

ESTTA Tracking number: **ESTTA344487**

Filing date: **04/28/2010**

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	Pendennis Club, Incorporated
Granted to Date of previous extension	04/28/2010
Address	218 West Muhammad Ali Blvd. Louisville, KY 40202 UNITED STATES

Attorney information	Julie Ann Gregory Middleton Reutlinger 2500 Brown and Williamson Tower Louisville, KY 40202 UNITED STATES jgregory@middreut.com Phone:(502)584-1135
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**Applicant Information**

Application No	77544495	Publication date	12/29/2009
Opposition Filing Date	04/28/2010	Opposition Period Ends	04/28/2010
Applicant	Pepper Patch, Inc. 1250 Old Hillsboro Road Franklin, TN 37064 UNITED STATES		

**Goods/Services Affected by Opposition**


Class 030. First Use: 1986/07/17 First Use In Commerce: 1986/07/17 All goods and services in the class are opposed, namely: sauces, excluding cranberry sauce and applesauce
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**Grounds for Opposition**

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Other	abandonment of mark pursuant to 15 USC 1127

**Marks Cited by Opposer as Basis for Opposition**

U.S. Application	77682799	Application Date	03/03/2009
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No.			
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	PENDENNIS CLUB SINCE 1881 NEC TENUI PENNA THE ORIGINAL HENRY BAIN'S FAMOUS SAUCE		
Design Mark			
Description of Mark	The mark consists of the wording PENDENNIS CLUB arched above a stylized fowl atop a lined bar and a single curved line centered above the wording "SINCE 1881." Below the design are the terms "NEC TENUI PENNA" within a banner. Centered at the bottom of the mark is the stacked wording "THE ORIGINAL HENRY BAIN'S FAMOUS SAUCE."		
Goods/Services	Class 030. First use: sauces		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	HENRY BAIN'S		
Goods/Services	sauces		

Attachments	77682799#TMSN.jpeg ( 1 page )( bytes ) Notice of Opposition 4-28-2010.pdf ( 6 pages )(199991 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	/Julie Ann Gregory/
Name	Julie Ann Gregory
Date	04/28/2010

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

**In Re Trademark Application Serial No.: 77/544,495**

**Mark: HENRY BAINE'S SAUCE**

**Filed: 08/12/2008**

**Published: 12/29/2009**

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**PENDENNIS CLUB, INCORPORATED** )  
 )  
**Opposer** ) **Opposition No.** \_\_\_\_\_  
 )  
**v.** )  
 )  
**PEPPER PATCH INC.** )  
 )  
**Applicant** )  
\_\_\_\_\_ )

**CERTIFICATE OF TRANSMISSION**

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING TRANSMITTED BY ELECTRONIC MAIL TO THE TRADEMARK TRIAL AND APPEAL BOARD, UNITED STATES PATENT AND TRADEMARK OFFICE, THIS 28<sup>th</sup> DAY OF APRIL, 2010.

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/JULIE ANN GREGORY/

**NOTICE OF OPPOSITION**

Pursuant to 15 U.S.C. §1063 and 37 C.F.R. §§2.101 and 2.104, Opposer, Pendennis Club, Incorporated (“Pendennis Club” or “Opposer”), believes it would be damaged by the registration of the above-referenced trademark, and hereby opposes the application to register same with the United States Patent & Trademark Office (“USPTO”), on the grounds set forth below.

1. Opposer, Pendennis Club, Incorporated, is a non-profit corporation organized under the laws of the Commonwealth of Kentucky, with a current business address of 218 West Muhammad Ali Blvd., Louisville, Kentucky 40202.

2. Upon information and belief, Applicant, Pepper Patch, Inc. (“Pepper Patch” or “Applicant”), is a corporation organized under the laws of the State of Tennessee, with a current business address of 1250 Old Hillsboro Road, Franklin, Tennessee 37064.

3. On March 3, 2009, Opposer filed an application with the USPTO to register the mark PENDENNIS CLUB SINCE 1881 NEC TENUI PENNA THE ORIGINAL HENRY BAIN'S FAMOUS SAUCE (Stylized ), as depicted below, for use in connection with “sauces” in International Class 30. Ser. No. 77/682,799 (hereinafter “the ‘799 Application”) was assigned to said application.



4. Opposer is the owner of the literal term and trademark HENRY BAIN'S for use in connection with “sauces.” Opposer has used the literal term and trademark HENRY BAIN'S “anywhere” in connection with “sauces” since at least as early as 1952 and “in commerce” in connection with “sauces” since at least as early as 1960.

5. Opposer is the owner of all common law rights in and to the trademark HENRY BAIN'S for use in connection with “sauces.” Through its ownership and use of the trademark over these past many years, Opposer has developed substantial goodwill and consumer recognition in its mark and the goods provided thereunder.

