

ESTTA Tracking number: **ESTTA516718**

Filing date: **01/17/2013**

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	Cosi, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	1751 Lake Cook Road Suite 600 Deerfield, IL 60015 UNITED STATES		

Attorney information	Charles P. Bacall Verrill Dana, LLP One Portland Square P.O. Box 586 Portland, ME 04112-0586 UNITED STATES cbacall@verrilldana.com Phone:207-774-4000
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Applicant Information

Application No	85664602	Publication date	12/18/2012
Opposition Filing Date	01/17/2013	Opposition Period Ends	01/17/2013
Applicant	Marcus Samuelsson Group LLC 770 Lexington Avenue, 11th Floor New York, NY 10065 UNITED STATES		

Goods/Services Affected by Opposition

Class 043. All goods and services in the class are opposed, namely: Bar services; Restaurant services
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2046483	Application Date	04/18/1995
Registration Date	03/18/1997	Foreign Priority Date	NONE
Word Mark	COSI		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 042. First use: First Use: 1996/02/17 First Use In Commerce: 1996/02/17 restaurant services		
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U.S. Registration No.	3083592	Application Date	03/11/2004
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Registration Date	04/18/2006	Foreign Priority Date	NONE
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Word Mark	COSÌ#		
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Design Mark			
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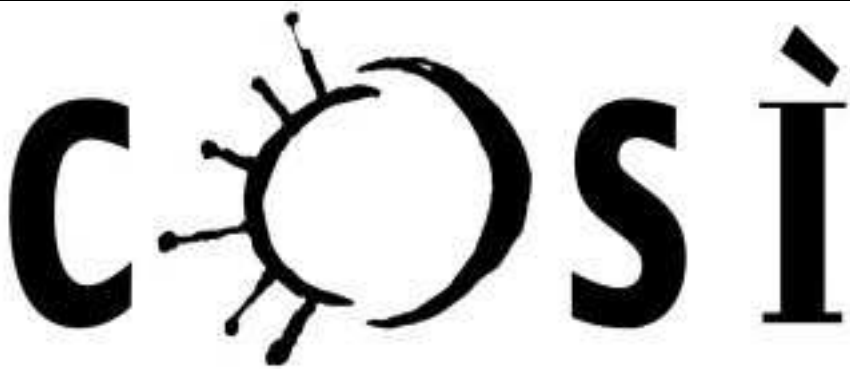
Description of Mark	The mark consists of the word "COSÌ" centered under the outline of a flame partially covered by an arch.		
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Goods/Services	Class 043. First use: First Use: 2004/01/14 First Use In Commerce: 2004/01/14 Restaurant services		
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U.S. Registration No.	3815733	Application Date	08/24/2009
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Registration Date	07/06/2010	Foreign Priority Date	NONE
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Word Mark	COSÌ#		
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Design Mark			
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Description of Mark	The mark consists of the word "COSÌ", with the letter "O" comprised of a half-circle shape with lines radiating to the left, representing the sun, enclosed on the right by a crescent moon shape.		
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Goods/Services	Class 043. First use: First Use: 2009/11/25 First Use In Commerce: 2009/11/25 Restaurant and catering services		
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U.S. Registration No.	2659348	Application Date	03/12/2002
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Registration Date	12/10/2002	Foreign Priority Date	NONE
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Word Mark	COSI CORNERS		
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Design Mark	COSI CORNERS		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1999/11/00 First Use In Commerce: 2000/01/00 Bread		

U.S. Registration No.	2669096	Application Date	04/09/2002
Registration Date	12/31/2002	Foreign Priority Date	NONE
Word Mark	COSI-DILLAS		
Design Mark	COSI-DILLAS		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2001/12/20 First Use In Commerce: 2002/02/01 Quesadillas for consumption on or off the premises		

U.S. Registration No.	3324565	Application Date	08/02/2006
Registration Date	10/30/2007	Foreign Priority Date	NONE
Word Mark	COSÌ# BREAK BAR		
Design Mark	COSÌ BREAK BAR		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2006/03/20 First Use In Commerce: 2006/03/20 Snack and breakfast foods, namely, primarily grain based food bars also containing fruit and nuts		

U.S. Registration	3751834	Application Date	07/13/2009
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No.			
Registration Date	02/23/2010	Foreign Priority Date	NONE
Word Mark	GET COSÌ#		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2005/11/04 First Use In Commerce: 2005/11/04 On-line retail store services featuring ceramic mugs and travel mugs Class 043. First use: First Use: 2005/11/04 First Use In Commerce: 2005/11/04 Restaurant and catering services		

