

ESTTA Tracking number: **ESTTA907220**

Filing date: **07/03/2018**

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	BIRDS EYE FOODS LLC
Granted to Date of previous extension	07/04/2018
Address	399 JEFFERSON ROAD PARSIPPANY, NJ 07054 UNITED STATES
Attorney information	LINDA MONGE CALLAGHAN FISHMAN STEWART PLLC 39533 WOODWARD AVE., STE. 140 BLOOMFIELD HILLS, MI 48304 UNITED STATES Email: lcallaghan@fishstewip.com, tmdocketing@fishstewip.com Phone: 2485940641

Applicant Information

Application No	87647669	Publication date	03/06/2018
Opposition Filing Date	07/03/2018	Opposition Period Ends	07/04/2018
Applicant	Moutray, Loland J P.O. Box 67 Weimar, CA 95736 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: Nut topping
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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)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3293447	Application Date	02/01/2007
Registration Date	09/18/2007	Foreign Priority Date	NONE
Word Mark	VOILA!		

Design Mark	<h1>VOILA!</h1>
Description of Mark	NONE
Goods/Services	<p>Class 029. First use: First Use: 1998/00/00 First Use In Commerce: 1998/00/00 frozen entrees consisting primarily of meat, fish, poultry or vegetables; frozen meals consisting primarily of meat, fish, poultry or vegetables</p> <p>Class 030. First use: First Use: 1998/00/00 First Use In Commerce: 1998/00/00 frozen entrees consisting primarily of pasta or rice; frozen meals consisting primarily of pasta or rice</p>

Attachments	77097194#TMSN.png(bytes) R1586091.PDF(371975 bytes)
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Signature	/Linda Monge Callaghan/
Name	LINDA MONGE CALLAGHAN
Date	07/03/2018

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

BIRDS EYE FOODS LLC,)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	Application Serial No. 87/647,669
LOLAND J. MOUTRAY,)	Mark: VOILAVEG
)	
Applicant.)	
_____)	

NOTICE OF OPPOSITION

Birds Eye Foods LLC, a Delaware limited liability company, at 399 Jefferson Road, Parsippany, New Jersey 07054 (“Opposer”), believes that it will be damaged by registration of the mark VOILAVEG of Application Serial No. 87/647,669 (“Application”) by Loland J. Moutray, an individual, at P.O. Box 67, Weimar, California 95736 (“Applicant”), for the goods recited therein, and hereby opposes the Application on the grounds that (1) the mark is likely to cause confusion, or to cause mistake or to deceive with respect to (a) Opposer’s prior adoption and use of the mark “VOILA” (“Opposer’s VOILA Mark”) and (b) Opposer’s prior registration for Opposer’s VOILA Mark, as identified below (“Opposer’s Registration”); and (2) registration of the Application will dilute the distinctiveness of Opposer’s VOILA Mark that is famous, by tarnishing it and by blurring the distinctiveness thereof.

As grounds for the opposition, Opposer states as follows:

1. Opposer is extensively engaged in the business of manufacturing, marketing and selling a broad range of food products, including food products of the type recited in Opposer’s Registration (“Opposer’s Goods”).

2. In connection with certain of Opposer’s Goods, Opposer has used Opposer’s VOILA Mark. Opposer has continuously used in commerce Opposer’s VOILA Mark in connection with certain of Opposer’s Goods since 1998.

3. As a result of the quality of Opposer's Goods and the widespread promotion thereof under Opposer's VOILA Mark in connection with certain of Opposer's Goods, such goods have met with substantial commercial success and customer recognition. As a further result, Opposer's VOILA Mark has become a symbol of Opposer, its quality products and its goodwill. In addition, Opposer's VOILA Mark is famous.

4. In recognition of the valuable rights in and to Opposer's VOILA Mark, the U.S. Patent and Trademark Office (the "Office") granted Opposer's Registration, namely, U.S Registration No. 3,293,447 dated September 18, 2007 for the mark VOILA! for "frozen entrees consisting primarily of meat, fish, poultry or vegetables; frozen meals consisting primarily of meat, fish, poultry or vegetables," in Class 29 and "frozen entrees consisting primarily of pasta or rice; frozen meals consisting primarily of pasta or rice," in Class 30.

5. In addition, Opposer's Registration has achieved incontestable status, and therefore constitutes conclusive evidence of the validity of the mark, the registration therefor, Opposer's ownership of the mark, and its exclusive right to use the mark in commerce.

