

ESTTA Tracking number: **ESTTA904603**

Filing date: **06/21/2018**

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	Sheetz of Delaware, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	501 Silverside Drive Wilmington, DE 19809 UNITED STATES		

Attorney information	Christopher T. Michelone McQuaide Blasko, Inc. 601 Hawthorne Drive Suite 2A Hollidaysburg, PA 16648 UNITED STATES Email: ctmichelone@mqblaw.com Phone: (814) 283-2000		
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Applicant Information

Application No	87743436	Publication date	05/29/2018
Opposition Filing Date	06/21/2018	Opposition Period Ends	06/28/2018
Applicant	Atallian Brian 668 Meeting House Rd. Hockessin, DE 19707 UNITED STATES		

Goods/Services Affected by Opposition

Class 045. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Online social networking services accessible by means of downloadable mobile applications
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)
Dilution by tarnishment	Trademark Act Sections 2 and 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1274635	Application Date	07/21/1982
Registration Date	04/17/1984	Foreign Priority Date	NONE
Word Mark	SHEETZ		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 042. First use: First Use: 1941/05/12 First Use In Commerce: 1941/05/12 Retail Convenience Store Services and Retail Gasoline Station Services

U.S. Registration No.	4447248	Application Date	04/17/2013
Registration Date	12/10/2013	Foreign Priority Date	NONE

Word Mark	SHEETZ
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Description of Mark	The mark consists of the word "SHEETZ" in all capital white letters outlined in black placed in a red banner surrounded by a darker red border, green border, another red border outlined in black with seven two-tone gold rays protruding from both left and right sides of the banner.
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Goods/Services	Class 035. First use: First Use: 2004/06/00 First Use In Commerce: 2004/06/00 retail convenience store services and retail gasoline station services
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U.S. Registration No.	3254024	Application Date	08/18/2003
Registration Date	06/19/2007	Foreign Priority Date	NONE

Word Mark	SHEETZ MTO
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Description of Mark	NONE
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Goods/Services	Class 029. First use: First Use: 1998/06/01 First Use In Commerce: 1998/06/01 Salads, except macaroni, rice and pasta Class 030. First use: First Use: 1998/06/01 First Use In Commerce: 1998/06/01 Sandwiches, featuring hamburger, hot dogs, chicken, ham, turkey, roast beef, chicken salad, tuna salad, egg salad, vegetables, and cheese; bagels; fajitas; and, nachos Class 032. First use: First Use: 1998/06/01 First Use In Commerce: 1998/06/01 Soft drinks
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Attachments	85906547#TMSN.png(bytes) 76538082#TMSN.png(bytes)
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	Sheetz App Opposition.pdf(325074 bytes)
Signature	/Christopher T. Michelone/
Name	Christopher T. Michelone
Date	06/21/2018

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

In the matter of trademark
Application Serial No.: 87/743436

Opposition No.: _____

For the mark: Sheetz APP

Published in the *Official Gazette* on: May 29, 2018

Name of Opposer: SHEETZ OF DELAWARE, INC, a
Delaware corporation

v.

Name of Applicants: BRIAN ATALLIAN, an individual


NOTICE OF OPPOSITION

Opposer, Sheetz of Delaware, Inc. (“Opposer”), a Delaware corporation with an address of 501 Silverside Drive, Wilmington, Delaware 19809, believes that it will be damaged by registration of the mark “Sheetz APP” in International Class 45 for “Online social networking services accessible by means of mobile applications” as shown in Application Serial No. 87/743436 (the “Application”), and hereby opposes the same.

As grounds for opposition, it is alleged that:

1. The Opposer, Sheetz of Delaware, Inc., a Delaware corporation, is the intellectual property arm of Sheetz, Inc. (“Sheetz”), a retail convenience and food service chain based in Altoona, Pennsylvania with locations throughout the mid-Atlantic region of the United States.
2. Sheetz serves consumers at its retail locations throughout the mid-Atlantic region and maintains a presence on the internet at www.sheetz.com. Additionally, Sheetz operates a

mobile phone app that is available for Apple iPhones in the Apple App Store and Android based mobile phones in the Google Play Store.

