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Filing date: **10/02/2017**

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

Proceeding	91236231
Party	Defendant Wild Flavors, Inc.
Correspondence Address	MARY INNIS 321 N. CLARK STREET, SUITE 2465 CHICAGO, IL 60654 Email: docket@innislaw.com, losier@innislaw.com
Submission	Answer
Filer's Name	Mary E. Innis
Filer's email	losier@innislaw.com, docket@innislaw.com
Signature	/Mary E. Innis/
Date	10/02/2017
Attachments	McCormick v. Wild Flavors - Answer to Notice of Opposition.pdf(223083 bytes) Exhibit A - Labels 2015-2017.pdf(619662 bytes)

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

MCCORMICK & COMPANY)	
INCORPORATED,)	
)	
Opposer,)	Opposition No. 91236231
)	
v.)	
)	
WILD FLAVORS, INC.,)	
)	
Applicant.)	

APPLICANT’S ANSWER TO OPPOSER’S NOTICE OF OPPOSITION

Applicant, Wild Flavors, Inc. (“Applicant” or “Wild Flavors”), answers McCormick & Company, Incorporated’s (“Opposer” or “McCormick”) Notice of Opposition as follows:

1. On September 30, 2016, Applicant filed Application Serial No. 87/189,861 for the mark COLORS FROM NATURE for “natural food coloring for food and beverages” in International Class 2.

ANSWER NO. 1: Applicant admits it filed Application Serial No. 87/189,861 seeking to register the trademark COLORS FROM NATURE (the “COLORS FROM NATURE Mark”) for “natural food coloring for food and beverages” in Class 02 on September 30, 2016. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 1, and therefore denies them.

2. In support of the opposed application filed under Section 1(a), Applicant asserted a claimed first use date of June 11, 2003, and submitted as a specimen of use a shipping label for elderberry extract concentrate bearing a manufacture date of June 11, 2003 and an expiration date of March 7, 2004.

ANSWER NO. 2: Applicant admits that in support of Application Serial No. 87/189,861, it claimed a first use date of June 11, 2003. Applicant further states that its COLORS FROM NATURE Mark is currently in use and has been continuously used in commerce with natural food coloring for food and beverages since at least as early as June 11, 2003. Applicant further

admits it submitted as a specimen of use a shipping label for elderberry extract concentrate bearing a manufacture date of June 11, 2003 and an expiration date of March 7, 2004. Applicant further states that the specimen shows use of the mark in commerce on or in connection with the applied-for goods and shows how Applicant uses the mark in commerce. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 2, and therefore denies them.

3. On information and belief, the applied-for mark was abandoned and not in use as of September 16, 2016, the application filing date of its Section 1(a) application. Further, on information and belief, Applicant submitted a specimen in support of its Section 1(a) application that did not show the applied-for mark as used in commerce as of September 16, 2016, as evidenced by the March 7, 2004 expiration date on the specimen. For these reasons, Applicant's application is *void ab initio* because there was no bona fide use of Applicant's COLORS FROM NATURE mark in commerce to support the use-based application for its registration under Section 1(a).

ANSWER NO. 3: Applicant denies that the COLORS FROM NATURE Mark was abandoned and not in use as of September 16, 2016, the application filing date of its Section 1(a) application. Applicant further states that its COLORS FROM NATURE Mark is currently in use and has been continuously used in commerce with natural food coloring for food and beverages since at least as early as June 11, 2003. Applicant denies that its specimen did not show the COLORS FROM NATURE Mark as used in commerce and further states that the specimen shows use of the mark in commerce on or in connection with the applied-for goods and shows how Applicant uses the mark in commerce. Applicant further states that it submitted a signed Declaration, as required under the Trademark Act, stating that that Applicant is "using the mark in commerce on or in connection with the goods/services in the application" and "the specimen shows the mark as used on or in connection with the goods services in the application." Applicant denies that its application is *void ab initio* and denies that there was no bona fide use of the COLORS FROM NATURE Mark in commerce to support Application Serial No.

87/189,861. Applicant makes no answer to the allegations in Paragraph 3 to the extent those allegations state legal conclusions rather than facts. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 3, and therefore denies them.

