

ESTTA Tracking number: **ESTTA259276**

Filing date: **01/07/2009**

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	01/07/2009
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

Applicant Information

Application No	77388318	Publication date	09/09/2008
Opposition Filing Date	01/07/2009	Opposition Period Ends	01/07/2009
Applicant	The Kroger Co. of Michigan 18334 Laurel Park Drive North Livonia, MI 481522686 UNITED STATES		

Goods/Services Affected by Opposition

Class 030. All goods and services in the class are opposed, namely: Pizza
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Grounds for Opposition

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

U.S. Registration No.	2858269	Application Date	08/01/2000
Registration Date	06/29/2004	Foreign Priority Date	NONE
Word Mark	TUSCAN GARDEN		

Design Mark	TUSCAN GARDEN
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2000/11/22 First Use In Commerce: 2000/11/22 spoonable and portable salad dressings

Attachments	76099987#TMSN.gif (1 page)(bytes) Tuscan Garden.Not of Opposition.pdf (3 pages)(15023 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	/Vincent J. Elders/
Name	Allen L. Landmeier / Vincent J. Elders
Date	01/07/2009

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

In the Matter of Trademark

Appl. Ser. No.: 77/388,318

For the Mark: TUSCAN GARDEN

Publication Date: September 9, 2008

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Aldi Inc.,
Opposer,
v.
The Kroger Co. of Michigan,
Applicant.
-----X

Opposition No. _____

NOTICE OF OPPOSITION

Aldi Inc. (“Opposer”), an Illinois Corporation located and doing business at 1200 N. Kirk Road, Batavia, Illinois 60510-1477, believes that it will be damaged by the registration of the mark shown in the above-identified application, and hereby opposes the same.

The grounds for opposition are as follows:

1. The Opposer is an Illinois corporation having a place of business at 1200 N. Kirk Road, Batavia, Illinois 60510-1477.
2. On information and belief, The Kroger Co. of Michigan (“Applicant”), is a Michigan corporation having a place of business at 18334 Laurel Park Drive, North Livonia, Michigan 48152-2686.
3. The Opposer has used the mark TUSCAN GARDEN in interstate commerce for spoonable and portable salad dressings since at least as early as November 22, 2000.

4. The Opposer is the owner of and will rely upon U.S. Registration No. 2,858,269 for the mark TUSCAN GARDEN.

5. The Opposer sells, advertises and promotes the aforementioned goods bearing the mark TUSCAN GARDEN and by reason of such efforts and the high quality of the Opposer's products, the TUSCAN GARDEN mark is known to the purchasing public and is a valuable asset of the Opposer.

6. The Applicant filed the above-identified intent-to-use application to register the mark TUSCAN GARDEN for pizza.

7. The Applicant's mark and the Opposer's mark are identical.

8. The Applicant has not alleged that it has used the mark TUSCAN GARDEN and, accordingly, its constructive date of first use is the date its application was filed, which is February 4, 2008.

9. On information and belief, the Applicant did not use the mark TUSCAN GARDEN in interstate commerce on or before November 22, 2000.

10. On information and belief, the Opposer's first use of the mark TUSCAN GARDEN in interstate commerce predates the Applicant's first use of the mark TUSCAN GARDEN in interstate commerce.

11. The Applicant's goods and the Opposer's goods are substantially similar or at least closely related.

12. The Opposer has not licensed, consented or in any manner authorized use of the mark TUSCAN GARDEN by the Applicant for any goods or services.

13. The purchasing public is likely to be confused, mistaken, or deceived into thinking that the Applicant's goods emanate from or are sponsored by the Opposer, or are related or connected in some way with the Opposer's established TUSCAN GARDEN goods, all to the damage of the Opposer.

WHEREFORE, the Opposer respectfully prays that this Opposition be sustained in favor of the

Opposer and that registration of the Applicant's mark 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.

By: /Allen L. Landmeier/
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Dated: January 7, 2009