

ESTTA Tracking number: **ESTTA783889**

Filing date: **11/18/2016**

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	Green Me, LLC		
Entity	Limited Liability Company	Citizenship	Utah
Address	871 S. Auto Mall Drive American Fork, UT 84003 UNITED STATES		

Attorney information	Mark F. Wright Wright Law Group, PLLC 1959 South Power Road, Suite 103-376 Mesa, AZ 85206 UNITED STATES mwright@wrightlawgroup.com Phone:(480) 270-4926
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Applicant Information

Application No	87066822	Publication date	11/15/2016
Opposition Filing Date	11/18/2016	Opposition Period Ends	12/15/2016
Applicants	Lyle Dippo 2207 North Tuckahoe Street Arlington, VA 22205 UNITED STATES Jeffrey Katz 337 E 77th St, 3A New York, NY 10075 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: Smoothies; Smoothies containing grains and oats; Concentrated fruit juice; Fruit juice concentrates; Grape juice beverages; Mixed fruit juice; Prepared entrees consisting of fruit drinks and fruit juices, fruit-based beverages, non-alcoholic beverages containing fruit juices, non-alcoholic fruit extracts used in the preparation of beverages, non-alcoholic fruit juice beverages, vegetable juices, vegetable-fruit juices and smoothies; Prepared entrees consisting of fruit drinks and fruit juices, fruit-based beverages, non-alcoholic beverages containing fruit juices, non-alcoholic fruit extracts used in the preparation of beverages, non-alcoholic fruit juice beverages, vegetable juices, vegetable-fruit juices and smoothies; Tomato juice beverages
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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. Application No.	87130976	Application Date	08/08/2016
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	SMOOTHIES AS A SERVICE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 039. First use: First Use: 2015/08/01 First Use In Commerce: 2015/08/01 Beverage delivery service		

Attachments	87130976#TMSN.png(bytes) NoticeOfOpposition.pdf(170558 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	/Mark F. Wright/
Name	Mark F. Wright
Date	11/18/2016

Certificate of Transmission

I hereby certify that this correspondence is being electronically filed via ESTTA on November 18, 2016.



Mark F. Wright

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

GREEN ME, LLC

Opposer,

vs.

LYLE DIPPO and JEFFREY KATZ

Applicants.

Opposition Number:

Serial Number: 87/066,822

Mark: SMOOTHIES AS A SERVICE

Filing Date: 06/09/2016

Publication Date: 11/15/2016

NOTICE OF OPPOSITION

Green Me, LLC a Utah limited liability company located at 871 South Auto Mall Drive, American Fork, Utah 84003 (hereinafter “Opposer”) believes that it will be damaged by the registration of the mark SMOOTHIES AS A SERVICE as shown in application Serial No.

87/066,822, filed on 06/09/2016, by Lyle Dippo and Jeffrey Katz (collectively, hereinafter “Applicants”), and hereby opposes the same. The grounds for opposition are as follows:

1. By the Application opposed herein, Applicants are seeking to obtain under the provision of the Trademark Act of 1946 as amended, registration on the Principal Register of the trademark SMOOTHIES AS A SERVICE for “Smoothies; Smoothies containing grains and oats; Concentrated fruit juice; Fruit juice concentrates; Grape juice beverages; Mixed fruit juice; Prepared entrees consisting of fruit drinks and fruit juices, fruit-based beverages, non-alcoholic beverages containing fruit juices, non-alcoholic fruit extracts used in the preparation of beverages, non-alcoholic fruit juice beverages, vegetable juices, vegetable-fruit juices and smoothies; Prepared entrees consisting of fruit drinks and fruit juices, fruit-based beverages, non-alcoholic beverages containing fruit juices, non-alcoholic fruit extracts used in the preparation of beverages, non-alcoholic fruit juice beverages, vegetable juices, vegetable-fruit juices and smoothies; Tomato juice beverages” in international class 32 (hereinafter “Application”).

2. Applicant’s mark was published for opposition on 11/15/2016.

3. This Notice of Opposition, being filed on 11/16/2016, is timely filed.

4. Opposer is the applicant identified in application Serial No. 87/130,976, for registration of the trademark SMOOTHIES AS A SERVICE for “Beverage delivery service,” which application was filed on 08/08/2016 and which application is now pending.

