

ESTTA Tracking number: **ESTTA1124237**

Filing date: **04/01/2021**

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	THE WONDERFUL COMPANY LLC
Granted to Date of previous extension	04/03/2021
Address	11444 WEST OLYMPIC BLVD. LOS ANGELES, CA 90064 UNITED STATES
Attorney information	DANIELLE M. CRIONA, ESQ. ROLL LAW GROUP PC 11444 WEST OLYMPIC BLVD., 7TH FLOOR LOS ANGELES, CA 90064 UNITED STATES Primary Email: danielle.criona@roll.com Secondary Email(s): ipdocketing@roll.com 310-966-8771
Docket Number	211580

**Applicant Information**

Application No.	90159771	Publication date	02/02/2021
Opposition Filing Date	04/01/2021	Opposition Period Ends	04/03/2021
Applicant	Fernandez de Mesa, Leticia 1581 BRICKELL AVE PH203 MIAMI, FL 33129 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 033. First Use: 0 First Use In Commerce: 0  
All goods and services in the class are opposed, namely: Spirits and liqueurs

**Grounds for Opposition**

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

**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	2637053	Application Date	04/24/2001
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Registration Date	10/15/2002	Foreign Priority Date	NONE
Word Mark	POM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2002/04/11 First Use In Commerce: 2002/04/11 FRUIT JUICES		

U.S. Registration No.	3047447	Application Date	10/06/2003
Registration Date	01/24/2006	Foreign Priority Date	NONE
Word Mark	POM		
Design Mark			
Description of Mark	The mark contains the word POM with a heart design in place of the letter "O".		
Goods/Services	Class 031. First use: First Use: 2001/10/15 First Use In Commerce: 2001/10/15 FRESH FRUITS Class 032. First use: First Use: 2002/09/16 First Use In Commerce: 2003/01/13 FRUIT JUICES and FRUIT JUICE CONCENTRATES		

U.S. Registration No.	2960192	Application Date	12/03/2002
Registration Date	06/07/2005	Foreign Priority Date	NONE
Word Mark	POMARITA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2005/02/20 First Use In Commerce: 2005/02/20 Prepared alcoholic cocktail		

U.S. Registration No.	2981525	Application Date	08/20/2003
Registration Date	08/02/2005	Foreign Priority Date	NONE
Word Mark	POMARITA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2005/02/20 First Use In Commerce: 2005/02/20 FRUIT JUICE FOR USE IN CONNECTION WITH PREPARED ALCOHOLIC COCKTAILS		

U.S. Registration No.	2960193	Application Date	12/03/2002
Registration Date	06/07/2005	Foreign Priority Date	NONE
Word Mark	POMTINI		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 2005/02/20 First Use In Commerce: 2005/02/20 Prepared alcoholic cocktail

U.S. Registration No.	2780314	Application Date	12/11/2001
Registration Date	11/04/2003	Foreign Priority Date	NONE
Word Mark	POM WONDERFUL		
Design Mark			
Description of Mark	The mark contains the word "POM", and the word "WONDERFUL" in red, the same redshade of which is also within the heartof the "POM".		
Goods/Services	Class 031. First use: First Use: 2001/10/15 First Use In Commerce: 2001/10/15 FRESH FRUITS Class 032. First use: First Use: 2001/10/15 First Use In Commerce: 2001/10/15 FRUIT JUICES AND FRUIT JUICE CONCENTRATES		

U.S. Application No.	90390442	Application Date	12/17/2020
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	POM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 0 First Use In Commerce: 0 Alcoholic beverages containing fruit; Alcoholic beverages, except beer; Alcoholic carbonated beverages, except beer; Alcoholic fruit beverages; Alcoholic mixed-beverages except beers; Alcoholic tea-based beverage; Pre-mixed alcoholic beverages, other than beer-based		

U.S. Application No.	90391298	Application Date	12/17/2020
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	POM WONDERFUL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 0 First Use In Commerce: 0 Alcoholic beverages containing fruit; Alcoholic beverages, except beer; Alcoholic carbonated beverages, except beer; Alcoholic fruit beverages; Alcoholic mixed-beverages except beers; Alcoholic tea-based beverage; Pre-mixed alcoholic beverages, other than beer-based		

Attachments	POM POM CI 33 90159771 211580 OPPN.pdf(116054 bytes )
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Signature	/Danielle M. Criona/
Name	DANIELLE M. CRIONA, ESQ.
Date	04/01/2021

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

THE WONDERFUL COMPANY LLC	)	Opposition No. _____
	)	
Opposer,	)	Mark: <b>POM POM</b>
	)	
v.	)	Application Serial No. 90159771
	)	
	)	Published in the <i>Official Gazette</i> of
LETICIA FERNANDEZ DE MESA,	)	February 2, 2021
	)	
Applicant.	)	<b>NOTICE OF OPPOSITION</b>

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THE WONDERFUL COMPANY LLC, a Delaware limited liability company located and doing business at 11444 West Olympic Blvd., Los Angeles, CA 90064 (“TWC” or “Opposer”), believes it will be damaged by the registration of the trademark POM POM in International Class 33 for “*Spirits and liqueurs*” (“Applicant’s Goods”), filed on September 4, 2020 in Application Serial No. 90159771 (the “POM POM Application” or the “POM POM Mark”), filed by Leticia Fernandez de Mesa, a United States citizen (“Applicant”), with an address of 1581 Brickell Ave. PH203, Miami, Florida 33129, and hereby opposes the same.