U.S. Registration No.	3275878	Application Date	05/27/2005
Registration Date	08/07/2007	Foreign Priority Date	NONE
Word Mark	COSI PRONTO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 2005/06/00 First Use In Commerce: 2005/06/00 restaurant services		

U.S. Registration No.	2692768	Application Date	03/12/2002
Registration Date	03/04/2003	Foreign Priority Date	NONE
Word Mark	COSI DOWNTOWN		

Design Mark	COSI DOWNTOWN
Description of Mark	NONE
Goods/Services	Class 043. First use: First Use: 2000/10/00 First Use In Commerce: 2001/04/00 Restaurant Services

Attachments	78382572#TMSN.jpeg (1 page)(bytes) 77811214#TMSN.jpeg (1 page)(bytes) 76380854#TMSN.gif (1 page)(bytes) 76392961#TMSN.gif (1 page)(bytes) 78943012#TMSN.jpeg (1 page)(bytes) 77779734#TMSN.jpeg (1 page)(bytes) 76639706#TMSN.gif (1 page)(bytes) 76380853#TMSN.gif (1 page)(bytes) COZY BOX RESTAURANT - BAR.Notice Opp.011713.pdf (16 pages)(295895 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	/Charles P. Bacall/
Name	Charles P. Bacall
Date	01/17/2013

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

Applicant: Marcus Samuelsson Group LLC)
Serial No.: 85/664,602)
Filing Date: June 28, 2012)
Mark: COZY BOX RESTAURANT – BAR)
(& Design)
Published: December 18, 2012)
_____)

Cosi, Inc., Opposer

v.

Marcus Samuelsson Group LLC, Applicant

Opposition No. _____

NOTICE OF OPPOSITION

Opposer: Cosi, Inc.
A Delaware Corporation
1751 Lake Cook Rd., 6th Floor
Deerfield, IL 60015

The above-identified Opposer believes that it will be damaged by registration of the mark shown in the above-identified application, and hereby opposes the same.

The grounds for the opposition are as follows:

1. This is an opposition by Cosi, Inc. (“Cosi”), a leading restaurant company providing restaurant and catering services, to stop another from registering the trademark “COZY BOX RESTAURANT – BAR (& Design),” which is confusingly similar to Cosi’s common law and federally registered marks “COSI,” “COSÌ (& Design)” “COSI CORNERS,” “COSI-DILLAS,” “COSÌ BREAK BAR,” “GET COSÌ,” “COSI PRONTO,” and “COSI DOWNTOWN” (collectively, the “COSI marks”).

2. Cosi uses the COSI marks (frequently pronounced kō'zē, like the English word cozy), in connection with promoting its restaurant and catering services to consumers. The services are provided by and from multiple restaurant locations, for consumption both on the premises and for take-away.

3. Cosi first began promoting its restaurant services under the trademark COSI through its predecessor, Wainwright Sandwich Partners, at least as early as 1996. Since that time, Cosi has spent significant time and money promoting that trademark to customers nationwide. Customers have come to know the COSI marks as symbols of Cosi's quality food and service.

4. Cosi owns United States Trademark Registration No. 2,046,483, dated March 18, 1997, for the word mark "COSI" for "restaurant services" in International Class 042. That registration is now incontestable. A copy of the TESS electronic database of the USPTO for Registration No. 2,046,483, and the trademark assignment abstract of title from the USPTO Assignments database, evidencing the assignment of that registration to Cosi, are attached as Exhibit 1.

5. Cosi owns United States Trademark Registration No. 3,083,592, dated April 18, 2006, for a design mark featuring the word "COSI" for "restaurant services" in International Class 043. That registration is now incontestable. A copy of the Certificate of Registration is attached as Exhibit 2.

6. Cosi owns United States Trademark Registration No. 3,815,733, dated July 6, 2010, for a design mark featuring the word "COSI" for "Restaurant and catering services" in International Class 043. A copy of the Certificate of Registration is attached as Exhibit 3.

7. Cosi owns United States Trademark Registration No. 2,659,348, dated December 10, 2002, for the word mark "COSI CORNERS" for "Bread" in International Class 030. That registration is now incontestable. A copy of the Certificate of Registration is attached as Exhibit 4.

8. Cosi owns United States Trademark Registration No. 2,669,096, dated December 31, 2002, for the word mark "COSI-DILLAS" for "Quesadillas for consumption on or off the premises" in International Class 030. A copy of the Certificate of Registration is attached as Exhibit 5.