6. Notwithstanding Opposer's prior use of Opposer's VOILA Mark and Opposer's Registration, on October 16, 2017, Applicant filed the Application seeking registration on the Principal Register on an intent-to-use basis for "nut topping," in Class 29.

7. Prior to the filing date of the Application, Opposer used Opposer's VOILA Mark in commerce and Opposer's Registration issued to registration.

8. The mark of the Application is similar to Opposer's VOILA Mark in that both marks contain the identical term "VOILA" and Applicant's mark contains the non-distinctive term "VEG" which is a known abbreviation for vegetables, an ingredient of Opposer's goods provided under Opposer's VOILA Mark. Further, the goods covered by the Application are similar or related to Opposer's Goods provided under Opposer's VOILA Mark. In view thereof, purchasers are likely to mistakenly assume that Applicant's goods of the Application originate from, are sponsored by or are in some way associated with Opposer. The mark of the Application so resembles Opposer's VOILA Mark

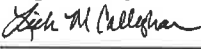
and Opposer's Registration as to be likely to cause confusion, or to cause mistake or to deceive. Accordingly, Opposer is likely to be damaged by registration of the mark of the Application for the goods recited therein.

9. Moreover, Opposer's VOILA Mark is famous. On a date prior to Applicant's filing date of the Application, Opposer's VOILA Mark became famous. Registration of the mark of the Application will dilute the distinctiveness of Opposer's VOILA Mark by tarnishing the mark and by blurring the distinctiveness of the mark.

WHEREFORE, Opposer prays that the Application be refused registration, that no registration be issued thereon to Applicant and that this Opposition be sustained in favor of Opposer.

A filing fee for the Notice of Opposition in the amount of \$400 should be charged to Deposit Account No. 18-0013. Any additional fees required should be charged to the same account.

Dated: July 3, 2018

Respectfully submitted,
By: 
Linda Monge Callaghan
Michael D. Fishman
FISHMAN STEWART PLLC
Attorneys for Opposer
39533 Woodward Avenue, Suite 140
Bloomfield Hills, Michigan 48304

Int. Cls.: 29 and 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 3,293,447

Registered Sep. 18, 2007

TRADEMARK
PRINCIPAL REGISTER

VOILA!

LINDEN OAKS CORPORATION (DELAWARE
CORPORATION)
SUITE 290
103 FOULK RD.
WILMINGTON, DE 19830

FOR: FROZEN ENTREES CONSISTING PRIMAR-
ILY OF MEAT, FISH, POULTRY OR VEGETABLES;
FROZEN MEALS CONSISTING PRIMARILY OF
MEAT, FISH, POULTRY OR VEGETABLES, IN
CLASS 29 (U.S. CL. 46).

FIRST USE 0-0-1998; IN COMMERCE 0-0-1998.

FOR: FROZEN ENTREES CONSISTING PRIMAR-
ILY OF PASTA OR RICE; FROZEN MEALS CON-
SISTING PRIMARILY OF PASTA OR RICE, IN
CLASS 30 (U.S. CL. 46).

FIRST USE 0-0-1998; IN COMMERCE 0-0-1998.

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

SER. NO. 77-097,194, FILED 2-1-2007.

DAVID COLLIER, EXAMINING ATTORNEY



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VOILA!

Word Mark	VOILA!
Goods and Services	IC 029. US 046. G & S: frozen entrees consisting primarily of meat, fish, poultry or vegetables; frozen meals consisting primarily of meat, fish, poultry or vegetables. FIRST USE: 19980000. FIRST USE IN COMMERCE: 19980000
	IC 030. US 046. G & S: frozen entrees consisting primarily of pasta or rice; frozen meals consisting primarily of pasta or rice. FIRST USE: 19980000. FIRST USE IN COMMERCE: 19980000
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Trademark Search Facility Classification Code	NOTATION-SYMBOLS Notation Symbols such as Non-Latin characters,punctuation and mathematical signs,zodiac signs,prescription marks
Serial Number	77097194
Filing Date	February 1, 2007
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	July 3, 2007
Registration Number	3293447
Registration Date	September 18, 2007
Owner	(REGISTRANT) Linden Oaks Corporation CORPORATION DELAWARE Suite 290 103 Foulk Rd. Wilmington DELAWARE 19830

(LAST LISTED OWNER) Birds Eye Foods LLC LIMITED LIABILITY COMPANY DELAWARE 399 Jefferson Road Parsippany NEW JERSEY 070543707

Assignment Recorded

ASSIGNMENT RECORDED

Attorney of Record

Michael D. Fishman

Type of Mark

TRADEMARK

Register

PRINCIPAL

Affidavit Text

SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20170521.