3. Opposer has registered numerous marks containing the “SHEETZ” branding including but not limited to “SHEETZ®” (Reg. No. 1,274,635), ® (Reg. No. 4,447,248), and “SHEETZ MTO®” (Reg. No. 3,254,024) (the Sheetz Marks”). True and correct copies of the certificates of registration for the Sheetz Marks are attached hereto as Exhibit “A.”

4. Opposer and its predecessors-in-interest have been using SHEETZ as part of their brand since at least 1941 in conjunction with the provision of retail convenience store services.

5. Sheetz has made its mobile phone app available to consumers since 2013. A true and correct screenshot of Apple App Store page for the Sheetz mobile app is attached hereto as Exhibit “B.”

6. The “SHEETZ” brand, including the Sheetz Marks indicated above, has gained recognition in the mid-Atlantic region and beyond over more than half a century of continued use.

7. On January 4, 2018, Applicants filed an application under Section 1(b) of the Lanham Act based on their intent to use the proposed mark “Sheetz APP” (the “Proposed Mark”) in commerce.

8. As of the application date, the Applicant had not yet alleged actual use of Proposed Mark in commerce. As of today’s date, the Applicant appears to have not yet used the Proposed Mark in commerce.

9. Upon information and belief, Applicant was aware of Opposer's use of the Sheetz Marks prior to filing its application.

10. The Proposed Mark is confusingly similar in appearance, sound, and commercial impression to the Sheetz Marks. Additionally, in Applicant's application for the Proposed Mark, Applicant was required to disclaim the term "APP", leaving the undisclaimed portion as identical to Opposer's registered mark, "SHEETZ®"

11. Applicant requests registration of the Proposed Mark for goods and services described as "online social networking services accessible by means of downloadable mobile applications." In conjunction with the goods and services offered in association with the Sheetz Marks, Sheetz offers a mobile app in which customers can order food, take advantage of special deals and discounts, and locate the closest Sheetz convenience store location.

12. Upon information and belief, the consumers for Opposer's goods and services are the same as the contemplated consumers for Applicant's soon-to-be offered goods and services. In particular, both Opposer and Applicant appear to be offering goods and services to the general public.

13. Applicant's use of the Proposed Mark in commerce is likely to cause confusion in the marketplace as to the source, origin or sponsorship of Applicant's goods and/or services. Moreover, Applicant's use of the Proposed Mark in commerce is likely to have a dilutive effect on Opposer's interests in virtually identical brand elements.

14. Because the parties' marks are virtually identical and their respective goods and services are overlapping, the registration of the Proposed Mark would be likely to cause a mistaken belief by consumers that Applicant's goods and services are endorsed by, sponsored by, or approved by Opposer; all of which is damaging to Opposer.

15. If Applicant's Proposed Mark is registered and Applicant begins sale of products bearing the Proposed Mark, such use will cause confusion and uncertainty in the marketplace.

16. As a result, Opposer stands to be deprived of distinctiveness in the Sheetz Marks, as Applicant's use will blur the marks, and the association that Opposer's mark has come to convey will be tarnished.

WHEREFORE, Opposer, Sheetz of Delaware, Inc., respectfully requests that the registration of Applicant's Proposed Mark be denied.

Respectfully submitted,

McQUAIDE BLASKO, INC.

Dated: June 20, 2018

/s/Christopher T. Michelone

Christopher T. Michelone
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Hollidaysburg, PA 16648
(814) 283-2000
ctmichelone@mqblaw.com
Attorneys for Applicant

Int. Cl.: 42

Prior U.S. Cl.: 101

United States Patent and Trademark Office

Reg. No. 1,274,635

Registered Apr. 17, 1984

SERVICE MARK
Principal Register

SHEETZ

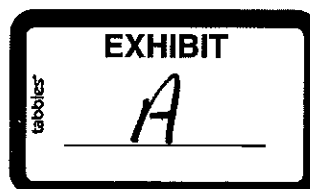
Sheetz, Inc. (Pennsylvania corporation)
5700 6th Ave.
Altonna, Pa. 16602

For: RETAIL CONVENIENCE STORE
SERVICES AND RETAIL GASOLINE STATION
SERVICES, in CLASS 42 (U.S. Cl. 101).
First use May 12, 1941; in commerce May 12,
1941.

