

ESTTA Tracking number: **ESTTA1148788**

Filing date: **07/23/2021**

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

Proceeding	91256413
Party	Plaintiff OlÃ© Mexican Foods, Inc.
Correspondence Address	PAUL S OWENS PAUL OWENS & ASSOCIATES PO BOX 15310 ATLANTA, GA 30333 UNITED STATES Primary Email: psowens@bellsouth.net 404-370-9800
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Paul S. Owens
Filer's email	psowens@bellsouth.net
Signature	/paul s. owens/
Date	07/23/2021
Attachments	Motion to Amend Not. of Opp. and Appendix A--File Copy.pdf(434463 bytes)

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

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In the Matter of Trademark Appl'n No.:
88-646,951

For the Mark: OLÉ CHAMOYLE

Filing date: October 8, 2019

OLÉ MEXICAN FOODS, INC.,

Opposer,

v.

Opposition No. 91256413

CERVEZA CITRUS L.L.C.,

Applicant.

-----X

MOTION FOR LEAVE TO AMEND NOTICE OF OPPOSITION

Opposer, Olé Mexican Foods, Inc. (“Opposer”) hereby moves the Board pursuant to 37 C.F.R. § 2.107(a) and Fed. R. Civ. P. 15(a) for leave to file the [Proposed] First Amended Notice of Opposition attached hereto as Appendix A, and if granted, to reset the remaining trial dates accordingly. The basis of the motion is set forth below.

BACKGROUND

Olé is a well-known manufacturer and distributor of authentic Mexican-style foods in the United States. In addition to being its trade name and house mark, OLÉ is one of Opposer’s most popular and well-recognized trademarks. The OLÉ mark is prominently displayed on the front, and often the backs and sides, of Opposer’s OLÉ-branded product packages and is the subject of numerous registrations in the U.S. Patent and Trademark Office.

Commencing long prior to the filing date of Applicant’s intent-to-use application (i.e., October 8, 2019), Opposer has been using, and is now using, the mark OLÉ in connection with its food products and food-related services, including but not limited to, chorizo, cheeses/quesos, cheese dips, chicharrones, tortillas, tostadas, tortilla chips, Mexican pastries, Mexican snack foods, salsas, hams, crema Mexicana, and seasonings/spices, namely, cinnamon sticks.

Opposer is the owner of an incontestable trademark registration for the word mark OLÉ (Reg. No. 3,223,608) issued on April 3, 2007 for use with “Mexican style food products, namely, chorizo, queso and cheese dips, and chicharrones in Class 29; Mexican style food products, namely, tortillas, tostadas, tortilla chips, Mexican pastries, Mexican snack foods, namely, corn chips, and salsas in Class 30.” Opposer is also the owner of an incontestable trademark registration for the word mark OLÉ (Reg. No. 2,740,014) issued on July 22, 2003 for use with “tortillas; tortilla chips.” Opposer is also the owner of incontestable trademark registrations for



the design mark

(Reg. No. 4,899,762) for use with “tortillas” and

(Reg. No. 4,292,655) for use with “cheese and chorizo” (the “Design Mark Registrations”).

Applicant Cerveza Citrus L.L.C. (“Applicant”) filed an intent-to-use application on October 8, 2019 for the word mark OLÉ CHAMOYLE for use with “packaged combinations consisting of chamoy and chile lime seasoning in separate compartments.” In its Notice of Opposition, Opposer opposed Cerveza’s application on the basis of its prior incontestable

registrations for the word mark OLÉ, and on its common law use of the OLÉ Mark “in connection with tortillas and other food products.” 1 TTABVUE at ¶ 1.