5. Since long before Applicant’s filing date for the SMOOTHIES AS A SERVICE mark, Opposer, or Opposer’s predecessor in interest, has been using the SMOOTHIES AS A SERVICE mark in commerce in conjunction with related goods and services. Specifically, Opposer provides beverages containing many of the same ingredients set forth in the description of goods and services in the Application.

6. Opposer’s use of the SMOOTHIES AS A SERVICE mark in commerce precedes Applicant’s filing of the Application.

7. Upon information and belief, and as reflected in the electronic records maintained by the United States Patent and Trademark Office, Applicant had not used the SMOOTHIES AS A SERVICE mark in commerce prior to the filing of the Application.

8. Upon information and belief, and as reflected in the electronic records maintained by the United States Patent and Trademark Office, Applicant has not used the SMOOTHIES AS A SERVICE mark in commerce as of the date of the filing of this Notice of Opposition.

9. Opposer has advertised and promoted its SMOOTHIES AS A SERVICE mark continuously and extensively, including via the Internet and social media, and has made substantial sales of goods in commerce under said mark, all prior to Applicant's filing of the Application and prior to Applicant's use of the mark in commerce. As a result of such continuous use and promotion, the SMOOTHIES AS A SERVICE mark has developed and represents valuable goodwill inuring to the benefit of Opposer, including common law trademark rights.

10. Opposer or its predecessor in interest adopted and commenced use of the term SMOOTHIES AS A SERVICE as a trademark long before Applicant adopted the SMOOTHIES AS A SERVICE mark.

11. Applicant's SMOOTHIES AS A SERVICE mark is confusingly and deceptively similar to Opposer's previously used SMOOTHIES AS A SERVICE mark, which has been used in commerce.

12. Applicant's proposed goods are closely related to Opposer's goods and confusingly similar to Opposer's goods. For example, Opposer operates an extensive delivery service using the SMOOTHIES AS A SERVICE mark to deliver smoothies to multiple locations to service companies and individuals.

13. Upon information and belief, the goods or both parties are or will be promoted to the same or similar customers, for the same types of use, through similar channels of trade.

14. Due to the identical nature of the marks, the closely related nature of the goods of the respective parties, consumers and potential consumers of the goods are likely to believe that Applicant's goods originate from Opposer, resulting in a likelihood of confusion in the marketplace, damaging Opposer.

15. The use and registration of the mark SMOOTHIES AS A SERVICE for Applicant's goods is likely to cause confusion or to cause mistake or deception in the trade, and among purchaser and potential purchasers of the goods, again resulting in damage to Opposer.

16. Because of the identical nature of the parties' marks and closely related goods, use and registration of the SMOOTHIES AS A SERVICE mark 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 for use with Opposer's goods, causing further damage to Opposer.

17. Registration of the mark shown in application Serial No. 85/910,356 will result in damage to Opposer under the provisions of Section 2 of the U.S. Trademark Act, 15 U.S.C. Section 1052, pursuant to the allegations stated above.

Please direct all correspondence to:

Mark F. Wright
Wright Law Group, PLLC
1959 South Power Road, Suite 103-376
Mesa, Arizona 85206

WHEREFORE Opposer asks that its opposition to the Application be sustained and that registration of the term SMOOTHIES AS A SERVICE for the goods set forth in the Application therein be refused.

Respectfully submitted,

GREEN ME, LLC

By its attorneys,

Date: November 18, 2016

WRIGHT LAW GROUP, PLLC



Mark F. Wright
Wright Law Group, PLLC
1959 South Power Road, Suite 103-376
Mesa, Arizona 85206
(480) 270-4926
Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **NOTICE OF OPPOSITION** has been served by mailing the copy to each of the Applicants at the addresses shown below via USPS, First Class Mail, postage prepaid, this 18th day of November 2016.

Jeffrey Katz
337 E 77th St, 3A
New York, NY 10075

AND

Lyle Dippo
2207 North Tuckahoe Street
Arlington, VA 22205

By:

A handwritten signature in black ink that reads "Mark F. Wright". The signature is written in a cursive style with a long horizontal stroke at the end.

Mark F. Wright