4. Opposer is a global leader in flavor, whose food, seasoning, and ingredient products encompass some of the top-selling global brands in the food industry. Specifically, Opposer manufactures, markets, and distributes spices, seasoning mixes, condiments, extracts, and other food seasoning products.

ANSWER NO. 4: Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4, and therefore denies those allegations.

5. Opposer owns U.S. Application Serial No. 86/923,064 for the mark COLOR FROM NATURE for “food color” in Class 02, against which Applicant filed a notice of opposition asserting a likelihood of confusion based in part upon its rights in Application Serial No. 87/189,861. Accordingly, Opposer will be injured if Applicant’s COLORS FROM NATURE mark matures to registration.

ANSWER NO. 5: Applicant admits it filed a Notice of Opposition against Opposer’s application for COLOR FROM NATURE for “food coloring” in Class 02 and asserted a likelihood of confusion based on its common law rights in the COLORS FROM NATURE Mark and its rights in Application Serial No. 87/189,861. Applicant denies that Opposer’s COLOR FROM NATURE mark is valid and further denies that Opposer will be injured if Applicant’s COLORS FROM NATURE Mark matures to registration. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 5, and therefore denies those allegations.

WHEREFORE, Applicant respectfully requests that this Opposition be denied and that the Board issue a Notice of Allowance for the COLORS FROM NATURE Mark shown in Application Serial No. 87/189,861.

AFFIRMATIVE DEFENSES AND AFFIRMATIVE PLEADINGS

1. Since long prior to the February 29, 2016 filing date of Application Serial No. 86/923,064, Applicant adopted, began using, and has continuously used the distinctive COLORS FROM NATURE Mark in commerce in connection with natural food coloring for food and beverages.

2. Applicant has established and developed substantial common law rights in and to the COLORS FROM NATURE Mark based on Applicant's continuous and extensive use of the COLORS FROM NATURE Mark in connection with natural food coloring for food and beverages since its adoption and first use, which was at least as early as June 11, 2003, over 12 years prior to Opposer's application filing date of February 29, 2016.

3. Opposer's use and/or proposed use of the mark COLOR FROM NATURE is likely to cause confusion, mistake, or deception with Applicant, Applicant's COLORS FROM NATURE Mark, and Applicant's goods marketed in connection with its prior rights in its COLORS FROM NATURE Mark in that consumers are likely to believe that Opposer's COLOR FROM NATURE goods are Applicant's goods or are sponsored, authorized, licensed, or in some other way legitimately connected with Applicant.

4. Due to the confusing similarity between Applicant's COLORS FROM NATURE Mark and Opposer's COLOR FROM NATURE mark, Applicant's prior use of and rights in its COLORS FROM NATURE Mark, and the similarity of the goods in connection with which the parties use their marks, there will be a likelihood of confusion in the marketplace and damage to Applicant as a result of Opposer's registration and use of COLOR FROM NATURE.

5. Applicant states that the specimen submitted in support of Application Serial No. 87/189,861 shows use of the COLORS FROM NATURE Mark in commerce on or in connection with the applied-for goods and shows how Applicant uses the mark in commerce. Applicant

further states that its COLORS FROM NATURE Mark is currently in use and has been continuously used in commerce with natural food coloring for food and beverages since at least as early as June 11, 2003 and submits as Exhibit A three specimens showing use of the COLORS FROM NATURE Mark in 2015, 2016, and 2017.

6. Opposer's Notice of Opposition should therefore be dismissed for failure to state a claim.

7. Applicant hereby reserves the right to assert additional affirmative defenses or pleading as may be warranted by future discovery in this proceeding.

8. Applicant hereby reserves the right to present alternative restrictions and/or amendments to the identification of goods in its application.

WHEREFORE, Applicant respectfully requests that this Opposition be denied and that the Board issue a Notice of Allowance for the COLORS FROM NATURE Mark shown in Application Serial No. 87/189,861.