9. Cosi owns United States Trademark Registration No. 3,324,565, dated July 6, 2010, for the word mark "COSI BREAK BAR" for "Snack and breakfast foods, namely, primarily grain based food bars also containing fruit and nuts" in International Class 030. A copy of the Certificate of Registration is attached as Exhibit 6.

10. Cosi owns United States Trademark Registration No. 3,751,834, dated February 23, 2010, for the word mark "GET COSI" for "On-line retail store services featuring ceramic mugs and travel mugs" in International Class 035, and "Restaurant and catering services" in Class 43. A copy of the Certificate of Registration is attached as Exhibit 7.

11. Cosi owns United States Trademark Registration No. 3,275,878, dated August 7, 2007, for the word mark "COSI PRONTO" for "Restaurant services" in Class 43. A copy of the Certificate of Registration is attached as Exhibit 8.

12. Cosi owns United States Trademark Registration No. 2,692,768, dated March 4, 2003, for the word mark "COSI DOWNTOWN" for "Restaurant services" in Class 43. That registration is now incontestable. A copy of the Certificate of Registration is attached as Exhibit 9.

13. On June 28, 2012, Marcus Samuelsson Group LLC ("Applicant") filed the instant application to register the trademark COZY BOX RESTAURANT – BAR (& Design). The application requests registration for "Bar services; Restaurant services" in International Class 043. The application is based on the applicant's intent to use the mark in commerce.

14. Cosi's rights in the COSI marks predate the Applicant's rights (if any) in the COZY BOX RESTAURANT – BAR (& Design) mark.

15. The COZY BOX RESTAURANT – BAR (& Design) mark so closely resembles Cusi's COSI mark and the other COSI marks when applied to the goods covered by the Application as to cause confusion, mistake or deception as to the source of Applicant's services.

16. Applicant's services are identical to or closely related to the services covered by Cusi's registrations for the COSI marks. As a result of the overlap of services, the public is likely to be confused about whether Cusi is the source of Applicant's services or whether Cusi is affiliated with or the sponsor of Applicant's services.

17. Applicant's use of the COZY BOX RESTAURANT – BAR (& Design) mark will infringe and/or dilute Cusi's prior rights in the Cusi marks.

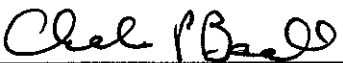
18. Applicant's registration and/or use of COZY BOX RESTAURANT – BAR (& Design) interfere with Cusi's use of its COSI Marks and will harm Cusi.

Therefore, Cusi respectfully requests that the Board refuse registration of the COZY BOX RESTAURANT – BAR (& Design) mark.

The filing fee of \$300.00 for this Notice of Opposition is filed herewith.

Respectfully submitted,

VERRILL DANA, LLP

By: 

Charles P. Bacall
Attorney for Opposer
One Portland Square
P.O. Box 586
Portland, ME 04112-0586
(207) 774-4000

Dated: January 17, 2013

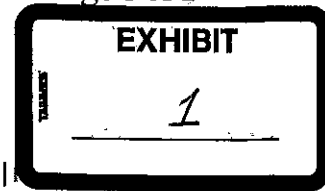
CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Notice of Opposition has been served on Applicant on January 17, 2013 by mailing the true and complete copy via First Class Mail, postage prepaid, to:

Mary Sotis
Frankfurt Kurnit Klein & Selz PC
488 Madison Avenue
New York, New York 10022



Charles P. Bacall
Attorney for Opposer



United States Patent and Trademark Office

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TSDR ASSIGN Status TTAB Status (Use the "Back" button of the Internet Browser to return to TESS)

Typed Drawing

Word Mark COSI
Translations The word "COSI" means "like this" in English.
Goods and Services IC 042. US 100 101. G & S: restaurant services. FIRST USE: 19960217. FIRST USE IN COMMERCE: 19960217
Mark Drawing Code (1) TYPED DRAWING
Serial Number 74662448
Filing Date April 18, 1995
Current Basis 1A
Original Filing Basis 1B
Published for Opposition January 23, 1996
Registration Number 2046483
Registration Date March 18, 1997
Owner (REGISTRANT) Wainwright Sandwich Partners composed of Jay Wainwright and Shep Wainwright, both U.S. citizens PARTNERSHIP NEW YORK Box 199 Wainscott NEW YORK 11975
 (LAST LISTED OWNER) COSI, INC. CORPORATION BY ASSIGNMENT, BY ASSIGNMENT DELAWARE 1751 LAKE COOK RD SUITE 650 DEERFIELD ILLINOIS 60015
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record ANDREW D. PRICE
Type of Mark SERVICE MARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20061208.
Renewal 1ST RENEWAL 20061208
Live/Dead

