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

Proceeding	91194881
Party	Defendant Classic Cooking LLC
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Date	06/21/2010
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 77/484,516
Published in the *Official Gazette* on November 17, 2009
Mark: GARDEN LITES

KELLOGG NORTH AMERICA COMPANY)	
)	
Opposer,)	
)	
v.)	Opposition No. 91194881
)	
CLASSIC COOKING LLC)	
)	
Applicant.)	

ANSWER TO NOTICE OF OPPOSITION

Pursuant to 37 CRF § 2.106 and TBMP § 311, applicant Classic Cooking LLC (“Applicant”), hereby timely answers Opposer Kellogg North America Company’s (“Opposer”) Notice of Opposition as follows:

1. Applicant denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1 of Opposer’s Notice of Opposition, and therefore denies each and every such allegation.

2. Applicant denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2 of Opposer’s Notice of Opposition, and therefore denies each and every such allegation.

3. Applicant admits that the on-line records of the United States Patent and Trademark Office (“USPTO”) identify Opposer as the owner of U.S. Trademark Registration Nos. 1409666, 1987820, 2103410, 2145861, 2182470, 2250585, 2348813,

2402720, 2409330, 2431878, 2433717, 2457162, 3474968. Applicant denies the remaining allegations of paragraph 3 of Opposer's Notice of Opposition.

4. Applicant denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4 of Opposer's Notice of Opposition, and therefore denies each and every such allegation.

5. Applicant denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5 of Opposer's Notice of Opposition, and therefore denies each and every such allegation.

6. Applicant admits that it filed an application to register the mark GARDEN LITES, as identified by U.S. Trademark Application Serial No. 77/484,516. Applicant admits the GARDEN LITES application was published for opposition on November 17, 2009 in the *Official Gazette*. Applicant admits that U.S. Trademark Application Serial No. 77/484,516 covers "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 also covers salad dressings, quiches, and dessert soufflés in International Class 30. Applicant denies the remaining allegations of paragraph 4 of Opposer's Notice of Opposition.

7. Applicant denies the allegations of paragraph 7 of Opposer's Notice of Opposition.

8. Applicant denies the allegations of paragraph 8 of Opposer's Notice of Opposition.

9. Applicant denies the allegations of paragraph 9 of Opposer's Notice of Opposition.

FIRST AFFIRMATIVE DEFENSE

10. Opposer has failed to state a claim upon which relief may be granted and on which the Notice of Opposition may be sustained.

SECOND AFFIRMATIVE DEFENSE

11. Registration of Applicant's GARDEN LITES mark as set forth in Application Serial No. 77/484,516 is not "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" because the respective marks are dissimilar in appearance and sound.

THIRD AFFIRMATIVE DEFENSE

12. Opposer will sustain no damage, injury or prejudice as a result of the registration of Applicant's trademark application for the mark GARDEN LITES, as set forth in Application Serial No. 77/484,516.

FOURTH AFFIRMATIVE DEFENSE

13. The claims and relief sought in the Notice of Opposition are barred by the equitable doctrines of estoppel, laches and waiver, by Opposer's continuous filing of dissimilar Marks all utilizing "GARDEN" as a portion thereof, thereby carving out Marks not only slightly dissimilar from one another, and implicitly if not explicitly acknowledging the crowded nature of the field. And by failing to use or file either GARDEN alone or Applicant's LITES or the combination.

FIFTH AFFIRMATIVE DEFENSE

14. Numerous registrations have been issued on marks for goods similar to those of Applicant, including but not limited to those listed below. The issuance of these registrations shows that the element “GARDEN” is not exclusive to the Opposer. The registrations also show that the element “GARDEN” exists with numerous combinations for similar goods.