Opposer filed a Motion for Summary Judgment on April 5, 2021 (5 TTABVUE), which was denied by the Board on July 13, 2021 (10 TTABVUE). In its decision the Board noted, at footnote 6, that “[t]he pleading of use of the mark in connection with ‘other food products’ is vague and insufficient to provide Applicant with fair notice of the basis of Opposer’s claim of common law rights in other goods, if any.” 10 TTABVUE 3 at fn. 6. Accordingly, Opposer seeks leave to amend its Notice of Opposition to add its incontestable Design Mark Registrations, and to clarify the “other food products” on which it has used its OLÉ mark, and if granted, to reset the remaining trial dates accordingly. This matter is still in the pre-trial stage, with Opposer’s 30-Day Trial Period currently set to end September 30, 2021.

ARGUMENT

Under Fed. R. Civ. P. 15(a), leave to amend pleadings shall be freely given when justice so requires. The Board liberally grants leave to amend pleadings at any stage of the proceeding when justice requires, unless entry of the proposed amendment would violate settled law or be prejudicial to the rights of the adverse party. *Polaris Industries v. DC Comics*, 59 USPQ2d 1798 (TTAB 2001); *Boral Ltd. v. FMC Corp.*, 59 USPQ2d 1701 (TTAB 2000) Thus, in deciding an Opposer's motion for leave to amend, the Board must consider whether there is any undue prejudice to Applicant and whether the amendment is legally sufficient. *Cool-Ray, Inc. v. Eye Care, Inc.*, 183 USPQ 618, 621 (TTAB 1974).

In this case, leave to amend should be granted because Opposer seeks only to amplify and clarify allegations already set forth in its original Notice of Opposition, by stating with particularity the “other food products” on which it has used its OLÉ mark, and to add two

additional registrations for its OLÉ mark for the same goods covered in the trademark registrations originally alleged.¹ *Avedis Zildjian Co. v. D. H. Baldwin Co.*, 180 USPQ 539, 541 (TTAB 1973)(“[A]mendments need not of themselves set forth a cause of action, it being sufficient for the purpose that they may serve to amplify allegations already set forth in the moving party’s pleadings.”) Moreover, amendment will not be prejudicial to Applicant. When a proceeding is still in the pre-trial state, there is no prejudice to the adverse party from amendments to the pleadings. *Leatherwood Scopes Int’l, Inc. v. Leatherwood* , 63 U.S.P.Q.2D (BNA) 1699, 1702 (TTAB 2002) (any prejudice that may have existed by the possible closing of discovery may be avoided by a resetting of the discovery period). Indeed, the Board has consistently held that there is no prejudice to the applicant when the opposer amends its Notice of Opposition before the first testimony period. *Focus 21 International Inc. v. Pola Kasei Kogyo Kabushiki Kaisha*, 22 USPQ 2d 1319, 1318 (TTAB 1992)(“the motion to amend was filed prior to the opening of petitioner’s testimony period and thus the discovery period may be reopened with no prejudice to the respondent”). Moreover, Opposer has promptly moved to amend its Notice of Opposition after the Board’s statement that Opposer’s original Notice of Opposition may be “vague or insufficient.”

CONCLUSION

Opposer’s proposed amendment to its Notice of Opposition merely clarifies its original allegations, and will not be prejudicial to Cerveza. For all of the foregoing reasons, Opposer Olé Mexican Foods, Inc. respectfully requests that the Board grant its Motion for Leave to Amend,

¹ It bears noting that Applicant did not seek or take any discovery of Opposer’s “other food products” or on any other issue during the discovery period.

and permit the filing of the attached [Proposed] First Amended Notice of Opposition and to reset the remaining trial dates accordingly.

Dated: July 23, 2021

Respectfully submitted,

/paul s. owens/
Paul S. Owens, Esq.
Attorney for Opposer--Olé Mexican
Foods, Inc.
Paul Owens & Associates
P.O. Box 15310
Atlanta, GA 30333-0310

Tel: (404) 370-9800
E-mail: psowens@bellsouth.net

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of July, 2021, a true and correct copy of the foregoing Motion for Leave to Amend Notice of Opposition with Appendix A—Proposed First Amended Notice of Opposition with Exhibits 1-4 was served on Applicant by emailing a copy to Applicant’s attorney of record at:

Richard A. Ryan, Esq.
Email: Richard@fresnopatentlaw.com

/paul s. owens/
Paul S. Owens, Esq.