Indicator LIVE

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United States Patent and Trademark Office

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Assignments on the Web > Trademark Query**Trademark Assignment Abstract of Title****Total Assignments: 2**Serial #: 74662448

Filing Dt: 04/18/1995

Reg #: 2046483

Reg. Dt: 03/18/1997

Registrant: Wainwright Sandwich Partners

Mark: COSI

Assignment: 1Reel/Frame: 1955/0552

Received: 09/10/1999

Recorded: 09/02/1999

Pages: 2

Conveyance: ASSIGNS THE ENTIRE INTEREST

Assignor: WAINWRIGHT SANDWICH PARTNERS

Exec Dt: 08/25/1999

Entity Type: PARTNERSHIP

Citizenship: NONE

Entity Type: CORPORATION

Citizenship: DELAWARE

Assignee: COSI SANDWICH BAR, INC.242 W. 36TH STREET, 12TH FLOOR
NEW YORK, NEW YORK 10018

Correspondent: VENABLE, BAETJER, HOWARD & CIVILETTI LLP

ANDREW D. PRICE

1201 NEW YORK AVENUE, N.W., SUITE 1000

WASHINGTON, DC 20005-3917

Assignment: 2Reel/Frame: 2466/0209

Received: 03/21/2002

Recorded: 03/05/2002

Pages: 3

Conveyance: ASSIGNS THE ENTIRE INTEREST

Assignor: COSI SANDWICH BAR, INC.

Exec Dt: 09/06/2001

Entity Type: CORPORATION

Citizenship: NONE

Entity Type: CORPORATION

Citizenship: DELAWARE

Assignee: COSI, INC.242 WEST 36TH STREET, 12TH FL.
NEW YORK, NEW YORK 10018

Correspondent: MARKOWITZ & ROSHCO, LLP

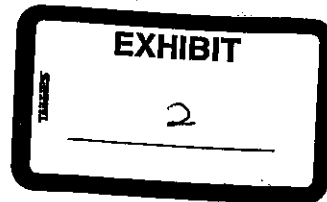
SETH P. MARKOWITZ, ESQ.

530 FIFTH AVENUE - 23RD FL

NEW YORK, NY 10036

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Int. Cl.: 43

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 3,083,592

Registered Apr. 18, 2006

SERVICE MARK
PRINCIPAL REGISTER



COSI, INC. (DELAWARE CORPORATION)
1751 LAKE COOK RD., 6 FLOOR
DEERFIELD, IL 60015

FOR: RESTAURANT SERVICES, IN CLASS 43
(U.S. CLS. 100 AND 101).

FIRST USE 1-14-2004; IN COMMERCE 1-14-2004.

OWNER OF U.S. REG. NOS. 2,046,483 AND
2,692,768.

THE MARK CONSISTS OF THE WORD "COSI"
CENTERED UNDER THE OUTLINE OF A FLAME
PARTIALLY COVERED BY AN ARCH.

THE ENGLISH TRANSLATION OF THE ITALIAN
WORDING "COSI" IS "LIKE THIS".

SN 78-382,572, FILED 3-11-2004.

ANNE MADDEN, EXAMINING ATTORNEY

United States of America

United States Patent and Trademark Office



COSÌ

Reg. No. 3,815,733

Registered July 6, 2010

Int. Cl.: 43

SERVICE MARK

PRINCIPAL REGISTER

COSI, INC. (DELAWARE CORPORATION)
6TH FLOOR
1751 LAKE COOK ROAD
DEERFIELD, IL 60015

FOR: RESTAURANT AND CATERING SERVICES, IN CLASS 43 (U.S. CLS. 100 AND 101).

FIRST USE 11-25-2009; IN COMMERCE 11-25-2009.

THE MARK CONSISTS OF THE WORD "COSÌ", WITH THE LETTER "O" COMPRISED OF A HALF-CIRCLE SHAPE WITH LINES RADIATING TO THE LEFT, REPRESENTING THE SUN, ENCLOSED ON THE RIGHT BY A CRESCENT MOON SHAPE.

THE ENGLISH TRANSLATION OF "COSÌ" IN THE MARK IS LIKE THIS.

SN 77-811,214, FILED 8-24-2009.

FONG HSU, EXAMINING ATTORNEY



David S. Kappas

Director of the United States Patent and Trademark Office

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 2,659,348

Registered Dec. 10, 2002

United States Patent and Trademark Office

**TRADEMARK
PRINCIPAL REGISTER**

COSI CORNERS

COSI, INC. (DELAWARE CORPORATION)
242 WEST 36TH STREET
NEW YORK, NY 10018

FIRST USE 11-0-1999; IN COMMERCE 1-0-2000.

