

ESTTA Tracking number: **ESTTA347384**

Filing date: **05/13/2010**

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 | 05/16/2010 |
| Address | ONE KELLOGG SQUARE, PO BOX 3599 BATTLE CREEK, MI 49016-3599 UNITED STATES |
| Correspondence information | BRIAN P O'DONNELL COUNSEL KELLOGG NORTH AMERICA COMPANY ONE KELLOGG SQUARE, PO BOX 3599 BATTLE CREEK, MI 49016-3599 UNITED STATES trademarks@kellogg.com Phone:269-660-7409 |

Applicant Information

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|------------------------|---|------------------------|------------|
| Application No | 77484516 | Publication date | 11/17/2009 |
| Opposition Filing Date | 05/13/2010 | Opposition Period Ends | 05/16/2010 |
| Applicant | Classic Cooking LLC 165-35 145th Drive Jamaica, NY 11434 UNITED STATES | | |

Goods/Services Affected by Opposition

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| <p>Class 029. All goods and services in the class are opposed, namely: Vegetable pancakes; vegetable souffl s and diet vegetable souffl s, vegetable souffl s and diet vegetable souffl s with fish, cheese souffl s, veggie food products, namely, vegetable cutlets, vegetable nuggets; vegetable based meat products, namely, meat souffl s; frozen packaged entrees consisting of vegetable based patties and fish based patties, soups</p> |
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Grounds for Opposition


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| Priority and likelihood of confusion | Trademark Act section 2(d) |
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Marks Cited by Opposer as Basis for Opposition

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| U.S. Registration No. | 1409666 | Application Date | 01/17/1986 |
| Registration Date | 09/16/1986 | Foreign Priority Date | NONE |

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| Word Mark | GARDENBURGER |
| Design Mark | |
| Description of Mark | NONE |
| Goods/Services | Class 029. First use: First Use: 1982/12/00 First Use In Commerce: 1984/05/00 VEGETABLE BASED MEAT SUBSTITUTES |

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|-----------------------|---|-----------------------|------------|
| U.S. Registration No. | 1987820 | Application Date | 06/17/1993 |
| Registration Date | 07/23/1996 | Foreign Priority Date | NONE |
| Word Mark | GARDENSAUSAGE | | |
| Design Mark | | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 029. First use: First Use: 1987/04/00 First Use In Commerce: 1987/04/00 meat substitute patties | | |

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|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 2103410 | Application Date | 10/17/1996 |
| Registration Date | 10/07/1997 | Foreign Priority Date | NONE |
| Word Mark | GARDENBURGER | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 029. First use: First Use: 1993/07/00 First Use In Commerce: 1993/07/00 meat substitutes | | |

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|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 2145861 | Application Date | 09/11/1996 |
| Registration Date | 03/24/1998 | Foreign Priority Date | NONE |
| Word Mark | GARDENBURGER VEGGIE MEDLEY | | |
| Design Mark | | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 029. First use: First Use: 1997/01/00 First Use In Commerce: 1997/01/00 meat substitutes | | |

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|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 2182470 | Application Date | 08/22/1997 |
| Registration Date | 08/18/1998 | Foreign Priority Date | NONE |
| Word Mark | GARDENVEGAN | | |
| Design Mark | | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 029. First use: First Use: 1994/08/29 First Use In Commerce: 1994/08/29 meat substitutes | | |

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|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 2250585 | Application Date | 02/02/1998 |
| Registration Date | 06/01/1999 | Foreign Priority Date | NONE |
| Word Mark | GARDENBURGER FIRE ROASTED VEGETABLE | | |
| Design Mark | | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 029. First use: First Use: 1998/02/11 First Use In Commerce: 1998/02/11 MEAT SUBSTITUTES | | |

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|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 2348813 | Application Date | 08/12/1999 |
| Registration Date | 05/09/2000 | Foreign Priority Date | NONE |
| Word Mark | THE ORIGINAL GARDENBURGER | | |
| Design Mark | THE ORIGINAL GARDENBURGER | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 029. First use: First Use: 1995/09/00 First Use In Commerce: 1995/09/00 MEAT SUBSTITUTES | | |

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|-----------------------|------------------------------|-----------------------|------------|
| U.S. Registration No. | 2402720 | Application Date | 12/18/1998 |
| Registration Date | 11/07/2000 | Foreign Priority Date | NONE |
| Word Mark | SANTA FE GARDENBURGER | | |
| Design Mark | SANTA FE GARDENBURGER | | |
| Description of Mark | NONE | | |

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| Goods/Services | Class 029. First use: First Use: 1999/01/18 First Use In Commerce: 1999/03/01 MEAT SUBSTITUTES | | |
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| U.S. Registration No. | 2409330 | Application Date | 12/18/1998 |
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|-------------------|------------|-----------------------|------|
| Registration Date | 11/28/2000 | Foreign Priority Date | NONE |
|-------------------|------------|-----------------------|------|

