

ESTTA Tracking number: **ESTTA333490**

Filing date: **02/22/2010**

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	KELLOGG NORTH AMERICA COMPANY
Granted to Date of previous extension	02/21/2010
Address	One Kellogg Square PO Box 3599 Battle Creek, MI 49016 UNITED STATES
Correspondence information	DAVID A. HERDMAN Assistant Secretary/Corporate Counsel KELLOGG NORTH AMERICA COMPANY One Kellogg Square PO Box 3599 Battle Creek, MI 49016-3599 UNITED STATES trademarks@kellogg.com Phone:trademarks@kellogg.com

Applicant Information

Application No	77718013	Publication date	08/25/2009
Opposition Filing Date	02/22/2010	Opposition Period Ends	02/21/2010
Applicant	IQ Foods, Inc. 1439 North View Dr Westlake Village, CA 91362 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Nutritionally fortified beverages; Nutritionally fortified water; Vitamin enriched water
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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.	3263230	Application Date	05/26/2006
Registration Date	07/10/2007	Foreign Priority Date	NONE
Word Mark	SPECIAL K 2 O		

Design Mark	SPECIAL K 2 O		
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2006/09/06 First Use In Commerce: 2006/09/06 Drinking water; Flavored waters		


U.S. Registration No.	3263229	Application Date	05/26/2006
Registration Date	07/10/2007	Foreign Priority Date	NONE
Word Mark	SPECIAL K		
Design Mark	SPECIAL K		
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2006/09/06 First Use In Commerce: 2006/09/06 Drinking water; Flavored waters		

U.S. Registration No.	1729645	Application Date	01/10/1991
Registration Date	11/03/1992	Foreign Priority Date	NONE
Word Mark	SPECIAL K		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1991/03/25 First Use In Commerce: 1991/03/25 waffles		

U.S. Registration No.	1812139	Application Date	04/21/1993
Registration Date	12/21/1993	Foreign Priority	NONE

		Date	
Word Mark	SPECIAL K		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1960/00/00 First Use In Commerce: 1960/00/00 printed recipes in the form of booklets, brochures, pamphlets, cookbooks, and cards marketed as a component of food packaging; pamphlets, brochures, and booklets concerning diet and nutrition		

U.S. Registration No.	3518241	Application Date	10/11/2005
Registration Date	10/14/2008	Foreign Priority Date	NONE

Word Mark	SPECIAL K		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1955/03/07 First Use In Commerce: 1955/03/07 PROCESSED CEREAL-DERIVED FOOD PRODUCT TO BE USED AS A BREAKFAST CEREAL, SNACK FOOD OR INGREDIENT FOR MAKING FOOD; READY-TO-EAT CEREAL DERIVED FOOD BARS; WAFFLES, GRAIN BASED SNACK FOODS		

U.S. Registration No.	625578	Application Date	05/02/1955
Registration Date	04/17/1956	Foreign Priority Date	NONE

Word Mark	SPECIAL K		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class U046 (International Class 030). First use: First Use: 1955/03/07 First Use In Commerce: 1955/03/07 READY-TO-EAT CEREAL FOOD		
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U.S. Registration No.	3459246	Application Date	10/12/2007
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Registration Date	07/01/2008	Foreign Priority Date	NONE
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Word Mark	SPECIAL K BLISS		
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Design Mark			
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Description of Mark	NONE		
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Goods/Services	Class 030. First use: First Use: 2007/12/31 First Use In Commerce: 2007/12/31 Cereal based snack food; Ready to eat, cereal derived food bars		
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U.S. Registration No.	1278007	Application Date	09/30/1982
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Registration Date	05/15/1984	Foreign Priority Date	NONE
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Word Mark	K		
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Design Mark			
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Description of Mark	NONE		
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Goods/Services	Class 016. First use: First Use: 1981/10/00 First Use In Commerce: 1981/10/00 Publications and Printed Matter-Namely, Booklets, Pamphlets, Leaflets and Brochures Concerning the Company's Products Class 030. First use: First Use: 1955/03/07 First Use In Commerce: 1955/03/07 Cereal-Derived Food Product to Be Used as a Breakfast Food, Snack Food and Ingredient for Making Food		
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U.S. Registration No.	1279803	Application Date	09/30/1982
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Registration Date	05/29/1984	Foreign Priority Date	NONE
Word Mark	K		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 016. First use: First Use: 1981/10/00 First Use In Commerce: 1981/10/00 Publications and Printed Matter-Namely, Booklets, Pamphlets, Leaflets and Brochures Concerning the Company's Products</p> <p>Class 030. First use: First Use: 1955/03/07 First Use In Commerce: 1955/03/07 Cereal-Derived Food Product to Be Used as a Breakfast Food, Snack Food or Ingredient for Making Food</p>		


