

ESTTA Tracking number: **ESTTA369312**

Filing date: **09/21/2010**

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

Proceeding	92052741
Party	Plaintiff General Mills, Inc.
Correspondence Address	RICHARD J. GROOS FULBRIGHT & JAWORSKI L.L.P. 600 CONGRESS AVENUE, SUITE 2400 AUSTIN, TX 78701 UNITED STATES aotrademark@fulbright.com, rgroos@fulbright.com, agroos@fulbright.com, kpfertner@fulbright.com
Submission	Motion to Suspend for Civil Action
Filer's Name	Richard J. Groos
Filer's e-mail	aotrademark@fulbright.com, rgroos@fulbright.com, agroos@fulbright.com, kpfertner@fulbright.com
Signature	/Richard J. Groos/
Date	09/21/2010
Attachments	Complaint.pdf ( 77 pages )(5873502 bytes )

**IN THE UNITED STATE DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

GENERAL MILLS, INC.,

Plaintiff

v.

IDAHOAN FOODS, LLC,

Defendant.

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Civil Action No. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY JUDGMENT**

Plaintiff, General Mills, Inc. (“General Mills”), complains of Idahoan Foods, LLC (“Idahoan”) and alleges as follows:

**Nature of action and jurisdiction**

1. This is an action for a declaration of rights under the Trademark Act of 1946, as amended (“Lanham Act”), 15 U.S.C. § 1051 *et seq.*, and under the common law of Minnesota.

2. A case of actual controversy within this Court’s jurisdiction exists between the parties concerning these rights. This Court is authorized to declare the rights of the parties in this case pursuant to the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201-2202, and the Minnesota Uniform Declaratory Judgments Act, Minn. Stat. §§ 555.01 – 555.16.

3. This Court has subject matter jurisdiction over this action under Section 39 of the Lanham Act, 15 U.S.C. § 1121; and under the jurisdictional provisions of Title 28 of the United States Code, 28 U.S.C. §§ 1331, 1338 and 1367.

**Parties**

4. General Mills is a Delaware corporation having a principal place of business at Number One General Mills Boulevard, Minneapolis, Minnesota 55426.

5. Idahoan is a Delaware limited liability company having a place of business at One Potato Place, Lewisville, Idaho 83431.

**General Mills' business and its use of the mark**

6. General Mills began doing business in the 1860s as a merchant flour miller. In the years since then, General Mills has grown to become one of the world's leading food companies with nearly 30,000 employees operating in more than 100 countries. As of 2009, General Mill's annual revenues reached nearly \$15 billion.

7. General Mills is now and has for many years been engaged in the manufacture, distribution and sale of shelf stable dehydrated potato mixes sold under the BETTY CROCKER® mark. The products come in many flavors, including, "loaded baked," "loaded mashed" and "loaded au gratin," among others. The use of the word "loaded" with these products is to indicate that the product tastes and/or is flavored like a "loaded" potato, i.e., with bacon, cheese, sour cream and chives. The words "baked," "mashed" and "au gratin" indicate the consistency or style of preparation of the potatoes.

8. The terms “loaded baked,” “loaded mashed” and “loaded au gratin” are not used by General Mills as trademarks or source indicators. Rather, they are used descriptively to indicate the taste and/or flavor of certain General Mills potato products.

**Idahoan and its business**

9. Idahoan owns and operates a business in Lewisville, Idaho.

10. On or about April 28, 2003, Idahoan, through its predecessor in interest, filed Application Serial No. 76/510,076 for the term “Loaded Baked” in connection with “dehydrated potatoes and mashed potato mix,” which registered on July 19, 2005 under U.S. Registration No. 2,969,189 (the “Loaded Baked Registration”). Idahoan claims a date of first use of August 23, 2001 for the term “Loaded Baked.” As registered, the Loaded Baked Registration contains the following disclaimer: “no claim is made to the exclusive right to use ‘baked’ apart from the mark as shown.”

**Descriptive nature of the terms “loaded” and “loaded baked” with potato products**

11. The term “loaded baked” is descriptive of potato products.

12. On information and belief, the term “loaded baked” is descriptive of the potato products sold by Idahoan.

13. On information and belief, Idahoan uses the term “loaded baked” in a descriptive manner to describe the taste and/or flavor of its potato products.

14. On information and belief, Idahoan uses the term “loaded baked” consistently with its use of other taste and/or flavor descriptors in which Idahoan does not

claim trademark rights, including the terms “buttery homestyle,” “roasted garlic” and “four cheese.”

15. As used by General Mills, the terms “loaded baked,” “loaded mashed” and “loaded au gratin” are descriptive of the taste and/or flavor of General Mills’ potato-based products.

16. On information and belief, numerous third parties throughout the food industry use the terms “loaded” and “loaded baked” to describe the taste and/or flavor of potato-based food products. Examples of third party uses of the terms “loaded” and/or “loaded baked” in connection with potato-based food products is attached hereto as Exhibit A.

17. Relevant purchasers and consumers do not ascribe any source-identifying meaning to the terms “loaded” or “loaded baked” in connection with potato-based food products.

18. On information and belief, General Mills and Idahoan each make prominent use of their respective primary brands, BETTY CROCKER® and IDAHOAN®, in connection with all use of the terms “loaded” or “loaded baked” for potato products. Examples of the parties’ respective uses of the terms “loaded” and/or “loaded baked” are attached hereto as Exhibit B.

19. Because the term “loaded baked” directly describes a quality or feature of potato-based food products, it cannot be claimed exclusively by any one seller.

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