

ESTTA Tracking number: **ESTTA463216**

Filing date: **03/22/2012**

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	Foremost Labs dba Tahiti Trader Company
Granted to Date of previous extension	04/18/2012
Address	28491 Rancho de Juana Laguna Niguel, CA 92677 UNITED STATES

Attorney information	Kit M. Stetina Stetina Brunda Garred & Brucker 75 Enterprise, Suite 250 Aliso Viejo, CA 92656 UNITED STATES opposition@stetinalaw.com Phone:949-855-1246
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### Applicant Information

Application No	85212773	Publication date	12/20/2011
Opposition Filing Date	03/22/2012	Opposition Period Ends	04/18/2012
Applicant	SMART STUFF INTERNATIONAL, INC. 315 EAST SHORE ROAD MANHASSET, NY 11030 UNITED STATES		

### Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Liquid nutritional and vitamin supplements for human consumption in foods or juices
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### 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.	2981288	Application Date	05/22/2001
Registration Date	08/02/2005	Foreign Priority Date	NONE
Word Mark	SMART NONI		

Design Mark	<b>SMART NONI</b>
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2005/02/28 First Use In Commerce: 2005/02/28 NUTRITIONAL SUPPLEMENTS

Attachments	76260268#TMSN.gif ( 1 page )( bytes ) Notice of Opposition.pdf ( 9 pages )(134915 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	/Kit M. Stetina/
Name	Kit M. Stetina
Date	03/22/2012

Case: LOGSD-009M  
Trademark Application

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

**In the Matter of Trademark Application Serial No. 85/212,773**

Foremost Labs dba Tahiti Trader )	Opposition No.:
Company, )	
) )	
Opposer )	
) )	
vs. )	
) )	
Smart Stuff International, Inc., )	
) )	
Applicant )	

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**NOTICE OF OPPOSITION**

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

Dear Sir/Madam:

In the matter of the application of Smart Stuff International, Inc. of Manhasset, NY (hereinafter "Applicant") for registration of the trademark SMART BOOST, Application Serial No. 85/212,773, published in the Official Gazette of December 20, 2011, at TM 339, Foremost Labs dab Tahiti Trader Company, a California trust, with offices at 28491 Rancho de Juana, Laguna Niguel, California 92677 (hereinafter "Opposer"), believes that it will be damaged by registration of the mark shown in Serial No. 85/212,773, and hereby opposes the same.

The grounds for opposition are as follows:

1. Opposer is and has been for many years engaged in the extensive development, advertising, and marketing of nutritional supplements and related nutritional products. In connection therewith, Opposer has used, or filed federal applications with an intent-to-use, in interstate commerce, the mark SMART NONI for the aforementioned goods since long prior to Applicant's filing date of application serial no. 85/212,773 for the mark SMART BOOST.

2. Since at least as early as February 2005, Opposer has made use of its SMART NONI throughout the United States in interstate commerce. Since adoption of its SMART NONI, Opposer has continuously used those marks throughout the United States in interstate commerce.

3. Opposer has expended considerable sums in exerting every effort to maintain the highest standard of quality for its goods, and has created valuable goodwill among the purchasing public under its SMART NONI.

4. As a result of the continuous and extensive use of the SMART NONI by Opposer, that mark has become and continues to function as a valuable business and marketing asset of Opposer, and serve to indicate to the trade and consuming public the services originating from Opposer and its authorized representative.

5. Opposer has obtained United States Trademark Registration No. 2,981,288, registered August 2, 2005, for the mark SMART NONI for the goods set forth in that registration, a copy of said registration is attached hereto as **Exhibit A**.

6. Notwithstanding Opposer's rights in and to said SMART NONI, Applicant, on information and belief, filed an application for registration of the mark SMART BOOST in International Class 005 on January 7, 2011 for Liquid nutritional and vitamin

supplements for human consumption in foods or juices. Said application was published for opposition in the Official Gazette of December 20, 2011 at TM 339.

7. Pursuant to Trademark Rules of Practice 2.102, Opposer filed a Request to Extend Time for Filing this Notice of Opposition to April 18, 2012, a copy of said Request to Extend Time is attached hereto as **Exhibit B**.

8. Applicant's SMART BOOST mark is confusingly similar to Opposer's SMART NONI and its registration and use by Applicant on the services claimed in the subject application is likely to cause confusion, deception and mistake.

