

ESTTA Tracking number: **ESTTA653277**

Filing date: **01/30/2015**

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	Knouse Foods Cooperative, Inc.
Granted to Date of previous extension	02/01/2015
Address	800 Peach Glen-Idaville Road Peach Glen, PA 17375 UNITED STATES
Attorney information	Michael A. Doctrow McNees Wallace & Nurick 100 Pine Street Harrisburg, PA 17108 UNITED STATES trademarks@mwn.com,bgregg@mwn.com Phone:717-232-8000

Applicant Information

Application No	86211916	Publication date	08/05/2014
Opposition Filing Date	01/30/2015	Opposition Period Ends	02/01/2015
Applicant	Gregory Packaging, Inc. 247 Rome Street Newark, NJ 07105 UNITED STATES		

Goods/Services Affected by Opposition

Class 032. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Beverages, namely, fruit and vegetable juices from concentrate

Grounds for Opposition

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

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3664862	Application Date	08/04/2008
Registration Date	08/04/2009	Foreign Priority Date	NONE
Word Mark	TOTALLY FRUIT		

Design Mark	TOTALLY FRUIT
Description of Mark	NONE
Goods/Services	Class 029. First use: First Use: 2008/10/10 First Use In Commerce: 2008/10/10 applesauce, flavored applesauce

Attachments	77538840#TMSN.png(bytes) A4325039.PDF(13069 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	/Michael Doctrow/
Name	Michael A. Doctrow
Date	01/30/2015

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

In re Application of
Gregory Packaging, Inc.

Serial No.	:	86/211,916	
Mark	:	TOTALLY JUICE	
Goods	:	International Class 32	
Filing Date	:	March 5, 2014	
Published	:	Official Gazette August 5, 2014	
Knouse Foods Cooperative, Inc. Opposer	:		
v.	:		Opposition No.
Gregory Packaging, Inc. Applicant	:		Filed Electronically

NOTICE OF OPPOSITION

Knouse Foods Cooperative, Inc. ("Opposer"), a Pennsylvania corporation, having a principal place of business at 800 Peach Glen-Idaville Road, Peach Glen, Pennsylvania 17375, believes and alleges that it will be damaged by the registration of the mark shown in Serial No. 86/211,916 and hereby opposes the same.

As grounds for opposition, Opposer alleges that:

1. Opposer is the owner of a federal registration for TOTALLY FRUIT (Registration No: 3,664,862; Registration Date: August 4, 2009), for use with "applesauce, flavored applesauce" in International Class 29, with a date of first use in commerce of October 10, 2008.

2. Opposer has continuously promoted its applesauce in connection with its TOTALLY FRUIT mark since October 10, 2008.

3. Opposer's TOTALLY FRUIT mark is symbolic of extensive goodwill and consumer recognition established by Opposer through continued use and expenditure of time, effort and money in advertising and promotion.

4. On information and belief, Applicant Gregory Packaging, Inc. ("Applicant") is a New Jersey corporation with a place of business at 247 Rome Street, Newark, New Jersey 07105.

5. Applicant seeks to register the word mark TOTALLY JUICE, for use with "beverages, namely, fruit and vegetable juices from concentrate" in International Class 32, having filed an intent to use-based federal trademark application, Serial No. 86/211,916, on March 5, 2014.

6. On information and belief, Opposer believes the date of first use and filing date of its TOTALLY FRUIT mark predate Applicant's priority date for its TOTALLY JUICE mark.

7. Opposer's TOTALLY FRUIT mark and Applicant's TOTALLY JUICE mark convey highly similar commercial impressions in that they share the identical, initial term "totally," contain terms that represent overlapping products, namely, "juice" and "fruit," and have the same TOTALLY _____ construction.

8. The goods claimed in connection with Opposer's TOTALLY FRUIT mark and Applicant's TOTALLY JUICE mark are highly similar fruit-related goods due in part to the fact that Opposer's TOTALLY FRUIT mark is used with applesauce flavored with fruit concentrate and Applicant's TOTALLY JUICE mark is used with fruit and vegetable juices from concentrate.

9. On information and belief, Opposer believes that the consumer base to whom Applicant intends to market its products under its TOTALLY JUICE mark is the same as, or at least overlaps with, the consumer base to whom Opposer markets its applesauce under the mark TOTALLY FRUIT.

10. On information and belief, Opposer believes that Applicant desires to market its products under the TOTALLY JUICE mark through the same channels of trade as those through which Opposer markets its applesauce under the mark TOTALLY FRUIT.

11. Applicant's TOTALLY JUICE mark so resembles Opposer's TOTALLY FRUIT mark, which has been previously registered and previously used in the United States and not abandoned, as to be likely to cause confusion, or to cause mistake, or to deceive.

12. Opposer is, or will be, damaged by the registration of Applicant's TOTALLY JUICE mark for Applicant's fruit and vegetable juices from concentrate, since, by virtue of such registration, (1) Applicant's use of its TOTALLY JUICE mark is likely to cause confusion, to cause mistake, or to deceive the consuming public as to the source, sponsorship or affiliation of Applicant's goods, and (2) doubts would be raised as to the exclusive right of Opposer to use its TOTALLY FRUIT mark.

WHEREFORE, Knouse Foods Cooperative, Inc. respectfully requests that this opposition be sustained, and that the United States Patent & Trademark Office refuse to register Applicant's TOTALLY JUICE mark, Application No. 86/211,916.

McNEES WALLACE & NURICK LLC

By /s/ Michael A. Doctrow
Michael A. Doctrow
Brian P. Gregg
Kelly M. Horein
100 Pine Street
P. O. Box 1166
Harrisburg, PA 17108-1166
(717) 232-8000

Attorneys for Opposer
Knouse Foods Cooperative, Inc.

Dated: January 30, 2015

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a true and correct copy of the **Notice of Opposition** was mailed via First Class Mail, postage prepaid, to:

Christopher Kinkade, Esq.
Fox Rothschild LLP
997 Lenox Drive, Building 3
Lawrenceville, New Jersey 08648-2317

/s/ Michael A. Doctrow
Michael A. Doctrow
Of Counsel for Opposer
Knouse Foods Cooperative, Inc.

Dated: January 30, 2015