

ESTTA Tracking number: **ESTTA315028**

Filing date: **11/04/2009**

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	Carolina Soy Products LLC
Granted to Date of previous extension	11/11/2009
Address	P. O. Box 527 Warsaw, NC 28398 UNITED STATES

Attorney information	William J. Mason MacCord Mason PLLC P. O. Box 1489 Wrightsville Beach, NC 28480 UNITED STATES wmason@mmpatent.com,lquinn@mmpatent.com Phone:910-313-6175
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**Applicant Information**

Application No	77688852	Publication date	07/14/2009
Opposition Filing Date	11/04/2009	Opposition Period Ends	11/11/2009
Applicant	Deacon Dog Brands LLC Suite A210 17383 Sunset Boulevard Pacific Palisades, CA 90272 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 029. All goods and services in the class are opposed, namely: Frozen entrees consisting primarily of meat, seafood, poultry, or vegetables; packaged entrees consisting primarily of meat, seafood, poultry, or vegetables; frozen appetizers consisting primarily of meat, seafood, poultry, or vegetables; packaged appetizers consisting primarily of meat, seafood, poultry, or vegetables; frozen side dishes consisting primarily of meat, seafood, poultry, or vegetables; packaged side dishes consisting primarily of meat, seafood, poultry, or vegetables
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**Grounds for Opposition**

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

**Mark Cited by Opposer as Basis for Opposition**

U.S. Registration No.	2913458	Application Date	11/09/2000
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Registration Date	12/21/2004	Foreign Priority Date	NONE
Word Mark	SMARTFRY		
Design Mark	<b>SMARTFRY</b>		
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2001/03/16 First Use In Commerce: 2001/03/16 COOKING OIL NOT SOLD AT RETAIL		

Attachments	76162782#TMSN.gif ( 1 page )( bytes ) 5483-050091103_notice of opposition.pdf ( 6 pages )(26091 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 Overnight Courier on this date.

Signature	/William J Mason/
Name	William J. Mason
Date	11/04/2009

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

In the matter of

U.S. Trademark Application 77/688,852  
For the mark SMART FRY  
Published in the Official Gazette on July 14, 2009

CAROLINA SOY PRODUCTS, LLC,

Opposer,

Opposition No. \_\_\_\_\_

v.

DEACON DOG BRANDS LLC,

Applicant.

Commissioner of Trademarks  
Box TTAB  
P.O. Box 1451  
Alexandria, VA 22313-1451

**NOTICE OF OPPOSITION**

1. Opposer, Carolina Soy Products, LLC ("Opposer"), a limited liability company organized and existing under the laws of North Carolina and having an address of P.O. Box 527, Warsaw, NC 28398, believes that it will be damaged by the registration of the mark SMART FRY shown in trademark application Serial No. 77/688,852 (the "Application") and hereby opposes same pursuant to 15 U.S.C. §§ 1052 and 1063.

2. To the best of Opposer's knowledge, the name and address of the current owner of the Application is Deacon Dog Brands LLC ("Applicant"), Suite A210, 17383 Sunset Boulevard, Pacific Palisades, CA 90272.

As grounds for opposition, it is alleged that:

3. Applicant has filed the Application to register the mark SMARTFRY to identify "Frozen entrees consisting primarily of meat, seafood, poultry, or vegetables; packaged entrees consisting primarily of meat, seafood, poultry, or vegetables; frozen appetizers consisting primarily of meat, seafood, poultry, or vegetables; packaged appetizers consisting primarily of meat, seafood, poultry, or vegetables; frozen side dishes consisting primarily of meat, seafood, poultry, or vegetables; packaged side dishes consisting primarily of meat, seafood, poultry, or vegetables".

4. The Application was published in the Official Gazette on July 14, 2009.

5. Opposer requested a 90-day extension of time to oppose the Application and Opposer's request was granted on July 28, 2009.

6. Applicant has not filed an amendment to allege use as of November 3, 2009.

7. Opposer is the owner of the following registration in the United States Patent and Trademark Office for the mark SMARTFRY (Opposer's Mark), which registration has not been cancelled, is valid and in full force and effect.

<b>Trademark</b>	<b>Registration No.</b>	<b>Registration Date</b>	<b>International Class/Goods</b>
SMARTFRY	2,913,458	December 21,2004	29 - cooking oil not sold at retail

8. Opposer, since at least as early as March 16, 2001, has been, and is now, using the mark SMARTFRY throughout the United States in connection with the goods described above.

9. Opposer's use of Opposer's Mark, as described above, has been valid and continuous since the date of first use.

10. Opposer's continuous, exclusive and commercially successful use of the mark SMARTFRY is symbolic of extensive good will and consumer recognition built up by Opposer through substantial amounts of time, money and effort in manufacturing, advertising and promotion. As such, the mark SMARTFRY has come to serve as a unique and famous identifier of Opposer's goods.

11. Upon information and belief, Opposer's SMARTFRY mark is widely and highly recognized by purchasers in the food service industry as a designation of Opposer's goods.

12. Opposer's use of the mark SMARTFRY predates any alleged use by Applicant of Applicant's Mark.

13. Opposer's use of the mark SMARTFRY predates the filing date of the Application.

14. Opposer's Mark was well established and famous long before the filing date of the Application and at the time the Applicant filed the Application.

15. Upon information and belief, Applicant's Mark SMART FRY, to be used in connection with the goods covered by Application Serial No. 77/688,852, is confusingly similar to Opposer's Mark as used and registered by Opposer.

16. Upon information and belief, the goods to which Applicant's Mark SMART FRY will be applied, and the products on and in connection with which Opposer uses its mark SMARTFRY, are products that are: (1) offered for sale and sold in the same channels of trade, and (2) offered for sale and sold to the same class of purchasers.

**COUNT 1**  
**LIKELIHOOD OF CONFUSION**

17. Opposer incorporated each and every allegation of Paragraphs 1-16 of this Notice as though fully set forth herein.

18. In view of the similarity of the respective marks, similarity of the channels of trade and the related nature of the goods offered for sale by the respective parties, it is alleged that Applicant's Mark SMART FRY so resembles Opposer's Mark, previously used in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake or to deceive as to source by suggesting that Applicant's goods are associated with or approved, endorsed, affiliated, authorized or sponsored by Opposer.

**COUNT II**  
**TRADEMARK DILUTION**

19. Opposer incorporates each and every allegation of Paragraphs 1-18 of this Notice as though fully set forth herein.

20. SMARTFRY has become famous in accordance with the standard set forth in 15 U.S.C. § 1125(c).

21. Applicant filed the Application for SMART FRY after Opposer's SMARTFRY became famous.

22. Applicant's Mark is likely to cause the dilution of the distinctiveness of the Opposer's famous SMARTFRY mark.

WHEREFORE, Opposer prays that Application Serial No. 77/688,852 be rejected on the basis of: (1) likelihood of confusion and (2) likelihood of dilution; and that no registration be issued thereon to Applicant and that this Opposition be sustained in favor of Opposer.

Dated this 4th day of November, 2009.

Respectfully submitted,

/William J. Mason/  
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Attorneys for Opposer  
Carolina Soy Products, LLC

**CERTIFICATE OF SERVICE**

A copy of the foregoing Notice of Opposition was served this 4th day of  
November, 2009 via FedEx overnight service upon counsel for Applicant:

Michelle A. Massicotte, Esq.  
NIXON PEABODY LLP  
100 Summer Street  
Boston, MA 02110-2106

/William J. Mason/  
Attorney for Opposer