

ESTTA Tracking number: **ESTTA431493**

Filing date: **09/20/2011**

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	SWH Corporation
Granted to Date of previous extension	09/21/2011
Address	18872 MacArthur Blvd.Suite 400 Irvine, CA 92612 UNITED STATES

Attorney information	Cory M. Amron Vorys, Sater, Seymour and Pease LLP 1909 K Street, NW 9th Floor Washington, DC 20006 UNITED STATES iplaw@vorys.com,cmott@vorys.com,behogue@vorys.com
----------------------	---

### Applicant Information

Application No	85214979	Publication date	05/24/2011
Opposition Filing Date	09/20/2011	Opposition Period Ends	09/21/2011
Applicant	Mimi Dlc LLC 5112 E 80th St. Tulsa, OK 74136 UNITED STATES		

### Goods/Services Affected by Opposition


Class 030. All goods and services in the class are opposed, namely: Bakery goods
---


### Grounds for Opposition


Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------


### Marks Cited by Opposer as Basis for Opposition


U.S. Registration No.	2132534	Application Date	02/05/1997
Registration Date	01/27/1998	Foreign Priority Date	NONE
Word Mark	MIMIS CAFE		

Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1996/06/00 First Use In Commerce: 1996/06/00 coffeeshop services		

U.S. Registration No.	3052780	Application Date	01/25/2005
Registration Date	01/31/2006	Foreign Priority Date	NONE
Word Mark	MIMIS CAFE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 1996/06/00 First Use In Commerce: 1996/06/00 Restaurant services, coffee shop services, bar services		

U.S. Registration No.	3052781	Application Date	01/25/2005
Registration Date	01/31/2006	Foreign Priority Date	NONE
Word Mark	MIMIS CAFE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 1978/12/19 First Use In Commerce: 1978/12/19 Restaurant services, coffee shop services, bar services		

U.S. Registration No.	3744361	Application Date	06/24/2009
Registration Date	02/02/2010	Foreign Priority Date	NONE
Word Mark	MIMIS CAFE FRESH & FIT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 2009/05/01 First Use In Commerce: 2009/05/01 Restaurant services		

U.S. Registration No.	3749117	Application Date	06/24/2009
Registration Date	02/16/2010	Foreign Priority Date	NONE
Word Mark	MIMIS CAFE KIDS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 2009/06/01 First Use In Commerce: 2009/06/01 Restaurant services		

U.S. Application No.	85182043	Application Date	11/22/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	MIMIS CAFE		

Design Mark	<h1>MIMIS CAFE</h1>		
Description of Mark	NONE		
Goods/Services	<p>Class 029. First use: Frozen, prepared or packaged entrees and meals consisting primarily of meat, fish, poultry, seafood, vegetables, soups, fruit salads or vegetable salads; Frozen, prepared or packaged side dishes consisting primarily of meat, fish, poultry, seafood, vegetables, soups, fruit salads or vegetable salads</p> <p>Class 030. First use: Frozen, prepared or packaged entrees and meals consisting primarily of pasta, rice, macaroni, or noodles; Frozen, prepared or packaged side dishes consisting primarily of pasta, rice, macaroni, or noodles; Bakery goods</p>		

U.S. Registration No.	3880912	Application Date	06/24/2009
Registration Date	11/23/2010	Foreign Priority Date	NONE

Word Mark	MIMI'S MEANINGFUL MUFFIN		
Design Mark	<h1>MIMI'S MEANINGFUL MUFFIN</h1>		
Description of Mark	NONE		
Goods/Services	<p>Class 030. First use: First Use: 2009/08/22 First Use In Commerce: 2009/08/22 Muffins</p> <p>Class 041. First use: First Use: 2009/04/01 First Use In Commerce: 2009/04/01 Conducting contests in the field of cooking recipes</p>		

U.S. Registration No.	3744362	Application Date	06/24/2009
Registration Date	02/02/2010	Foreign Priority Date	NONE
Word Mark	MEET ME AT MIMI'S		

Design Mark	<b>MEET ME AT MIMI'S</b>		
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 2009/06/15 First Use In Commerce: 2009/06/15 Restaurant services		

U.S. Registration No.	3886056	Application Date	04/20/2010
Registration Date	12/07/2010	Foreign Priority Date	NONE
Word Mark	MIMI'S		
Design Mark	<b>MIMI'S</b>		
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 1978/12/19 First Use In Commerce: 1978/12/19 Restaurant services		

U.S. Registration No.	3883126	Application Date	04/30/2010
Registration Date	11/30/2010	Foreign Priority Date	NONE
Word Mark	MIMI'S QUICK CAFE		

Design Mark	MIMI'S QUICK CAFE
Description of Mark	NONE
Goods/Services	Class 043. First use: First Use: 2010/04/10 First Use In Commerce: 2010/04/10 Restaurant services

