

ESTTA Tracking number: **ESTTA703586**

Filing date: **10/21/2015**

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 parties oppose registration of the indicated application.

Opposers Information

Name	McKee Foods Kingman, Inc.		
Entity	Corporation	Citizenship	Arizona
Address	2675 West Oatman Road Kingman, AZ 86413 UNITED STATES		

Name	McKee Foods Kingman, Inc.		
Granted to Date of previous extension	12/23/2015		
Address	2675 West Oatman Road Kingman, AZ 86413 UNITED STATES		

Attorney information	Sandra Edelman Dorsey & Whitney LLP 51 West 52nd Street New York, NY 10019-6119 UNITED STATES ny.trademark@dorsey.com, edelman.sandra@dorsey.com, sun-derji.fara@dorsey.com Phone:(212) 415-9200		
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Applicant Information

Application No	86542924	Publication date	09/22/2015
Opposition Filing Date	10/21/2015	Opposition Period Ends	10/22/2015
Applicant	Coastal Sunbelt Produce, LLC 8704 Bollman Place Savage, MD 20763 UNITED STATES		

Goods/Services Affected by Opposition

Class 030. First Use: 2014/10/00 First Use In Commerce: 2014/10/00 All goods and services in the class are opposed, namely: Organic foodstuffs, namely, salsa
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Applicant Information

Application No	86542882	Publication date	09/22/2015
Opposition Filing Date	10/21/2015	Opposition Period Ends	10/22/2015
Applicant	Coastal Sunbelt Produce, LLC 8704 Bollman Place		

	Savage, MD 20763 UNITED STATES
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Goods/Services Affected by Opposition

Class 030. First Use: 2014/10/00 First Use In Commerce: 2014/10/00
All goods and services in the class are opposed, namely: Organic foodstuffs, namely, salsa

Applicant Information

Application No	86542895	Publication date	10/13/2015
Opposition Filing Date	10/21/2015	Opposition Period Ends	11/12/2015
Applicant	Coastal Sunbelt Produce LLC 8704 Bollman Place Savage, MD 20763 UNITED STATES		

Goods/Services Affected by Opposition

Class 029. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Organic processed fruits and vegetables

Applicant Information

Application No	86542911	Publication date	08/25/2015
Opposition Filing Date	10/21/2015	Opposition Period Ends	12/23/2015
Applicant	Coastal Sunbelt Produce, LLC 8704 Bollman Place Savage, MD 20763 UNITED STATES		

Goods/Services Affected by Opposition

Class 031. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Organic fresh fruits and vegetables

Applicant Information

Application No	86542872	Publication date	08/25/2015
Opposition Filing Date	10/21/2015	Opposition Period Ends	
Applicant	Coastal Sunbelt Produce, LLC 8704 Bollman Place Savage, MD 20763 UNITED STATES		

Goods/Services Affected by Opposition

Class 031. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Organic fresh fruits and vegetables

Applicant Information

Application No	86542854	Publication date	07/14/2015
Opposition Filing	10/21/2015	Opposition Peri-	

Date		od Ends	
Applicant	Coastal Sunbelt Produce, LLC 8704 Bollman Place Savage, MD 20763 UNITED STATES		

Goods/Services Affected by Opposition

Class 029. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Processed organic fruits and vegetables
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1228969	Application Date	05/22/1981
Registration Date	03/01/1983	Foreign Priority Date	NONE
Word Mark	SUNBELT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1981/03/07 First Use In Commerce: 1981/04/18 Cookies and Cakes		

U.S. Registration No.	1875441	Application Date	12/17/1993
Registration Date	01/24/1995	Foreign Priority Date	NONE
Word Mark	SUNBELT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1982/02/07 First Use In Commerce: 1982/03/07 breakfast cereals, granola-based snack bars [and candy]		

U.S. Registration No.	4831911	Application Date	03/23/2015
Registration Date	10/13/2015	Foreign Priority Date	NONE
Word Mark	SUNBELT BAKERY		

Design Mark	SUNBELT BAKERY
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2012/07/15 First Use In Commerce: 2012/07/15 Granola; breakfast cereal; granola-based snack bars; grain-based snack bars; grain-based snack bars also containing fruit; cereal-based snack bars; cookie bars

U.S. Registration No.	4836630	Application Date	03/23/2015
Registration Date	10/20/2015	Foreign Priority Date	NONE

Word Mark	SUNBELT BAKERY
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Design Mark	
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Description of Mark	The mark consists of the stylized words "SUNBELT BAKERY" and design. The wording "SUNBELT BAKERY" is in black and shown below an orange ring containing an image of light golden brown stalks of wheat growing in the green grass with a light and medium blue sky with white clouds in the background and green leaves are on the outside border of the ring.
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Goods/Services	Class 030. First use: First Use: 2012/07/15 First Use In Commerce: 2012/07/15 Granola; breakfast cereal; granola-based snack bars; grain-based snack bars; grain-based snack bars also containing fruit; cereal-based snack bars; cookie bars
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Attachments	86572672#TMSN.png(bytes) 86572683#TMSN.png(bytes) SUNBELT ORGANIC Notice of Opposition-v3.pdf(40350 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	/se/
Name	Sandra Edelman
Date	10/21/2015

Gazette on August 25, 2015, in International Class 31; SUNBELT ORGANIC & Design, sought to be registered by Application Serial No. 86/542,854, published in the Official Gazette on July 14, 2015, in International Class 29, and hereby opposes the same.