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| Word Mark | GARDENBURGER SANTA FE | | |
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| Design Mark | GARDENBURGER SANTA FE | | |
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| Description of Mark | NONE | | |
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| Goods/Services | Class 029. First use: First Use: 1999/01/18 First Use In Commerce: 1999/03/01 MEAT SUBSTITUTES | | |
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|-----------------------|---------|------------------|------------|
| U.S. Registration No. | 2431878 | Application Date | 05/23/2000 |
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|-------------------|------------|-----------------------|------|
| Registration Date | 02/27/2001 | Foreign Priority Date | NONE |
|-------------------|------------|-----------------------|------|

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| Word Mark | GARDENBURGER VEGGIE VEGAN | | |
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| Design Mark | GARDENBURGER VEGGIE VEGAN | | |
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| Description of Mark | NONE | | |
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| Goods/Services | Class 029. First use: First Use: 2000/04/30 First Use In Commerce: 2000/04/30 meat substitutes | | |
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| U.S. Registration No. | 2433717 | Application Date | 04/26/2000 |
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|-------------------|------------|-----------------------|------|
| Registration Date | 03/06/2001 | Foreign Priority Date | NONE |
|-------------------|------------|-----------------------|------|

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| Word Mark | GARDENBURGER HAMBURGER CLASSIC | | |
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| Design Mark | GARDENBURGER HAMBURGER CLASSIC | | |
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| Description of Mark | NONE | | |
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| Goods/Services | Class 029. First use: First Use: 2000/03/24 First Use In Commerce: 2000/03/24 meat substitutes | | |
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|-----------------------|---------|------------------|------------|
| U.S. Registration No. | 2457162 | Application Date | 04/07/2000 |
|-----------------------|---------|------------------|------------|

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|---------------------|---|-----------------------|------|
| Registration Date | 06/05/2001 | Foreign Priority Date | NONE |
| Word Mark | GARDENBURGER FLAME GRILLED | | |
| Design Mark | GARDENBURGER FLAME GRILLED | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 029. First use: First Use: 2000/03/22 First Use In Commerce: 2000/03/24 MEAT SUBSTITUTES | | |

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|-----------------------|---|-----------------------|------------|
| U.S. Registration No. | 3474968 | Application Date | 06/26/2007 |
| Registration Date | 07/29/2008 | Foreign Priority Date | NONE |
| Word Mark | GARDENBURGER GOURMET | | |
| Design Mark | GARDENBURGER GOURMET | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 029. First use: First Use: 2007/06/25 First Use In Commerce: 2007/06/25 Unformed and formed textured meat substitutes and meat extenders consisting primarily of vegetables, grains or soy | | |

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| Attachments | 75183493#TMSN.gif (1 page)(bytes) 75774537#TMSN.gif (1 page)(bytes) 75608052#TMSN.gif (1 page)(bytes) 75608051#TMSN.gif (1 page)(bytes) 78009504#TMSN.gif (1 page)(bytes) 78005808#TMSN.gif (1 page)(bytes) 76020349#TMSN.gif (1 page)(bytes) 77215786#TMSN.jpeg (1 page)(bytes) GARDEN LITES Opposition Notice Scan.pdf (6 pages)(219063 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 | /BRIAN P O'DONNELL/ |
| Name | BRIAN P O'DONNELL |
| Date | 05/13/2010 |

**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. 77/484,516 |
| CLASSIC COOKING LLC |) | Mark: GARDEN LITES |
| |) | Filing Date: May 27, 2008 |
| Applicant. |) | Publication Date: May 20, 2008 |
| |) | |

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. 77/484,516 in Class 29, filed by Classic Cooking LLC (hereinafter “Applicant”) on May 27, 2008, and opposes Application Serial No. 77/484,516.

The grounds for this opposition are as follows:

1. Commencing long prior to Applicant’s filing date, Opposer and Opposer’s predecessors-in-interest have engaged, and Opposer is now engaged in the manufacture, distribution, sale, advertising and promotion in interstate commerce of food products, including veggie foods products.

2. Commencing long prior to Applicant’s filing date, Opposer and Opposer’s predecessors-in-interest have used, and Opposer is now using Opposer’s various GARDENBURGER and GARDEN VEGGIE PATTIES trademarks (herein after referred to as “Opposer’s Marks”) in connection with vegetable-based foods products, as well as promotional products distributed by Opposer in commerce.