As grounds for this Opposition, TWC alleges:

1. TWC is a privately-held global company dedicated to growing, harvesting, bottling, packaging, offering and/or marketing a diverse range of high-quality and healthy products including fruit juices, fruit teas, fresh fruits, nuts, water and wine through iconic brands, such as Wonderful® Pistachios, Wonderful® Almonds, Wonderful® Halos® mandarins, POM Wonderful® pomegranate products and Wonderful® Sweet Scarletts® grapefruit, among others.



2. One of Opposer’s affiliates, POM Wonderful LLC (“POM Wonderful”), is the largest grower and distributor of pomegranates and pomegranate juices in the United States, and

produces, offers and/or markets pomegranates and pomegranate products such as pomegranate juice, pomegranate teas, pomegranate arils for use as ingredients, fresh pomegranate arils, and fresh pomegranates.

3. POM Wonderful LLC sells pomegranate products to the general consuming public and ingredients to manufacturers in several different industries.

4. Opposer and POM Wonderful LLC are collectively referred to herein as “POM Wonderful”.

5. TWC owns numerous trademarks containing the term POM® for various fruit beverage and fruit related goods, which have been registered with the United States Patent and Trademark Office (“USPTO”) and are licensed to POM Wonderful LLC. The relevant registrations (the “POM Marks”) include, but are not limited to:

<b>Mark</b>	<b>Image</b>	<b>Serial No.</b>	<b>Reg. No.</b>	<b>Classes</b>
POM	Std. Char.	76245687	2637053	32
POM & Design		76553991	3047447	31, 32
POMARITA	Std. Char.	76473207	2960192	33
POMARITA	Std. Char.	76538620	2981525	32
POMTINI	Std. Char.	76473209	2960193	33
POM WONDERFUL & Design		76347919	2780314	31, 32
POM	Std. Char.	90390442		33
POM WONDERFUL	Std. Char.	90391298		33

6. The above registrations are valid, subsisting and owned by Opposer.

7. TWC’s Registration Nos. 2637053, 3047447, 2960192, 2981525, 2960193 and 2780314 are incontestable pursuant to 15 U.S.C. §§1064 and 1115(b).

8. Since prior to Applicant’s September 4, 2020 filing date of its Application filed on an intent-to-use basis, POM Wonderful has offered consumers a variety of goods in connection

with one or more of POM Wonderful's distinctive POM Marks, including but not limited to pure pomegranate juice, pomegranate juice blends, pomegranate teas, pomegranate cocktails, pomegranate mocktails, pomegranate ingredients, pomegranate arils and/or fresh pomegranate fruit.

9. Some of the products offered under the POM Marks are promoted as mixers or, in the case of arils, as garnish for, alcoholic beverages including on Opposer's website at <https://www.pomwonderful.com/recipes/drinks> (last visited March 30, 2021). POM Wonderful has, at times, engaged in cross-promotional marketing campaigns where a coupon for POM Wonderful's 100% pomegranate juice was affixed to a bottle of alcohol along with a recipe for a cocktail made with POM Wonderful's 100% pomegranate juice.

10. Applicant's POM POM Application and Mark is without POM Wonderful's consent or permission.

11. Opposer timely filed a Request for Extension of Time to Oppose the Application with the Trademark Trial and Appeal Board on March 2, 2021. Opposer's request was granted. An Opposition to Applicant's Application must be filed by April 3, 2021. Therefore, this Notice of Opposition is being timely filed.

### **COUNT I – LIKELIHOOD OF CONFUSION**

12. Opposer incorporates its allegations of Paragraphs 1 through 11 herein by reference.

13. Applicant's use of the POM POM Mark on Applicant's beverages is likely to cause confusion, mistake, or deception in that consumers are likely to believe that Applicant's beverage(s) offered under the POM POM mark are sponsored, authorized or licensed by, or in some other way legitimately connected with POM Wonderful, are POM Wonderful products or

are made with POM Wonderful ingredients.

**COUNT II – DILUTION**

14. Opposer incorporate its allegations of Paragraphs 1 through 13 herein by reference.

15. Prior to Applicant’s September 4, 2020 filing date of its Application filed on an intent-to-use basis, Opposer’s POM® and POM WONDERFUL® Marks became distinctive and famous in accordance with 15 U.S.C. § 1125(c).

16. Applicant’s registration and use of the POM POM Mark for Applicant’s Goods is likely to cause dilution of Opposer’s famous POM® and POM WONDERFUL® Marks by impairing the distinctiveness of the POM® and POM WONDERFUL® Marks (blurring).

WHEREFORE, Opposer respectfully request that this Opposition be sustained and that Application Serial No. 90159771 be denied registration and that such other and further relief as is deemed just and proper be granted.

Please debit our Deposit Account No. 502934 for the \$600 filing fee per class and for any additional necessary fees.

The undersigned, Danielle M. Criona, is an active member of the bar of the highest court of a U.S. state, the District of Columbia, or any U.S. Commonwealth or territory, and holds California Bar Membership No. 204074 with an admission date of 1999.

Please address all correspondence to Danielle M. Criona, Esq., Special Counsel at Roll Law Group P.C., 11444 West Olympic Boulevard, Los Angeles, CA 90064.

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Respectfully submitted,

The Wonderful Company LLC

Date: April 1, 2021

By: /s/ Danielle M. Criona /s/

Danielle M. Criona, Esq.

Daniel L. Rogna, Esq.

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*Attorneys for Opposer*