Appendix A

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

-----X
In the Matter of Trademark Appl'n No.:
88-646,951

For the Mark: OLÉ CHAMOYLE

Filing date: October 8, 2019

OLÉ MEXICAN FOODS, INC.,

Opposer,

v.

Opposition No. 91256413

CERVEZA CITRUS L.L.C.,

Applicant.

-----X

FIRST AMENDED NOTICE OF OPPOSITION

Opposer-Olé Mexican Foods, Inc. believes that it will be damaged by registration of the mark OLÉ CHAMOYLE shown in Application No. 88-646,951 for use with “packaged combinations consisting of chamoy and chile lime seasoning in separate compartments,” and hereby opposes the registration of said mark.

As grounds for the Opposition, it is alleged that:

1. Commencing long prior to the filing date of Applicant’s intent-to-use application (i.e., October 8, 2019) and any date upon which Applicant can rely, Opposer has been using, and is now using, OLÉ as a trademark, house mark, and trade name in connection with its food products and food-related services, including but not limited to, chorizo, cheeses/quesos, cheese dips, chicharrones, tortillas, tostadas, tortilla chips, Mexican pastries, Mexican snack foods, salsas, hams, crema Mexicana, hams, and seasonings/spices, namely, cinnamon sticks.

2. Opposer's use of the OLÉ trademark, house mark, and trade name in connection with foods has been continuous to the present since its first use with tortillas and tortilla chips in 1988.

3. Opposer is the owner of the following registrations that are duly and validly registered on the Principal Register:

<u>Mark</u>	<u>Reg. No.</u>	<u>Goods</u>
OLÉ	3,223,608	Mexican style food products, namely, chorizo, queso and cheese dips, and chicharrones in Class 29; Mexican style food products, namely, tortillas, tostadas, tortilla chips, Mexican pastries, Mexican snack foods, namely, corn chips, and salsas in Class 30.
OLÉ	2,740,014	Tortillas; tortilla chips.



4,899,762 tortillas.



4,292,655 cheese and chorizo.

Title and status copies of these registrations are attached hereto as Exhibits 1, 2, 3, and 4, respectively.

4. Each of the registrations identified in paragraph 3 have become incontestable under 15 U.S.C. § 1065. Consequently, each of the registrations identified in paragraph 4 and the exhibits attached hereto constitute conclusive evidence of the validity of the registered mark,

of the registration of the mark, of Opposer's ownership of the mark, and of Opposer's exclusive right to use the registered mark in commerce for the goods identified in the registrations.

5. Olé's rights in the OLÉ mark were established long prior to any date upon which Applicant can rely.

6. The applied-for mark so resembles Olé's OLÉ mark, and the goods in connection with which the parties' marks are used are so closely related, that use of the applied-for mark is likely to cause confusion, or to cause mistake, or to deceive in violation of 15 U.S.C. § 1052(d).

7. For the reasons set out above, Olé will be damaged by registration of the above-captioned mark since Application No. 88-646,951, if granted, would create statutory rights in violation of Olé's established rights.

WHEREFORE, Opposer prays that judgment be entered refusing Application No. 88-646,951, and for such other and further relief as to the Board seems just.

Dated: July 22, 2021

Respectfully submitted,

/paul s. owens/
Paul S. Owens, Esq.
Attorney for Opposer--Olé Mexican
Foods, Inc.
Paul Owens & Associates
P.O. Box 15310
Atlanta, GA 30333-0310

Tel: (404) 370-9800
E-mail: psowens@bellsouth.net

Exhibit 1

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Mark: OLÉ

OLÉ

US Serial Number: 76619200

Application Filing Date: Nov. 02, 2004

US Registration Number: 3223608

Registration Date: Apr. 03, 2007

Register: Principal

Mark Type: Trademark

TM5 Common Status

LIVE/REGISTRATION/Issued and Active

Descriptor:



The trademark application has been registered with the Office.

