

ESTTA Tracking number: **ESTTA249448**

Filing date: **11/18/2008**

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	Aldi Inc.
Granted to Date of previous extension	11/19/2008
Address	1200 North Kirk Road Batavia, IL 60510-1477 UNITED STATES

Attorney information	Allen L. Landmeier / Vincent J. Elders Smith, Landmeier & Elders, P.C. 15 North Second Street P.O. Box 127 Geneva, IL 60134-0127 UNITED STATES trademarks@smithlandmeier.com, a_landmeier@smithlandmeier.com, v_elders@smithlandmeier.com Phone:630-232-2880
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Applicant Information

Application No	77412801	Publication date	07/22/2008
Opposition Filing Date	11/18/2008	Opposition Period Ends	11/19/2008
Applicant	Leehar Distributors, Inc. Suite 200 680 Craig Road Saint Louis, MO 63141 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. First Use: 1996/01/01 First Use In Commerce: 1996/01/01 All goods and services in the class are opposed, namely: retail pharmacy services

Applicant Information

Application No	77412887	Publication date	07/22/2008
Opposition Filing Date	11/18/2008	Opposition Period Ends	
Applicant	Leehar Distributors, Inc. Suite 200 680 Craig Road Saint Louis, MO 63141 UNITED STATES		


Goods/Services Affected by Opposition


Class 035. First Use: 2007/09/15 First Use In Commerce: 2007/09/15 All goods and services in the class are opposed, namely: retail pharmacy services

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.	1093441	Application Date	08/25/1976
Registration Date	06/13/1978	Foreign Priority Date	NONE
Word Mark	ALDI		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1976/04/28 First Use In Commerce: 1976/04/28 GROCERY SUPERMARKET SERVICES		

U.S. Registration No.	1331354	Application Date	04/07/1983
Registration Date	04/16/1985	Foreign Priority Date	NONE
Word Mark	A ALDI		
Design Mark			
Description of Mark	The mark consists in part of a fanciful representation of the letter "A".		
Goods/Services	Class 042. First use: First Use: 1981/05/07 First Use In Commerce: 1982/09/01 Grocery Store Services		


U.S. Registration No.	2617555	Application Date	05/17/2001
Registration Date	09/10/2002	Foreign Priority Date	NONE

Word Mark	A ALDI		
Design Mark			
Description of Mark	The mark consists, in part, of a fanciful representation of the letter "A" and the word "ALDI" on a background surrounded by rectangular framing.		
Goods/Services	Class 035. First use: First Use: 1984/01/04 First Use In Commerce: 1984/01/04 Retail Grocery Stores and Supermarkets		


U.S. Registration No.	3306405	Application Date	03/26/2007
Registration Date	10/09/2007	Foreign Priority Date	NONE

Word Mark	A ALDI		
Design Mark			
Description of Mark	The mark consists of a fanciful representation of the letter "A" and the word "ALDI" on a background surrounded by rectangular framing.		
Goods/Services	Class 035. First use: First Use: 2006/02/23 First Use In Commerce: 2006/02/23 retail grocery stores and supermarkets		

U.S. Registration No.	3400731	Application Date	12/29/2006
Registration Date	03/25/2008	Foreign Priority Date	NONE
Word Mark	ALDI		

Design Mark	
Description of Mark	The mark consists of Yellow appearing in the outermost rectangular framing, orange appears in the midmost rectangular framing, red appears in the innermost rectangular framing, light blue appears in the fanciful representation of the letter "A" and the surrounding square framing, dark blue appears in the background behind the fanciful representation of the letter "A" and the surrounding square framing and the word "ALDI". White appears in the word "ALDI".
Goods/Services	Class 035. First use: First Use: 2006/02/23 First Use In Commerce: 2006/02/23 retail grocery stores and supermarkets

U.S. Registration No.	3414110	Application Date	03/26/2007
Registration Date	04/22/2008	Foreign Priority Date	NONE