Sec. 2(f).

Ser. No. 375,808, filed Jul. 21, 1982.

NANCY O. HEBERT, Examining Attorney



United States of America

United States Patent and Trademark Office



Reg. No. 4,447,248

Registered Dec. 10, 2013

Int. Cl.: 35

SERVICE MARK

PRINCIPAL REGISTER

SHEETZ OF DELAWARE, INC. (DELAWARE CORPORATION)
SUITE 67
501 SILVERSIDE DRIVE
WILMINGTON, DE 19809

FOR: RETAIL CONVENIENCE STORE SERVICES AND RETAIL GASOLINE STATION SERVICES, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 6-0-2004; IN COMMERCE 6-0-2004.

OWNER OF U.S. REG. NOS. 1,274,635, 3,254,024 AND OTHERS.

THE COLOR(S) GOLD, GREEN, RED, WHITE AND BLACK IS/ARE CLAIMED AS A FEATURE OF THE MARK.

THE MARK CONSISTS OF THE WORD "SHEETZ" IN ALL CAPITAL WHITE LETTERS OUTLINED IN BLACK PLACED IN A RED BANNER SURROUNDED BY A DARKER RED BORDER, GREEN BORDER, ANOTHER RED BORDER OUTLINED IN BLACK WITH SEVEN TWO-TONE GOLD RAYS PROTRUDING FROM BOTH LEFT AND RIGHT SIDES OF THE BANNER.

SER. NO. 85-906,547, FILED 4-17-2013.

WILLIAM JACKSON, EXAMINING ATTORNEY



Deborah S. Cohn

Commissioner for Trademarks of the
United States Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

Requirements in the First Ten Years*
What and When to File:

First Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

Second Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.* See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*
What and When to File:

You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

**The United States Patent and Trademark Office (USPTO) will NOT send you any future notice or
reminder of these filing requirements.**

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the USPTO. The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

Int. Cls.: 29, 30, and 32

Prior U.S. Cls.: 45, 46, and 48

Reg. No. 3,254,024

United States Patent and Trademark Office

Registered June 19, 2007

**TRADEMARK
PRINCIPAL REGISTER**

SHEETZ MTO

SHEETZ OF DELAWARE, INC. (DELAWARE
CORPORATION)
500 SILVERSIDE ROAD, SUITE 67
WILMINGTON, DE 19809

FOR: SALADS, EXCEPT MACARONI, RICE AND
PASTA, IN CLASS 29 (U.S. CL. 46).

FIRST USE 6-1-1998; IN COMMERCE 6-1-1998.

FOR: SANDWICHES, FEATURING HAMBUR-
GER, HOT DOGS, CHICKEN, HAM, TURKEY,
ROAST BEEF, CHICKEN SALAD, TUNA SALAD,
EGG SALAD, VEGETABLES, AND CHEESE; BA-
GELS; FAJITAS; AND, NACHOS, IN CLASS 30 (U.S.
CL. 46).

FIRST USE 6-1-1998; IN COMMERCE 6-1-1998.

FOR: SOFT DRINKS, IN CLASS 32 (U.S. CLS. 45, 46
AND 48).

FIRST USE 6-1-1998; IN COMMERCE 6-1-1998.

OWNER OF U.S. REG. NOS. 1,274,635, 2,650,622,
AND OTHERS.

SN 76-538,082, FILED 8-18-2003.

LINDA M. KING, EXAMINING ATTORNEY

< Search



Sheetz®

Sheetz

UPDATE



2.9 ★★☆☆☆

124 Ratings

#57

Food & Drink

4+

Age

What's New

Version History

Version 5.1.1

3h ago

Getting ready for the summer with some optimizations and bug fixes.

Preview



Today



Games



Apps



Updates



Search