

# Trademark/Service Mark Application, Principal Register

Serial Number: 77383064

Filing Date: 01/29/2008

The table below presents the data as entered.

Input Field	Entered
<b>SERIAL NUMBER</b>	77383064
<b>MARK INFORMATION</b>	
*MARK	<a href="#">PANTHERADE</a>
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	PANTHERADE
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
<b>APPLICANT INFORMATION</b>	
*OWNER OF MARK	Super Bakery, Incorporated
*STREET	5700 Corporate Drive
INTERNAL ADDRESS	Suite 455
*CITY	Pittsburgh
*STATE (Required for U.S. applicants)	Pennsylvania
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	15237
<b>LEGAL ENTITY INFORMATION</b>	
TYPE	corporation
STATE/COUNTRY OF INCORPORATION	Pennsylvania

<b>GOODS AND/OR SERVICES AND BASIS INFORMATION</b>	
<b>*INTERNATIONAL CLASS</b>	032
<b>*IDENTIFICATION</b>	Sports drinks and performance drinks
<b>FILING BASIS</b>	SECTION 1(b)
<b>ATTORNEY INFORMATION</b>	
<b>NAME</b>	John W. McIlvaine
<b>ATTORNEY DOCKET NUMBER</b>	4927-080353
<b>FIRM NAME</b>	The Webb Law Firm
<b>STREET</b>	436 Seventh Avenue
<b>INTERNAL ADDRESS</b>	700 Koppers Building
<b>CITY</b>	Pittsburgh
<b>STATE</b>	Pennsylvania
<b>COUNTRY</b>	United States
<b>ZIP/POSTAL CODE</b>	15219
<b>PHONE</b>	412-471-8815
<b>FAX</b>	412-471-4094
<b>EMAIL ADDRESS</b>	webblaw@webblaw.com
<b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes
<b>OTHER APPOINTED ATTORNEY</b>	William H. Logsdon, Registration No. 22,132; Russell D. Orkin, Registration No. 25,363; David C. Hanson, Registration No. 23,024; Richard L. Byrne, Registration No. 28,498; Kent E. Baldauf, Registration No. 25,826; Paul M. Reznick, Registration No. 33,059; John W. McIlvaine, Registration No. 34,219; Julie W. Meder, Registration No. 36,216; Lester N. Fortney, Registration No. 38,141; Kent E. Baldauf, Jr., Registration No. 36,082; Kirk M. Miles, Registration No. 37,891; Randall A. Notzen, Registration No. 36,882; James G. Porcelli, Registration No. 33,757; Christian E. Schuster, Registration No. 43,908; Ann M. Cannoni, Registration No. 35,972; Nathan J. Prepelka, Registration No. 43,016; J. Matthew Pritchard,

	Registration No. 46,228; Darrell E. Williams, Registration No. 45,222; Patricia A. Olosky, Registration No. 53,411; Alexander Detschelt, Registration No. 50,261; Lara A. Northrop, Registration No. 55,502; James J. Bosco, Jr., Registration No. 51,489; Thomas C. Wolski, Registration No. 55,739; Taressa J. Fenus, Registration No. 60,792; Emily A. Danchuk; and John W. Zerr, Registration No. 56,009
<b>CORRESPONDENCE INFORMATION</b>	
<b>NAME</b>	John W. McIlvaine
<b>FIRM NAME</b>	The Webb Law Firm
<b>STREET</b>	436 Seventh Avenue
<b>INTERNAL ADDRESS</b>	700 Koppers Building
<b>CITY</b>	Pittsburgh
<b>STATE</b>	Pennsylvania
<b>COUNTRY</b>	United States
<b>ZIP/POSTAL CODE</b>	15219
<b>PHONE</b>	412-471-8815
<b>FAX</b>	412-471-4094
<b>EMAIL ADDRESS</b>	webblaw@webblaw.com
<b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes
<b>FEE INFORMATION</b>	
<b>NUMBER OF CLASSES</b>	1
<b>FEE PER CLASS</b>	325
<b>*TOTAL FEE DUE</b>	325
<b>*TOTAL FEE PAID</b>	325
<b>SIGNATURE INFORMATION</b>	
<b>SIGNATURE</b>	/JWMc/
<b>SIGNATORY'S NAME</b>	John W. McIlvaine, Reg. No. 34,219
<b>SIGNATORY'S POSITION</b>	Attorney of record

DATE SIGNED

01/29/2008

PTO Form 1478 (Rev 9/2006)

OMB No. 0651-0009 (Exp 12/31/2008)

## Trademark/Service Mark Application, Principal Register

**Serial Number: 77383064**

**Filing Date: 01/29/2008**

### To the Commissioner for Trademarks:

**MARK:** PANTHERADE (Standard Characters, see [mark](#))

The literal element of the mark consists of PANTHERADE.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Super Bakery, Incorporated, a corporation of Pennsylvania, having an address of  
Suite 455,  
5700 Corporate Drive  
Pittsburgh, Pennsylvania 15237  
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