6. On August 12, 2008, Applicant filed an application to register the mark HENRY BAINE'S [sic] SAUCE with the USPTO for use in connection with “sauces, excluding cranberry sauce and applesauce.” Ser. No. 77/544,495 (“the ‘495 Application”).

7. Opposer has priority of use over Applicant of the mark HENRY BAIN'S, which is similar in sight, sound and meaning to the dominant portion of Applicant's mark, namely, HENRY BAINE.'S [sic].

8. Applicant's '495 Application has been cited against Opposer's '799 Application, and Opposer's application has been placed in suspension pending disposition of the '495 Application.

9. The '495 Application was published for opposition by the USPTO on December 29, 2009.

10. Opposer believes that it would be damaged by registration of Applicant's mark and pursuant to Section 13 of the Trademark Act, hereby opposes same. 15 U.S.C. §1063.

11. Opposer will be damaged by the registration of the '495 Application because the dominant portion of Applicant's mark is phonetically identical to Opposer's mark, and further because Applicant's mark otherwise so resembles Opposer's mark, such that when used in connection with the goods identified in Applicant's Application, it is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Applicant with Opposer, or as to the origin, sponsorship, or approval of Applicant or Applicant's goods by Opposer. 15 U.S.C. §1052(d).

12. On information and belief, Opposer and Applicant market, advertise for sale, and sell, or will market, advertise, and sell their respective goods under their respective marks in the same channels of trade, in the same outlets, and to the same customers or consumer groups. In the alternative, Opposer states that Applicant's goods, markets, channels of trade, and relevant consumers are sufficiently related to those of Opposer such that Opposer will be damaged by the registration of Applicant's mark.

13. On information and belief, Applicant's mark is confusingly and deceptively similar to Opposer's mark, such that the use and registration of Applicant's mark for the goods identified in the '495 Application will be likely to cause confusion in the minds of consumers as to the source of Opposer's or Applicant's goods, and will be likely to confuse and deceive the trade and purchasing public into believing that Applicant's goods originate with or are otherwise authorized, licensed, or sponsored by Opposer. 15 U.S.C. §1052(d).

14. On information and belief, Applicant's use and registration of its mark may disparage or falsely suggest a connection between Applicant's goods and Opposer. 15 U.S.C. §1052(a).

15. Opposer will further be damaged by Applicant's '495 Application because the USPTO has refused registration of Opposer's '799 Application pursuant to Section 2(d) of the Trademark Act, citing the '495 Application.

16. On information and belief, Applicant has discontinued use of the mark HENRY BAINE'S SAUCE with intent not to resume such use. Thus, Applicant has abandoned its trademark pursuant to 15 U.S.C. § 1127.

17. On information and belief, Applicant has not used, or made a *bona fide* use of, the mark HENRY BAINE'S SAUCE in connection with the goods identified in the '495 Application in accordance with the first use dates set forth in the '495 Application, those being, July 17, 1986. To that end, Applicant has sought to obtain registration of the '495 Application by fraudulent means in violation of 15 U.S.C. §1051, by its assertion of a false statement, those being the dates of first use asserted in the '495 Application, that concerns a fact material to the registrability of the '495 Application.

18. Opposer's HENRY BAIN'S mark is famous as defined by the Lanham Act and are therefore entitled to further protection under 15 U.S.C. §1125(c).

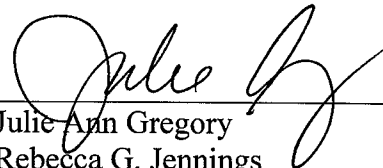
19. Opposer submits that Applicant's mark, when used in association with the goods identified in the '495 Application, is likely to cause dilution of Opposer's famous HENRY BAIN'S mark in violation of 15 U.S.C. §1125(c).

20. Based upon the foregoing, Opposer believes it will be damaged by registration of the '495 Application and hereby opposes same.

WHEREFORE, Opposer, Pendennis Club, Incorporated, respectfully requests that this Notice of Opposition be sustained, and that registration of Application Ser. No. 77/544,495 for the mark HENRY BAINE'S [sic] SAUCE be denied.

The filing fee of \$300.00 per class is enclosed herewith.

Respectfully submitted,



Julie Ann Gregory  
Rebecca G. Jennings  
Julia R. McGuffey  
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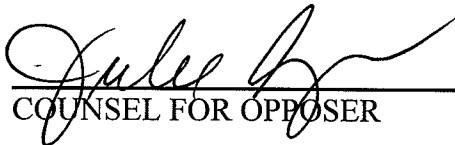
Counsel for Opposer

Dated: Sept 28, 2010

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of this Notice of Opposition has been served via US First Class Mail, postage prepaid, on April 28th, 2010, on the following counsel of record for Applicant:

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COUNSEL FOR OPPOSER