Status: A Section 15 declaration has been acknowledged.

Status Date: May 13, 2017

Publication Date: Jul. 12, 2005

Mark Information

Mark Literal Elements: OLÉ

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

Related Properties Information

Claimed Ownership of US [2740014](#), [2808204](#)

Registrations:

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: Mexican style food products, namely, chorizo, queso and cheese dips, [canned peppers, dried peppers,] chic based beverages]

International Class(es): 029 - Primary Class

U.S Class(es): 046

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Class Status: ACTIVE**Basis:** 1(a)**First Use:** Jan. 1996**Use in Commerce:** Jan. 1996**For:** Mexican style food products, namely, tortillas, tostadas, [gorditas, sopes,] tortilla chips, Mexican pastries, Me. corn chips, salsas, [mole, dried corn husks, frijoles, pasta, Mexican candies, tamales, taquitos, and herbal tea**International Class(es):** 030 - Primary Class**U.S Class(es):** 046**Class Status:** ACTIVE**Basis:** 1(a)**First Use:** May 1988**Use in Commerce:** May 1988

Basis Information (Case Level)

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

Current Owner(s) Information

Owner Name: Olé Mexican Foods, Inc.**Owner Address:** 6585 Crescent Drive
Norcross, GEORGIA UNITED STATES 30071**Legal Entity Type:** CORPORATION**State or Country Where Organized:** GEORGIA

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Paul S. Owens**Attorney Primary Email Address:** psowens@bellsouth.net**Attorney Email Authorized:** Yes

Correspondent

Correspondent Name/Address: Paul S. Owens
PAUL OWENS & ASSOCIATES
PO BOX 15310
ATLANTA, GEORGIA UNITED STATES 30333-0310**Phone:** (404) 370-9800**Fax:** (404) 370-9801**Correspondent e-mail:** psowens@bellsouth.net**Correspondent e-mail Authorized:** Yes**Domestic Representative - Not Found**

Prosecution History

Date	Description	Proceeding Number
May 14, 2017	SEC. 15 ACKNOWLEDGEMENT - E-MAILED	
May 13, 2017	REGISTERED - SEC. 15 ACKNOWLEDGED	67657
May 13, 2017	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	67657
Feb. 06, 2017	TEAS SECTION 15 RECEIVED	
Jan. 03, 2017	NOTICE OF ACCEPTANCE OF SEC. 8 & 9 - E-MAILED	
Jan. 03, 2017	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	70131
Jan. 03, 2017	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	70131
Jan. 03, 2017	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	70131
Oct. 21, 2016	TEAS SECTION 8 & 9 RECEIVED	
Oct. 18, 2016	PETITION TO DIRECTOR - DISMISSED	83176
Oct. 17, 2016	ASSIGNED TO PETITION STAFF	83176
Oct. 04, 2016	REINSTATED	67657
Jul. 26, 2016	TEAS PETITION TO DIRECTOR RECEIVED	1111
Apr. 03, 2016	COURTESY REMINDER - SEC. 8 (10-YR)/SEC. 9 E-MAILED	
Mar. 21, 2016	TTAB RELEASE CASE TO TRADEMARKS	48698
Mar. 21, 2016	CANCELLATION TERMINATED NO. 999999	48698
Feb. 05, 2016	CANCELLED SECTION 18-PARTIAL	48698
Sep. 10, 2015	CANCELLATION GRANTED NO. 999999	48698
Jul. 31, 2012	NOTICE OF ACCEPTANCE OF SEC. 8 - E-MAILED	
Jul. 31, 2012	REGISTERED - SEC. 8 (6-YR) ACCEPTED	74886
Jul. 31, 2012	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	74886
Jul. 15, 2012	TEAS SECTION 8 RECEIVED	
Jan. 07, 2008	CANCELLATION INSTITUTED NO. 999999	48698
Aug. 30, 2007	OPPOSITION DISMISSED NO. 999999	166228
Apr. 03, 2007	REGISTERED-PRINCIPAL REGISTER	
Jan. 03, 2006	OPPOSITION DISMISSED NO. 999999	166228
Aug. 15, 2005	OPPOSITION INSTITUTED NO. 999999	166228
Aug. 11, 2005	OPPOSITION PAPERS RECEIVED AT TTAB	
Jul. 12, 2005	PUBLISHED FOR OPPOSITION	
Jun. 22, 2005	NOTICE OF PUBLICATION	
Apr. 08, 2005	LAW OFFICE PUBLICATION REVIEW COMPLETED	76243
Apr. 01, 2005	ASSIGNED TO LIE	76243
Mar. 28, 2005	EXAMINER'S AMENDMENT MAILED	
Mar. 26, 2005	APPROVED FOR PUB - PRINCIPAL REGISTER	
Mar. 26, 2005	EXAMINERS AMENDMENT -WRITTEN	73708
Mar. 26, 2005	ASSIGNED TO EXAMINER	73708
Nov. 17, 2004	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: TMEG LAW OFFICE 105