International Class 032: Sports drinks and performance drinks

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

The applicant hereby appoints John W. McIlvaine and William H. Logsdon, Registration No. 22,132; Russell D. Orkin, Registration No. 25,363; David C. Hanson, Registration No. 23,024; Richard L. Byrne, Registration No. 28,498; Kent E. Baldauf, Registration No. 25,826; Paul M. Reznick, Registration No. 33,059; John W. McIlvaine, Registration No. 34,219; Julie W. Meder, Registration No. 36,216; Lester N. Fortney, Registration No. 38,141; Kent E. Baldauf, Jr., Registration No. 36,082; Kirk M. Miles, Registration No. 37,891; Randall A. Notzen, Registration No. 36,882; James G. Porcelli, Registration No. 33,757; Christian E. Schuster, Registration No. 43,908; Ann M. Cannoni, Registration No. 35,972; Nathan J. Prepelka, Registration No. 43,016; J. Matthew Pritchard, Registration No. 46,228; Darrell E. Williams, Registration No. 45,222; Patricia A. Olosky, Registration No. 53,411; Alexander Detschelt, Registration No. 50,261; Lara A. Northrop, Registration No. 55,502; James J. Bosco, Jr., Registration No. 51,489; Thomas C. Wolski, Registration No. 55,739; Taressa J. Fenus, Registration No. 60,792; Emily A. Danchuk; and John W. Zerr, Registration No. 56,009 of The Webb Law Firm

700 Koppers Building  
436 Seventh Avenue  
Pittsburgh, Pennsylvania 15219  
United States

to submit this application on behalf of the applicant. The attorney docket/reference number is 4927-080353.

Correspondence Information: John W. McIlvaine

700 Koppers Building  
436 Seventh Avenue  
Pittsburgh, Pennsylvania 15219  
412-471-8815(phone)  
412-471-4094(fax)  
webblaw@webblaw.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

### **Declaration**

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /JWMc/ Date Signed: 01/29/2008  
Signatory's Name: John W. McIlvaine, Reg. No. 34,219  
Signatory's Position: Attorney of record

RAM Sale Number: 8334  
RAM Accounting Date: 01/29/2008

Serial Number: 77383064  
Internet Transmission Date: Tue Jan 29 13:38:34 EST 2008  
TEAS Stamp: USPTO/BAS-74.94.192.131-2008012913383408  
1928-77383064-400cd258f5c4b5053b38017993  
e78dcb888-CC-8334-20080129133118829793

PANTHERADE

## Response to Office Action

**The table below presents the data as entered.**

Input Field	Entered
<b>SERIAL NUMBER</b>	77383064
<b>LAW OFFICE ASSIGNED</b>	LAW OFFICE 108
<b>MARK SECTION (no change)</b>	
<b>ARGUMENT(S)</b>	
<p><u>REMARKS</u></p> <p>This is in response to the Office Action dated May 14, 2008. The Examining Attorney's comments have been carefully considered. Applicant herein requests amendment of this trademark application in accordance with the amendments entered elsewhere in this electronic reply.</p> <p>Applicant acknowledges with appreciation the Examining Attorney's indication that the search revealed no pending or registered mark which would bar registration of Applicant's proposed mark. The Examining Attorney has required amendment to identification of the goods.</p> <p><u>Identification of Goods</u></p> <p>The Examining Attorney has objected to the identification of goods as being indefinite. Specifically, the Examining Attorney has required clarification of the phrase "performance drinks." Applicant has amended the identification of goods to delete "performance drinks." The identification of goods has accordingly been amended to recite:</p> <p>"Sports drinks" in International Class 032.</p> <p><u>Summary</u></p> <p>In view of the foregoing, it is respectfully submitted that this application is in condition for acceptance pursuant to Section 1(b) of the Trademark Act. Applicant respectfully requests entry of the amendment to the identification of goods, and acceptance of the application.</p>	
<b>GOODS AND/OR SERVICES SECTION (current)</b>	
<b>INTERNATIONAL CLASS</b>	032
<b>DESCRIPTION</b>	Sports drinks and performance drinks
<b>FILING BASIS</b>	Section 1(b)
<b>GOODS AND/OR SERVICES SECTION (proposed)</b>	
<b>INTERNATIONAL CLASS</b>	032

DESCRIPTION	Sports drinks
FILING BASIS	Section 1(b)
<b>SIGNATURE SECTION</b>	
DECLARATION SIGNATURE	The filing Attorney has elected not to submit the signed declaration, believing no supporting declaration is required under the <i>Trademark Rules of Practice</i> .
RESPONSE SIGNATURE	/JWMc/
SIGNATORY'S NAME	John W. McIlvaine, Reg. No. 34,219; Atty Docket No. 4927-080353
SIGNATORY'S POSITION	Attorney of record
DATE SIGNED	07/02/2008
AUTHORIZED SIGNATORY	YES
<b>FILING INFORMATION SECTION</b>	
SUBMIT DATE	Wed Jul 02 08:04:48 EDT 2008
TEAS STAMP	USPTO/ROA-74.94.192.131-2 0080702080448100954-77383 064-420f92d3b5fd4b236941a f9b40907a89df-N/A-N/A-200 80702080122653390

**Response to Office Action  
To the Commissioner for Trademarks:**

Application serial no. **77383064** has been amended as follows:

**ARGUMENT(S)**

**In response to the substantive refusal(s), please note the following:**

REMARKS

This is in response to the Office Action dated May 14, 2008. The Examining Attorney's comments have been carefully considered. Applicant herein requests amendment of this trademark application in accordance with the amendments entered elsewhere in this electronic reply.