Renewal

1ST RENEWAL 20170521

Live/Dead Indicator

LIVE

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STATUS **DOCUMENTS** **MAINTENANCE**

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Mark: VOILA!

VOILA!

US Serial Number: 77097194

Application Filing Date: Feb. 01, 2007

US Registration Number: 3293447

Registration Date: Sep. 18, 2007

Filed as TEAS Plus: Yes

Currently TEAS Plus: Yes

Register: Principal

Mark Type: Trademark

TM5 Common Status

Descriptor:



LIVE/REGISTRATION/Issued and Active

The trademark application has been registered with the Office

Status: The registration has been renewed.

Status Date: May 21, 2017

Publication Date: Jul. 03, 2007

Mark Information

Mark Literal Elements: VOILA!

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: frozen entrees consisting primarily of meat, fish, poultry or vegetables; frozen meals consisting primarily of vegetables

International Class(es): 029 - Primary Class

U.S Class(es): 046

Class Status: ACTIVE

Basis: 1(a)

First Use: 1998

Use in Commerce: 1998

For: frozen entrees consisting primarily of pasta or rice; frozen meals consisting primarily of pasta or rice

International Class(es): 030 - Primary Class

U.S Class(es): 046

Class Status: ACTIVE

Basis: 1(a)

First Use: 1998

Use in Commerce: 1998

Basis Information (Case Level)

Filed Use: Yes	Currently Use: Yes	Ameri
Filed ITU: No	Currently ITU: No	Ame
Filed 44D: No	Currently 44D: No	Ameri
Filed 44E: No	Currently 44E: No	Ameri
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: Birds Eye Foods LLC

Owner Address: 399 Jefferson Road
Parsippany, NEW JERSEY UNITED STATES 070543707

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Michael D. Fishman

Docket Number: 67092-0865

Attorney Primary Email Address: tmddocketing@fishstewip.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: Michael D. Fishman

Fishman Stewart PLLC
39533 Woodward Avenue, Suite 140
Bloomfield Hills, MICHIGAN UNITED STATES 48304

Phone: 248-594-0630

Fax: 248-594-0610

Correspondent e-mail: tmddocketing@fishstewip.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
May 21, 2017	NOTICE OF ACCEPTANCE OF SEC. 8 & 9 - E-MAILED	

May 21, 2017	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	74704
May 21, 2017	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	74704
May 21, 2017	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	74704
Mar. 24, 2017	TEAS SECTION 8 & 9 RECEIVED	
Sep. 18, 2016	COURTESY REMINDER - SEC. 8 (10-YR)/SEC. 9 E-MAILED	
Sep. 25, 2013	NOTICE OF ACCEPTANCE OF SEC. 8 & 15 - E-MAILED	
Sep. 25, 2013	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	76533
Sep. 18, 2013	REGISTERED - SEC. 8 (6-YR) & SEC. 15 FILED	76533
Sep. 25, 2013	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	76533
Sep. 18, 2013	TEAS SECTION 8 & 15 RECEIVED	
Jun. 13, 2012	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Feb. 18, 2010	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Mar. 05, 2008	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Sep. 18, 2007	REGISTERED-PRINCIPAL REGISTER	
Jul. 03, 2007	PUBLISHED FOR OPPOSITION	
Jun. 13, 2007	NOTICE OF PUBLICATION	
Apr. 27, 2007	LAW OFFICE PUBLICATION REVIEW COMPLETED	74193
Apr. 27, 2007	ASSIGNED TO LIE	74193
Apr. 09, 2007	APPROVED FOR PUB - PRINCIPAL REGISTER	
Apr. 04, 2007	ASSIGNED TO EXAMINER	81852
Feb. 06, 2007	NEW APPLICATION ENTERED IN TRAM	

Maintenance Filings or Post Registration Information

Affidavit of Continued Use: Section 8 - Accepted

Affidavit of Incontestability: Section 15 - Accepted

Renewal Date: Sep. 18, 2017

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: GENERIC WEB UPDATE

Date in Location: May 21, 2017

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