

ESTTA Tracking number: **ESTTA308237**

Filing date: **09/25/2009**

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	Sheetz of Delaware, Inc.
Granted to Date of previous extension	09/30/2009
Address	501 Silverside Drive Suite 67 Wilmington, DE 19809 UNITED STATES

Attorney information	Roberta Jacobs-Meadway Eckert Seamans Cherin & Mellott, LLC 50 South 16th Street, 22nd Floor Philadelphia, PA 19102 UNITED STATES rjacobsmeadway@eckertseamans.com, smcconnell@eckertseamans.com Phone:215-851-8400
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**Applicant Information**

Application No	77515621	Publication date	06/02/2009
Opposition Filing Date	09/25/2009	Opposition Period Ends	09/30/2009
Applicant	Cup-a-Ccino, LLC Suite 103 7900-D Stevens Mill Road Matthews, NC 28104 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 035. First Use: 2008/07/07 First Use In Commerce: 2008/07/07 All goods and services in the class are opposed, namely: providing automated vending machine services for the dispensing of coffee and other hot beverages; vending machine rental and stocking of vending machines related to the above vending items
Class 036. First Use: 2008/07/07 First Use In Commerce: 2008/07/07 All goods and services in the class are opposed, namely: charitable fund raising services, namely, facilitating charitable donations on behalf of third parties through donating a portion of revenues collected from vending machines located at the workplaces of such third parties to charities designated by such third parties


**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	2197125	Application Date	01/29/1997
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No.			
Registration Date	10/20/1998	Foreign Priority Date	NONE
Word Mark	CUPO'CCINO		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 030. First use: First Use: 1995/03/20 First Use In Commerce: 1995/11/30 prepared and processed coffee based beverages containing milk sold through convenience stores; prepared and processed coffee sold through convenience stores</p> <p>Class 032. First use: First Use: 1995/03/20 First Use In Commerce: 1995/11/30 prepared and processed coffee flavored soft drinks sold through convenience stores</p>		

U.S. Registration No.	2407973	Application Date	04/21/1999
Registration Date	11/28/2000	Foreign Priority Date	NONE
Word Mark	CUPO'CCINO		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 030. First use: First Use: 1995/03/20 First Use In Commerce: 1995/11/30 prepared and processed coffee based beverages containing milk sold through convenience stores; prepared and processed coffee sold through convenience stores</p> <p>Class 032. First use: First Use: 1995/03/20 First Use In Commerce: 1995/11/30 prepared and processed coffee flavored soft drinks sold through convenience stores</p>		

Attachments	75688814#TMSN.gif ( 1 page )( bytes ) NOTICE OF OPPOSITION - CUP-A-CCINO (M0762378).PDF ( 15 pages )(502079 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	/Roberta Jacobs-Meadway/
Name	Roberta Jacobs-Meadway
Date	09/25/2009



2. The application herein opposed was filed July 7, 2008 on the basis of Section 1(a) with a claim of use since July 7, 2008.

3. Sheetz, itself and through its predecessor and related companies (“Sheetz”) is and has been engaged in the operation of service stations and convenience stores and in the sale and distribution of food and beverage products for consumption on and off premises, including coffee beverages sold through convenience stores.

4. Sheetz has engaged in such activities in commerce since at least as early as March 20, 1995 the mark CUPO’CCINO.

5. Since at least as early as March 20, 1995, the business of Sheetz and its sale of coffee beverages under the CUPO’CCINO mark have been continuous and commercially significant.

6. The CUPO’CCINO mark as used by Sheetz is inherently distinctive or has acquired distinctiveness by virtue of long use in commerce in connection with the sale and distribution of coffee beverages through convenience stores.

7. Sheetz is the owner of U.S. Trademark Registrations Nos. 2,197,125 and 2,407,973 for its CUPO’CCINO mark. These registrations are valid and subsisting and incontestable. The printouts for each of these registrations from the USPTO website establishing status and title are attached as Exhibits A and B, respectively.

8. The mark as shown in the application which is the subject of this opposition is confusingly similar to the CUPO’CCINO mark of Sheetz. In each instance, the initial syllable and the last two syllables of the mark are “CUP” and “CCINO” and only the second syllable differs, and that by replacing an “O” with an “A” in the middle of the mark, which is the least conspicuous position. The difference in punctuation is not significant, as the average purchaser

is likely only to recall that there was some punctuation where normally there would be none.