Applicant acknowledges with appreciation the Examining Attorney's indication that the search revealed no pending or registered mark which would bar registration of Applicant's proposed mark. The Examining Attorney has required amendment to identification of the goods.

#### Identification of Goods

The Examining Attorney has objected to the identification of goods as being indefinite. Specifically, the Examining Attorney has required clarification of the phrase "performance drinks." Applicant has amended the identification of goods to delete "performance drinks." The identification of goods has accordingly been amended to recite:

"Sports drinks" in International Class 032.

#### Summary

In view of the foregoing, it is respectfully submitted that this application is in condition for acceptance pursuant to Section 1(b) of the Trademark Act. Applicant respectfully requests entry of the amendment to the identification of goods, and acceptance of the application.

#### **CLASSIFICATION AND LISTING OF GOODS/SERVICES**

**Applicant proposes to amend the following class of goods/services in the application:**

**Current:** Class 032 for Sports drinks and performance drinks

Original Filing Basis:

**Filing Basis: Section 1(b), Intent to Use:** The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

**Proposed:** Class 032 for Sports drinks

**Filing Basis: Section 1(b), Intent to Use:** The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

#### **SIGNATURE(S)**

##### **Declaration Signature**

I hereby elect to bypass the submission of a signed declaration, because I believe a declaration is not required by the rules of practice. I understand that the examining attorney could still, upon later review, require a signed declaration.

##### **Response Signature**

Signature: /JWMc/ Date: 07/02/2008

Signatory's Name: John W. McIlvaine, Reg. No. 34,219; Atty Docket No. 4927-080353

Signatory's Position: Attorney of record

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the

applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

Serial Number: 77383064

Internet Transmission Date: Wed Jul 02 08:04:48 EDT 2008

TEAS Stamp: USPTO/ROA-74.94.192.131-2008070208044810

0954-77383064-420f92d3b5fd4b236941af9b40

907a89df-N/A-N/A-20080702080122653390

Side - 1

**NOTICE OF PUBLICATION UNDER §12(a)**

**MAILING DATE: Aug 20, 2008**

**PUBLICATION DATE: Sep 9, 2008**

The mark identified below will be published in the Official Gazette on Sep 9, 2008. Any party who believes they will be damaged by registration of the mark may oppose its registration by filing an opposition to registration or a request to extend the time to oppose within thirty (30) days from the publication date on this notice. If no opposition is filed within the time specified by law, the USPTO may issue a Notice of Allowance. To view the Official Gazette online or to order a paper copy, visit the USPTO website at <http://www.uspto.gov/web/trademarks/tmog/> any time within the five-week period after the date of publication. You may also order a printed version from the U.S. Government Printing Office (GPO) at <http://bookstore.gpo.gov> or 202-512-1800. To check the status of your application, go to <http://tarr.uspto.gov/>.

**SERIAL NUMBER: 77383064**

**MARK: PANTHERADE**

**OWNER: Super Bakery, Incorporated**

Side - 2

UNITED STATES PATENT AND TRADEMARK OFFICE  
COMMISSIONER FOR TRADEMARKS  
P.O. BOX 1451  
ALEXANDRIA, VA 22313-1451

FIRST-CLASS  
MAIL  
U.S POSTAGE  
PAID

JOHN W. MCILVAINE  
THE WEBB LAW FIRM  
436 SEVENTH AVENUE  
700 KOPPERS BUILDING  
PITTSBURGH, PA 15219

ESTTA Tracking number: **ESTTA270895**

Filing date: **03/09/2009**

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	University of Pittsburgh
Granted to Date of previous extension	03/08/2009
Address	1710 Cathedral of Learning Pittsburgh, PA 15260 UNITED STATES

Attorney information	Alicia Grahn Jones KILPATRICK STOCKTON LLP 1100 Peachtree Street, Suite 2800 Atlanta, GA 30309 UNITED STATES tmadmin@kilpatrickstockton.com, chenn@kilpatrickstockton.com, aljones@kilpatrickstockton.com Phone:404-815-6500
----------------------	--

**Applicant Information**

Application No	77383064	Publication date	09/09/2008
Opposition Filing Date	03/09/2009	Opposition Period Ends	03/08/2009
Applicant	Super Bakery, Incorporated Suite 455 5700 Corporate Drive Pittsburgh, PA 15237 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 032. All goods and services in the class are opposed, namely: Sports drinks
--

**Applicant Information**

Application No	77574589	Publication date	02/10/2009
Opposition Filing Date	03/09/2009	Opposition Period Ends	03/12/2009
Applicant	Super Bakery, Incorporated Suite 455 5700 Corporate Drive Pittsburgh, PA 15237 UNITED STATES		


**Goods/Services Affected by Opposition**


Class 032. All goods and services in the class are opposed, namely: Sports drinks and fruit drinks
---

## Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

## Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3204527	Application Date	04/18/2005
Registration Date	01/30/2007	Foreign Priority Date	NONE
Word Mark	PITT PANTHERS		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 025. First use: First Use: 2005/10/21 First Use In Commerce: 2005/10/21 Clothing, namely, T-shirts, sweatshirts, collared shirts, hooded sweatshirts, sweatpants, shorts, socks, sweaters, hats, caps, and neckties</p> <p>Class 041. First use: First Use: 2006/03/31 First Use In Commerce: 2006/03/31 Educational Services at the University level namely, providing courses of instruction at the undergraduate, graduate, postgraduate and professional level, and Entertainment Services, namely, organizing, arranging and conducting athletic contests, exhibitions, and clinics</p>		

U.S. Registration No.	3232178	Application Date	12/05/2005
Registration Date	04/24/2007	Foreign Priority Date	NONE
Word Mark	THE PANTHER PITT		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 024. First use: First Use: 2003/10/10 First Use In Commerce: 2003/10/10 Towels		
----------------	---	--	--

U.S. Registration No.	3269771	Application Date	08/09/2005
-----------------------	---------	------------------	------------

Registration Date	07/24/2007	Foreign Priority Date	NONE
-------------------	------------	-----------------------	------

Word Mark	PANTHER CLUB		
-----------	--------------	--	--

Design Mark			
-------------	--	--	--

Description of Mark	NONE		
---------------------	------	--	--

Goods/Services	Class 025. First use: First Use: 2004/06/30 First Use In Commerce: 2004/06/30 Shirts, namely, T-shirts, golf shirts, football jerseys, sweatshirts, baseball shirts, long-sleeve shirts; pants, namely, shorts and sweatpants; caps, hats, visors, jackets, gloves, socks, neckties, wristbands and headbands		
----------------	--	--	--

U.S. Registration No.	3328277	Application Date	02/23/2007
-----------------------	---------	------------------	------------

Registration Date	11/06/2007	Foreign Priority Date	NONE
-------------------	------------	-----------------------	------

Word Mark	PITT PANTHER CLUB		
-----------	-------------------	--	--

Design Mark			
-------------	--	--	--


Description of Mark	NONE		
---------------------	------	--	--


Goods/Services	Class 036. First use: First Use: 2007/02/05 First Use In Commerce: 2007/02/05 Fundraising for university athletics		
----------------	---	--	--

U.S. Registration No.	3392339	Application Date	10/20/2006
-----------------------	---------	------------------	------------


Registration Date	03/04/2008	Foreign Priority Date	NONE
-------------------	------------	-----------------------	------

Word Mark	PITT PANTHER GAME PLAN		
-----------	------------------------	--	--

Design Mark	
Description of Mark	NONE
Goods/Services	Class 018. First use: First Use: 2006/05/31 First Use In Commerce: 2006/05/31 Backpacks and book bags Class 025. First use: First Use: 2006/02/07 First Use In Commerce: 2006/02/07 Clothing, namely, collared shirts and tee-shirts Class 035. First use: First Use: 2006/02/07 First Use In Commerce: 2006/02/07 Promoting personal participation in university educational, entertainment, sporting and cultural activities Class 036. First use: First Use: 2006/07/31 First Use In Commerce: 2006/07/31 Charitable university fund raising

U.S. Registration No.	3396838	Application Date	12/22/2004
Registration Date	03/18/2008	Foreign Priority Date	NONE
Word Mark	PANTHER CLUB		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 2004/11/22 First Use In Commerce: 2004/11/22 Fundraising for university athletics directed toward supporters of the University of Pittsburgh athletics		

U.S. Registration No.	3584062	Application Date	08/09/2007
Registration Date	03/03/2009	Foreign Priority Date	NONE
Word Mark	NONE		

Design Mark	
Description of Mark	The mark consists of design of a panther head.
Goods/Services	Class 021. First use: First Use: 2007/07/31 First Use In Commerce: 2007/07/31 Coffee mugs and drinking glasses Class 024. First use: First Use: 2007/07/31 First Use In Commerce: 2007/07/31 Golf towels Class 028. First use: First Use: 2007/12/15 First Use In Commerce: 2007/12/15 Basketballs, and footballs

U.S. Registration No.	2203327	Application Date	06/30/1997
Registration Date	11/10/1998	Foreign Priority Date	NONE

Word Mark	PITTSBURGH
-----------	------------


Design Mark	
-------------	---

Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1997/09/01 First Use In Commerce: 1997/09/01 clothing, namely, T-shirts, sweatshirts, hats, caps, jackets, warmup suits, shorts Class 041. First use: First Use: 1997/09/01 First Use In Commerce: 1997/09/01 [ intercollegiate and intracollegiate sports exhibitions, competitions and games ]


U.S. Registration No.	2755637	Application Date	08/08/2002
Registration Date	08/26/2003	Foreign Priority Date	NONE


Word Mark	PITTSBURGH
-----------	------------




Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2002/03/31 First Use In Commerce: 2002/03/31 Ice Cream


U.S. Registration No.	1240632	Application Date	03/25/1982
Registration Date	05/31/1983	Foreign Priority Date	NONE
Word Mark	UNIVERSITY OF PITTSBURGH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 1908/00/00 First Use In Commerce: 1908/00/00 Educational Services at the University Level Including Undergraduate, Graduate, Postgraduate and Professional Educational Services, and Entertainment Services Including Organizing, Promoting & Participating in Athletic Contests, Exhibitions and Clinics		

