

ESTTA Tracking number: **ESTTA318893**

Filing date: **11/25/2009**

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	Honest Tea, Inc.
Granted to Date of previous extension	11/25/2009
Address	4827 Bethesda Avenue Bethesda, MD 20814 UNITED STATES

Attorney information	Ira J. Levy GOODWIN PROCTER LLP 620 Eighth Avenue New York, NY 10018 UNITED STATES NY-TM-Admin@goodwinprocter.com, ilevy@goodwinprocter.com, hdietrick@goodwinprocter.com Phone:212-813-8800
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**Applicant Information**

Application No	77977365	Publication date	07/28/2009
Opposition Filing Date	11/25/2009	Opposition Period Ends	11/25/2009
Applicant	IDAHOAN FOODS, LLC ONE POTATO PLACE LEWISVILLE, ID 834310130 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 029. First Use: 2008/05/31 First Use In Commerce: 2008/05/31 All goods and services in the class are opposed, namely: Instant potatoes; processed potatoes; dehydrated potatoes
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**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.	3436920	Application Date	11/30/2006
Registration Date	05/27/2008	Foreign Priority Date	NONE
Word Mark	HONEST KIDS		

Design Mark	<b>HONEST KIDS</b>		
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		
Design Mark	<b>HONEST ADE</b>		
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		

U.S. Application No.	77622483	Application Date	11/26/2008
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	HONEST KOMBUCHA		

Design Mark	<h1>HONEST KOMBUCHA</h1>		
Description of Mark	NONE		
Goods/Services	Class 030. First use: TEA-BASED BEVERAGES		

U.S. Registration No.	3696281	Application Date	01/25/2007
Registration Date	10/13/2009	Foreign Priority Date	NONE
Word Mark	HONEST BEVERAGES		
Design Mark	<h1>HONEST BEVERAGES</h1>		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2009/08/04 First Use In Commerce: 2009/08/04 Tea-based beverages Class 032. First use: First Use: 2009/08/04 First Use In Commerce: 2009/08/04 Non-alcoholic, organic beverages containing fruit juices		

U.S. Registration No.	3670282	Application Date	03/06/2008
Registration Date	08/18/2009	Foreign Priority Date	NONE
Word Mark	BE REAL. GET HONEST.		

Design Mark	<b>BE REAL. GET HONEST.</b>
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2008/08/31 First Use In Commerce: 2008/08/31 TEA-BASED BEVERAGES Class 032. First use: First Use: 2008/08/31 First Use In Commerce: 2008/08/31 NON-ALCOHOLIC, ORGANIC BEVERAGES CONTAINING FRUIT JUICES

U.S. Application No.	77812926	Application Date	08/26/2009
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	HONEST FOOD		
Design Mark	<b>HONEST FOOD</b>		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1996/04/01 First Use In Commerce: 1996/04/01 packaged foods: namely, cereal bars, chocolate, snack bars, fruit bars, vegetable bars, bakery goods, and snacks		

U.S. Registration No.	3670894	Application Date	12/12/2008
Registration Date	08/18/2009	Foreign Priority Date	NONE
Word Mark	HONEST MATE		

Design Mark	<b>HONEST MATE</b>
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2009/03/15 First Use In Commerce: 2009/05/15 TEA-BASED BEVERAGES

Attachments	77054096#TMSN.jpeg ( 1 page )( bytes ) 78543157#TMSN.jpeg ( 1 page )( bytes ) 77622483#TMSN.jpeg ( 1 page )( bytes ) 77090698#TMSN.jpeg ( 1 page )( bytes ) 77414463#TMSN.jpeg ( 1 page )( bytes ) 77812926#TMSN.jpeg ( 1 page )( bytes ) 77631793#TMSN.jpeg ( 1 page )( bytes ) 77977365.pdf ( 6 pages )(169686 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	/ijl/
Name	Ira J. Levy
Date	11/25/2009

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

HONEST TEA, INC.,  
*Opposer,*

v.

