

ESTTA Tracking number: **ESTTA342945**

Filing date: **04/19/2010**

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	04/18/2010
Address	ONE KELLOGG SQUARE, PO BOX 3599 BATTLE CREEK, MI 49016-3599 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 trademark@kellogg.com Phone:269-961-2170

Applicant Information

Application No	77620901	Publication date	10/20/2009
Opposition Filing Date	04/19/2010	Opposition Period Ends	04/18/2010
Applicant	Radlo Foods LLC 313 Pleasant Street Watertown, MA 02472 UNITED STATES		

Goods/Services Affected by Opposition

Class 030. All goods and services in the class are opposed, namely: processed grains and herbs; processed cereals
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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 No.	1555954	Application Date	08/08/1988
Registration Date	09/12/1989	Foreign Priority Date	NONE
Word Mark	SMART START		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 1979/07/27 First Use In Commerce: 1988/07/28 CEREAL-DERIVED FOOD PRODUCT TO BE USED AS BREAKFAST FOOD, [CEREAL BAR,] SNACK FOOD OR INGREDIENT FOR MAKING FOOD

U.S. Registration No.	2332452	Application Date	04/13/1999
Registration Date	03/21/2000	Foreign Priority Date	NONE

Word Mark	SMART START
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Design Mark	SMART START
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Description of Mark	NONE
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Goods/Services	Class 042. First use: First Use: 1998/05/06 First Use In Commerce: 1998/05/06 providing general information over a global computer network in the fields of news, entertainment, recipes and nutrition
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Attachments	75682188#TMSN.gif (1 page)(bytes) SMART GOODNESS Opposition Notice scan.pdf (6 pages)(198687 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	04/19/2010

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

KELLOGG NORTH AMERICA COMPANY)	
)	
Opposer,)	
)	
v.)	
)	Opposition No. _____
RADLO FOODS LLC)	Serial No. 77/620,901
)	Mark: SMART GOODNESS
Applicant.)	Filing Date: November 24, 2008
)	Publication Date: October 20, 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. 77/620,901 in Class 30, filed by RADLO FOODS LLC (hereinafter "Applicant") on November 24, 2008, and opposes Application Serial No. 77/620,901 for those goods included in Class 30 only.

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 food products, including breakfast cereal and cereal based snack food products.

2. Commencing long prior to Applicant's filing date, Opposer and Opposer's predecessor in interest, Kellogg Company, have used, and Opposer is now using Opposer's SMART START (hereinafter sometimes referred to as Opposer's Marks) in connection with

food products, including breakfast cereal, snack food bars and ready to eat cereal and grain-based food bars.

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

Mark	Registration No.	Issue Date	Goods
SMART START	1,555,954	09/12/1989	Cereal-derived food product to be used as breakfast food, cereal bar, snack food or ingredient for making food
SMART START	2,332,452	03/21/2000	Providing general information over a global computer network in the fields of news, entertainment, recipes and nutrition

The above registered marks are, in all respects, valid, subsisting and conclusive evidence of Opposer's exclusive right to use the above registered marks for the goods and services specified in said registration.

4. In addition to Opposer's Marks referred to in Paragraph 2 above and the registered marks specified in Paragraph 3 above, Opposer shall rely herein upon its common law usage of its SMART START marks as a result of its active promotional and nutritional programs under which Opposer's marks are used for diverse products and services that further expand the scope of the well-known and distinctive nature of Opposer's SMART START Marks nationwide well beyond the cereal, snack and food categories, which together with Opposer's Marks and the registered marks noted above form a family of valuable "SMART START" marks, herein referred to as "Opposer's SMART START Marks." Given the fame and widespread favorable public recognition of Opposer's SMART START Marks use on these other products and services is a natural extension of Opposer's earlier usage on food products.

5. Opposer has made substantial investment in advertising and promoting its goods under Opposer's SMART START Marks since their initial use. Opposer has extensively used, advertised, promoted and offered Opposer's goods bearing Opposer's SMART START 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 SMART START Marks and associate the same with Opposer and/or goods sold and/or services provided by Opposer. Opposer has built extensive goodwill in connection with the sales of products under Opposer's SMART START Marks.

6. As a result of the success of its extensive promotional program and the substantial sales and advertising of its primary products sold under Opposer's SMART START Marks, Opposer's SMART START® mark was recognized by the U.S. Trademark Office's Trademark Trial and Appeal Board as a strong trademark well prior to the filing date of Applicant's mark and/or use of the applied for mark.

7. Upon information and belief, notwithstanding Opposer's rights in and to Opposer's SMART START Marks, on November 24, 2008, Applicant filed an intent to use application for registration of the proposed SMART GOODNESS trademark for "processed grains and herbs; processed cereals" in International Class 30. Said application was assigned Serial No. 77/620,901 and was published for Opposition in the Official Gazette of October 20, 2009. In said application, Applicant also applied for additional goods in Classes 29, 31 and 32 that are not being opposed and are not in dispute within this opposition proceeding.

8. Applicant's SMART GOODNESS mark is similar to and so resembles Opposer's Marks as to be likely, when applied to the proposed goods of Applicant, to cause confusion or

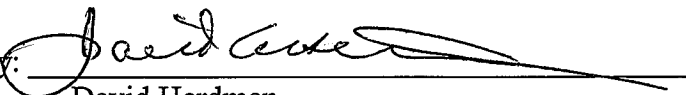
mistake or to deceive purchasers resulting in damage and detriment of Opposer and its reputation.

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 SMART GOODNESS mark and misled into believing that such goods, emanate from, or are licensed by 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 SMART GOODNESS mark, as set forth in Applicant's Trademark Application Serial No. 77/620,901, in that the mark is substantially similar to Opposer's SMART START Marks and will be used in connection with goods closely related to and/or directly competitive with the goods offered to the public by Opposer.

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 SMART GOODNESS trademark as aforesaid, prays that said Application Serial No. 77/620,901 be rejected, in accordance with the provisions of the Trademark Act, 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 Herdman
Assistant Secretary and Corporate Counsel
Kellogg North America Company
One Kellogg Square
P.O. Box 3599
Battle Creek, MI 49016

Date: April 19, 2010

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

KELLOGG NORTH AMERICA COMPANY)	
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Opposer,)	
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v.)	
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RADLO FOODS LLC)	Opposition No. _____
)	Serial No. 77/620,901
Applicant.)	Mark: SMART GOODNESS
)	Filing Date: November 24, 2008
)	Publication Date: October 20, 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 attorney for Radlo Foods LLC by mailing said copy on April 19, 2010, via First Class Mail, postage prepaid to:

S. Lloyd Smith
Buchanan Ingersoll & Rooney, PC
P.O. Box 1404
Alexandria, VA 22313-1404



Patricia A. Conor