U.S. Registration No.	3167642	Application Date	04/20/2005
Registration Date	11/07/2006	Foreign Priority Date	NONE
Word Mark	UNIVERSITY OF PITTSBURGH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1976/12/15 First Use In Commerce: 1976/12/15 Tee-shirts, sweatshirts, collared shirts, shorts, sweatshirts		

U.S. Registration No.	2235254	Application Date	06/30/1997
Registration Date	03/23/1999	Foreign Priority Date	NONE
Word Mark	PITTSBURGH PANTHERS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1997/12/15 First Use In Commerce: 1997/12/15 clothing, namely, T-shirts, sweatshirts, hats, caps, jackets Class 041. First use: First Use: 1997/12/15 First Use In Commerce: 1997/12/15 intercollegiate and intracollegiate sports exhibitions, competitions and games		

U.S. Registration No.	2736342	Application Date	08/07/2002
Registration Date	07/15/2003	Foreign Priority Date	NONE
Word Mark	PITTSBURGH PANTHERS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2002/03/31 First Use In Commerce: 2002/03/31 Ice Cream		

U.S. Registration No.	2844537	Application Date	06/13/2003
Registration Date	05/25/2004	Foreign Priority Date	NONE
Word Mark	PITTSBURGH PANTHERS TEAM STORE WORLD HEADQUARTERS FOR PANTHERS MERCHANDISE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 2002/12/20 First Use In Commerce: 2002/12/20 Internet and retail store services featuring articles bearing indicia related to the University of Pittsburgh

Attachments	78610944#TMSN.jpeg ( 1 page )( bytes ) 76651313#TMSN.gif ( 1 page )( bytes ) 78688732#TMSN.jpeg ( 1 page )( bytes ) 76673056#TMSN.gif ( 1 page )( bytes ) 76667812#TMSN.gif ( 1 page )( bytes ) 76626236#TMSN.gif ( 1 page )( bytes ) 77251342#TMSN.jpeg ( 1 page )( bytes ) 75316757#TMSN.gif ( 1 page )( bytes ) 76439524#TMSN.gif ( 1 page )( bytes ) 78613042#TMSN.jpeg ( 1 page )( bytes ) 75316846#TMSN.gif ( 1 page )( bytes ) 76438303#TMSN.gif ( 1 page )( bytes ) 76522605#TMSN.gif ( 1 page )( bytes ) TM - PANTHERADE and TM - PITTSBURGHAE - combined Notice of Opposition.pdf ( 43 pages )(1116152 bytes )
-------------	---

### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/agj/
Name	Alicia Grahn Jones
Date	03/09/2009

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

THE UNIVERSITY OF PITTSBURGH	)	
OF THE COMMONWEALTH	)	
SYSTEM OF HIGHER EDUCATION,	)	
	)	
Opposer,	)	In the matter of Application
v.	)	Serial Nos. 77/383,064 and 77/574,589
	)	for the mark PANTHERADE and
	)	PITTSBURGHADE
	)	
	)	
SUPER BAKERY, INCORPORATED,	)	
	)	
	)	
Applicant.	)	

**COMBINED NOTICE OF OPPOSITION**

Opposer The University of Pittsburgh of the Commonwealth System for Higher Education (“Opposer” or the “University”), a Pennsylvania non-profit corporation located at 4200 Fifth Ave, Pittsburgh, Pennsylvania 15260, believes it will be damaged by the registration of the marks PANTHERADE (Serial No. 77/383,064) and PITTSBURGHADE (Serial No. 77/574,589), and opposes the same pursuant to 15 U.S.C. § 1063 and 37 C.F.R. §§ 2.101, 2.04(a). The grounds for this opposition are as follows:

1. On information and belief, on January 29, 2008, Applicant Super Bakery, Incorporated (“Applicant”) filed an intent-to-use application to register the mark PANTHERADE (Serial No. 77/383,064) for use in connection with “sports drinks and performance drinks” in International Class 32. Applicant amended the recitation of goods in the application to “sports drinks.”

2. On September 19, 2008, Applicant filed an intent-to-use application to register the mark PITTSBURGHADE (Serial No. 77/574,589) for use in connection with “sports drinks and fruit drinks” in International Class 32. Applicant’s PANTHERADE and PITTSBURGHADE marks are collectively referred to as “Applicant’s Marks.”

3. Applicant owns at least twenty pending applications to register marks that incorporate the nickname or mascot trademarks of well-known universities and colleges in addition to the letter string "ADE" for use in connection with sports drinks. Attached as **Exhibit 1** is a chart reflecting Applicant's applications that incorporate collegiate nickname or mascot trademarks. Applicant is attempting to register marks that trade on the goodwill and fame of various colleges and universities as well as professional sports teams across the United States.

4. The application for Applicant's PANTHERADE mark was first published for opposition in the *Official Gazette* dated September 9, 2008. Opposer timely filed extensions of time to oppose this application, and thus is allowed until March 9, 2008 to file this Notice of Opposition.

5. The application for Applicant's PITTSBURGHADE mark was first published for opposition in the *Official Gazette* dated February 10, 2009. Opposer timely filed extensions of time to oppose this application, and thus is allowed until June 10, 2009 to file this Notice of Opposition.

