

ESTTA Tracking number: **ESTTA1193562**

Filing date: **02/28/2022**

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	DiscoverFresh Foods, Inc.
Granted to date of previous extension	03/02/2022
Address	600 S MAIN STREET, 3RD FLOOR GREENVILLE, SC 29601 UNITED STATES
Attorney information	RANDEL S. SPRINGER WOMBLE BOND DICKINSON (US) LLP ONE WEST FOURTH STREET WINSTON-SALEM, NC 27101 UNITED STATES Primary email: TMDocketing@wbd-us.com Secondary email(s): Randy.Springer@wbd-us.com, Jacob.Wharton@wbd-us.com, Carla.Clements@wbd-us.com, Trademarkswinston@wbd-us.com 336-721-3747
Docket no.	60800.01.2

Applicant information

Application no.	90562339	Publication date	11/02/2021
Opposition filing date	02/28/2022	Opposition period ends	03/02/2022
Applicant	Chef Christopher's, LLC 364 GOODMAN ROAD PELAHATCHIE, MS 39145 UNITED STATES		

Goods/services affected by opposition

Class 030. First Use: None First Use In Commerce: None
Opposed goods and services in the class: Dipping sauce

Grounds for opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
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Mark cited by opposer as basis for opposition

U.S. application no.	90031329	Application date	07/01/2020
Registration date	NONE	Foreign priority	NONE

		date	
Word mark	TASTE OF THE SOUTH		
Design mark	<p style="text-align: center;">TASTE OF THE SOUTH</p>		
Description of mark	NONE		
Goods/services	Class 029. First use: First Use: May 15, 2019 First Use In Commerce: May 15, 2019 Cheese spreads; Chicken salad; Dairy-based dips		

Attachments	90031329#TMSN.png(bytes) Notice of Oppositon - PUT A TASTE OF THE SOUTH IN YO MOUTH.pdf(155363 bytes)
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Signature	/Jacob S. Wharton/
Name	Jacob S. Wharton
Date	02/28/2022

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

In the matter of Application Serial Number 90/562,339
Mark: “PUT A TASTE OF THE SOUTH IN YO MOUTH”
Filed: March 5, 2021
Published: November 2, 2021

DISCOVERFRESH FOODS, INC.)	
)	
Opposer)	
)	
v.)	Opposition No. _____
)	
CHEF CHRISTOPHER’S, LLC)	
)	
Applicant.)	

NOTICE OF OPPOSITION

DiscoverFresh Foods, Inc., a corporation organized and existing under the laws of South Carolina, with a principal place of business at 600 S Main Street, 3rd floor, Greenville, South Carolina 29601 (“Opposer”), believes that it would be damaged by the registration of the mark shown in Application Serial No. 90/562,339 (“Applicant’s Application”) in connection with the goods specified therein, filed by Chef Christopher’s, LLC, a limited liability company organized and existing under the laws of Indiana, with an address of 364 Goodman Road, Pelahatchie, Mississippi 39145 (“Applicant”). Opposer hereby opposes such registration.

A. Applicant’s Application

1. Applicant seeks to register the mark “PUT A TASTE OF THE SOUTH IN YO MOUTH” (“Applicant’s Mark”) in connection with *dipping sauce* (“Applicant’s Goods”).
2. Applicant’s Application was filed on an intent-to-use basis on March 5, 2021.
3. Applicant’s Application was published for opposition on November 2, 2021.

4. On November 29, 2021, the Board granted Opposer's request for a 90-day extension of time, until March 2, 2022, to oppose Applicant's Application.

5. This Notice of Opposition is timely submitted.

B. Opposer's Rights in Opposer's Mark

6. Prior to the filing date of Applicant's Application, Opposer began using the mark TASTE OF THE SOUTH ("Opposer's Mark") in connection with, at the least, *cheese spreads, chicken salad and dairy-based dips* ("Opposer's Goods").

7. Opposer owns a pending application ("Opposer's Application") for Opposer's Mark, under Serial No. 90/031,329 in connection with Opposer's Goods.¹

8. Opposer has spent substantial amounts of time, money, and effort in developing, marketing, and providing Opposer's Goods under Opposer's Mark. As a result, Opposer has built up extensive goodwill in, and owns extensive common-law rights in, Opposer's Mark.

C. Priority and Likelihood of Confusion

9. Upon information and belief, Applicant acquired no potential rights in Applicant's Mark prior to March 5, 2021, the filing date of Applicant's intent-to-use application to register Applicant's Mark.

10. Opposer's rights in Opposer's Mark date back to at least as early as May 15, 2019, the date of first use of the mark claimed in International Class 30 in Opposer's Application Serial No. 90/031,329.

¹ Opposer's Application was filed in the name of "Duke Sandwich Productions, LLC" The initial filing included an error, namely that "Duke Sandwich Productions, **LLC**" was supposed to have been "Duke Sandwich Productions, **Inc.**" Opposer corrected this error by way of amendment on November 1, 2021. By the time opposer filed its request for a 90-day extension of time in which to oppose Opposer's Mark, Duke Sandwich Productions, Inc. had changed its name to DiscoveryFresh Foods, Inc. Specifically, the name change occurred on July 7, 2021.

11. Consequently, upon information and belief, Opposer's rights in Opposer's Mark precede any rights that Applicant could claim in Applicant's Mark.

12. Applicant's Mark contains Opposer's mark in its entirety, therefore is visually and phonetically similar to Opposer's Mark.

13. Applicant's Mark and Opposer's Mark create similar commercial impressions.

14. Applicant's Goods are related to, similar to, complementary with, and/or overlap with Opposer's Goods.

15. Both dips and dipping sauces are used as condiments, which consumers dip food into for flavor.

16. Neither Opposer's Application nor Applicant's Application are restricted as to customers, distribution channels, or advertising and promotional media.

17. Applicant's Goods, in connection with which Applicant uses or intends to use Applicant's Mark, may be marketed to the same potential members of the public in the same relevant markets as Opposer's Goods under Opposer's Mark.

18. Applicant's Goods, in connection with which Applicant uses or intends to use Applicant's Mark, may be advertised using the same or similar media as the media used by Opposer to advertise Opposer's Goods under Opposer's Mark.

19. Applicant's Goods, in connection with which Applicant uses or intends to use Applicant's Mark, may be provided to the same or overlapping members of the public as Opposer's Goods provided under Opposer's Mark.

20. Because of the similarity of the parties' marks, goods, relevant markets, advertising, channels of trade, purchasers, and/or users, there would be a strong likelihood of confusion if

Applicant were permitted to register Applicant's Mark for use in connection with Applicant's Goods.

21. Consumers who encounter Applicant's Mark are likely to believe that Applicant and/or Applicant's Goods offered under Applicant's Mark are authorized by, sponsored by, affiliated with, related to, or the same as Opposer and/or Opposer's Goods under Opposer's Mark. Any fault or defect in Applicant's Goods would reflect negatively upon and injure Opposer.

22. Applicant's Mark so closely resembles Opposer's Mark that Applicant's Mark is likely, when used in connection with Applicant's Goods, to cause confusion, mistake, or deception in the minds of consumers as to the origin or source of Applicant's Goods in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), with consequent injury to Opposer and the public.

D. Conclusion

23. For the foregoing reasons, Opposer prays that Applicant's application Serial No. 90/562,339 be rejected and the registration of the mark therein shown for the goods therein specified be refused and denied. In addition, Opposer prays for such further or alternative relief as the Board may find appropriate.

Opposer respectfully submits this Notice of Opposition, along with the \$600 filing fee, on February 28, 2022.

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

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