Dated: October 2, 2017

Respectfully submitted,

INNIS LAW GROUP, LLC

By: /s/ Mary E. Innis
Mary E. Innis
Lucille Mackey
Lian Osier
Innis Law Group, LLC
321 North Clark Street
Suite 2465
Chicago, Illinois 60654
Phone: (312) 321-9020

Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **APPLICANT'S ANSWER TO OPPOSER'S NOTICE OF OPPOSITION** has been served upon Jennifer Lee Taylor by electronic mail on October 2, 2017 to:

Jennifer Lee Taylor
Morrison & Foerster LLP
jtaylor@mof.com

/s/ Lian B. Osier

Exhibit A



WILD FLAVORS, INC.
1350 DOLWICK ROAD
ERLANGER, KY 41018 USA

1.800.677.2722
WWW.WILDFLAVORS.COM

WE CERTIFY THAT ALL
FLAVOR INGREDIENTS
ARE GRAS (GRAND
RECOGNIZED AS SAFE)
UNDER REGULATIONS
OF THE F.D.A.
AND/OR T.C.M.F.
USA.

WELCOME DAIRY
HEADQUARTERS
USA

FAKS181

COLORS From Nature™
BETA CAROTENE 0.30%

CUSTOMER CODE: 1500/7

Gross Wgt: 1.000 LB Net Wgt: 1.000 LB Tare Wgt: .000 LB
Gross Wgt: 1.000 LB Net Wgt: 1.000 LB Tare Wgt: .000 LB

Manufacture Date: 1/12/15

Expiration Date: 7/11/15

Batch/Lot#: F1501120VJ

Manufactured by WILD

Batch/Lot#: F1501120VJ

INGREDIENTS: WATER, ETHYL ALCOHOL, MALTODEXTRIN, GUM
ARABIC, MEDIUM CHAIN TRIGLYCERIDES, SUGAR, NATURAL FLAVOR,
DEHYDRATED POTATOE (color), SODIUM ASCORBATE (antioxidant),
ASCORBIC ACID (preservative), DL-alpha-TOCOPHEROL
(antioxidant).



Pareve

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PRODUCT OF USA

STORE REFRIGERATED (34 - 40 F)(1 - 4 C) UPON RECEIPT



0W1



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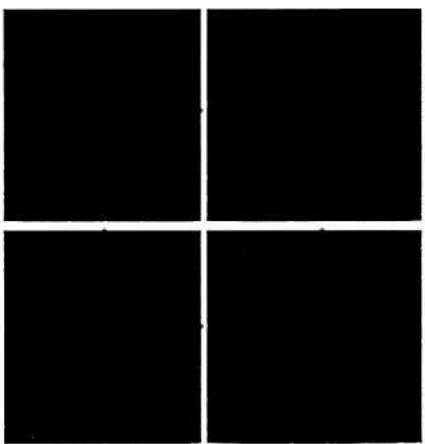


0W1 2280339

Flammable liquid and vapor - Causes serious eye irritation

Keep away from heat/sun/any hot surfaces - no smoking. Keep
container tightly closed. Ground/bond container and receiving equipment. Use
explosion - proof electrical/ventilating/lighting equipment. Use only
non - sparking tools. Take precautionary measures against static discharge.
Wash thoroughly after handling. Wear eye/face protection. Wear protective
gloves/eye protection/face protection. If on skin (or hair), Take off
immediately all contaminated clothing. Rinse skin with water/shower. If in
eyes. Rinse cautiously with water for several minutes. Remove contact
lenses, if present and easy to do. Continue rinsing. If eye irritation persists,
Get medical advice/attention. In case of fire: Use appropriate media to
extinguish. Store in a well-ventilated place. Keep cool. Dispose of
contents/container in accordance with local/regional/national/international
regulations.

Warning





BAY VALLEY FOODS
HEADQUARTERS
USA

WILD FLAVORS, INC.
1350 DOLWICK ROAD
ERLANGER, KY 41018 USA

1.800.677.2722

WWW.WILDFLAVORS.COM

WE CERTIFY THAT ALL
FLAVOR INGREDIENTS
ARE GRAS (GENERALLY
RECOGNIZED AS SAFE)
UNDER REGULATIONS
OF THE F.D.A.
AND/OR E.M.A.
USA

DABJ053
COLORS From Nature™
FRUIT JUICE COLOR BLEND (BLUE)
CUSTOMER CODE: S2607
Gross Wgt: 1.000 LB Net Wgt: 1.000 LB Tare Wgt: .000 LB
Gross Wgt: 1.000 LB Net Wgt: 1.000 LB Tare Wgt: .000 LB
Manufacture Date: 4/20/16
Expiration Date: 4/15/17

Batch/Lot#: F16042040J

Manufactured by WILD

Batch/Lot#: F16042040J

INGREDIENTS: FRUIT JUICE CONCENTRATES (color), ETHYL
ALCOHOL, WATER, CITRIC ACID, NATURAL FLAVOR.