6. The University was founded in 1787. In 2007, the University was ranked 19<sup>th</sup> among public universities in the U.S. and 57<sup>th</sup> among all national universities. In 2006, *Newsweek* ranked the University 37<sup>th</sup> in its "The Top 100 Global Universities." The University's total enrollment is 33,898 students, with more than 27,000 students enrolled at the Pittsburgh campus. The University has nearly 169,000 alumni living in all 50 states and 4 territories and 117 foreign countries.

7. The University adopted a Panther as the University's mascot in 1909, making it the first university or college to adopt a Panther as its mascot. The University's athletic department, and its many teams and organizations use the PANTHER mark, which is the University's mascot and athletic identity.

8. The University is a member of the Big East Conference, which participates in the NCAA Division I. The University has seventeen varsity sports teams, which are all referred to as either the PITTSBURGH PANTHERS or PITT PANTHERS. The University's athletic teams have enjoyed tremendous success and *Sports Illustrated* ranked the athletic program 17<sup>th</sup> among all U.S. universities in terms of overall strength. The University's football team is among the top schools in all-time wins and has claimed nine National Championships. The University's basketball team has also had great success. Since 2001, the University's basketball team has achieved seven straight NCAA tournament appearances, four Sweet Sixteen appearances, three Big East regular season championships, two Big East Tournament Championships, and six Big East Tournament Championship game appearances.

9. For decades (and well before Applicant adopted its PANTHERADE and PITTSBURGHADE marks), the University has licensed its PANTHER and PITTSBURGH trademarks in connection with a variety of products. The University's licensed products bearing the PANTHER and PITTSBURGH marks are sold across the United States.

10. Opposer owns a federal registration for the mark PITT PANTHERS (Reg. No. 3,204,527) for "clothing, namely, T-shirts, sweatshirts, collared shirts, hooded sweatshirts, sweatpants, shorts, socks, sweaters, hats, caps, and neckties" in International Class 25 and "educational services at the University level, namely, providing courses of instruction at the undergraduate, graduate, postgraduate and professional level, and entertainment services, namely, organizing, arranging and conducting athletic contests, exhibitions, and clinics" in International Class 41, registered on January 30, 2007, claiming a date of first use of October 21, 2005 for the goods in International Class 25 and March 31, 2006 for the services listed in International Class 41. A true and correct copy of the Certificate of Registration for the mark PITT PANTHERS (Reg. No. 3,204,527) is attached as **Exhibit 2**.

11. Opposer owns a federal registration for the mark THE PANTHER PITT & Design (Reg. No. 3,232,178), depicted on the top of the following page, for "towels" in International Class 24, registered on April 24, 2007, claiming a date of first use of October, 10, 2003.



A true and correct copy of the Certificate of Registration for the mark THE PANTHER PITT & Design (Reg. No. 3,232,178) is attached as **Exhibit 3**.

12. Opposer owns a federal registration for the mark PANTHER CLUB (Reg. No. 3,269,771) for “shirts, namely, T-shirts, golf shirts, football jerseys, sweatshirts, baseball shirts, long-sleeve shirts; pants, namely, shorts and sweatpants; caps, hats, visors, jackets, gloves, socks, neckties, wristbands and headbands” in International Class 25, registered on July 24, 2007, claiming a date of first use of June 30, 2004. A true and correct copy of the Certificate of Registration for the mark PANTHER CLUB (Reg. No. 3,269,771) is attached as **Exhibit 4**.

13. Opposer owns a federal registration for the mark PITT PANTHER CLUB (Stylized) (Reg. No. 3,328,277), depicted below, for “fundraising for university athletics” in International Class 36, registered on November 6, 2007, claiming a date of first use of February 5, 2007.

## PITT PANTHER CLUB

A true and correct copy of the Certificate of Registration for the mark PITT PANTHER CLUB (Stylized) (Reg. No. 3,328,277) is attached as **Exhibit 5**.

14. Opposer owns a federal registration for the mark PITT PANTHER GAME PLAN & Design (Reg. No. 3,392,339), depicted on the top of the following page, for “backpacks and book bags” in International Class 18, “clothing, namely, collared shirts and tee-shirts” in International Class 25, “promoting personal participation in university educational, entertainment, sporting and cultural activities” in International Class 35, and “charitable university fundraising” in International Class 36, registered on March 4, 2008, claiming a date of first use of May 31, 2006 for the goods in International Class 18, February 7, 2006 for the goods

and services in International Class 25 and International Class 35, and July 31, 2006 for the services in International Class 36.



A true and correct copy of the Certificate of Registration for the mark PITT PANTHER GAME PLAN & Design (Reg. No. 3,392,339) is attached as **Exhibit 6**.

15. Opposer owns a federal registration for the mark PANTHER CLUB (Reg. No. 3,396,838) for “fundraising for university athletics directed toward supporters of the University of Pittsburgh athletics” in International Class 36, registered on March 18, 2008, claiming a date of first use of November 22, 2004. A true and correct copy of the Certificate of Registration for the mark PANTHER CLUB (Reg. No. 3,396,838) is attached as **Exhibit 7**.

