

ESTTA Tracking number: **ESTTA1101797**

Filing date: **12/15/2020**

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	Mastronardi Produce Limited
Granted to Date of previous extension	12/16/2020
Address	2100 RD 4 E KINGSVILLE, ON N9Y2E5 CANADA
Attorney information	MARK D. SCHNEIDER DINSMORE & SHOHL LLP 900 WILSHIRE DRIVE, STE. 300 TROY, MI 48084 UNITED STATES Primary Email: mark.schneider@dinsmore.com Secondary Email(s): liane.rousseau@dinsmore.com 248-647-6000
Docket Number	205373-703

Applicant Information

Application No.	88881133	Publication date	08/18/2020
Opposition Filing Date	12/15/2020	Opposition Period Ends	12/16/2020
Applicant	Driscoll's, Inc. 345 WESTRIDGE DRIVE WATSONVILLE, CA 95076 UNITED STATES		

Goods/Services Affected by Opposition

Class 031. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: fresh berries

Grounds for Opposition

The mark is merely descriptive	Trademark Act Section 2(e)(1)
The mark is generic	Trademark Act Sections 1, 2 and 45
Failure to function as a mark	Trademark Act Sections 1, 2 and 45

Attachments	Mastronardi Notice of Opposition for Driscoll BERRY BIG Application w ith Exhibit.pdf(714001 bytes)
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Signature	/s/ Mark D. Schneider
Name	MARK D. SCHNEIDER
Date	12/15/2020

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

In the Matter of Application Serial No. 88/881,133
Published on August 18, 2020

Mastronardi Produce Limited,)	
)	
)	Opposition No.: _____
v. Opposer,)	
)	Mark: BERRY BIG
)	
Driscoll's, Inc.,)	
)	
Defendant.)	

NOTICE OF OPPOSITION

Opposer, Mastronardi Product Limited (“**Mastronardi**”), is a corporation organized under the laws of Ontario, Canada, with an address of 2100 Road #4 East, Kingsville, Ontario, Canada, N9Y2E5.

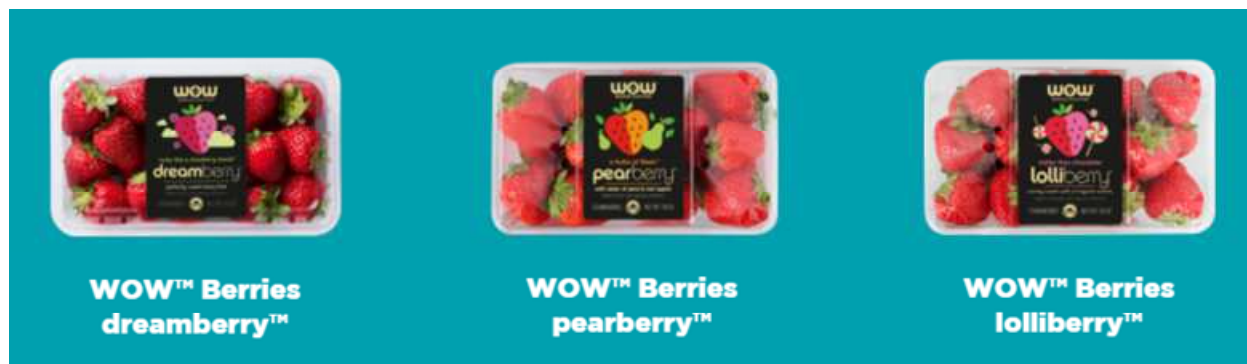
Mastronardi has been, or would be, damaged by registration on the Principal Register of the mark “BERRY BIG” (the “**BERRY BIG Mark**”), shown in Application Serial No. 88/881,133 (the “**Opposed Application**”), filed by Applicant, Driscoll's, Inc. (“**Driscoll's**” or “**Applicant**”), and directed to use of the mark in connection with “*fresh berries*” in International Class 031 (“**Driscoll's Goods**”), and Mastronardi opposes registration of the Opposed Application.

The Opposition is timely. The Opposed Application was filed April 21, 2020, under Section 1(b) of the Trademark Act, and published in the Official Gazette on August 18, 2020. On September 14, 2020, Mastronardi filed a 90 Day Request for Extension of Time to Oppose. On the same day the Board granted Mastronardi's request and set a deadline of December 16, 2020 to oppose.

Mastronardi alleges the following as grounds for the opposition:

MASTRONARDI'S HISTORY AND PRODUCT OFFERINGS

1. Mastronardi is a leader in the greenhouse industry.
2. Mastronardi markets nationally recognized products under its SUNSET® brand, including fresh tomatoes, peppers, cucumbers, and berries.
3. Mastronardi's berry products include the WOW™ brand of berries, the product lineup for which includes at least the DREAMBERRY™ brand, the PEARBERRY™ brand, and the LOLLIBERRY™ brand of strawberries, sample images of which are shown here:



4. Mastronardi's WOW™ berry products have been offered for sale in interstate commerce since about 2014, and in October 2019, the brand received a best in show award by the Produce Marketing Association, *see e.g.*, <https://theproducenews.com/sunset-wow-berries-promo-named-best-show>.
5. Mastronardi's berry products are offered in interstate commerce and have been associated with the words "berry" and "big." For example, early press for WOW™ berries included the following headline, "First volumes of **big** sweet winter straw**berries**", and a consumer wrote the following, in part, in an online post, "The WOW **berries** are not overly **big** and are actually red on the inside." *See e.g.*, <https://www.instagram.com/p/BsodQgllIDT/>.

THE OPPOSED APPLICATION

Mastronardi incorporates and realleges every allegation in the prior paragraphs of this Notice of Opposition as though fully set forth herein.

6. Upon information and belief, Driscoll's is the owner of the Opposed Application for the BERRY BIG Mark.

7. Upon information and belief, Driscoll's is a California corporation with a place of business at 345 Westridge Drive, Watsonville, California, 95076.

8. The Opposed Application was filed April 21, 2020 under Section 1(b) of the Trademark Act.

9. The Opposed Application alleged a *bona fide* intention to use the BERRY BIG Mark in commerce on or in connection with Driscoll's Goods.

10. A true and correct copy of the Opposed Application and TSDR status pages for the Opposed Application are attached hereto as **Exhibit A**.

GENERAL ALLEGATIONS

Mastronardi incorporates and realleges every allegation in the prior paragraphs of this Notice of Opposition as though fully set forth herein.

11. The BERRY BIG Mark of the Opposed Application consists of the words BERRY and BIG.

12. The BERRY BIG Mark that is the subject of the Opposed Application is intended to be used with fresh berries.

13. On information and belief, the BERRY BIG Mark that is the subject of the Opposed Application is intended to be used with fresh strawberries.

14. A strawberry is a berry.

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