

ESTTA Tracking number: **ESTTA418148**

Filing date: **07/06/2011**

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	Cargill Meat Solutions Corporation
Granted to Date of previous extension	07/06/2011
Address	151 North Main Wichita, KS 67202 UNITED STATES

Attorney information	William Schultz Merchant & Gould P.C. Suite 3200 80 South Eighth Street Minneapolis, MN 55402 UNITED STATES cargilltm@merchantgould.com Phone:612.332.5300
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Applicant Information

Application No	77949856	Publication date	03/08/2011
Opposition Filing Date	07/06/2011	Opposition Period Ends	07/06/2011
Applicant	Ecopacific Seafood, LLC 1124 15th Street Bellingham, WA 98225 UNITED STATES		

Goods/Services Affected by Opposition

Class 029. All goods and services in the class are opposed, namely: Seafood, namely, packaged fresh, frozen and re-freshed seafood

Grounds for Opposition

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

U.S. Registration No.	3620891	Application Date	02/07/2005
Registration Date	05/12/2009	Foreign Priority Date	NONE
Word Mark	REDIFRESH		

Design Mark	REDIFRESH
Description of Mark	NONE
Goods/Services	Class 029. First use: First Use: 2008/09/30 First Use In Commerce: 2008/09/30 Beef

Related Proceedings	None
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Attachments	78561661#TMSN.jpeg (1 page)(bytes) 2011 07 06 Notice of Opposition_READY FRESH.pdf (10 pages)(274180 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	/William Schultz/
Name	William Schultz
Date	07/06/2011

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

Cargill Meat Solutions Corporation)	
)	Opposition No. _____
Opposer,)	
)	Mark: READY FRESH
v.)	
)	Application Ser. No. 77-949,856
Ecopacific Seafood, LLC,)	
)	Filed: March 3, 2010
Applicant.)	
)	Published: March 8, 2011
_____)	

NOTICE OF OPPOSITION

Cargill Meat Solutions Corporation (“Cargill”), a Delaware Corporation having a principal place of business at 151 N. Main, Wichita, KS 67202, believes it will be damaged by registration of READY FRESH as a trademark for “Seafood, namely, packaged fresh, frozen and re-freshed seafood,” Application Ser. No. 77-949,856, by Ecopacific Seafood, LLC (hereinafter referred to as “Applicant”), and hereby opposes the same upon the following grounds.

1. Cargill has sold a variety of food products under the REDIFRESH marks, including meat products.
2. Since at least as early as September 30, 2008, Cargill adopted and began using the mark REDIFRESH for use in connection meat, which is and has been marketed in commerce throughout the United States. On February 7, 2005, Cargill applied for registration of the mark REDIFRESH with the United States Patent and Trademark Office and on May 12, 2009, the United States Patent and Trademark Office registered on the Principal Register and issued to Cargill Registration No. 3,620,891 for the mark REDIFRESH in connection with “beef.”

Registration No. 3,620,891 is presently valid and subsisting and is now owned by Cargill and is prima facie evidence of Cargill's exclusive right to use the REDIFRESH mark in commerce in connection with those goods.

3. Cargill has common law rights in its REDIFRESH mark in connection with various forms of meat products.

4. Cargill's goods under its REDIFRESH mark have been sold in interstate commerce and have been advertised and promoted by Cargill or its affiliates.

5. Cargill's REDIFRESH mark has developed and represents valuable goodwill to the benefit of Cargill. The REDIFRESH mark has trademark significance to purchasers and potential purchasers.

6. The REDIFRESH mark is distinctive within the meaning of the Lanham Act, and was distinctive prior to Applicant's application to register the READY FRESH mark.

7. Applicant is a Washington company, with a place of business at 1124 15th Street, Bellingham, WA 98225.

8. In its Application Serial No. 77-949,856, Applicant seeks to obtain registration on the Principal Register of the mark READY FRESH as a trademark for use in connection with "Seafood, namely, packaged fresh, frozen and re-freshed seafood" in International Class 29.

