

ESTTA Tracking number: **ESTTA387610**

Filing date: **01/10/2011**

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	Jarritos, Inc.
Granted to Date of previous extension	01/12/2011
Address	500 West Overland Avenue, Suite 300 El Paso, TX 79901 UNITED STATES

Attorney information	Christine Lebron-Dykeman McKee, Voorhees & Sease, PLC 801 Grand Avenue, Suite 3200 Des Moines, IA 50309-2721 UNITED STATES mvslit@ipmvs.com
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Applicant Information

Application No	77949657	Publication date	09/14/2010
Opposition Filing Date	01/10/2011	Opposition Period Ends	01/12/2011
Applicant	Carlos Garciarce Ramirez Adofo Prieto 1714-A co. Del Calle c.p, MEXICO		


Goods/Services Affected by Opposition


Class 029. All goods and services in the class are opposed, namely: Frozen and dried fruit; fruit concentrate and powders as ingredients of food products, namely, ice cream, sorbet, ice cones, frappes, and frozen confections
Class 030. All goods and services in the class are opposed, namely: concentrates and powders used in the preparation of tea-based beverages; flavorings for beverages
Class 032. All goods and services in the class are opposed, namely: concentrates and powders used in the preparation of fruit-based beverages; frozen fruit beverage; fruit flavored beverages; non-alcoholic cocktail mixes, namely, fruit concentrate and powder for non-alcoholic drinks
Class 033. All goods and services in the class are opposed, namely: Alcoholic cocktail mixes, namely, fruit concentrate and powder for alcoholic drinks

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.	1191311	Application Date	08/12/1980
Registration Date	03/02/1982	Foreign Priority Date	NONE
Word Mark	JARRITOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: Soft Drinks		

U.S. Registration No.	1854805	Application Date	07/20/1990
Registration Date	09/20/1994	Foreign Priority Date	NONE
Word Mark	JARRITOS		
Design Mark			
Description of Mark	The mark consists of a plurality of raised areas in the shape of jugs around the bottom of the bottle and a plurality of raised areas in the shape of jugs around the neck of bottle; the word "JARRITOS" appears at the base of the neck of the bottle and three jugs are positioned between the lower and upper raised areas in the shape of jugs and the word "JARRITOS" appears below the three jugs.		
Goods/Services	Class 032. First use: soft drinks		


U.S. Registration No.	2173641	Application Date	08/29/1996
Registration Date	07/14/1998	Foreign Priority	NONE

		Date	
Word Mark	JARRITOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1996/11/00 First Use In Commerce: 1996/11/00 mineral water		

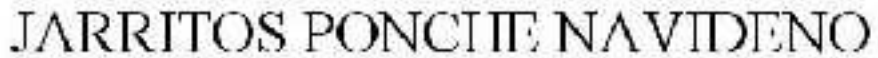
U.S. Registration No.	2360415	Application Date	09/24/1999
Registration Date	06/20/2000	Foreign Priority Date	NONE


Word Mark	JARRITOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1988/12/00 First Use In Commerce: 1988/12/00 Soft drinks		

U.S. Registration No.	3544108	Application Date	12/20/2006
Registration Date	12/09/2008	Foreign Priority Date	NONE


Word Mark	JARRITOS		
Design Mark			
Description of Mark	The mark consists of three jug logo.		
Goods/Services	Class 025. First use: First Use: 2005/02/09 First Use In Commerce: 2005/02/09 Caps; Footwear; Hats; Headgear, namely, hats and caps; Jackets; Pants; Shirts; Shorts; Skirts; Socks; Sport shirts; Sports jackets; Sports shirts; Sweat pants; Sweat shirts; T-shirts		

U.S. Registration	3727464	Application Date	12/11/2008
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No.			
Registration Date	12/22/2009	Foreign Priority Date	NONE
Word Mark	JARRITOS PONCHE NAVIDENO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2008/10/00 First Use In Commerce: 2008/10/00 Fruit beverage		


U.S. Registration No.	3276571	Application Date	02/04/2005
Registration Date	08/07/2007	Foreign Priority Date	NONE
Word Mark	JARRITOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2005/06/21 First Use In Commerce: 2005/06/21 Flavored drinking water		

U.S. Registration No.	3294993	Application Date	06/23/2005
Registration Date	09/18/2007	Foreign Priority Date	NONE
Word Mark	DE LA FAMILIA JARRITOS		