SER. NO. 76-380,854, FILED 3-12-2002.

FOR: BREAD, IN CLASS 30 (U.S. CL. 46).

NAKWAMA ANKRAH, EXAMINING ATTORNEY

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 2,669,096

United States Patent and Trademark Office

Registered Dec. 31, 2002

**TRADEMARK
PRINCIPAL REGISTER**

COSI-DILLAS

COSI, INC. (DELAWARE CORPORATION)
242 WEST 36TH STREET
NEW YORK, NY 10018

FIRST USE 12-20-2001; IN COMMERCE 2-1-2002.

SER. NO. 76-392,961, FILED 4-9-2002.

FOR: QUESADILLAS FOR CONSUMPTION ON
OR OFF THE PREMISES, IN CLASS 30 (U.S. CL. 46).

BRENDAN MCCAULEY, EXAMINING ATTORNEY

EXHIBIT

6

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 3,324,565

Registered Oct. 30, 2007

TRADEMARK
PRINCIPAL REGISTER

COSI BREAK BAR

COSI, INC. (DELAWARE CORPORATION)
6TH FLOOR
1751 LAKE COOK RD.
DEERFIELD, IL 60015

FOR: SNACK AND BREAKFAST FOODS, NAME-
LY, PRIMARILY GRAIN BASED FOOD BARS ALSO
CONTAINING FRUIT AND NUTS, IN CLASS 30
(U.S. CL. 46).

FIRST USE 3-20-2006; IN COMMERCE 3-20-2006.

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

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

THE FOREIGN WORDING IN THE MARK
TRANSLATES INTO ENGLISH AS LIKE THIS.

SER. NO. 78-943,012, FILED 8-2-2006.

WANDA KAY PRICE, EXAMINING ATTORNEY

United States of America

United States Patent and Trademark Office

GET COSÌ

Reg. No. 3,751,834 COSI, INC. (DELAWARE CORPORATION)
Registered Feb. 23, 2010 6TH FLOOR

1751 LAKE COOK RD.
DEERFIELD, IL 60015

Int. Cls.: 35 and 43

FOR: ON-LINE RETAIL STORE SERVICES FEATURING CERAMIC MUGS AND TRAVEL MUGS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

SERVICE MARK
PRINCIPAL REGISTER

FIRST USE 11-4-2005; IN COMMERCE 11-4-2005.

FOR: RESTAURANT AND CATERING SERVICES, IN CLASS 43 (U.S. CLS. 100 AND 101).

FIRST USE 11-4-2005; IN COMMERCE 11-4-2005.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 2,046,483, 3,083,592 AND OTHERS.

THE ENGLISH TRANSLATION OF "COSÌ" IN THE MARK IS "LIKE THIS".

SER. NO. 77-779,734, FILED 7-13-2009.

FONG HSU, EXAMINING ATTORNEY



David S. Kappas

Director of the United States Patent and Trademark Office

EXHIBIT

7/11/07

8

Int. Cl.: 43

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 3,275,878

Registered Aug. 7, 2007

SERVICE MARK
PRINCIPAL REGISTER

COSI PRONTO

COSI, INC. (DELAWARE CORPORATION)
1751 LAKE COOK ROAD
DEERFIELD, IL 60015

OWNER OF U.S. REG. NOS. 2,046,483, 2,692,768,
AND OTHERS.

FOR: RESTAURANT SERVICES, IN CLASS 43
(U.S. CLS. 100 AND 101).

THE ENGLISH TRANSLATION OF THE MARK IS
"READY LIKE THIS."

FIRST USE 6-0-2005; IN COMMERCE 6-0-2005.

SN 76-639,706, FILED 5-27-2005.

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

IRA J. GOODSaid, EXAMINING ATTORNEY

Int. Cl.: 43

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 2,692,768

Registered Mar. 4, 2003

**SERVICE MARK
PRINCIPAL REGISTER**

COSI DOWNTOWN

COSI, INC. (DELAWARE CORPORATION)
242 WEST 36TH STREET
NEW YORK, NY 10018

FOR: RESTAURANT SERVICES, IN CLASS 43
(U.S. CLS. 100 AND 101).

FIRST USE 10-0-2000; IN COMMERCE 4-0-2001.

OWNER OF U.S. REG. NO. 2,046,483.

THE WORD "COSI" MEANS "LIKE THIS" IN
ENGLISH.

SER. NO. 76-380,853, FILED 3-12-2002.

IRA J. GOODSaid, EXAMINING ATTORNEY