9. Applicant has not used the READY FRESH mark in commerce.

10. Applicant's adoption and intended use of the READY FRESH mark has been without the consent or permission of Cargill.

11. Applicant's adoption and intended use of its READY FRESH mark has been with actual or constructive knowledge of Cargill's prior use and registrations of its REDIFRESH mark in connection with meat and other various food products.

12. Applicant's mark is confusingly similar to Cargill's REDIFRESH mark. The READY FRESH mark for which Applicant seeks registration is phonetically identical to Cargill's REDIFRESH mark and the marks share the same commercial impression.

13. Applicant's goods under Applicant's READY FRESH mark are confusingly similar to Cargill's goods sold under Cargill's REDIFRESH mark in that, among other things, Cargill uses and Applicant intends to use the marks in connection with meat. Consumers are likely to view Applicant's goods as Cargill's goods or a natural extension of Cargill's various meat and food products.

14. Applicant's goods sold under its READY FRESH mark and Cargill's goods sold under its REDIFRESH marks are likely to travel in the same channels of trade.

15. Applicant's goods sold under its READY FRESH mark and Cargill's goods sold under its REDIFRESH marks are likely to be sold in the same area of grocery stores.

16. Applicant's goods sold under its READY FRESH mark and Cargill's goods sold under its REDIFRESH mark are likely to be sold to the same types of consumers.

17. Due to the similarity of Cargill's REDIFRESH mark with Applicant's READY FRESH application and the closely related nature of the goods of the respective parties, customers and potential customers are likely to believe that Applicant's goods under Applicant's mark originate from Cargill, resulting in a likelihood of confusion in the marketplace and damage to Cargill.

18. Because of the related nature of the goods and the similarity of the marks, use and registration of the mark READY FRESH by Applicant is likely to cause confusion, mistake, or deception that Applicant's goods are those of Cargill or otherwise endorsed, sponsored, or approved by Cargill causing further damage to Cargill.

19. Registration of the mark shown in Application Serial No. 77-949,856 will result in damage to Cargill under Section 2(d) of the U.S. Trademark Act, 15 U.S.C. § 1052.

20. Cargill will be damaged if Applicant obtains a registration of the READY FRESH mark because Applicant will obtain statutory rights in the mark in violation and in derogation of the established prior rights of Cargill in its REDIFESH mark.

PRAYER FOR RELIEF

WHEREFORE, Cargill asks that its opposition to Application No. 77-949,856 be sustained and that the registration of the term READY FRESH set forth therein be refused.

Please direct all correspondence to the attention of William D. Schultz:

Merchant & Gould P.C.
PO Box 2910
Minneapolis, MN 55402
612-332-5300

Cargill hereby appoints Allen W. Hinderaker; William D. Schultz; Heather J. Kliebenstein; and all other attorneys of the firm of Merchant & Gould P.C., and Scott Piering and the attorneys of Cargill, Inc. and Cargill Meat Solutions Corporation as attorneys with the full power to represent Cargill, to receive all correspondence related thereto and to represent it in all proceedings affecting the potential opposition of the mark.

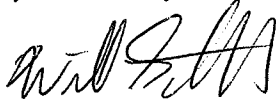
Accompanying the duplicate signed copies of this Notice of Opposition is the required fee of \$300.00. Please charge any excess fees or credit any overpayment to Deposit Account No. 13-2725 of Cargill's counsel noted above.

Respectfully submitted,

Dated: July 6, 2011

CARGILL MEAT SOLUTIONS CORPORATION

By its attorneys,

A handwritten signature in black ink, appearing to read "Allen Hinderaker", written over a horizontal line.