Design Mark			
Description of Mark	The mark consists of 3-jug design with Agave plant background.		
Goods/Services	Class 032. First use: First Use: 2005/09/06 First Use In Commerce: 2005/09/06 non-alcoholic beverages, namely soft drinks; syrups and concentrates for making beverages, namely soft drinks		


U.S. Registration No.	3407220	Application Date	07/05/2006
Registration Date	04/01/2008	Foreign Priority Date	NONE


Word Mark	JARRITOS KIDS
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Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2006/10/12 First Use In Commerce: 2006/10/12 Fruit flavored soft drinks; Fruit-flavored beverages; Fruit-flavored drinks; Preparations for making fruit flavored drinks; Soft drinks		

U.S. Registration No.	3412833	Application Date	06/21/2005
Registration Date	04/15/2008	Foreign Priority Date	NONE

Word Mark	JARRITOS
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Design Mark	
Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 2005/06/00 First Use In Commerce: 2005/06/00 flavored drinking water

U.S. Registration No.	3532651	Application Date	07/10/2006
Registration Date	11/11/2008	Foreign Priority Date	NONE
Word Mark	JARRITOS KIDS		
Design Mark			
Description of Mark	The mark consists of the wording "JARRITOS KIDS" in stylized form with line and circle design elements.		
Goods/Services	Class 032. First use: First Use: 2006/10/12 First Use In Commerce: 2006/10/12 Fruit flavored soft drinks; Fruit-flavored beverages; Preparations for making fruit flavored drinks; Soft drinks		

Related Proceedings	Opposition No. 91197652
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Attachments	73274177#TMSN.gif (1 page)(bytes) 74080042#TMSN.gif (1 page)(bytes) 75809105#TMSN.gif (1 page)(bytes) 77068527#TMSN.jpeg (1 page)(bytes) 77631029#TMSN.jpeg (1 page)(bytes) 78560897#TMSN.jpeg (1 page)(bytes) 78656810#TMSN.jpeg (1 page)(bytes) 78922820#TMSN.jpeg (1 page)(bytes) 78654840#TMSN.jpeg (1 page)(bytes) 78925507#TMSN.jpeg (1 page)(bytes) Jarritos_Jarro Frut 01-10-11.pdf (6 pages)(41321 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 Overnight Courier on this date.

Signature	/Christine Lebron-Dykeman/
Name	Christine Lebron-Dykeman
Date	01/10/2011

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

<p>JARRITOS, INC.,</p> <p style="text-align: center;">Opposer,</p> <p>v.</p> <p>CARLOS GARCJARCE RAMIREZ,</p> <p style="text-align: center;">Applicant.</p>	<p>Opposition No: _____</p> <p>In the matter of: Application No: 77/949,657 Mark: JARRO FRUT & Design Published in Official Gazette on: August 3, 2010</p>
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NOTICE OF OPPOSITION

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

Jarritos, Inc. believes that it will be damaged by registration of the marks shown in Serial No. 77/949,657 and hereby opposes registration of that mark. Serial No. 77/949,657 is an application of Carlo Garcjarce Ramirez, filed March 3, 2010 and published for opposition in the Official Gazette August 3, 2010. The grounds for opposition are as follows:

1. Jarritos, Inc. ("Opposer") is a Delaware corporation having a principal place of business at 500 West Overland Avenue, Suite 300, El Paso, Texas 79901.
2. Upon information and belief, Mr. Ramirez ("Applicant") is an individual residing in Mexico at Adofa Prieto 1714-A Co. Del Calle C.P. Mexico.

3. Opposer is the owner of a family and marks incorporating the term "Jarritos", including the following:

JARRITOS, Reg. No. 1,191,311
JARRITOS, Reg. No. 1,854,805
JARRITOS, Reg. No. 2,173,641
JARRITOS, Reg. No. 2,360,415
JARRITOS, Reg. No. 3,544,108
JARRITOS PONCHE NAVIDENO, Reg. No. 3,727,464
JARRITOS, Reg. No. 3,276,571
DE LA FAMILIAR JARRITOS, Reg. No. 3,294,993
JARRITOS KIDS, Reg. No. 3,407,220
JARRITOS, Reg. No. 3,412,833
JARRITOS KIDS, Reg. No. 3,532,651

(collectively "the JARRITOS family of marks") These marks are for use in connection with, among other things, Class 32 goods including fruit flavored beverages, fruit flavored drinks, fruit flavored soft drinks, preparations for making fruit flavored drinks soft drinks, mineral water, flavored drinking water, non-alcoholic beverages, syrups and concentrates for making beverages. Opposer has used the JARRITOS mark in commerce in the United States since at least as early as 1986, with regard to its goods.