The marks are accordingly close in appearance, and in sound, and also in connotation and overall commercial impression, being plays on the beverage name cappuccino

9. The services identified in the application which is the subject of this opposition are closely related to the goods sold by Sheetz under its CUPO'CCINO mark. Sheetz sells under its CUPO'CCINO mark coffee beverages through convenience stores associated with service stations while Applicant provides vending machines for dispensing coffee beverages. Convenience stores and service stations are common venues for vending machines.

10. The services identified in the application which is the subject of this opposition are also closely related to Sheetz' charitable efforts in the communities in which its convenience stores and services stations operate. Among its many charitable activities, Sheetz provides its coffee beverages as a donation to charity. Sheetz provides its coffee beverages directly at charitable events, away from its convenience stores and service stations. When Sheetz sells coffee beverages at charitable events, it donates all or a portion of the proceeds from the sale of its coffee beverages directly to the charity hosting the event.

11. The application which is the subject of this opposition contains no geographic restrictions. It must be assumed that the services will be directed to convenience stores and service stations and like outlets.

12. There is no issue as to priority, since Sheetz is the owner of federal registrations for its CUPO'CCINO mark.

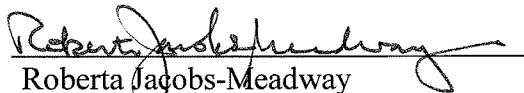
13. Applicant's mark which is the subject of this opposition is confusingly similar to the previously used and registered CUPO'CCINO mark of Sheetz, being used for services related to goods sold by Sheetz under its CUPO'CCINO mark.

14. If Applicant is permitted to register its mark for the services set forth in the application herein opposed, Applicant would thereby obtain a *prima facie* exclusive right to use such mark for the services identified in the application in derogation of Sheetz' rights. Such registration would be a source of damage and injury to Sheetz.

WHEREFORE, Sheetz of Delaware, Inc. prays that registration of the mark of Application Serial No. 77/515,621 for the services identified therein be refused and that this Opposition be sustained.

Respectfully submitted,

Dated: 9/25/09

By:   
Roberta Jacobs-Meadway  
Sean P. McConnell  
Joseph L. Hoynoski, III  
ECKERT SEAMANS CHERIN & MELLOTT,  
LLC  
Two Liberty Place  
50 S. 16<sup>th</sup> Street, 22<sup>nd</sup> Floor  
Philadelphia, PA 19103  
(215) 851-8522

ATTORNEYS FOR OPPOSER

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the attached  
Notice of Opposition was served on correspondent for the Applicant on the dated listed below

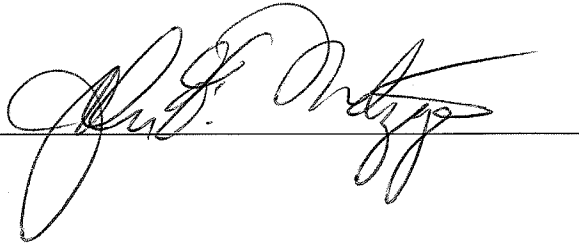
U.S. Mail:

C. Christopher Clark  
Tillman Wright, PLLC  
7400 Carmel Executive Park Drive  
Suite 120  
Charlotte, NC 28226-6148

Dated: \_\_\_\_\_

9/25/09

By: \_\_\_\_\_

A handwritten signature in black ink, appearing to read "C. Christopher Clark", written over a horizontal line.



# Exhibit A

**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2009-09-25 12:43:56 ET**

**Serial Number:** 75233138 Assignment Information      Trademark Document Retrieval

**Registration Number:** 2197125

**Mark (words only):** CUPO'CCINO

**Standard Character claim:** No

**Current Status:** This registration has been renewed.

**Date of Status:** 2008-10-30

**Filing Date:** 1997-01-29

**Transformed into a National Application:** No

**Registration Date:** 1998-10-20

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 101

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov**

**Current Location:** 830 -Post Registration

**Date In Location:** 2008-10-30

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**LAST APPLICANT(S)/OWNER(S) OF RECORD**

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1. Sheetz of Delaware, Inc.

**Address:**

Sheetz of Delaware, Inc.  
501 Silverside Drive Suite 67  
Wilmington, PA 19809  
United States

**Legal Entity Type:** Corporation

**State or Country of Incorporation:** Delaware

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**GOODS AND/OR SERVICES**

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**International Class:** 030

**Class Status:** Active

prepared and processed coffee based beverages containing milk sold through convenience stores;  
prepared and processed coffee sold through convenience stores

**Basis:** 1(a)

**First Use Date:** 1995-03-20

**First Use in Commerce Date:** 1995-11-30

**International Class:** 032

**Class Status:** Active

prepared and processed coffee flavored soft drinks sold through convenience stores