As grounds for opposition, it is alleged that:

1. Opposer McKee Foods Kingman, Inc. and its related and/or affiliated companies (collectively, “Opposer”) is now, and for many years past, has been engaged in the manufacture, distribution and sale of a wide variety of food products, including granola, granola bars, cakes, snack bars, cereal, cookies and snack cakes.

2. For many years, and prior to the filing date of the applications herein opposed and/or any claimed first use date in the applications herein opposed, the trademark SUNBELT has been exclusively used by Opposer in connection with breakfast cereals, granola-based snack bars, cookies and cakes. The varied products in the SUNBELT line include many items containing fruit, such as Fruit & Grain Bars, Fruit & Nut Whole Grain Granola Cereal, Banana Harvest Bars and Apple Spice Chewy Granola Bars.


3. Ever since its adoption and use of the SUNBELT mark, Opposer has widely used and extensively sold, advertised and promoted goods in interstate commerce bearing the SUNBELT mark. As a consequence of same, the consuming public and trade have come to recognize and do recognize the SUNBELT mark as being used by Opposer, and to identify and associate the SUNBELT mark with Opposer, and Opposer derives substantial goodwill and value from the aforesaid recognition, association and identification by the consuming public and trade.

4. In addition to its common law rights, Opposer is the owner of the following federal trademark registrations for SUNBELT:

<u>Mark</u>	<u>Registration No.</u>	<u>Goods</u>
SUNBELT	1,228,969	cookies and cakes
SUNBELT	1,875,441	breakfast cereals and granola-based snack bars

Both of these registrations are valid and subsisting, unrevoked and uncanceled, and Opposer is the owner of these registrations and all of the goodwill represented thereby. Moreover, both of these registrations are incontestable pursuant to 15 U.S.C. § 1065.

5. Opposer also owns the following federal trademark registrations for SUNBELT BAKERY and SUNBELT BAKERY & Design on the Principal Register based on use in commerce prior to the filing date of the applications herein opposed and/or any claimed first use date in the applications herein opposed:

<u>Mark</u>	<u>Registration No.</u>	<u>Goods</u>
SUNBELT BAKERY	4,831,911	Granola; breakfast cereal; granola-based snack bars; grain-based snack bars; grain-based snack bars also containing fruit; cereal-based snack bars; cookie bars
	4,836,630	Granola; breakfast cereal; granola-based snack bars; grain-based snack bars; grain-based snack bars also containing fruit; cereal-based snack bars; cookie bars

6. Both of these registrations are valid and subsisting, unrevoked and uncanceled, and Opposer is the owner of these registrations and all of the goodwill represented thereby. The consuming public has referred to Opposer's products sold and marketed under the SUNBELT BAKERY and SUNBELT BAKERY & Design marks as "SUNBELT" products. (Opposer's SUNBELT and SUNBELT BAKERY marks will hereinafter be referred to collectively as the "SUNBELT Marks.")

7. By the applications herein opposed, Applicant seeks to register the marks SUNBELT ORGANIC and SUNBELT ORGANIC & Design, both in International Class 29 for “Organic processed fruits and vegetables” and “Processed organic fruits and vegetables,” respectively; in International Class 30 for “Organic foodstuffs, namely, salsa;” and in International Class 31 for “Organic fresh fruits and vegetables.” Said goods are closely related to and complementary to Opposer’s products bearing the SUNBELT Marks. Products bearing Applicant’s marks are also likely to be sold and advertised in the same channels of trade and to the same category of customers as those offered by Opposer under the SUNBELT Marks. In addition, Opposer’s products bearing the SUNBELT Marks are promoted as having “no preservatives,” appealing to health and ingredient-conscious consumers, similar to those who might be interested in the products to be offered under Applicant’s marks. As such, Applicant’s marks are likely to cause confusion, and mistake and to deceive, with consequent injury to Opposer, the consuming public and the trade.

8. Opposer will be damaged by the registrations sought by Applicant because such registrations will support and assist Applicant in the confusing and misleading use of Applicant’s marks sought to be registered, and will give color of exclusive statutory rights to Applicant in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

WHEREFORE Opposer believes that it will be damaged by registration of Applicant’s marks and prays that this opposition be sustained, and that Application Serial Nos. 86/542,924, 86/542,882, 86/542,895, 86/542,911, 86/542,872 and 86/542,854 be denied.

Please recognize as attorneys for Opposer in this proceeding Sandra Edelman, Bruce R. Ewing, Sarah M. Robertson, Fara S. Sunderji and Kaydi L. Osowski, members of the Bar of the State of New York, whose address is Dorsey & Whitney LLP, 51 West 52nd Street, New York, New York, 10019, telephone number (212) 415-9200.

Please address all correspondence to Sandra Edelman at the below address.

Dated: New York, New York

DORSEY & WHITNEY LLP

October 21, 2015

By: _____ /se/
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Attorneys for Opposer
McKee Foods Kingman, Inc.