U.S. Registration No.	2344341	Application Date	08/18/1997
Registration Date	04/25/2000	Foreign Priority Date	NONE
Word Mark	K		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 042. First use: First Use: 1995/10/00 First Use In Commerce: 1995/10/00 Providing general information over a global computer network in the fields of news, entertainment, recipes and nutrition</p>		

U.S. Registration No.	3570046	Application Date	07/30/2008
Registration Date	02/03/2009	Foreign Priority Date	NONE
Word Mark	K		

Design Mark	
Description of Mark	The mark consists of the stylized letter "K" in the color red.
Goods/Services	Class 029. First use: First Use: 2006/09/05 First Use In Commerce: 2006/09/05 Protein based, nutrient-dense snack bars

U.S. Registration No.	3628661	Application Date	07/30/2008
Registration Date	05/26/2009	Foreign Priority Date	NONE
Word Mark	K		
Design Mark			
Description of Mark	The mark consists of the stylized letter "K" in the color red.		
Goods/Services	Class 030. First use: First Use: 1955/03/07 First Use In Commerce: 1955/03/07 PROCESSED CEREAL-BASED FOOD TO BE USED AS A BREAKFAST FOOD, SNACK FOOD OR INGREDIENT FOR MAKING OTHER FOODS; WAFFLES; CEREAL BASED SNACK FOOD BARS; CEREAL BASED SNACK BARS CONTAINING NUTS; CRACKERS; BISCUITS		

U.S. Registration No.	3694754	Application Date	07/30/2008
Registration Date	10/13/2009	Foreign Priority Date	NONE
Word Mark	K		

Design Mark	
Description of Mark	The mark consists of the stylized letter "K" in the color red.
Goods/Services	Class 005. First use: First Use: 2006/09/05 First Use In Commerce: 2006/09/05 MEAL REPLACEMENT BARS; PROTEIN ENRICHED WATER; PROTEIN ENRICHED POWDERED WATER MIXES Class 032. First use: First Use: 2006/09/05 First Use In Commerce: 2006/09/05 DRINKING WATERS; FLAVORED WATER POWDERS FOR MAKING FLAVORED WATER DRINKS

U.S. Registration No.	3272224	Application Date	06/06/2006
Registration Date	07/31/2007	Foreign Priority Date	NONE
Word Mark	K-ONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 022. First use: First Use: 1999/12/19 First Use In Commerce: 1999/12/19 SACKS OR BAGS FOR THE TRANSPORTATION OR STORAGE OF MATERIALS IN BULK		

U.S. Registration No.	3477212	Application Date	10/14/2006
Registration Date	07/29/2008	Foreign Priority Date	NONE
Word Mark	FUN K TOWN		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 041. First use: First Use: 2004/09/16 First Use In Commerce: 2004/09/16 providing general information over a global computer network in the fields of news, entertainment, games, interactive games

Attachments	78894270#TMSN.jpeg (1 page)(bytes) 78894239#TMSN.jpeg (1 page)(bytes) 78730681#TMSN.jpeg (1 page)(bytes) 71686658#TMSN.gif (1 page)(bytes) 77302517#TMSN.jpeg (1 page)(bytes) 73395402#TMSN.gif (1 page)(bytes) 73395148#TMSN.gif (1 page)(bytes) 75343041#TMSN.gif (1 page)(bytes) 77535145#TMSN.jpeg (1 page)(bytes) 77535193#TMSN.jpeg (1 page)(bytes) 77535173#TMSN.jpeg (1 page)(bytes) 78901860#TMSN.jpeg (1 page)(bytes) 77021286#TMSN.jpeg (1 page)(bytes) Notice of Opposition Scan.pdf (7 pages)(281493 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	/DAVID A. HERDMAN/
Name	DAVID A. HERDMAN
Date	02/22/2010

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

KELLOGG NORTH AMERICA COMPANY)	
)	
Opposer,)	
)	
v.	)	Opposition No. _____
	)	Serial No. 77/718,013
IQ FOODS, INC.	)	Mark: KI2OMEGA
	)	Filing Date: April 20, 2009
Applicant.	)	Publication Date: August 25, 2009
)	

NOTICE OF OPPOSITION

Kellogg North America Company, a Delaware corporation, located and doing business at One Kellogg Square, P.O. Box 3599, Battle Creek, Michigan 49016, (hereinafter called "Opposer"), believes that it will be damaged by the registration of the mark shown in Application Serial No. 77/718,013 in Class 5, filed by IQ FOODS, INC. (hereinafter "Applicant") on April 20, 2009, and opposes Application Serial No. 77/718,013.

