

ESTTA Tracking number: **ESTTA496724**

Filing date: **09/26/2012**

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	MOM Brands Company
Granted to Date of previous extension	09/26/2012
Address	2700 IDS Center 80 S 8th Street Minneapolis, MN 55402 UNITED STATES

Attorney information	John A. Clifford Merchant & Gould PC PO Box 2910 Minneapolis, MN 55402-9944 UNITED STATES jclifford@merchantgould.com, aavery@merchantgould.com, dockmpls@merchantgould.com Phone:612.336.4616
----------------------	--

Applicant Information

Application No	85351782	Publication date	05/29/2012
Opposition Filing Date	09/26/2012	Opposition Period Ends	09/26/2012
Applicant	Taylor, Karen O'Donnell 21 Cunningham Street Hopkinton, MA 01748 UNITED STATES		

Goods/Services Affected by Opposition

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

Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)


Marks Cited by Opposer as Basis for Opposition


U.S. Registration No.	3850604	Application Date	06/23/2008
Registration Date	09/21/2010	Foreign Priority Date	NONE
Word Mark	MMM...MUFFINS		

Design Mark	<h1>MMM...MUFFINS</h1>		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2010/02/04 First Use In Commerce: 2010/02/04 BREAKFAST CEREAL		

U.S. Registration No.	3753433	Application Date	10/13/2008
Registration Date	02/23/2010	Foreign Priority Date	NONE
Word Mark	BLUEBERRY MUFFIN SQUARES		
Design Mark	<h1>BLUEBERRY MUFFIN SQUARES</h1>		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2007/11/30 First Use In Commerce: 2007/11/30 BREAKFAST CEREAL		

U.S. Registration No.	2993286	Application Date	01/06/2004
Registration Date	09/06/2005	Foreign Priority Date	NONE
Word Mark	MUFFIN TOPS		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2004/08/31 First Use In Commerce: 2004/08/31 breakfast cereal

U.S. Registration No.	3121925	Application Date	11/03/2004
Registration Date	07/25/2006	Foreign Priority Date	NONE
Word Mark	MOM'S BEST		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2005/05/15 First Use In Commerce: 2005/05/15 Breakfast cereal		

U.S. Registration No.	3379585	Application Date	05/30/2006
Registration Date	02/05/2008	Foreign Priority Date	NONE
Word Mark	MOM'S BEST NATURALS		

Design Mark	MOM'S BEST NATURALS
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2006/08/14 First Use In Commerce: 2006/08/14 BREAKFAST CEREAL

U.S. Registration No.	4199138	Application Date	10/26/2010
Registration Date	08/28/2012	Foreign Priority Date	NONE
Word Mark	MOM BRANDS		
Design Mark	MOM BRANDS		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2012/02/01 First Use In Commerce: 2012/02/01 BREAKFAST CEREAL AND CEREAL BASED SNACK FOODS Class 035. First use: First Use: 2011/12/26 First Use In Commerce: 2011/12/26 PROMOTION SERVICES AND BUSINESS ADMINISTRATION SERVICES FOR PROCESSING SALES MADE ON THE INTERNET		

Attachments	77505673#TMSN.jpeg (1 page)(bytes) 77591141#TMSN.jpeg (1 page)(bytes) 78348200#TMSN.jpeg (1 page)(bytes) 78510878#TMSN.jpeg (1 page)(bytes) 78895971#TMSN.jpeg (1 page)(bytes) 85161176#TMSN.jpeg (1 page)(bytes) 2012 09 26 Notice of Opposition.PDF (6 pages)(224270 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	/John A.Clifford/
Name	John A. Clifford
Date	09/26/2012

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

_____)	
MOM Brands Company,)	
)	Opposition No. _____
Opposer,)	
)	
v.)	
)	Serial No.: 85/351,782
Karen O'Donnell Taylor)	Mark: MOM'S MUFFINS
)	
Applicant.)	
_____)	

NOTICE OF OPPOSITION

To The Assistant Commissioner for Trademarks
ATTN: BOX TTAB
2900 Crystal Drive
Arlington, VA 22202-3513

Dear Sir:

MOM Brands Company, a corporation duly organized and existing under the laws of Minnesota, with a mailing address of 2700 IDS Center, 80 South 8th Street, Minneapolis, Minnesota 55402, United States, believes that it will be damaged by the registration of the MOM'S MUFFINS mark shown in Application Serial No. 85/351,782, filed June 21, 2011 by Karen O'Donnell Taylor, with a mailing address of 21 Cunningham Street, Hopkinton, Massachusetts 01748, and hereby opposes registration of the mark. The grounds for opposition are as follows:

1. By the application herein opposed, Applicant is seeking to obtain under the provisions of the Trademark Act of 1946 as amended, registration on the Principal Register of the trademark MOM'S MUFFINS, in part, for:

International Class 30: Farinaceous foods.

This application (Serial No. 85/351,782) is based on Applicant's intention to use of the mark in commerce.

2. Applicant's Mark published for opposition on May 29, 2012 and Opposer obtained an extension of time to oppose the application. This Notice of Opposition is timely filed.
3. Opposer is the owner of the following U.S. Trademark Registrations.

MMM...MUFFINS, U.S. Reg. No. 3,850,604, used in connection with breakfast cereal, in International Class 30. Said registration was registered on the Principal Register on September 21, 2010 with a first use date of February 4, 2010, which is a date prior to the date of filing of Applicant's application.

