

ESTTA Tracking number: **ESTTA245009**

Filing date: **10/27/2008**

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	Honest Tea, Inc.
Granted to Date of previous extension	10/26/2008
Address	4827 Bethesda Avenue Bethesda, MD 20814 UNITED STATES
Correspondence information	Ira Jay Levy Goodwin Procter LLP The New York Times Building 620 Eighth Avenue New York, NY 10018 UNITED STATES ilevy@goodwinprocter.com, tadmin@goodwinprocter.com, Phone:212-813-8800

Applicant Information

Application No	77348030	Publication date	04/29/2008
Opposition Filing Date	10/27/2008	Opposition Period Ends	10/26/2008
Applicant	Marriott International, Inc. 10400 Fernwood Road Bethesda, MD 20817 UNITED STATES		

Goods/Services Affected by Opposition

Class 030. All goods and services in the class are opposed, namely: Coffee

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2271571	Application Date	11/10/1997
Registration Date	08/24/1999	Foreign Priority Date	NONE
Word Mark	HONEST TEA		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 1998/05/00 First Use In Commerce: 1998/05/00 Tea-based beverages

U.S. Registration No.	3436920	Application Date	11/30/2006
Registration Date	05/27/2008	Foreign Priority Date	NONE

Word Mark	HONEST KIDS
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Design Mark	
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Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 2007/04/30 First Use In Commerce: 2007/04/30 NON-ALCOHOLIC, ORGANIC BEVERAGES CONTAINING FRUIT JUICES

U.S. Registration No.	3140335	Application Date	01/06/2005
Registration Date	09/05/2006	Foreign Priority Date	NONE

Word Mark	HONEST ADE
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Design Mark	
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Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 2005/05/21 First Use In Commerce: 2005/07/01 non-alcoholic, organic beverages containing fruit juices

Attachments	77054096#TMSN.jpeg (1 page)(bytes) 78543157#TMSN.jpeg (1 page)(bytes) Notice of Opposition.pdf (5 pages)(64017 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	/Ira Jay Levy/
Name	Ira Jay Levy
Date	10/27/2008

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

Honest Tea, Inc.
Opposer,

v.

Marriott International, Inc.
Applicant.

Opposition No. _____

Serial Number: 77348030

Mark: HONEST EARTH

NOTICE OF OPPOSITION

Honest Tea, Inc., a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 4827 Bethesda Avenue, Bethesda MD 20814, believes it will be damaged by the registration of the mark shown in application Serial No. 77348030 – HONEST EARTH – for coffee in International Class 30, and having previously obtained an extension of time to oppose until October 26, 2008, hereby opposes the same.

The grounds for this opposition are as follows:

1. Honest Tea, Inc. (“Opposer”) is the owner of the federally registered trademark HONEST TEA, Reg. No. 2,271,571, used in connection with the sale and marketing of tea-based beverages in International Class 20. Opposer adopted the HONEST TEA mark in about May of 1998 and has used said mark in commerce continuously ever since. By virtue of compliance with

the relevant statutory requirements, the registration for the HONEST TEA mark has become incontestable.

2. Opposer is also the owner of the federally registered trademarks HONEST KIDS (Reg. No. 3,436,920) and HONEST ADE (Reg. No. 3,140,335), both for non-alcoholic, organic beverages containing fruit juice in International Class 32. Opposer has used the HONEST ADE mark in connection with beverages since at least July of 2005 and the HONEST KIDS mark in connection with beverages since at least April of 2007.

3. Through the continued and widespread use by Opposer of the marks HONEST TEA, HONEST ADE and HONEST KIDS (collectively the “HONEST Marks”), in connection with a variety of beverage products, including those described above, the marks have acquired extensive goodwill, have earned a high degree of distinctiveness, and are recognized by a broad segment of the consuming public as identifying high quality beverage productions that originate with or have been authorized by Opposer.

4. The HONEST marks are famous marks, and are valuable assets of Opposer.

5. Marriott International, Inc. (“Applicant”) is the record owner of an intent-to-use trademark application, Application Serial No. 77348030, seeking registration of the mark HONEST EARTH for coffee in International Class 30 (“Applicant’s Mark”).

6. Opposer obtained an extension of time to oppose registration of Applicant’s Mark until October 26, 2008.

7. Applicant proposes to use Applicant’s Mark in connection with coffee, goods that are complementary to, and in fact closely related to, the goods in association with which Opposer uses its HONEST Marks in general, and the HONEST TEA mark in particular.

8. Opposer has used the Honest Marks in commerce since long prior to the filing of the Application, and Opposer has actively expanded its use of said marks.

9. Upon information and belief, to date, Applicant has not yet commenced use of the mark HONEST EARTH in connection with coffee.

10. Applicant's Mark is confusingly similar to Opposer's HONEST Marks in appearance, sound and commercial impressions.

11. Applicant's coffee is related to the tea and other beverage goods sold and provided in connection with Opposer's Honest Marks and/or represent a natural zone of expansion for Opposer.

12. Upon information and belief, Applicant's coffee would travel and/or be promoted through the same channels of trade for sale to, and use by, the same class of consumers.

13. Applicant's proposed use of Applicant's Mark in connection with Applicant's coffee, and the registration thereof, is likely to cause dilution to the distinctiveness and goodwill attached to Opposer's HONEST Marks, and therefore should be denied registration, pursuant to 15 U.S.C. § 1125(c).

14. Applicant's Mark is confusingly similar in sight, sound and commercial impression to Opposer's HONEST marks, such that the proposed use of Applicant's Mark in connection with coffee is likely to cause confusion, mistake or deception as to the source or origin of Applicant's coffee in that the public is likely to believe that Applicant's goods are (i) the same goods as Opposer's or (ii) provided by, sponsored by, approved or licensed by, or otherwise affiliated with or connected to Opposer. Therefore, Opposer would be irreparably harmed and damaged by the allowance of Applicant's Mark, and thus has standing to commence and maintain this proceeding.

WHEREFORE, Opposer prays that the registration sought by Applicant be refused and that this Opposition be sustained.

Dated: October 27, 2008

Respectfully submitted,

Honest Tea, Inc.

By Their Attorneys,

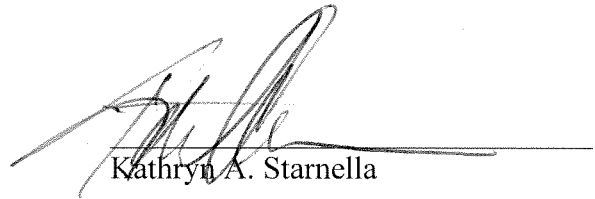
By: 
Ira Jay Levy

GOODWIN PROCTER LLP
The New York Times Building
620 8th Avenue
New York, New York 10018
Tel: (212) 813-8800
Fax: (212) 355-3333
ilevy@goodwinprocter.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing NOTICE OF OPPOSITION has been served by first class mail on October 27, 2008 upon:

Marriott International Inc.
10400 Fernwood Road
Bethesda, Maryland 20817



Kathryn A. Starnella