16. Opposer owns a federal registration for the Panther Design (Reg. No. 3,584,062), depicted below, for “coffee mugs and drinking glasses” in International Class 21, “golf towels” in International Class 24, and “basketballs and footballs” in International Class 28, registered on March 3, 2009, claiming a date of first use of July 31, 2007 for the goods in International Class 21 and International Class 24 and December 15, 2007 for the goods in International Class 28.



A true and correct copy of the Certificate of Registration for the Panther Design mark (Reg. No. 3,584,062) is attached as **Exhibit 8**.

17. Opposer owns a federal registration for the mark PITTSBURGH & Design (Reg. No. 2,203,327), depicted on the top of the following page, for “clothing, namely, T-shirts,



sweatshirts, hats, caps, jackets, warmup suits, shorts” in International Class 25, registered on November 10, 1998, claiming a date of first use of September 1, 1997.



A true and correct copy of the Certificate of Registration for the mark PITTSBURGH & Design (Reg. No. 2,203,327) is attached as **Exhibit 9**.

18. Opposer has complied with all the requirements necessary to maintain its registration of the mark PITTSBURGH & Design (Reg. No. 2,203,327), which is now incontestable under 15 U.S.C. § 1065.

19. Opposer owns a federal registration for the mark PITTSBURGH & Design (Reg. No. 2,755,637) for “ice cream” in International Class 30, registered on August 26, 2003, claiming a date of first use of March 31, 2002. A true and correct copy of the Certificate of Registration for the mark PITTSBURGH & Design (Reg. No. 2,755,637) is attached as **Exhibit 10**.

20. Opposer owns a federal registration for the mark UNIVERSITY OF PITTSBURGH (Reg. No. 1,240,632) for “education services at the University level including undergraduate, graduate, postgraduate and professional educational services, and entertainment services including organizing, promoting and participating in athletic contests, exhibitions, and clinics” in International Class 41, registered on May 31, 1983, claiming a date of first use of 1908. A true and correct copy of the U.S. Patent and Trademark Office online records for the mark UNIVERSITY OF PITTSBURGH (Reg. No. 1,240,632) are attached as **Exhibit 11**.

21. Opposer has complied with all the requirements necessary to maintain registration of the mark UNIVERSITY OF PITTSBURGH (Reg. No. 1,240,632), which is now incontestable under 15 U.S.C. § 1065.

22. Opposer owns a federal registration for the mark UNIVERSITY OF PITTSBURGH (Reg. No. 3,167,642) for “tee-shirts, sweatshirts, collard shirts, shorts, sweatshirts” in International Class 25, registered November 7, 2006, claiming a date of first use of December 15, 1976. A true and correct copy of the Certificate of Registration for the mark UNIVERSITY OF PITTSBURGH (Reg. No. 3,167,642) is attached as **Exhibit 12**.

23. Opposer owns a federal registration for the mark PITTSBURGH PANTHERS (Stylized) (Reg. No. 2,235,254), depicted below, for “clothing, namely, T-shirts, sweatshirts, hats, caps, jackets” in International Class 25 and “intercollegiate and intracollegiate sports exhibitions, competitions and games” in International 41, registered on March 23, 1999, claiming a date of first use of December 15, 1997 for the goods and services listed in International Class 25 and International Class 41.



A true and correct copy of the Certificate of Registration for the mark (Reg. No. 2,235,254) is attached as **Exhibit 13**.

24. Opposer has complied with all requirements necessary to maintain its registration of the mark PITTSBURGH PANTHERS (Stylized) (Reg. No. 2,235,254), which is now incontestable under 15 U.S.C. § 1065.

25. Opposer owns a federal registration for the mark PITTSBURGH PANTHERS (Stylized) (Reg. No. 2,736,342) for “ice cream” in International Class 30, registered on July 15, 2003, claiming a date of first use of March 31, 2002. A true and correct copy of the Certificate of Registration for the mark PITTSBURGH PANTHERS (Stylized) (Reg. No. 2,736,342) is attached as **Exhibit 14**.

26. Opposer owns a federal registration for the mark PITTSBURGH PANTHERS TEAM STORE WORLD HEADQUARTERS FOR PANTHERS MERCHANDISE & Design (Reg. No. 2,844,537), depicted on the following page, for “internet and retail store services

featuring articles bearing indicia related to the University of Pittsburgh” in International Class 35, registered on May 25, 2004, claiming a date of first use of December 20, 2002.



A true and correct copy of the Certificate of Registration for the mark PITTSBURGH PANTHERS TEAM STORE WORLD HEADQUARTERS FOR PANTHERS MERCHANDISE & Design (Reg. No. 2,844,537) is attached as **Exhibit 15**.

27. Opposer’s trademarks in paragraphs 7-26 are collectively referred to as the “University’s Marks.”

28. As a result of the University’s longstanding and extensive use, the University’s Marks are symbolic of the extensive goodwill and consumer recognition established by the University. The University’s Marks have attained a high degree of recognition and distinctiveness throughout the U.S. in connection with services commonly associated with a university as an educational institution and its athletic departments. By virtue of the University’s expenditure of substantial amounts of time, effort, and money in advertising and promoting its goods and services, the University’s Marks have come to identify the University’s athletics and other goods and services. Purchasers and prospective purchasers, as well as other members of the public, are familiar with and identify the University’s Marks, and understand and expect that a wide variety of goods and services offered under the University’s Marks are affiliated, sponsored, or licensed by the University. Indeed, the University’s Marks have become well-known for the University’s goods and services.

