

ESTTA Tracking number: **ESTTA363344**

Filing date: **08/16/2010**

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	Unilever Supply Chain, Inc.
Granted to Date of previous extension	09/15/2010
Address	1 John Street Clinton, CT 06413 UNITED STATES
Attorney information	Gregory P. Gulia, Esq. Duane Morris LLP 1540 Broadway New York, NY 10036-4086 UNITED STATES gpgulia@duanemorris.com, ewmccormick@duanemorris.com

Applicant Information

Application No	77905444	Publication date	05/18/2010
Opposition Filing Date	08/16/2010	Opposition Period Ends	09/15/2010
Applicant	Hi Mountain Jerky, Inc. 1000 College View Drive Riverton, WY 82501 UNITED STATES		

Goods/Services Affected by Opposition


Class 029. All goods and services in the class are opposed, namely: Food package combinations consisting primarily of cheese, meat and/or processed fruit; Pre-packaged dinners consisting of primarily of meat, seafood or poultry served with pasta, rice and or vegetables; Prepared food kits composed of meat, poultry, fish, seafood, and/or vegetables and also including sauces or seasonings, ready for cooking and assembly as a meal; Freeze-dried pre-packaged meals consisting primarily of meat, fish, poultry or vegetables

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3810881	Application Date	01/27/2010
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Registration Date	06/29/2010	Foreign Priority Date	NONE
Word Mark	FUEL THE FUN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2005/00/00 First Use In Commerce: 2005/00/00 Peanut butter		

Attachments	77921273#TMSN.jpeg (1 page)(bytes) FUEL YOUR FUN OPP.pdf (5 pages)(208149 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	/Gregory P. Gulia/
Name	Gregory P. Gulia, Esq.
Date	08/16/2010

As grounds for opposition, Opposer, through its undersigned counsel, alleges as follows:

1. Opposer is the owner of the distinctive trademark FUEL THE FUN® for peanut butter (the “FUEL THE FUN® Mark”).

2. Opposer is the owner of U.S. Registration No. 3,810,881 for the FUEL THE FUN® Mark covering “peanut butter” in International Class 29.

3. Opposer’s FUEL THE FUN® Mark has been used continuously in interstate commerce in connection with the production, distribution, sale, advertising and promotion of peanut butter products, beginning long prior to any priority date on which Applicant can rely.

4. Opposer’s FUEL THE FUN® Mark has also been used in interstate commerce in connection with the production, distribution, sale, advertising and promotion of snack products, long prior to any priority date on which Applicant can rely.

5. As a result of extensive use and promotion, Opposer’s FUEL THE FUN® Mark has secondary meaning, is famous in the United States, and is associated exclusively with Opposer.

6. Opposer’s FUEL THE FUN® Mark was famous on and prior to the filing date of Applicant’s application, or any other priority date on which Applicant can rely, and is famous as of the date of filing of this opposition.

7. Opposer’s FUEL THE FUN® Mark symbolizes extensive goodwill and consumer recognition which has been established through substantial expenditures of time, effort and other resources in the advertising and promotion of the goods sold under the FUEL THE FUN® Mark.

8. On January 5, 2010, Applicant filed the Application under Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b).

9. The Application was published for opposition in the *Official Gazette* on May 18, 2010.

10. The Trademark Trial and Appeal Board extended the opposition period for the Application by granting Opposer's timely request for an extension of time to oppose. The opposition period for the Application is currently set to expire on September 15, 2010. Opposer, therefore, timely files this Opposition.

11. Upon information and belief, Applicant has not filed an Amendment to Allege Use under Section 1(c) of the Lanham Act, 15 U.S.C. § 1051(c).

12. Opposer's rights in its FUEL THE FUN® Mark substantially predate and are superior to any rights upon which Applicant may rely.

13. FUEL YOUR FUN is confusingly similar to Opposer's FUEL THE FUN® Mark in sight, sound, meaning and commercial impression and is intended to be used with products related to those for which Opposer's FUEL THE FUN® Mark is used.

14. Applicant is not entitled to register the mark FUEL YOUR FUN for Applicant's Goods because FUEL YOUR FUN so resembles Opposer's FUEL THE FUN® Mark so as to be likely, when applied to Applicant's Goods, to cause confusion, or to cause mistake, or to deceive. Consumers familiar with Opposer's FUEL THE FUN® Mark are likely to believe, mistakenly, that Applicant and/or Applicant's Goods emanate from, are sponsored, approved, endorsed, licensed or authorized by, or are otherwise associated with Opposer in violation of Section 2(d) of the Lanham Act, 15 U.S.C. Section 1052(d). As a result the granting of the registration applied for will cause substantial damage and injury to Opposer.

15. Opposer believes it will be damaged by registration of Applicant's FUEL YOUR FUN designation because the use and registration of Applicant's FUEL YOUR FUN designation is likely to dilute the distinctive quality of Opposer's famous FUEL THE FUN® Mark in violation of Section 43(d) of the Lanham Act, 15 U.S.C. § 1125(c).

WHEREFORE, Opposer believes that it will be damaged by registration of the designation FUEL YOUR FUN shown in Application Serial No. 77905444 and respectfully requests that the registration sought by Applicant be refused.

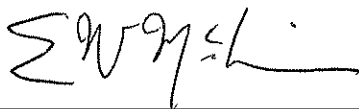
Dated: August 16, 2010

I hereby certify that this correspondence is being filed by electronic transmission in the United States Patent and Trademark Office, Trademark Trial and Appeal Board on the date shown below.

/Inez P. Vega/
Inez P. Vega

Dated: August 16, 2010

Respectfully submitted,

By:  _____

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Attorneys for Opposer
UNILEVER SUPPLY CHAIN, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 16th day of August, 2010 a true and correct copy of the foregoing Notice of Opposition was served, via prepaid first class mail, on Ramon L. Pizarro, the attorney of record for Application Serial No. 77905444, at the address indicated below:

Ramon L. Pizarro, Esq.
3515 South Tamarac Drive
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Inez P. Vega