Date in Location: May 13, 2017

Assignment Abstract Of Title Information - None recorded

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Exhibit 2

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Mark: OLÉ

OLÉ

US Serial Number: 76438776

Application Filing Date: Aug. 06, 2002

US Registration Number: 2740014

Registration Date: Jul. 22, 2003

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: Aug. 06, 2013

Publication Date: Apr. 29, 2003

Mark Information

Mark Literal Elements: OLÉ

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

Disclaimer: "DELI"

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: Tortillas Tortilla chips

International Class(es): 030 - Primary Class

U.S Class(es): 046

Class Status: ACTIVE

Basis: 1(a)

First Use: Feb. 28, 1996

Use in Commerce: Feb. 28, 1996

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Basis Information (Case Level)

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

Current Owner(s) Information

Owner Name: Ole Mexican Foods, Inc.

Owner Address: 6585 Crescent Drive
Norcross, GEORGIA UNITED STATES 30071

Legal Entity Type: CORPORATION **State or Country Where Organized:** GEORGIA

Attorney/Correspondence Information

Attorney of Record

Attorney Name: PAUL S OWENS

Attorney Primary Email Address: psowens@bellsouth.net **Attorney Email Authorized:** Yes

Correspondent

Correspondent Name/Address: PAUL S OWENS
Paul Owens & Associates
P.O. Box 15310
Atlanta, GEORGIA UNITED STATES 30333

Phone: 404-370-9800 **Fax:** 404-370-9801

Correspondent e-mail: psowens@bellsouth.net **Correspondent e-mail Authorized:** Yes

Domestic Representative

Domestic Representative Name: PAUL S OWENS

Prosecution History

Date	Description	Proceeding Number
Aug. 06, 2013	NOTICE OF ACCEPTANCE OF SEC. 8 & 9 - E-MAILED	
Aug. 06, 2013	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	68502
Aug. 06, 2013	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	68502
Aug. 06, 2013	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	68502
Jul. 22, 2013	TEAS SECTION 8 & 9 RECEIVED	
Jan. 27, 2009	CASE FILE IN TICRS	

Sep. 26, 2008	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	69934
Sep. 18, 2008	TEAS SECTION 8 & 15 RECEIVED	
Sep. 15, 2008	AMENDMENT UNDER SECTION 7 – PROCESSED	
Sep. 03, 2008	ASSIGNED TO PARALEGAL	69934
Aug. 08, 2008	TEAS SECTION 7 REQUEST RECEIVED	
Aug. 30, 2006	REVIEW OF CORRESPONDENCE COMPLETE	59315
Jul. 31, 2003	PAPER RECEIVED	
Jul. 25, 2003	PAPER RECEIVED	
Jul. 22, 2003	REGISTERED-PRINCIPAL REGISTER	
Apr. 29, 2003	PUBLISHED FOR OPPOSITION	
Apr. 09, 2003	NOTICE OF PUBLICATION	
Jan. 03, 2003	APPROVED FOR PUB - PRINCIPAL REGISTER	
Dec. 27, 2002	EXAMINER'S AMENDMENT MAILED	
Dec. 20, 2002	ASSIGNED TO EXAMINER	76729
Nov. 22, 2002	CORRESPONDENCE RECEIVED IN LAW OFFICE	
Nov. 22, 2002	PAPER RECEIVED	