29. Opposer will be damaged by the registration of Applicant’s PANTHERADE and PITTSBURGHADE marks because the marks and their associated goods so resemble the University’s Marks and the associated goods and services as to be likely to cause confusion,

mistake, and deception. Indeed, Applicant's PANTHERADE mark incorporates the University's PANTHER mark. Applicant's PITTSBURGHADE mark incorporates the University's PITTSBURGH mark. Moreover, the goods offered under Applicant's Marks are similar to the goods and services offered under the University's Marks. On information and belief, Applicant's goods offered under Applicant's Marks will be sold to students, fans, and alumni of the University.

30. Persons familiar with the University's Marks are likely to believe erroneously that Applicant's goods are offered by the University, or are authorized, licensed, endorsed, or sponsored by the University, and registration of Applicant's Marks on the Principal Register will be inconsistent with the University's rights in the University's Marks.

31. Applicant's applied-for-marks also falsely suggest a connection with the University, in violation of Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a).

32. The filing fee in the amount of \$600.00 is enclosed. The Commissioner is authorized to debit the deposit account of Kilpatrick Stockton LLP (deposit account no. 11-0860) for any deficiency in the required fee.

WHEREFORE, Opposer requests that Application Serial No. 77/383,064 and Application Serial No. 77/574,589 be refused registration and this Combined Notice of Opposition be sustained in its favor.

Respectfully submitted,

/s/ Alicia Grahn Jones  
R. Charles Henn Jr.  
Alicia Grahn Jones

KILPATRICK STOCKTON LLP  
1100 Peachtree Street  
Suite 2800  
Atlanta, Georgia 30309-4530  
(404) 815-6500

Attorneys for Opposer

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing COMBINED NOTICE OF OPPOSITION was served on counsel for Applicant on March 9, 2009 via first class mail to:

John W. McIlvaine  
The Webb Law Firm  
436 Seventh Avenue  
700 Koppers Building  
Pittsburgh, PA 15219

/s/ Alicia Grahn Jones  
Counsel for Opposer

**CERTIFICATE OF TRANSMITTAL**

I hereby certify that a true copy of the foregoing COMBINED NOTICE OF OPPOSITION is being filed electronically with the TTAB via ESTTA on this day, March 9, 2009.

/s/ Alicia Grahn Jones  
Counsel for Opposer

# EXHIBIT 1

**Trademark Applications Owned by Applicant**

<b>Trademark</b>	<b>Application Number</b>	<b>Goods</b>
<b>BADGERADE</b>	77-382271	“sports drinks” in International Class 32
<b>BRONCOADE</b>	77-382281	“sports drinks” in International Class 32
<b>BULLDOGADE</b>	77-382118	“non-caffeinated hydrating sports drinks” in International Class 32
<b>CATADE</b>	77-382985	“sports drinks” in International Class 32
<b>COUGARADE</b>	77-382996	“sports drinks” in International Class 32
<b>COWBOYADE</b>	77-383001	“sports drinks” in International Class 32
<b>FALCONADE</b>	77-384233	“sports drinks and performance drinks” in International Class 32
<b>IRISHADE</b>	77-382991	“sports drinks” in International Class 32
<b>JAYHAWKADE</b>	77-383006	“sports drinks” in International Class 32
<b>WOLVERINEADE</b>	77-384032	“sports drinks and performance drinks” in International Class 32
<b>KNIGHTADE</b>	77-383021	“sports drinks” in International Class 32
<b>MOUNTAINEERADE</b>	77-383048	“sports drinks” in International Class 32
<b>SOONERADE</b>	77-383960	“sports drinks” in International Class 32
<b>VOLUNTEERADE</b>	77-384000	“sports drinks” in International Class 32
<b>CORNHUSKERADE</b>	77-674883	“sports drinks and performance drinks” in International Class 32
<b>LONGHORNADE</b>	77-383038	“sports drinks, namely, lemonade and limeade” in International Class 32
<b>REBELADE</b>	77-383860	“non-caffeinated hydrating sports drinks” in International Class 32
<b>SPARTANADE</b>	77-383891	“hydrating sports drinks” in International Class 32

**Trademark Applications Owned by Applicant**

<b>WARRIORADE</b>	77-384024	“sports drinks and performance drinks” in International Class 32
<b>BRUINADE</b>	77-382906	“sports drinks” in International Class 32
<b>DEVILADE</b>	77-384226	“sports drinks and performance drinks” in International Class 32
<b>BRAVEADE</b>	77-382257	“sports drinks” in International Class 32
<b>TROJANADE</b>	77-383985	“non-caffeinated hydrating sports drinks” in International Class 32
<b>RAIDERADE</b>	77-383853	“sports drinks” in International Class 32
<b>BUCKEYEADE</b>	77-382914	“sports drinks” in International Class 32
<b>BEARADE</b>	77-382243	“sports drinks” in International Class 32
<b>LIONADE</b>	76-567472	“nutritionally fortified drink, namely protein recovery shake” in International Class 30
<b>MIAMIADA</b>	77-574565	“sports drinks and fruit drinks” in International Class 32