The grounds are as follows:

1. Commencing long prior to Applicant's filing date, Opposer and Opposer's predecessor in interest, Kellogg Company, have engaged, and Opposer is now engaged in the manufacture, distribution, sale, advertising and promotion in interstate commerce of a wide range of food and beverage products, including drinking water, protein-enriched water, flavored water and powders for making beverages, as well as an ever expanding range of promotional and licensed goods.

2. Commencing long prior to Applicant's filing date, Opposer and Opposer's predecessor in interest have used, and Opposer is now using Opposer's K, K2O, SPECIAL K2O, SPECIAL K and K LOGO trademarks (hereinafter sometimes referred to as Opposer's Marks) in

connection with food and beverage products, including cereal-derived food products to be used as breakfast food or snack food and drinking water including protein-enriched water, flavored water and powders for making beverages as well as an ever expanding range of promotional and licensed goods, distributed and sold by Opposer and/or its controlled licensees in commerce.

3. Opposer, is owner of, and will rely herein, upon the following Federal Trademark registrations:

Mark	Registration No.	Issue Date	Goods
SPECIAL K20	3,263,230	07/10/2007	Class 32-Drinking water; flavored waters
SPECIAL K	3,263,229	07/10/2007	Class 32-Drinking water; flavored waters
SPECIAL K	1,729,645	11/03/1992	Class 30-Waffles
SPECIAL K	1,812,139	12/21/1993	Class 16-Printed recipes in the form of booklets, brochures, pamphlets, cookbooks, and cards marketed as a component of food packaging; pamphlets, brochures, and booklets concerning diet and nutrition
SPECIAL K	3,518,241	10/14/2008	Class 30-Processed cereal-derived food product to be used as a breakfast cereal, snack food or ingredient for making food; ready-to-eat cereal derived food bars; waffles, grain based snack foods.
SPECIAL K (stylized)	625,578	04/17/1956	Class 30-Ready-to-eat cereal food
SPECIAL K BLISS	3,459,246	07/01/2008	Class 30- Cereal based snack food; Ready to eat, cereal derived food bars
K (stylized)	1,278,007	05/15/1984	Class 30-Cereal-derived food product to be used as a breakfast food, snack food and ingredient for making food Class 16-Publications and printed matter-namely, booklets, pamphlets, leaflets and brochures concerning the company's products

Mark	Registration No.	Issue Date	Goods
K (stylized)	1,279,803	05/29/1984	Class 30-Cereal-derived food product to be used as a breakfast food, snack food or ingredient for making food Class 16-Publications and printed matter-namely, booklets, pamphlets, leaflets and brochures concerning the company's products
K (Stylized)	2,344,341	04/25/2000	Class 42-Providing general information over a global computer network in the fields of news, entertainment, recipes and nutrition
K (Stylized)	3,570,046	02/03/2009	Class 29-Protein based, nutrient-dense snack bars
K (Stylized)	3,628,661	05/26/2009	Class 30-Processed cereal- based food to be used as a breakfast food, snack food or ingredient for making other foods; waffles; cereal-based snack food bars; cereal-based snack bars containing nuts; crackers; biscuits
K (Stylized)	3,694,754	10/13/2009	Class 5-Meal replacement bars; protein enriched water; protein enriched powdered water mixes Class 32-Drinking waters; flavored water powders for making flavored water drinks
K-ONE (Stylized)	3,272,224	07/31/2007	Class 22-Sacks and bags for the transportation or storage of materials in bulk.
FUN K TOWN	3,477,212	07/29/2008	Class 42 - Providing general information over a global computer network in the fields of news, entertainment, games, interactive games.

(hereinafter referred to as “Opposer’s Registered Marks”). Each of Opposer’s Registered Marks is, in all respects, valid, subsisting and owned by Opposer and is conclusive evidence of Opposer’s exclusive right to use such marks in commerce on the goods specified in said registrations.

4. Further, Opposer is also known by its New York Stock Exchange symbol (K) and the famous "red K" logo and has frequently used the same to form other marks, such as K-ONE (subject of Registration No. 3,272,224), K-ESSENTIALS (subject of Registration No. 2,400,777), FUN K TOWN (subject of Registration No. 3,477,212), W. K. KELLOGG (subject of lapsed Registration Nos. 105,213 and 105,018) K2O (currently used in connection with several beverage products) and "Kay" (the spokesperson for Special K brand) (hereinafter referred to as "Opposer's Red K Marks"). Kellogg would naturally be the first company to come to mind for use of any "K" logo relating to Kellogg's core products as well as commonly licensed goods.