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

| Mark | Reg. No. | Issue Date | Goods |
|-------------------------------------|-----------------|-------------------|---|
| GARDENBURGER | 1409666 | 09/16/1986 | Vegetable based meat substitutes |
| GARDENSAUSAGE | 1987820 | 07/23/1996 | Meat Substitutes |
| GARDENBURGER Logo | 2103410 | 10/07/1997 | Meat Substitutes |
| GARDENBURGER VEGGIE MEDLEY | 2145861 | 03/24/1998 | Meat Substitutes |
| GARDENVEGAN | 2182470 | 08/19/1998 | Meat Substitutes |
| GARDENBURGER FIRE ROASTED VEGETABLE | 2250585 | 06/01/1999 | Meat Substitutes |
| THE ORIGINAL GARDENBURGER | 2348813 | 05/09/2000 | Meat Substitutes |
| SANTA FE GARDENBURGER | 2402720 | 11/07/2000 | Meat Substitutes |
| GARDENBURGER SANTA FE | 2409330 | 11/28/2000 | Meat Substitutes |
| GARDENBURGER VEGGIE VEGAN | 2431878 | 02/27/2001 | Meat Substitutes |
| GARDENBURGER HAMBURGER CLASSIC | 2433717 | 03/06/2001 | Meat Substitutes |
| GARDENBURGER FLAME GRILLED | 2457162 | 06/05/2001 | Meat Substitutes |
| GARDENBURGER GOURMET | 3474968 | 07/29/2008 | Unformed and formed textured meat substitutes and meat extenders consisting primarily of vegetables, grains and soy |

(hereinafter referred to herein as “Opposer’s Registered Marks”). Opposer’s Registered Marks are valid, subsisting and conclusive evidence of Opposer’s exclusive right to use Opposer’s Registered Marks in commerce for the goods specified in said registrations.

4. In addition Opposer’s Marks and Opposer’s Registered Marks specified above, Opposer shall rely herein upon its common law usage of its GARDENBURGER and GARDEN VEGGIE PATTIES marks in connection with its vegetable-based food products, including GARDENBURGER veggie foods, and its promotional use of its GARDENBURGER and GARDEN VEGGIE PATTIES mark, which together with Opposer’s Marks and Opposer’s

Registered Marks noted above form a family of valuable "GARDENBURGER" marks, herein referred to as Opposer's GARDEN Marks. Given the fame and widespread favorable public recognition of Opposer's GARDEN Marks use on these other products and services is a natural extension of Opposer's earlier usage on veggie food products.

5. Opposer and its predecessors-in-interest have made substantial investment in advertising and promoting its goods under Opposer's GARDEN Marks since their initial use in commerce, which for certain of Opposer's GARDEN Marks goes back to at least as early as 1982. Opposer has extensively used, advertised, promoted and offered Opposer's goods bearing Opposer's GARDEN 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 GARDEN Marks and associate the same with Opposer and/or the goods and services sold or provided by Opposer.

6. Upon information and belief, notwithstanding Opposer's rights in and to Opposer's GARDEN Marks, on May 27, 2008, Applicant filed an application for registration of GARDEN LITES trademark, for the goods "Vegetable pancakes; vegetable soufflés and diet vegetable soufflés, vegetable soufflés and diet vegetable soufflés with fish, cheese soufflés, veggie food products, namely, vegetable cutlets, vegetable nuggets; vegetable based meat products, namely, meat soufflés; frozen packaged entrees consisting of vegetable based patties and fish based patties, soups" in International Class 29. Said application was assigned Serial No. 77/484,516, and was published for Opposition in the Official Gazette of May 20, 2008. Said application also includes goods in International Class 30 that are not at issue in this proceeding.


7. Applicant's GARDEN LITES trademark so resembles Opposer's GARDEN Marks as to be likely, when applied to the goods of Applicant, to cause confusion or mistake or to deceive users resulting in damage and detriment of Opposer and its reputation.

8. Opposer, upon information and belief, avers that its customers, and the public in general, are likely to be confused, mistaken or deceived as to the origin and sponsorship of Applicant's identical and/or closely related goods when marketed under Applicant's GARDEN LITES trademark 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 damage and detriment of Opposer and its reputation.

9. Opposer, upon information and belief, avers that it will be damaged by the registration by Applicant of the alleged GARDEN LITES trademark, as set forth in Applicant's Trademark Application Serial No. 77/484,516, in that the mark is substantially similar to Opposer's GARDEN Marks and common law rights and the goods are identical and/or closely related to Opposer's goods. Further, in view of the extensive use of Opposer's GARDEN Marks and the extensive range of goods and services offered to the public by Opposer under Opposer's GARDEN Marks, Applicant's goods will be presumed to emanate from Opposer, either directly or indirectly.

Wherefore, this Opposer, Kellogg North America Company believes and avers that it is being and will continue to be damaged by registration of the GARDEN LITES trademark as aforesaid, and prays that said Application Serial No. 77/484,516 be rejected under 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: 
Brian P. O'Donnell
Counsel
Kellogg North America Company
One Kellogg Square
P.O. Box 3599
Battle Creek, MI 49016

Date: May 13, 2010