9. Applicant's use of the mark SMART BOOST interferes with Opposer's use of its SMART NONI and dilutes the strength of Opposer's trademarks and use of, or registration of, the mark SMART BOOST by Applicant will seriously damage Opposer.

WHEREFORE, Opposer believes that it will be damaged by said registration and prays that registration of the mark SMART BOOST to Applicant be denied.

Opposer's representative authorizes the charging of any additional fees to its Deposit Account No. 19-4330.

Respectfully submitted,

STETINA BRUNDA GARRED & BRUCKER

Dated:

3/22/12

By: 

Kit M. Stetina, Reg. No. 29,445

75 Enterprise, Suite 250

Aliso Viejo, CA 92656

(949) 855-1246

Counsel for Opposer

Foremost Labs dba Tahiti Trader Company

# EXHIBIT A

**Int. Cl.: 5**

**Prior U.S. Cls.: 6, 18, 44, 46, 51, and 52**

**Reg. No. 2,981,288**

**United States Patent and Trademark Office**

**Registered Aug. 2, 2005**

**TRADEMARK  
PRINCIPAL REGISTER**

**SMART NONI**

FOREMOST LABS (CALIFORNIA COMPLEX  
TRUST)  
28491 RANCHO DE JUANA  
LAGUNA NIGUEL, CA 92677

NO CLAIM IS MADE TO THE EXCLUSIVE  
RIGHT TO USE "NONI", APART FROM THE MARK  
AS SHOWN.

FOR: NUTRITIONAL SUPPLEMENTS, IN CLASS  
5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

SN 76-260,268, FILED 5-22-2001.

FIRST USE 2-28-2005; IN COMMERCE 2-28-2005.

MARC LEIPZIG, EXAMINING ATTORNEY

# **EXHIBIT B**





United States Patent and Trademark Office

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Your submission has been received by the USPTO.  
The content of your submission is listed below.  
You may print a copy of this receipt for your records.

ESTTA Tracking number: **ESTTA448827**Filing date: **12/29/2011**

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

Applicant: **SMART STUFF INTERNATIONAL, INC.**  
Application Serial Number: **85212773**  
Application Filing Date: **01/07/2011**  
Mark: **SMART BOOST**  
Date of Publication **12/20/2011**

**First 90 Day Request for Extension of Time to Oppose for Good Cause**

Pursuant to 37 C.F.R. Section 2.102, Foremost Labs dba Tahiti Trader Company, 28491 Rancho de Juana, Laguna Niguel, CA 92677, UNITED STATES, a Trust, organized under the laws of California, respectfully requests that it be granted a 90-day extension of time to file a notice of opposition against the above-identified mark for cause shown.

Potential opposer believes that good cause is established for this request by:

- The potential opposer needs additional time to investigate the claim

The time within which to file a notice of opposition is set to expire on 01/19/2012. Foremost Labs dba Tahiti Trader Company respectfully requests that the time period within which to file an opposition be extended until 04/18/2012.

Respectfully submitted,  
/Kit M. Stetina/  
12/29/2011

**Kit M. Stetina****Stetina Brunda Garred & Brucker****75 Enterprise, Suite 250****Aliso Viejo, CA 92656****UNITED STATES**

[opposition@stetinalaw.com](mailto:opposition@stetinalaw.com)

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**PROOF OF SERVICE**


State of California    )  
                                  ) ss.  
County of Orange     )

I am over the age of 18 and not a party to the within action; my business address is 75 Enterprise, Suite 250, Aliso Viejo, California 92656. On **March 22, 2012**, the attached **NOTICE OF OPPOSITION** was served on all interested parties in this action by U.S. Mail, postage prepaid, at the address as follows:

Smart Stuff International, Inc.  
315 East Shore Road  
Manhasset, New York 11030

William M. Borchard  
Cowan, Liebowitz & Latman PC  
1133 Avenue of the Americas  
New York, NY 10036

Executed on **March 22, 2012** at Aliso Viejo, California. I declare under penalty of perjury that the above is true and correct. I declare that I am employed in the office of STETINA BRUNDA GARRED & BRUCKER at whose direction service was made.

  
\_\_\_\_\_  
Ellen Burns