5. In addition to Opposer's Registered Marks, Opposer's Marks and Opposer's Red K Marks specified above, Opposer shall rely herein upon its and its licensees' common law usage of its other K and SPECIAL K marks for additional usage on and in connection with various promotional and licensed products and services. Together, Opposer's Registered Marks, Opposer's Marks and common law uses comprise a valuable family of trademarks, collectively known as Opposer's K Marks.

6. Opposer and Opposer's above identified licensees have made substantial investment in advertising and promoting its goods under Opposer's K Marks since their initial use. Opposer has extensively used, advertised, promoted and offered Opposer's goods bearing Opposer's K Marks to the public through various channels of trade in commerce with the result that Opposer's customers and the public in general have come to know and recognize Opposer's K Marks and associate the same with Opposer and/or goods sold by Opposer and that Opposer's K Marks are famous and distinctive and became famous and distinctive well prior to Applicant's filing its Intent-to-Use trademark application.

7. Upon information and belief, notwithstanding Opposer's rights in and to Opposer's K Marks, on April 20, 2009, Applicant filed an Intent-to-Use application for registration of the proposed KI2OMEGA trademark for "Nutritionally fortified beverages; Nutritionally fortified water; Vitamin enriched water" in International Class 5. Said application was assigned Serial No. 77/718,013.

8. Applicant's KI2OMEGA mark, which incorporates the entirety of Opposer's previously used common law K2O mark for identical or closely related goods, so resembles Opposer's K Marks as to be likely to cause confusion or mistake or to deceive purchasers resulting in damage and detriment to Opposer and its reputation. In this regard, it is noted that color is not claimed as a feature of the Applicant's mark so the letter "K" in the mark could be displayed in any color, including red.

9. Opposer, upon information and belief, avers that its customers, and the public generally, are likely to be confused, mistaken or deceived as to the origin and sponsorship of Applicant's proposed goods to be marketed under Applicant's alleged KI2OMEGA mark and misled into believing that such goods, emanate from, or are licensed to or are in some way directly or indirectly associated with Opposer, to the detriment of Opposer and its reputation.

10. Opposer, upon information and belief, avers that it will be damaged by the registration by Applicant of the alleged KI2OMEGA trademark, as set forth in Applicant's Trademark Application Serial No. 77/718,013, in that the mark is substantially similar to Opposer's K Marks and will be used in connection with goods that are either directly competitive with or closely related to Opposer's goods and services.

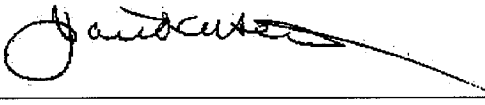
11. Opposer, upon information and belief, also avers that it will be damaged by the registration by Applicant of the proposed KI2OMEGA trademark, as set forth in Applicant's

Trademark Application Serial No. 77/718,013, in that the alleged mark will dilute the distinctiveness of Opposer's famous K Marks as described above in paragraph 5 herein within the meaning of the provisions of the Federal Trademark Dilution Act of 1995, as amended by the Trademark Revision Act of 2006.

Wherefore, this Opposer, Kellogg North America Company believes and avers that it is being and will continue to be damaged by registration of the proposed KI2OMEGA trademark as aforesaid, and prays that said Application Serial No. 77/718,013 be rejected, that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

Respectfully Submitted,

KELLOGG NORTH AMERICA COMPANY

By: 

David A. Herdman
Assistant Secretary/Corporate Counsel
Kellogg North America Company
One Kellogg Square
P.O. Box 3599
Battle Creek, MI 49016

Date: February 22, 2010

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


KELLOGG NORTH AMERICA COMPANY)	
)	
Opposer,)	
)	
v.	)	Opposition No. _____
	)	Serial No. 77/718,013
IQ FOODS, INC.	)	Mark: KI2OMEGA
	)	Filing Date: April 20, 2009
Applicant.	)	Publication Date: August 25, 2009
)	

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Notice of Opposition has been served on the following correspondent as listed on the TARR website of the United States Patent and Trademark Office and attorney of record by mailing said copy on February 22, 2010 via First Class Mail, postage prepaid to:

IQ FOODS, INC.
1439 N. View Drive
Westlake Village, CA 91362-4315

Jeffrey W. Weaver
Dunlap, Grubb & Weaver, PLLC
199 Liberty St. SW
Leesburg, VA 20175-2715



Susan A. Geist