

ESTTA Tracking number: **ESTTA343532**

Filing date: **04/22/2010**

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	Investigacion de Tecnologia Avanzada, S.A. de C.V.		
Entity	Corporation	Citizenship	Mexico
Address	Ave. Ruiz Cortines No. 2002 Colonia La Purisima Guadalupe, NL 67110 MEXICO		

Attorney information	John M. Cone Hitchcock Evert LLP P.O. Box 131709 Dallas, TX 75313-1709 UNITED STATES jcone@hitchcockevert.com, docket@hitchcockevert.com Phone:214 880 7002		
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Applicant Information

Application No	77757065	Publication date	04/13/2010
Opposition Filing Date	04/22/2010	Opposition Period Ends	05/13/2010
Applicant	Phu Nhuan Service Joint Stock Company Ward 8, Phu Nhuan District 78A Nguyen Van Troi Street Ho Chi Minh City, VIET NAM		

Goods/Services Affected by Opposition


Class 030. All goods and services in the class are opposed, namely: Pepper

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.	833021	Application Date	01/13/1966
Registration Date	08/01/1967	Foreign Priority Date	NONE
Word Mark	MASECA		

Design Mark			
Description of Mark	NONE		
Goods/Services	Class U046 (International Class 030). First use: First Use: 1955/07/25 First Use In Commerce: 1965/05/00 CORN FLOUR		

U.S. Registration No.	1539468	Application Date	08/18/1987
Registration Date	05/16/1989	Foreign Priority Date	NONE
Word Mark	MASECA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1955/07/25 First Use In Commerce: 1965/05/31 CORN FLOUR AND CORN FLOUR MIXES; WHEAT FLOUR AND WHEAT FLOUR MIXES		

U.S. Registration No.	3337838	Application Date	03/02/2007
Registration Date	11/20/2007	Foreign Priority Date	NONE
Word Mark	MASECA BRAND NATURAL 100% NATURAL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2006/10/31 First Use In Commerce: 2006/10/31 Corn flour		

Attachments	72236402#TMSN.gif (1 page)(bytes) 76673532#TMSN.gif (1 page)(bytes) 100422 Statement of the Claim.pdf (3 pages)(20048 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	/s/ John M. Cone
Name	John M. Cone
Date	04/22/2010

Statement of the Claim

1. Investigacion de Tecnologia Avanzada, S.A. de C.V. ("INTASA") is the owner of the famous trademark MASECA used continuously in the U.S. since as long ago as 1955 for flour and flour mixes. INTASA and its related companies have spent more than fifty years and many millions of dollars building the goodwill and reputation of the MASECA brand in the U.S. and throughout the world. MASECA brand flour is sold in over twenty varieties in the U.S. It is the category leader with unaided awareness recognition of over 90%.

2. INTASA owns registrations of marks consisting of or including MASECA for these products. In particular, INTASA is the owner of the following registrations that are duly and validly registered on the Principal Register:

<u>Mark</u>	<u>Reg. No.</u>	<u>Goods</u>
MASECA	0833021	Corn flour
MASECA and Design	1343000	Corn flour
MASECA	1539468	Corn flour and corn flour mixes; wheat flour and wheat flour mixes
MASECA and Design	3337838	Corn flour

3. Each of the registrations identified in paragraph 2 constitutes *prima facie* evidence of the validity of the registered mark, and of the registration of the mark, and of INTASA's exclusive right to use the registered mark in commerce on the goods of the registration and is constructive notice of INTASA's ownership of the mark.

4. In addition, INTASA's right to use each of the marks of Registrations Nos. 0833021, 1343000, 1539468 and 3337838 has become incontestable under 15 U.S.C. § 1065 and each of those registrations is conclusive evidence of the validity of the registered mark, of the registration of the mark, of INTASA's ownership of the mark, and of INTASA's exclusive right to use the registered mark in commerce for the goods of the registration.

5. INTASA's rights in the mark MASECA were established long before the priority date of Applicant's mark MASECO pepper.

6. The mark applied for, MASECO pepper and Design, so resembles INTASA's mark MASECA and the various forms of that mark that it has used in the United States and that are the subject of the registrations listed in Paragraph 2 hereof, that use of MASECO pepper and Design, for the goods identified in application S.N. 77/757,065, would be likely to cause confusion, or to cause mistake, or to deceive. 15 U.S.C. § 1052(d).

7. Use of the mark MASECO pepper and Design in connection with the goods of application S.N. 77/757,065 is likely to dilute the distinctive quality of the famous mark MASECA within the meaning of 15 U.S.C. § 1125(c).

8. For the reasons set out above, INTASA is being damaged because application S.N. 77/757,065, if granted, would create statutory rights in violation of INTASA's established rights.

WHEREFORE, INTASA prays that judgment be entered refusing application S.N. 77/757,065 and for such other and further relief that the Board find just and proper.

Dated: April 22, 2010

Respectfully submitted,

/s/ John M. Cone

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ATTORNEY FOR OPPOSER
INVESTIGACION DE TECNOLOGIA
AVANZADA, S.A. DE C.V.

Certificate of Service

The Grounds of Opposition was served on Applicant by mailing a copy by first class U.S. mail, postage pre-paid, to its attorney of record, Jack D. Stone, Jr., at Scheef & Stone, L.L.P., 500 N. Akard Street, Suite 2700, Dallas, Texas 75201 on the 22nd day of April, 2010.

/s/ John M. Cone