IDAHOAN FOODS, LLC,  
*Applicant.*

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

Serial Number: 77/977,365

Mark: HONEST EARTH

**NOTICE OF OPPOSITION**

Opposer 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, Maryland 20814, believes it will be damaged by the registration of the mark shown in application Serial No. 77/977,365– HONEST EARTH for various goods in International Class 29, and 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 tea-based beverages in International Class 30. 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 a family of registered and common law HONEST-formative marks, for use in connection with a variety of food and beverage products, including the following:

<b>MARK</b>	<b>SER./REG. NO.</b>	<b>ISSUED</b>	<b>FIRST USE IN COMMERCE</b>	<b>CLASS(ES)</b>
HONEST KIDS	3,436,920	05/27/2008	April 2007	32
HONEST ADE	3,140,335	09/05/2006	July 2005	32
HONEST MATE	3,670,894	08/18/2009	May 2009	30
HONEST KOMBUCHA	77/622,483		November 2009	30
HONEST BEVERAGES	3,696,281	10/13/2009	August 2009	30, 32
BE REAL. GET HONEST.	3,670,282	08/18/2009	August 2008	30, 32
HONEST FOOD	77/812,926		April 1996	30

3. Opposer also holds common law rights in the mark HONEST FOOD, which it uses in connection with packaged foods namely cereal bars, chocolate, snack bars, fruit bars, vegetable bars, bakery goods, and snacks. The HONEST FOOD mark has been used by Opposer and a predecessor in interest since at least April of 1996.

4. Through a variety of efforts over the last twelve years, Opposer has established a strong customer base and become known as a provider of quality goods and services in the fields of healthy, organic beverages and foods. By virtue of the quality of its products and services, and as a result of the expenditure of considerable sums of money on advertising and promotional activity in various media (including without limitation the web site at [www.honesttea.com](http://www.honesttea.com)). Opposer has built a solid reputation for and valuable goodwill in the HONEST brand and family of marks.

5. Opposer promotes its HONEST Marks as a family of marks through the use of its house marks HONEST TEA, HONEST BEVERAGES and in particular the slogan BE REAL GET HONEST.

6. Through the continued and widespread use by Opposer of the above-mentioned HONEST-formative marks (collectively the “HONEST Marks”), in connection with a variety of food and 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 food and beverage productions that originate with or have been authorized by Opposer.

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

8. Idahoan Foods, LLC (“Applicant”) is the record owner of a use trademark application, Application Serial No. 77/977,365, seeking registration of the mark HONEST EARTH for instant potatoes, processed potatoes and dehydrated potatoes in International Class 29 (“Applicant’s Mark”). The filing date of Applicant’s Mark is December 10, 2007 – almost *ten years after* Opposer’s first use of its HONEST TEA mark.

9. Applicant proposes to use Applicant’s Mark in connection with goods that are complementary to, and in fact closely related to, the goods with which Opposer uses its HONEST Marks.

10. 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.

11. Applicant’s Mark is confusingly similar to Opposer’s HONEST Marks in appearance, sound and commercial impression.



12. Applicant's instant, processed and dehydrated potatoes are related to the various food and beverage goods sold and provided in connection with Opposer's HONEST Marks and/or represent a natural zone of expansion for Opposer.

13. Upon information and belief, Applicant's goods would travel and/or be promoted through the same channels of trade for sale to, and use by, the same class of consumers, *i.e.*, the general consuming public.

14. Applicant's proposed use of Applicant's Mark in connection with Applicant's goods, 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).

15. The proposed use of Applicant's Mark is likely to cause confusion, mistake or deception as to the source or origin of Applicant's goods, 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.

16. Opposer has not consented and does not consent in any way to Applicant's use or registration of Applicant's Mark.

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

Dated: November 25, 2009

Respectfully submitted,

HONEST TEA, INC.

By Their Attorneys,

By: Ira Levy  
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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 November 25, 2009, upon counsel of record for the Applicant at the following address:

Preston C. Regehr  
Techlaw Ventures, PLLC  
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Janis Nici