Attachments	75236938#TMSN.gif ( 1 page )( bytes ) 76628691#TMSN.gif ( 1 page )( bytes ) 76628692#TMSN.gif ( 1 page )( bytes ) 77767253#TMSN.jpeg ( 1 page )( bytes ) 77767265#TMSN.jpeg ( 1 page )( bytes ) 85182043#TMSN.jpeg ( 1 page )( bytes ) 77767260#TMSN.jpeg ( 1 page )( bytes ) 77767269#TMSN.jpeg ( 1 page )( bytes ) 85017879#TMSN.jpeg ( 1 page )( bytes ) 85027223#TMSN.jpeg ( 1 page )( bytes ) Notice of Opposition - MIMI'S YUMMIES.pdf ( 5 pages )(172925 bytes )
-------------	---

### 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	/Chris Ott/
Name	Christopher M. Ott
Date	09/20/2011

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

In the matter of Trademark Application No. 85/214,979

Mark: MIMI'S YUMMIES

Filing date: January 11, 2011

Publication date: May 24, 2011

SWH CORPORATION,  Opposer,  v.  MIMI DLC LLC,  Applicant.	Opposition No. _____
---	----------------------

**NOTICE OF OPPOSITION**

SWH Corporation (“Opposer”), a California corporation located at 18872 MacArthur Boulevard, Suite 400, Irvine, California 92612, believes it will be damaged if Trademark Application No. 85/214,979 (the “Application”) for the mark MIMI’S YUMMIES (“Applicant’s Mark”) by Mimi Dlc LLC (“Applicant”), an Oklahoma limited liability company located at 5112 East 80<sup>th</sup> Street, Tulsa, OK 74136, registers and therefore opposes the Application.

**BACKGROUND**

1. Opposer owns the MIMI’S and MIMIS CAFE trademarks, including the marks in U.S. Trademark Registration Nos. 2,132,534, 3,052,780, 3,052,781, 3,744,361, 3,749,117 and Application No. 85/182,043 for MIMIS CAFE and U.S. Trademark Registration Nos. 3,880,912, 3,744,362, 3,886,056, 3,883,126 for MIMI’S (collectively, “Opposer’s Marks”), the earliest of which registered on January 27, 1998.

2. Since at least as early as December 19, 1978, Opposer has continuously used Opposer's Marks in connection with *restaurant services* ("Opposer's Services").

3. Since at least as early as August 22, 2009, Opposer has continuously used Opposer's Marks with *muffins* and since at least as early as November 22, 2010 and as set forth in Application No. 85/182,043, Opposer has had a bona fide intent to use Opposer's Marks with various foods including *bakery goods* (collectively, "Opposer's Goods").

4. The public recognizes Opposer's Marks as exclusively identifying Opposer's Goods and Opposer's Services and Opposer's Marks embody the goodwill and reputation that Opposer has developed by continuously using Opposer's Marks.

5. On January 14, 2011, well after Opposer filed its first application for Opposer's Marks, Applicant filed the Application for use with *bakery goods* ("Applicant's Goods"), based on an intent to use that mark in commerce.

6. The Application was published for opposition on May 24, 2011.

7. On June 8, 2011, Opposer filed for and was granted an extension of time to oppose the Application through September 21, 2011.

### **LIKELIHOOD OF CONFUSION**

8. Applicant's Mark and Opposer's Marks feature the identical elements MIMI'S and have nearly pronunciations.

9. Applicant's Goods and Opposer's Goods are identical in part and Applicant's Goods are closely related to Opposer's Services.

10. Opposer established its priority to MIMI'S (or MIMIS) formative marks by filing its applications for Opposer's Marks several years before Applicant filed the Application.



11. Allowing the Application to register would damage Opposer by interfering with Opposer's right to use Opposer's Marks in connection with Opposer's Goods and Opposer's Services.

12. Because of the similarity between Opposer's Marks and Applicant's Mark, and the closer relation between Opposer's Goods and Opposer's Services and Applicant's Services, Applicant's Mark is likely to cause confusion, cause mistake or deceive the public, and cause the public to believe, incorrectly, that Applicant's Services emanate from, are authorized or endorsed by, or are otherwise connected with Opposer in violation of Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d).

\* \* \*

THEREFORE, Opposer prays that the Trademark Trial and Appeal Board sustain this Opposition and refuse to register Trademark Application No. 85/214,979 for MIMI'S YUMMIES.

Please charge all fees to Deposit Account No. 22-0585.

Please recognize Cory M. Amron, William H. Oldach III, Christopher M. Ott, and Richard S. Donnell, all members of the bar of the District of Columbia, and the firm of Vorys, Sater, Seymour and Pease, LLP, as Opposer's attorneys to prosecute this Notice of Opposition and to transact all related business in the Patent and Trademark Office.

I  ted,

9.20.2011  
Date: \_\_\_\_\_

\_\_\_\_\_  
Cory M. Amron  
Christopher M. Ott  
William H. Oldach III  
VORYS, SATER, SEYMOUR & PEASE LLP  
1909 K Street, NW, 9th Floor  
Washington, DC 20006  
Telephone: 202.467.8800  
Facsimile: 202.533.9099  
E-Mail: [iplaw@vorys.com](mailto:iplaw@vorys.com)

Attorneys for Opposer  
SWH CORPORATION

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing Notice of Opposition was served on September 20, 2011, by first-class United States Mail, postage prepaid, on:

Ms. Diana Cheek  
Mimi Dlc LLC  
5112 East 80<sup>th</sup> St.  
Tulsa, OK 74117



---

Christopher M. Ott