

ESTTA Tracking number: **ESTTA348398**

Filing date: **05/19/2010**

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	The Power of Fruit, Inc.
Granted to Date of previous extension	05/19/2010
Address	2374 Seipstown Road Fogelsville, PA 18051 UNITED STATES

Attorney information	Sanford J. Piltch 1132 Hamilton Street, Suite 201 Allentown, PA 18101 UNITED STATES spiltch@pennsylvlawyers.com Phone:(610) 433-6266
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Applicant Information

Application No	77664947	Publication date	01/19/2010
Opposition Filing Date	05/19/2010	Opposition Period Ends	05/19/2010
Applicant	Apple & Eve, LLC 2 Seaview Boulevard Port Washington, NY 11050 UNITED STATES		

Goods/Services Affected by Opposition

Class 032. First Use: 2008/10/00 First Use In Commerce: 2008/10/00 All goods and services in the class are opposed, namely: Fruit juice
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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.	3325347	Application Date	01/09/2006
Registration Date	10/30/2007	Foreign Priority Date	NONE
Word Mark	THE POWER OF FRUIT		

Design Mark	THE POWER OF FRUIT
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 2006/02/15 First Use In Commerce: 2006/02/15 Advertising, publicity and product merchandising services, namely, promoting goods and brand identity of others through print, audio, video, digital, and on-line media

U.S. Registration No.	3518714	Application Date	05/08/2006
Registration Date	10/21/2008	Foreign Priority Date	NONE
Word Mark	THE POWER OF FRUIT		
Design Mark	THE POWER OF FRUIT		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2006/03/23 First Use In Commerce: 2006/12/18 frozen fruit bars consisting of whole, ground or pureed fruit and natural juices therefrom		

Attachments	76653152#TMSN.gif (1 page)(bytes) 76659681#TMSN.gif (1 page)(bytes) PowerofFruit-Apple&Eve.Opposition(051910).pdf.pdf (4 pages)(133530 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	/Sanford J Pilitch/
Name	Sanford J. Pilitch
Date	05/19/2010

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

THE POWER OF FRUIT, INC.,	:	
	:	
OPPOSER,	:	OPPOSITION No.
	:	
v.	:	
	:	
APPLE & EVE, LLC,	:	
	:	
APPLICANT.	:	

NOTICE OF OPPOSITION

BOX TTAB – FILED VIA ESTTA
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

This NOTICE OF OPPOSITION is brought in the matter of pending trademark application accorded Serial No. 77/664,947 and having a filing date of February 6, 2009, filed by APPLE & EVE, LLC (hereinafter "APPLICANT"), a limited liability company of the State of Delaware, for the registration of the mark "**NORTHLAND THE POWER OF DARK FRUIT**" for goods identified as **fruit juice** in International Class **32**, the mark being published in the *Official Gazette* of January 19, 2010. THE POWER OF FRUIT, INC. (hereinafter "OPPOSER"), a corporation of the Commonwealth of Pennsylvania, having an address of 2374 Seipstown Road, Fogelsville, Pennsylvania 18051, believes it will be damaged by the registration of such trademark and hereby opposes same. This Opposition is being timely filed pursuant to the grant of a ninety (90) day Extension of Time to file that expires on May 19, 2010.

OPPOSER believes it will be damaged by registration of the above-identified mark and hereby gives notice of its intention to oppose the above-identified application for registration; its grounds for Opposition are as follows:

1. APPLICANT has applied to register the word mark **NORTHLAND THE POWER OF DARK FRUIT** for *fruit juice* in International Class 32, which mark is believed to be confusingly similar in appearance to the trade name and marks used by OPPOSER, i.e. **THE POWER OF FRUIT**.
2. OPPOSER is, and for several years has been, a well-known producer of frozen fruit bars and advertising, publicity and product merchandising services, namely, promoting goods and brand identity of others through print, audio, video, digital, and on-line media.
3. OPPOSER filed a first application for registration of the mark **THE POWER OF FRUIT** on January 9, 2006 for *advertising, publicity and product merchandising services, namely, promoting goods and brand identity of others through print, audio, video, digital, and on-line media* in International Class 35, alleging a first date of use of the mark in commerce of February 15, 2006, which application was accorded Serial No. 76/653,152 and was granted registration on the Principal Register as Registration No. 3,325,347 on October 30, 2007.
4. OPPOSER filed a second application for registration of the mark **THE POWER OF FRUIT** on May 8, 2006 for *frozen fruit bars consisting of whole, ground or pureed fruit and natural juices therefrom* in International Class 30 alleging a first date of use of the mark in commerce of December 18, 2006, which application was accorded Serial No. 76/659,681 and was granted registration on the Principal Register as Registration No. 3,518,714 on October 21, 2008.

5. On information and belief, long prior to the filing of the original application by the APPLICANT, OPPOSER adopted the trade name and mark **THE POWER OF FRUIT** for *advertising, publicity and product merchandising services, namely, promoting goods and brand identity of others through print, audio, video, digital, and on-line media* in International Class **35** and *frozen fruit bars consisting of whole, ground or pureed fruit and natural juices therefrom* in International Class **30**.
6. On information and belief, APPLICANT only began using its mark, **NORTHLAND THE POWER OF DARK FRUIT**, in or about October 2008 for the described services in Class **32** in the same geographic areas that OPPOSER previously used its mark(s) without abandonment.
7. On information and belief, APPLICANT displays and uses the mark **NORTHLAND THE POWER OF DARK FRUIT** on containers for the fruit juice using a substantially identical mark to the trade name and marks of OPPOSER.
8. APPLICANT'S mark **NORTHLAND THE POWER OF DARK FRUIT** so resembles OPPOSER'S trade name and mark **THE POWER OF FRUIT** that, when used in connection with the marketing of APPLICANT'S fruit juice, there is a strong likelihood that confusion will result wherein the public will believe that there is some connection, sponsorship, affiliation or association between the fruit juice provided by APPLICANT and the frozen fruit bars and/or the advertising, publicity and product merchandising services for others provided by OPPOSER.
9. APPLICANT'S mark, when used to identify its fruit juice, is likely to cause confusion, mistake and deception with consumers as to the source or origin of OPPOSER'S goods and services.

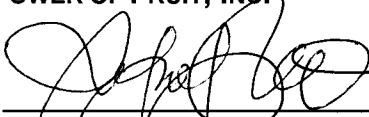
10. Granting registration of **NORTHLAND THE POWER OF DARK FRUIT** to APPLICANT would result in a likelihood of confusion since APPLICANT'S goods are similar to OPPOSER'S, APPLICANT'S mark is similar to OPPOSER'S mark in sight and sound, and APPLICANT'S and OPPOSERS' products are sold and advertised to the same consumers, in the same target market, and through similar channels of distribution.
11. Due to the high level of similarity between OPPOSER'S marks and APPLICANT'S mark, the goods identified by the marks, the target market, and the channels of distribution, there is a likelihood that even the most sophisticated consumer would be confused.
12. APPLICANT'S use of its mark may result in economic loss to OPPOSER due to the confusion of Applicant's products with Opposers' products.
13. OPPOSER'S use of **THE POWER OF FRUIT** (Registration Nos. 3,325,347 and 3,518,714) pre-dates APPLICANT'S date of first use and OPPOSER claims priority of use of its marks pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d).
14. Based on the foregoing, OPPOSER believes that it will be seriously damaged by registration of APPLICANT'S mark.

WHEREFORE, OPPOSER respectfully requests that this OPPOSITION be sustained and that the registration being sought by APPLICANT be refused.

Respectfully submitted,

THE POWER OF FRUIT, INC.

BY: _____


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ATTORNEY FOR OPPOSER

DATE: **May 19, 2010**