4. The English translation of the word "Jarritos" is "little jugs" or "pitchers".

5. By reason of Opposer's long and extensive use of the JARRITOS family of marks, the marks have achieved widespread and favorable public appearance and recognition and have become an asset of great value as a symbol of Opposer's goods and goodwill.

6. Opposer has invested a great deal of time and money in promoting its goods under the JARRITOS family of marks and it continues to use and promote these goods under these marks.

7. By virtue of Opposer's continuous, exclusive and widespread use of the JARRITOS family of marks, the marks are entitled to a broad scope of protection.

8. On March 3, 2010, Applicant filed an intent-to-use application, Serial No. 77/949,657, to register the mark JARRO FRUT & Design for use in connection with frozen and dried fruit; fruit concentrate and powders as ingredients of food products, namely, ice cream, sorbet, ice cones, frappes, and frozen confections in Class 29; concentrates and powders used in the preparation of tea-based beverages; flavorings for beverages in Class 30; concentrates and powders used in the preparation of fruit-based beverages; frozen fruit beverage; fruit flavored beverages; non-alcoholic cocktail mixes, namely, fruit concentrate and powder for non-alcoholic drinks in Class 32; and alcoholic cocktail mixes, namely, fruit concentrate and powder for alcoholic drinks in Class 33.

9. The English translation of the word "Jarro" is "jar" or "jug".

10. Opposer acquired trademark rights in and to the JARRITOS family of marks for Opposer's goods that pre-date the actual and/or constructive use of Applicant of the mark JARRO FRUT & Design.

11. Applicant's mark has the same or highly similar sight, sound, meaning and commercial impression in comparison to Opposer's mark. As such, Applicant's mark is likely to be confused with Opposer's mark.

12. The addition of the word "fruit" in Applicant's mark is not sufficient to distinguish these marks as noted above, both marks are used in connection with, among other things, fruit flavored beverages.

13. Certain of Applicant's intended goods are identical to Opposer's goods. By way of example, both Applicant and Opposer's goods include fruit flavored beverages. Applicant's other goods are similar or related to Opposer's goods.

14. Upon information and belief, Applicant and Opposer's goods are intended to be advertised and sold through similar channels of trade.

15. Applicant's mark, when used for goods recited in the application, is likely to cause confusion, mistake or deception within the meaning of § 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

16. Use and application for registration by Applicant of its mark is without Opposer's consent.

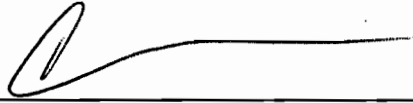
17. Registration of the mark JARRO FRUT & Design by Applicant will provide Applicant with the prima facie exclusive rights therein, and would harm Opposer by interfering with Opposer's exclusive rights in and to the JARRITOS family of marks.

18. Opposer has the right to continue using the JARRITOS family of marks in connection with its goods and related goods and services and to use the mark without interference by Applicant and without confusion, mistake or deception.

19. Opposer hereby appoints McKee, Voorhees & Sease, PLC, 801 Grand Avenue, Suite 3200, Des Moines, Iowa 50309, as its attorney, to act on its behalf and to receive all correspondence related to this opposition.

WHEREFORE, Opposer believes it will be damaged by the registration of JARRO FRUT & Design by Applicant and prays that the registration be denied.

Respectfully submitted,



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ATTORNEYS FOR OPPOSER, JARRITOS, INC.

CERTIFICATE OF SERVICE

I hereby declare that the foregoing instrument was served upon the following this 10th day of January, 2011, via:

- | | |
|--|---|
| <input type="checkbox"/> 1 st Class U.S. Mail | <input checked="" type="checkbox"/> Federal Express |
| <input type="checkbox"/> Facsimile | <input type="checkbox"/> Hand Delivery |
| <input type="checkbox"/> Email (.pdf) | <input type="checkbox"/> Other _____ |

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Christine Lebrón-Dykeman