Word Mark	A ALDI
Design Mark	
Description of Mark	Light gray appears in the outermost rectangular framing, medium gray appears in the midmost rectangular framing, dark gray appears in the innermost rectangular framing, light gray appears in the fanciful representation of the letter "A" and the surrounding square framing, black appears in the background behind the fanciful representation of the letter "A" and the surrounding square framing and the word "ALDI." White appears in the word "ALDI."
Goods/Services	Class 035. First use: First Use: 2006/02/23 First Use In Commerce: 2006/02/23 retail grocery stores and supermarkets

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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	/Vincent J. Elders/
Name	Allen L. Landmeier / Vincent J. Elders
Date	11/18/2008

services on or before April 28, 1976 and has been used since that date in interstate commerce by applying it to advertisements for the services and in other ways customary to the trade.

3. Opposer is the owner of Certificate of Registration No. 1,093,441 for the service mark ALDI for grocery supermarket services granted by the United States Patent and Trademark Office on June 13, 1978, on the Principal Register under the Trademark Act of 1946, as amended, and renewed on June 13, 1998.

4. Opposer is the owner of Certificate of Registration No. 1,331,354 for the service mark A ALDI & Design for grocery store services granted by the United States Patent and Trademark Office on April 16, 1985, on the Principal Register under the Trademark Act of 1946, as amended.

5. Opposer is the owner of Certificate of Registration No. 2,617,555 for the service mark A ALDI & Design for retail grocery stores and supermarkets granted by the United States Patent and Trademark Office on September 10, 2002, on the Principal Register under the Trademark Act of 1946, as amended.

6. Opposer is the owner of Certificate of Registration No. 3,306,405 for the service mark A ALDI & Design for retail grocery stores and supermarkets granted by the United States Patent and Trademark Office on October 9, 2007, on the Principal Register under the Trademark Act of 1946, as amended.

7. Opposer is the owner of Certificate of Registration No. 3,400,731 for the service mark A ALDI & Design for retail grocery stores and supermarkets granted by the United States Patent and Trademark Office on March 25, 2008, on the Principal Register under the Trademark

Act of 1946, as amended.

8. Opposer is the owner of Certificate of Registration No. 3,414,110 for the service mark A ALDI & Design for retail grocery stores and supermarkets granted by the United States Patent and Trademark Office on April 22, 2008, on the Principal Register under the Trademark Act of 1946, as amended.

9. Opposer has sold, advertised and promoted the aforescribed services bearing the service mark ALDI and by reason of such efforts and the high quality of Opposer's products and services, said service mark has become known to the purchasing public and is a valuable asset of the Opposer.

10. The literal portion of the Applicant's service marks, namely "LDI," is substantially similar to Opposer's service mark, ALDI.

11. The Applicant seeks registration of LDI and LDI & Design for, inter alia, retail pharmacy services.

12. The Applicant's retail pharmacy services as set forth in its applications are similar or related to the Opposer's services.

13. Applicant's service marks, LDI and LDI & Design, so resemble Opposer's service mark, ALDI, that when used on or in connection with retail pharmacy services, the purchasing public is likely to be confused, mistaken, or deceived into thinking that Applicant's services emanate from or are sponsored by Opposer, or are related or connected in some way with Opposer, all to the damage of the Opposer.

14. Applicant had constructive knowledge, and on information and belief, had actual

knowledge of Opposer's service marks ALDI and A ALDI & Design prior to its decision to file the opposed applications.

15. Opposer's fee of Six Hundred Dollars (\$600.00) provided by the Trademark Act of 1946, as amended, is paid herewith.

WHEREFORE, Opposer respectfully prays that this Opposition be sustained and that the registration of Applicant's marks be denied.

Attorney's Authorization to Charge Account

Please be advised that our attorney office deposit account number is 500963. In the event there is a deficiency in the appropriate fee, please charge that account for the deficiency.

ALDI INC.

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Dated: November 18, 2008