Allen Hinderaker
William Schultz
Merchant & Gould P.C.
PO Box 2910
Minneapolis, MN 55402
(612) 332-5300

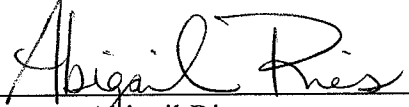
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing NOTICE OF OPPOSITION has been served by First

Class Mail this 6th day of July, 2011 upon the following:

Ecopacific Seafood, LLC
1124 15th Street
Bellingham, WA 98225

Robert E. Wise, Jr., Esq.
Suite 1000
1050 Winter Street
Waltham MA 02451


Abigail Ries

Thank you for your request. Here are the latest results from the [TARR web server](#).

This page was generated by the TARR system on 2011-07-06 14:29:37 ET

Serial Number: 78561661 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 3620891

Mark

REDIFRESH

(words only): [REDIFRESH](#)

Standard Character claim: Yes

Current Status: [Registered](#). The registration date is used to determine when post-registration maintenance documents are due.

Date of Status: [2009-05-12](#)

Filing Date: [2005-02-07](#)

Transformed into a National Application: No

Registration Date: [2009-05-12](#)

Register: [Principal](#)

Law Office Assigned: [LAW OFFICE 114](#)

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: [650 -Publication And Issue Section](#)

Date In Location: [2009-04-07](#)

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. [Cargill Meat Solutions Corporation](#)

Address:

[Cargill Meat Solutions Corporation](#)
[151 North Main](#)
[Wichita, KS 67202](#)
[United States](#)

Legal Entity Type: [Corporation](#)
State or Country of Incorporation: [Delaware](#)

GOODS AND/OR SERVICES

International Class: [029](#)
Class Status: [Active](#)
[Beef](#)
Basis: [1\(a\)](#)
First Use Date: [2008-09-30](#)
First Use in Commerce Date: [2008-09-30](#)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

[2009-05-12 - Registered - Principal Register](#)
[2009-04-07 - Law Office Registration Review Completed](#)
[2009-03-31 - Assigned To LIE](#)
[2009-03-31 - Allowed for Registration - Principal Register \(SOU accepted\)](#)
[2009-03-31 - Statement Of Use Processing Complete](#)
[2009-03-10 - Use Amendment Filed](#)
[2009-03-31 - Case Assigned To Intent To Use Paralegal](#)
[2009-03-10 - TEAS Statement of Use Received](#)
[2008-08-27 - Extension 3 granted](#)
[2008-08-27 - Extension 3 filed](#)
[2008-08-27 - TEAS Extension Received](#)

2008-03-03 - Extension 2 granted
2008-03-03 - Extension 2 filed
2008-03-03 - TEAS Extension Received
2007-09-05 - Attorney Revoked And/Or Appointed
2007-09-05 - TEAS Revoke/Appoint Attorney Received
2007-08-14 - Extension 1 granted
2007-08-14 - Extension 1 filed
2007-08-14 - TEAS Extension Received
2007-03-13 - NOA Mailed - SOU Required From Applicant
2006-12-19 - Published for opposition
2006-11-29 - Notice of publication
2006-11-12 - Law Office Publication Review Completed
2006-11-03 - Assigned To LIE
2006-10-30 - Approved For Pub - Principal Register
2006-10-18 - LIE Checked Susp - To Atty For Action
2006-04-16 - LETTER OF SUSPENSION E-MAILED
2006-04-16 - Suspension Letter Written
2006-03-21 - Teas/Email Correspondence Entered
2006-03-07 - Communication received from applicant
2006-03-07 - TEAS Response to Office Action Received
2005-09-07 - Non-final action e-mailed
2005-09-07 - Non-Final Action Written
2005-09-05 - Assigned To Examiner
2005-02-18 - Applicant amendment prior to exam entered
2005-02-18 - PAPER RECEIVED

2005-02-15 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Carrie L. Johnson

Correspondent

Carrie L. Johnson

Cargill, Incorporated

P.O. Box 5624

Law Department - MS 24

Minneapolis MN 55440

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