

ESTTA Tracking number: **ESTTA337773**

Filing date: **03/17/2010**

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	Jarrow Formulas, Inc.
Granted to Date of previous extension	03/17/2010
Address	1842 South Robertson Blvd. Los Angeles, CA 90035-4317 UNITED STATES

Attorney information	Mark D. Giarratana McCarter & English, LLP CityPlace I, 185 Asylum Street Hartford, CT 06103-3495 UNITED STATES mgiarratana@mccarter.com, eswift@mccarter.com, jwhitney@mccarter.com Phone:860-275-6700
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**Applicant Information**

Application No	78626152	Publication date	11/17/2009
Opposition Filing Date	03/17/2010	Opposition Period Ends	03/17/2010
Applicant	PomWonderful LLC 11444 W. Olympic Blvd., 10th Floor Los Angeles, CA 90064 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 005. All goods and services in the class are opposed, namely: Food, dietary and nutritional supplements, including antioxidant supplements and supplements derived from and containing pomegranate extracts and plant extracts, including powders, liquids, capsules, and pills; nutraceuticals for use as a dietary supplement, including powders, liquids, capsules, and pills; nutritional additives for use in foods, including antioxidant additives and additives derived from and containing pomegranate extracts and plant extracts, including powders, liquids, capsules, and pills; nutritionally fortified beverages; anti-cancer preparations; pharmaceutical products and preparations, including preparations derived from and containing pomegranate extracts and plant extracts, for the treatment of viral and infectious diseases, including for the treatment of cancer; drug delivery agents consisting of compounds that facilitate delivery of pharmaceuticals; nutritionally enhanced water; vitamin enhanced water
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**Applicant Information**

Application No	78626155	Publication date	11/17/2009
Opposition Filing	03/17/2010	Opposition	

Date		Period Ends	
Applicant	PomWonderful LLC 11444 W. Olympic Blvd., 10th Floor Los Angeles, CA 90064 UNITED STATES		

## Goods/Services Affected by Opposition

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## Grounds for Opposition

The mark is merely descriptive	Trademark Act section 2(e)(1)
Related Proceedings	Consolidated Opposition No. 91171281
Attachments	152 POM notice of oppositoin.pdf ( 3 pages )(114985 bytes ) 155 POM opposition.pdf ( 3 pages )(115789 bytes )

## 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	/mark d giarratana/
Name	Mark D. Giarratana, Esq.
Date	03/17/2010

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

Jarrow Formulas, Inc.	)	Application No. 78/626,152
	)	
Opposer,	)	Mark: POM
	)	
v.	)	Opposition No. _____
	)	
Pom Wonderful LLC.	)	
	)	
Applicant.	)	

**NOTICE OF OPPOSITION**

Jarrow Formulas, Inc., a California corporation, having a principal place of business at 1824 South Robertson Blvd, Los Angeles, California, 90035 (“Opposer”), believes it will be damaged by the registration of the mark “POM” (the “Mark”) that is the subject of U.S. Trademark Application No. 78/626,152 (the “Application”) and hereby opposes registration of same under Section 13 of the Trademark Act, 15 U.S.C. § 1063.

In support of its opposition, Opposer, by its attorneys, states as follows:

1. Opposer manufactures and sells nutritional supplements, including supplements containing pomegranate extract.
2. Applicant filed the Application with the U.S. Patent and Trademark Office on an intent-to-use basis on May 9, 2005, seeking registration for the mark POM in connection with, *inter alia*, “dietary and nutritional supplements, including antioxidant supplements and supplements derived from and containing pomegranate extracts and plant extracts, including powders, liquids, capsules, and pills; nutraceuticals for use as a dietary supplement, including powders, liquids, capsules, and pills; nutritional additives for use in foods, including antioxidant additives and additives derived from and containing pomegranate extracts and plant extracts, including powders, liquids, capsules, and pills; nutritionally fortified beverages;” in international class 5.
3. The Application was published for opposition on November 17, 2009. This is a timely opposition, as extensions of time to file opposition have been obtained by Opposer to date.

4. The term “pom” is an abbreviation for “pomegranate”. The simple truncation “pom” has been and continues to be used by Opposer and other manufacturers of nutritional supplements, and is well-recognized in the nutritional supplement field as referring to or denoting pomegranate, pomegranate extracts, or pomegranate products as an ingredient of dietary supplements.

5. The mark “POM” is merely descriptive of Applicant’s goods because the designation “POM” merely describes the fact that the goods named in Applicant’s application contain pomegranate, or pomegranate extract, and therefore does not function as a trademark or indication of origin.

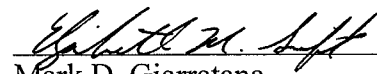
6. In view of Opposer’s and third parties’ long and widespread use in the marketplace of the abbreviation or prefix “POM” to describe pomegranate-containing nutritional supplements, this designation has not acquired distinctiveness with respect to Applicant’s nutritional supplements.

7. Issuance of a registration to Applicant on the designation POM would purportedly provide Applicant with the exclusive right to use such descriptive designation in connection with nutritional supplements, and therefore would unlawfully conflict with the rights of Opposer and others to describe and otherwise designate their nutritional supplements containing pomegranate, pomegranate extracts, or pomegranate products.

8. For all of the foregoing reasons, Opposer will be damaged by the registration of the Mark POM sought to be registered by Applicant.

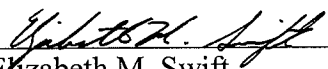
WHEREFORE, Opposer respectfully request that the Board deny registration of Applicant’s POM mark sought through the Application.

Respectfully Submitted,

  
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Mark D. Giarratana  
Elizabeth M. Swift  
McCarter & English, LLP  
CityPlace I, 185 Asylum Street  
Hartford, CT 06103-3495  
Telephone: (860) 275-6719  
Facsimile: (860) 560-5919  
mgiarratana@mccarter.com  
Attorney for Opposer

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this Notice of Opposition is being filed with the Trademark Trial and Appeal Board, Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia, 22313-1451, by using the ESTTA electronic filing system, this 17<sup>th</sup> day of March, 2010.

  
Elizabeth M. Swift

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Opposition has been served on Applicant's Attorney of record, Christine Lofgren, Pom Wonderful LLC, 11444 W. Olympic Blvd., 10<sup>th</sup> Floor, Los Angeles, CA 90064, and to Danielle M. Criona, Esq., Roll International Corp., 11444 W. Olympic Blvd., 10<sup>th</sup> Floor, Los Angeles, CA 90064, via first class mail on this 17<sup>th</sup> day of March, 2010.

  
Elizabeth M. Swift

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

Jarrow Formulas, Inc.	)	Application No. 78/626,155
	)	
Opposer,	)	Mark: POM (Stylized)
	)	
v.	)	Opposition No. _____
	)	
PomWonderful LLC.	)	
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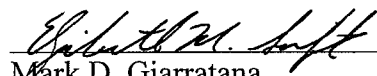
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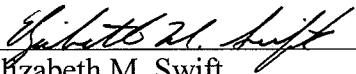
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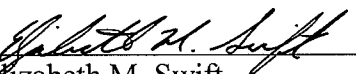
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