplan's Frozen Dough, Inc.,	:
	: Re: Serial No. 77/398,916
Opposer,	: for ULTIMATE START THE
	: TASTY MUFFIN THAT'S GOOD
v.	: FOR YOU. and Design
	:
Ultimate Start, LLC,	: Published: August 5, 2008
	:
Applicant.	:
	: X

MS TTAB
P.O. Box 1451
Alexandria, Virginia 22313-1451

NOTICE OF OPPOSITION

Sir:

Guttenplan's Frozen Dough, Inc. ("Opposer"), a corporation organized and existing under the laws of the State of New Jersey and having a place of business at 100 Highway 36, Middletown, New Jersey 07748, believes that it would be damaged by the registration of the mark shown in Application Serial No. 77/398,916, owned by Ultimate Start, LLC ("Applicant"), and hereby opposes registration of the aforementioned mark. Opposer has timely requested an extension of time to oppose through and including October 4, 2008.

The specific grounds for opposition are as follows:

1. At least as early as August 17, 1989, Opposer adopted and began using the mark GOOD FOR YOU ROLLS! to identify bakery products, including frozen baked, partially baked and unbaked bakery products. Opposer has used and continues to use the

mark GOOD FOR YOU ROLLS! to identify fresh and frozen bakery products which travel in interstate commerce.

2. At least as early as August 17, 1989, Opposer adopted and began using the mark GOOD FOR YOU BREADS! to identify bakery products, including frozen baked, partially baked and unbaked bakery products. Opposer has used and continues to use the GOOD FOR YOU BREADS! mark to identify fresh and frozen bakery products which travel in interstate commerce.

3. At least as early as October 4, 1994, Opposer adopted and began using the mark GOOD FOR YOU BAGELS! to identify dough and bakery products, including frozen, partially baked and unbaked bagels. Opposer continues to use the GOOD FOR YOU BAGELS! mark to identify such goods which travel in interstate commerce.

4. At least as early as October 4, 1994, Opposer adopted and began using the mark GOOD FOR YOU! for dough and bakery products, including frozen baked, partially baked and unbaked bakery products. Opposer has used and continues to use the GOOD FOR YOU! mark to identify fresh and frozen bakery products which travel in interstate commerce. Opposer's GOOD FOR YOU ROLLS!, GOOD FOR YOU BREADS!, GOOD FOR YOU BAGELS! and GOOD FOR YOU! marks are referred to collectively herein as Opposer's "GOOD FOR YOU! Family of Marks."

5. Based on its long and continued use, the Opposer has acquired extensive, exclusive and valuable common law rights in and to its GOOD FOR YOU! Family of Marks.

6. Opposer is the owner of the following U.S. Trademark Registrations for its GOOD FOR YOU! Family of Marks:

- (a) Registration No. 1,608,413 for the mark GOOD FOR YOU BREADS! for bakery products, namely, frozen baked, partially baked and unbaked bread, danish, buns, pastries, bagels, donuts, cookies and muffins, issued on July 31, 1990;
- (b) Registration No. 1,610,697 for the mark GOOD FOR YOU ROLLS! for bakery products, namely, frozen baked, partially baked and unbaked bread, danish, buns, pastries, bagels, donuts, cookies and muffins, issued on August 21, 1990;
- (c) Registration No. 1,931,494 for the mark GOOD FOR YOU BAGELS! for dough; and bakery products, namely frozen, partially baked and unbaked bagels, issued on October 31, 1995;
- (d) Registration No. 1,942,507 for the mark GOOD FOR YOU! for dough; and bakery products, namely frozen bread, partially baked and unbaked bread, danish, buns, pastries, bagels, cakes, donuts, pies, cookies, muffins and croissants, issued on December 19, 1995;
- (e) Registration No. 2,139,060 for the mark GOOD FOR YOU ROLLS! for bakery products, namely, rolls and buns, issued on February 24, 1998; and
- (f) Registration No. 2,139,061 for the mark GOOD FOR YOU BREAD! for bakery products, namely, bread, issued on February 24, 1998.

7. The Applicant filed an application to register the mark ULTIMATE START THE TASTY MUFFIN THAT'S GOOD FOR YOU. and Design for "muffins," in Class 30 on February 16, 2008 based on alleged use of the mark since May 1, 2007 and use in interstate commerce since June 1, 2007.

8. Applicant's trademark ULTIMATE START THE TASTY MUFFIN THAT'S GOOD FOR YOU. and Design is confusingly similar to Opposer's GOOD FOR YOU! Family of Marks.

9. The mark ULTIMATE START THE TASTY MUFFIN THAT'S GOOD FOR YOU. and Design, when applied to the Applicant's goods, will falsely suggest to customers and the trade that the Applicant's goods identified with the mark ULTIMATE START THE TASTY MUFFIN THAT'S GOOD FOR YOU. and Design are sold, approved or sponsored by the Opposer, or that there is some other connection between the Applicant and the Opposer with respect to such goods. The Applicant's mark ULTIMATE START THE TASTY MUFFIN THAT'S GOOD FOR YOU. and Design, when applied to the Applicant's goods, is likely to cause confusion or mistake or to deceive and, accordingly, the granting of the registration applied for by the Applicant would cause substantial damage and injury to the Opposer.

10. The granting of a registration to the Applicant for the mark ULTIMATE START THE TASTY MUFFIN THAT'S GOOD FOR YOU. and Design will create statutory rights in the Applicant in violation and derogation of the established prior rights of the Opposer.

11. Registration should be refused to the Applicant, the newcomer in the field, in order to prevent deception to the public, and damage and harm to the Opposer and to the good will of the Opposer.

WHEREFORE, the Opposer prays that its opposition be sustained and that Application Serial No. 77/398,916 be rejected, denying registration of the mark ULTIMATE START THE TASTY MUFFIN THAT'S GOOD FOR YOU. and Design to the Applicant.

Please charge the \$300.00 filing fee for an opposition in one class and any additional fees that may be required to Deposit Account No. 12-1095. The undersigned is authorized to make charges to said deposit account.

Respectfully submitted,

GUTTENPLAN'S FROZEN DOUGH, INC.

By: 

Robert B. Cohen
Lerner, David, Littenberg,
Krumholz & Mentlik, LLP
Attorneys for Opposer
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Westfield, New Jersey 07090
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(908) 654-7866 = Fax

CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2008, a true copy of the foregoing Notice of Opposition was served on Applicant via first-class mail, postage prepaid, addressed as follows:

President
Ultimate Start, LLC
17226 N. 47th Street
Phoenix, AZ 85032



ROBERT B. COHEN