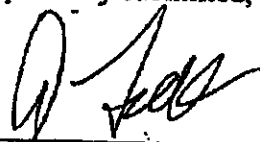
Mark	Goods and Services	Reg. No.	Reg. Date
GARDEN GOURMET	Class 29: Frozen Vegetable And Grain Protein Foods Used As Substitutes For Meat	1615879	10/02/1990
GARDEN GOURMET	Class 29: Frozen Vegetable And Grain Protein Foods Used As Substitutes For Meat	1615028	09/25/1990
GARDEN PROTEIN	Class 29: Formed textured vegetable protein for use as a meat extender or meat substitute; Meat substitutes; Vegetable-based meat substitutes Formed textured vegetable protein for use as a meat extender or meat substitute; Meat substitutes; Vegetable-based meat substitutes	3545141	03/23/2009
GARDEN BISTRO	Class 29: Prepared frozen or packaged entrees or meals consisting primarily of meat, fish, poultry, seafood, cheese, fruit and/or vegetables	2900853	11/02/2004
GARDEN MADE	Class 29: Processed fruits and vegetables, namely canned vegetables, canned fruits, pickled vegetables and pickled fruit; fruit-based spreads; vegetable-based spreads; salads and appetizers made from salted or marinated fruits and vegetables served as a side dish, fried and stuffed fruits and vegetables served as a side dish, processed mushrooms.	3156789	10/17/2006
GARDEN PLEASURES	Class 29: Canned or bottled vegetables; Combination meal consisting primarily of a meat or vegetable-based entree and a soup or salad for consumption on or off the premises; Cut vegetables; Frozen vegetables; Fruit and vegetable salads; Processed vegetables; Processed vegetables and fruits; Sliced vegetables; Vegetable salads; Canned or bottled fruits; Cut fruits; Fruit salads; Glazed fruits; Processed fruits	3558624	01/06/2009
GARDEN PATH	Class 29: Canned and Frozen Mushrooms.	1233792	04/05/1983
GARDEN CRISP	Class 29: Canned Vegetables.	1257045	11/08/1983
GARDEN BLEND	Class 29: Mixtures Of Frozen Vegetables	1054027	12/07/1976
GARDEN SELECT	Class 29: Canned Vegetables.	1469900	12/22/1987
GARDEN RITE	Class 29: Canned fruits and vegetables.	1742421	12/22/1992
GARDEN VALLEY	Class 29: Canned round tomatoes and canned pear-shaped tomatoes	1744685	01/05/1993

Mark	Goods and Services	Reg. No.	Reg. Date
GARDEN SNACK	Class 29: Canned fruits and vegetables.	3694273	10/06/2009
GARDEN PRIDE	Class 29: Frozen fresh vegetables.	1962476	03/12/1996
GARDEN SWEET	Class 29: Cut fresh fruits and vegetables.	2068402	06/10/1997
GARDEN PURE	Class 29: Fresh-cut produce, namely, raw fruits and raw vegetables.	3525015	10/28/2008
GARDEN FROST	Class 29: Frozen pureed produce and frozen minced produce, namely onions, jalapeno peppers, chili peppers, combinations thereof, and mixtures consisting primarily of jalapeno peppers.	1944858	01/02/1996
GARDEN CHEF	Class 29: Frozen potatoes and processed vegetables	2780930	11/11/2003
GARDEN SUPREME	Class 29: Vegetable salads	3412332	04/15/2008
GARDEN RUSH	Class 29: Dried fruits, fruit and soy based snack food, fruit chips, fruit leathers, fruit-based snack food, garden salads, dried vegetables, protein-based, nutrient-dense snack bars.	2940050	04/12/2005
GARDEN HARVEST	Class 30: Grain-based chips	3565129	01/20/2009
GARDEN TIME	Class 30: Pasta.	1408795	09/09/1986

WHEREFORE, Applicant respectfully requests that the Notice of Opposition be dismissed with prejudice.

Dated: June 21, 2010

Respectfully submitted,



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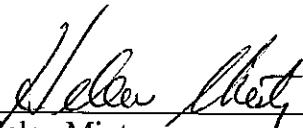
Attorney for Applicant

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the Answer to Notice of Opposition was forwarded by United States Mail, first class postage prepaid to:

Brian P. O'Donnell
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This 21st day of June, 2010.



Helen Mintz
Trademark Paralegal

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