**Basis:** 1(a)

**First Use Date:** 1995-03-20

**First Use in Commerce Date:** 1995-11-30

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#### ADDITIONAL INFORMATION

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(NOT AVAILABLE)

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#### MADRID PROTOCOL INFORMATION

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(NOT AVAILABLE)

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#### PROSECUTION HISTORY

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**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

2008-10-30 - First renewal 10 year

2008-10-30 - Section 8 (10-year) accepted/ Section 9 granted

2008-10-24 - Assigned To Paralegal

2008-10-20 - TEAS Section 8 & 9 Received

2008-03-06 - TEAS Change Of Correspondence Received

2007-07-31 - Case File In TICRS

2004-05-10 - Section 8 (6-year) accepted & Section 15 acknowledged

2004-04-02 - Section 8 (6-year) and Section 15 Filed

1998-10-20 - Registered - Principal Register

1998-07-28 - Published for opposition

1998-06-26 - Notice of publication

1998-05-12 - Approved for Pub - Principal Register (Initial exam)

1998-05-12 - Assigned To Examiner  
1998-04-03 - Communication received from applicant  
1997-12-22 - Final refusal mailed  
1997-12-03 - Communication received from applicant  
1997-07-24 - Non-final action mailed  
1997-07-22 - Assigned To Examiner

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**ATTORNEY/CORRESPONDENT INFORMATION**

---

**Attorney of Record**

ROBERTA JACOBS-MEADWAY

**Correspondent**

ROBERTA JACOBS-MEADWAY  
Eckert Seamans Cherin & Mellott, LLC  
50 South 16th Street, 22nd Floor  
Two Liberty Place  
Philadelphia PA 19102  
Phone Number: 215-851-8522  
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## **No assignment has been recorded at the USPTO**

**For Serial Number: 75233138**

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Web interface last modified: October 18, 2008 v.2.0.2

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# Exhibit B

**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2009-09-25 12:44:13 ET**

**Serial Number:** 75688814 Assignment Information      Trademark Document Retrieval

**Registration Number:** 2407973

**Mark**



**(words only):** CUPO'CCINO

**Standard Character claim:** No

**Current Status:** Section 8 and 15 affidavits have been accepted and acknowledged.

**Date of Status:** 2007-01-29

**Filing Date:** 1999-04-21

**Transformed into a National Application:** No

**Registration Date:** 2000-11-28

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 114

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov**

**Current Location:** 830 -Post Registration

**Date In Location:** 2007-01-29

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**LAST APPLICANT(S)/OWNER(S) OF RECORD**

---

1. Sheetz of Delaware, Inc.

**Address:**

Sheetz of Delaware, Inc.  
501 Silverside Road, Suite 67

Wilmington, DE 19809

United States

**Legal Entity Type:** Corporation

**State or Country of Incorporation:** Delaware

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### GOODS AND/OR SERVICES

---

**International Class:** 030

**Class Status:** Active

prepared and processed coffee based beverages containing milk sold through convenience stores;

prepared and processed coffee sold through convenience stores

**Basis:** 1(a)

**First Use Date:** 1995-03-20

**First Use in Commerce Date:** 1995-11-30

**International Class:** 032

**Class Status:** Active

prepared and processed coffee flavored soft drinks sold through convenience stores

**Basis:** 1(a)

**First Use Date:** 1995-03-20

**First Use in Commerce Date:** 1995-11-30

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### ADDITIONAL INFORMATION

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**Design Search Code(s):**

26.11.21 - Rectangles that are completely or partially shaded

**Prior Registration Number(s):**

2197125

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### MADRID PROTOCOL INFORMATION

---

(NOT AVAILABLE)

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### PROSECUTION HISTORY

---

**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

2008-03-06 - TEAS Change Of Correspondence Received

2007-01-29 - Section 8 (6-year) accepted & Section 15 acknowledged

2006-11-14 - Section 8 (6-year) and Section 15 Filed

2006-11-14 - TEAS Section 8 & 15 Received

2006-07-25 - Case File In TICRS



2000-11-28 - Registered - Principal Register

2000-09-05 - Published for opposition

2000-08-04 - Notice of publication

2000-06-18 - Approved for Pub - Principal Register (Initial exam)

2000-02-22 - Communication received from applicant

1999-09-16 - Non-final action mailed

1999-08-31 - Assigned To Examiner

1999-08-25 - Assigned To Examiner

---

**ATTORNEY/CORRESPONDENT INFORMATION**

---

**Attorney of Record**

Roberta Jacobs-Meadway

**Correspondent**

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**For Serial Number: 75688814**

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Web interface last modified: October 18, 2008 v.2.0.2

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