TM Staff and Location Information

TM Staff Information - None

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Date in Location: Aug. 06, 2013

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Exhibit 3

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Mark: OLÉ MEXICAN FOODS EST. 1988



US Serial Number: 77426608

Application Filing Date: Mar. 19, 2008

US Registration Number: 4899762

Registration Date: Feb. 16, 2016

Register: Principal

Mark Type: Trademark

TM5 Common Status

LIVE/REGISTRATION/Issued and Active

Descriptor:



The trademark application has been registered with the Office.

Status: A Sections 8 and 15 combined declaration has been accepted and acknowledged.

Status Date: Jul. 15, 2021

Publication Date: Feb. 10, 2009

Mark Information

Mark Literal Elements: OLÉ MEXICAN FOODS EST. 1988

Standard Character Claim: No

Mark Drawing Type: 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of a panel shaped design and a cross-shaped background design that includes a bull; the center panel is white and the right panel is red, with the words "OLÉ MEXICAN FOODS" superimposed on the background design is yellow, brown and gold and the bull and wording are black.

Color Drawing: Yes

Color(s) Claimed: The color(s) red, white, green, yellow, gold, brown and black is/are claimed as a feature of the mark.

Disclaimer: "MEXICAN FOODS" AND "EST. 1988"

Design Search Code(s): 03.07.01 - Steers; Oxen, cows, calves, bulls; Cattle
 03.07.24 - Stylized bovines, deer, antelopes, goats, sheep, pigs, cows, bulls, buffalo, moose
 24.09.25 - Other flags; Bunting (flags); Flags, signal
 24.13.02 - Cross, Greek (equal sides); Greek cross (equal sized lines)
 26.03.21 - Ovals that are completely or partially shaded

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Related Properties Information

Claimed Ownership of US [2969695](#), [3061751](#)

Registrations:

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: tortillas

International Class(es): 030 - Primary Class

U.S Class(es): 046

Class Status: ACTIVE

Basis: 1(a)

First Use: Jan. 2008

Use in Commerce: Jan. 2008

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Filed ITU: No

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: Olé Mexican Foods, Inc.

Owner Address: 6585 Crescent Drive
Norcross, GEORGIA UNITED STATES 30071

Legal Entity Type: CORPORATION

State or Country Where Organized: GEORGIA

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Paul S. Owens

Attorney Primary Email Address: psowens@bellsouth.net

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: Paul S. Owens

PAUL OWENS & ASSOCIATES
PO BOX 15310
ATLANTA, GEORGIA UNITED STATES 30333-0310

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Phone: 404-370-9800

Correspondent e-mail: psowens@bellsouth.net

Correspondent e-mail Yes

Authorized:

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Jul. 15, 2021	NOTICE OF ACCEPTANCE OF SEC. 8 & 15 - E-MAILED	
Jul. 15, 2021	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	76293
Jul. 15, 2021	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	76293
Mar. 08, 2021	TEAS SECTION 8 & 15 RECEIVED	
Feb. 16, 2021	COURTESY REMINDER - SEC. 8 (6-YR) E-MAILED	
Feb. 16, 2016	REGISTERED-PRINCIPAL REGISTER	
Jan. 06, 2016	TTAB RELEASE CASE TO TRADEMARKS	189001
Jan. 06, 2016	OPPOSITION TERMINATED NO. 999999	189001
Sep. 10, 2015	OPPOSITION SUSTAINED NO. 999999	189001
Feb. 25, 2009	OPPOSITION INSTITUTED NO. 999999	189001
Feb. 25, 2009	OPPOSITION PAPERS RECEIVED AT TTAB	
Feb. 10, 2009	PUBLISHED FOR OPPOSITION	
Jan. 21, 2009	NOTICE OF PUBLICATION	
Jan. 08, 2009	LAW OFFICE PUBLICATION REVIEW COMPLETED	74215
Jan. 08, 2009	ASSIGNED TO LIE	74215
Dec. 23, 2008	APPROVED FOR PUB - PRINCIPAL REGISTER	
Dec. 23, 2008	EXAMINER'S AMENDMENT ENTERED	88888
Dec. 23, 2008	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
Dec. 23, 2008	EXAMINERS AMENDMENT E-MAILED	6328
Dec. 23, 2008	EXAMINERS AMENDMENT -WRITTEN	78478
Jul. 02, 2008	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Jul. 02, 2008	NON-FINAL ACTION E-MAILED	6325
Jul. 02, 2008	NON-FINAL ACTION WRITTEN	78478
Jun. 24, 2008	ASSIGNED TO EXAMINER	78478
Mar. 26, 2008	NOTICE OF DESIGN SEARCH CODE MAILED	
Mar. 25, 2008	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None**File Location**

Current Location: TMO LAW OFFICE 117

Date in Location: Jul. 15, 2021

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Exhibit 4

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Mark: OLÉ MEXICAN FOODS EST. 1988



US Serial Number: 77924000

Application Filing Date: Jan. 29, 2010

US Registration Number: 4292655

Registration Date: Feb. 19, 2013

Filed as TEAS Plus: Yes

Currently TEAS Plus: No

Register: Principal

Mark Type: Trademark

TM5 Common Status

LIVE/REGISTRATION/Issued and Active

Descriptor:



The trademark application has been registered with the Office.

Status: A Sections 8 and 15 combined declaration has been accepted and acknowledged.

Status Date: Jun. 07, 2018

Publication Date: Mar. 15, 2011

Notice of Allowance Date: May 10, 2011

Mark Information

Mark Literal Elements: OLÉ MEXICAN FOODS EST. 1988

Standard Character Claim: No

Mark Drawing Type: 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of a panel shaped design and a cross-shaped background design that includes a bull; the center panel is white and the right panel is red, with the words "OLÉ MEXICAN FOODS" superimposed on the background design is yellow, brown and gold and the bull and wording are black.

Color Drawing: Yes

Color(s) Claimed: The color(s) red, white, green, yellow, gold, brown and black is/are claimed as a feature of the mark.

Disclaimer: "MEXICAN FOODS" AND "EST. 1988"

Translation: The English translation of "OLÉ" in the mark is BRAVO.

Design Search Code(s): 03.07.01 - Steers; Oxen, cows, calves, bulls; Cattle
24.13.25 - Other crosses, including ankh, Maltese; Cross, Maltese; Cross, ankh
26.11.13 - Two rectangles; Rectangles (exactly two rectangles)

[Privacy](#) - [Terms](#)

26.11.16 - Rectangles touching or intersecting
 26.11.21 - Rectangles that are completely or partially shaded
 26.17.13 - Underlined words or letters; Overlined words or letters; Letters or words underlined and/or overlined or lines

Related Properties Information

Claimed Ownership of US [2932646](#), [3161729](#)

Registrations:

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: Cheese; Chorizo

International Class(es): 029 - Primary Class

U.S Class(es): 046

Class Status: ACTIVE

Basis: 1(a)

First Use: May 2011

Use in Commerce: May 2011

Basis Information (Case Level)

Filed Use: No

Currently Use: Yes

Filed ITU: Yes

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: Olé Mexican Foods, Inc.