Pareve

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001 -2012619

PRODUCT OF USA

STORE REFRIGERATED (34-40 F)(1-4 C) UPON RECEIPT



DWI



001

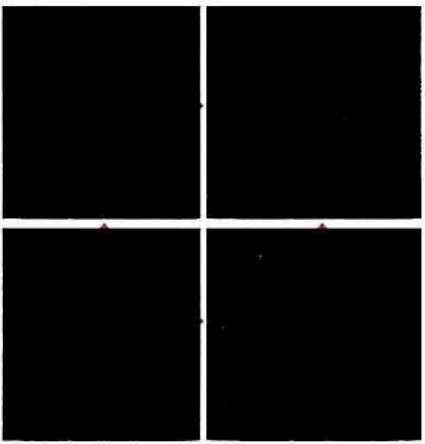


DWI 2485927

Flammable liquid and vapor. Causes eye irritation.

Keep away from heat/sparks/open flames/hot surfaces. - No smoking. Keep container tightly closed. Ground/bond container and receiving equipment. Use explosion - proof electrical/ventilating/lighting equipment. Use only non - sparking tools. Take precautionary measures against static discharge. Wear protective gloves/eye protection/face protection. If on skin (or hair): Take off immediately all contaminated clothing. Rinse skin with water/shower. If in eyes: Rinse cautiously with water for several minutes. Remove contact lenses, if present and easy to do. Continue rinsing. If eye irritation persists: Get medical advice/attention. In case of fire: Use appropriate media to extinguish. Store in a well - ventilated place. Keep cool. Dispose of contents/container in accordance with local/regional/national/international regulations.

Warning





BAY VALLEY FOODS
HEADQUARTERS
USA

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1350 DOLWICK ROAD
HUNTER, KY 41018 USA

1.800.677.2722

WWW.WILDFLAVORS.COM

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FLAVOR INGREDIENTS
ARE GRAS (GENERALLY
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UNDER REGULATIONS
OF THE F.D.A.
INDOR, F.E.M.A.
USA



0W1

DABJ053
COLORS From Nature™
FRUIT JUICE COLOR BLEND (BLUE)

CUSTOMER CODE: S2607
Gross Wgt: 1.000 LB Net Wgt: 1.000 LB Tare Wgt: .000 LB
Gross Wgt: 1.000 LB Net Wgt: 1.000 LB Tare Wgt: .000 LB
Manufacture Date: 3/23/17
Expiration Date: 3/18/18

Batch/Lot#: F17032308J

Manufactured by WILD

Batch/Lot#: F17032308J

INGREDIENTS: FRUIT JUICE CONCENTRATES (COLOR), ETHYL
ALCOHOL, WATER, CITRIC ACID, NATURAL FLAVOR.



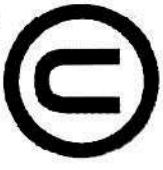
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001 -2012619

PRODUCT OF USA

1.000/.000

STORE REFRIGERATED (34-40 F)(1-4 C) UPON RECEIPT



Pareve



0W1 2639401

Flammable liquid and vapor. Causes eye irritation.

Keep away from heat/spark/open flame/hot surfaces. No smoking. Keep
container tightly closed. Ground/bond container and receiving equipment. Use
explosion - proof electrical/ventilating/lighting equipment. Use only
non-sparking tools. Take precautionary measures against static discharge.
Wear protective gloves/eye protection/face protection. If on skin (or hair):
Take off immediately all contaminated clothing. Rinse skin with water/shower.
If in eyes: Rinse cautiously with water for several minutes. Remove contact
lenses, if present and easy to do. Continue rinsing. If eye irritation persists:
Get medical advice/attention. In case of fire: Use appropriate media to
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Warning