BLUEBERRY MUFFIN SQUARES, U.S. Reg. No. 3,753,433, used in connection with breakfast cereal, in International Class 30. Said registration registered on the Supplemental Register on February 23, 2010 with a first use date of November 30, 2007, which is a date prior to the date of filing of Applicant's application.

MUFFIN TOPS, U.S. Reg. No. 2,993,286, used in connection with breakfast cereal, in International Class 30. Said registration was registered on the Principal Register on September 6, 2005 with a first use date of August 31, 2004, which is a date prior to the date of filing of Applicant's application.

The above will be described herein as Opposer's MUFFIN marks consisting of a family of such marks.

MOM'S BEST, U.S. Reg. No. 3,121,925, used in connection with breakfast cereal, in International Class 30. Said registration was registered on the Principal Register on July 25, 2006 with a first use date of May 15, 2005, which is a date prior to the date of filing of Applicant's application.

MOM'S BEST NATURALS, U.S. Reg. No. 3,379,585, used in connection with breakfast cereal, in International Class 30. Said registration was registered on the Principal Register on February 5, 2008 with a first use date of August 14, 2006, which is a date prior to the date of filing of Applicant's application.

MOM BRANDS, U.S. Reg. No. 4,199,138, used in connection with breakfast cereal and cereal based snack foods, in International Class 30; promotion services and business administration services for processing sales made on the internet, in International Class 35. Said registration was registered on the Principal Register on August 28, 2012.

The above will be described herein as Opposer's MOM marks, consisting of a family of such marks.

4. Opposer's registered marks are valid and subsisting, and are prima facie evidence of Opposer's exclusive right to use said mark in commerce on the goods and services specified in each registration.
5. Opposer has advertised and promoted its MUFFIN marks and its MOM marks extensively. Opposer has also made substantial sales under said marks. As a result of such use and promotion, Opposer's MUFFIN marks and its MOM marks have developed and represent valuable goodwill inuring to the benefit of Opposer.
6. Opposer has priority with respect to the mark at issue in this opposition. Opposer has had priority of use of its MUFFIN marks and its MOM marks long before the June 21, 2011 filing date of Applicant's application.
7. Applicant's MOM'S MUFFINS mark is confusingly similar to Opposer's MUFFIN marks and its MOM marks. The marks have an overall confusingly similar appearance, sound, meaning and commercial impression. Applicant's goods are highly and closely related to Opposer's goods and services. Applicant's mark would appear to be a member of Opposer's family of MUFFIN marks and its family of MOM marks.
8. Applicant's mark is deceptively similar to Opposer's marks. The marks have a confusingly similar appearance, sound, meaning and commercial impression. Consumers will mistakenly believe that Applicant's goods are offered by, affiliated with and/or sponsored by Opposer when the same is not true.
9. Due to the highly similar nature of Applicant's mark and Opposer's marks, the closely related nature of the goods provided by the respective parties, consumers and potential consumers are likely to believe that Applicant's goods originate from Opposer, resulting in a likelihood of confusion in the marketplace, and damage to Opposer.

10. Upon information and belief, the goods and services provided by Opposer under its MUFFIN marks and its MOM marks and the goods intended to be provided by Applicant under its MOM'S MUFFINS mark will be promoted and sold in the same channels of trade to the same consumers or class of consumers.
11. The use and registration by Applicant of the mark MOM'S MUFFINS for Applicant's goods are likely to cause confusion or to cause mistake or deception among consumers and potential consumers, with Opposer's previously used MUFFIN marks and its MOM marks, again resulting in damage to Opposer.
12. Because of the highly related nature of the goods and services, and the highly similar nature of the marks in overall appearance, sound, meaning and commercial impression, use and registration of the term MOM'S MUFFINS by Applicant is likely to cause confusion, mistake, or deception that Applicant's goods are those of Opposer, or are otherwise endorsed, sponsored, or approved by Opposer causing further damage to Opposer.
13. If Applicant is granted registration of the mark herein opposed, it would thereby obtain at least a *prima facie* exclusive right to the use of its alleged mark. Such registration would be a source of further damage and injury to Opposer.
14. Registration of the mark shown in Application Serial No 85/351,782 will result in damage to Opposer under the provisions of §2(a), and §2(d) and of the U.S. Trademark Act, 15 U.S.C. § 1052, pursuant to the allegations stated above.

WHEREFORE, Opposer asks that its opposition to this application be sustained and that the registration of the proposed mark MOM'S MUFFINS set forth therein be refused.

Please direct all correspondence to the attention of:

John A. Clifford
Merchant & Gould P.C.
P.O. Box 2910
Minneapolis, MN 55402-0910
Tel: 612-336-4616 Fax: 612-332-9081

Opposer hereby appoints: John A. Clifford; Danielle I. Mattessich; Heather Kliebenstein, Laura Konkel; Brian H. Batzli; Gregory C. Golla; Scott W. Johnston; D. Randall King; Andrew S. Ehard; Christopher J. Schulte; and Brent Routman as its attorneys with the full power to represent the Opposer in connection with this proceeding.

Respectfully submitted,

MOM BRANDS COMPANY,

By its attorneys,

Date:

Sept 26, 2012




John A. Clifford
MERCHANT & GOULD P.C.
P.O. Box 2910
Minneapolis, MN 55402-0910
Tel. 612.336.4616
Fax 612.332.9081

JAC/aja

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **NOTICE OF OPPOSITION** was served, via first-class mail, postage prepaid on Karen O'Donnell Taylor this 26th day of September, 2012.

Karen O'Donnell Taylor
21 Cunningham Street
Hopkinton, MA 01748


John A. Clifford