Owner Address: 6585 Crescent Drive
Norcross, GEORGIA UNITED STATES 30071

Legal Entity Type: CORPORATION

State or Country Where Organized: GEORGIA

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Paul S. Owens, Esq.

Attorney Primary Email Address: psowens@bellsouth.net

Attorney Email Authorized: No

Correspondent

Correspondent PAUL S. OWENS, ESQ.
Name/Address: PAUL OWENS & ASSOCIATES
 PO BOX 15310
 ATLANTA, GEORGIA UNITED STATES 30333-0310

Phone: 404-370-9800

Correspondent e-mail: psowens@bellsouth.net

Correspondent e-mail Yes
Authorized:

Domestic Representative - Not Found**Prosecution History**

Date	Description	Proceeding Number
Jun. 07, 2018	NOTICE OF ACCEPTANCE OF SEC. 8 & 15 - E-MAILED	
Jun. 07, 2018	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	76533
Jun. 07, 2018	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	76533
May 24, 2018	TEAS SECTION 8 & 15 RECEIVED	
May 24, 2018	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Feb. 19, 2018	COURTESY REMINDER - SEC. 8 (6-YR) E-MAILED	
Feb. 19, 2013	REGISTERED-PRINCIPAL REGISTER	
Jan. 16, 2013	NOTICE OF ACCEPTANCE OF STATEMENT OF USE E-MAILED	
Jan. 15, 2013	LAW OFFICE REGISTRATION REVIEW COMPLETED	73787
Dec. 19, 2012	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Dec. 19, 2012	STATEMENT OF USE PROCESSING COMPLETE	66154
Dec. 04, 2012	USE AMENDMENT FILED	66154
Dec. 04, 2012	TEAS STATEMENT OF USE RECEIVED	
Nov. 15, 2012	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Nov. 14, 2012	EXTENSION 3 GRANTED	66154
Nov. 10, 2012	EXTENSION 3 FILED	66154
Nov. 12, 2012	TEAS EXTENSION RECEIVED	
May 30, 2012	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
May 29, 2012	EXTENSION 2 GRANTED	66154
May 07, 2012	EXTENSION 2 FILED	66154
May 07, 2012	TEAS EXTENSION RECEIVED	
Nov. 22, 2011	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Nov. 21, 2011	EXTENSION 1 GRANTED	66154
Nov. 10, 2011	EXTENSION 1 FILED	66154
Nov. 15, 2011	CASE ASSIGNED TO INTENT TO USE PARALEGAL	66154
Nov. 10, 2011	TEAS EXTENSION RECEIVED	
May 10, 2011	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	
Mar. 15, 2011	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Mar. 15, 2011	PUBLISHED FOR OPPOSITION	

Feb. 04, 2011	LAW OFFICE PUBLICATION REVIEW COMPLETED	73787
Feb. 03, 2011	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jan. 10, 2011	TEAS/EMAIL CORRESPONDENCE ENTERED	73787
Jan. 10, 2011	CORRESPONDENCE RECEIVED IN LAW OFFICE	73787
Jan. 10, 2011	ASSIGNED TO LIE	73787
Dec. 10, 2010	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Jun. 17, 2010	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Jun. 17, 2010	NON-FINAL ACTION E-MAILED	6325
Jun. 17, 2010	NON-FINAL ACTION WRITTEN	72517
Jun. 16, 2010	REMOVED FROM TEAS PLUS	72517
May 26, 2010	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
May 26, 2010	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
May 26, 2010	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
May 26, 2010	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
May 06, 2010	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
May 06, 2010	NON-FINAL ACTION E-MAILED	6325
May 06, 2010	NON-FINAL ACTION WRITTEN	72517
Apr. 28, 2010	ASSIGNED TO EXAMINER	72517
Feb. 04, 2010	NOTICE OF DESIGN SEARCH CODE MAILED	
Feb. 03, 2010	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Feb. 02, 2010	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: TMEG LAW OFFICE 102

Date in Location: Jun. 07, 2018

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