

BOX TTAB/FEE



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

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MARS, INCORPORATED, :
:
Opposer, :
:
v. :
:
INNOVATION PLUS HOLDINGS CORP., :
:
Applicant. :
-----X

Ser. No. 78/127678

Opposition No.:



09-20-2004

U.S. Patent & TMO/TM Mail Rpt Dt. #22

NOTICE OF OPPOSITION

This Notice of Opposition is brought in the matter of pending trademark application Serial No. 78/127678 filed on May 9, 2002 by Innovation Plus Holdings Corp. (hereinafter "Applicant"), against registration of the mark GINO and Design for "meats, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams; eggs, milk and other dairy products namely, cheese, butter, cream, condensed milk, sterilized milk, powdered milk, yogurt, desserts prepared from yogurt; preserves, pickles" in International Class 29 and "coffee, tea, cocoa, sugar, rice, tapioca, sago, coffee substitutes; flour, and preparations made from cereals; namely, breakfast cereals, cereal-based snack food; bread, biscuits, cakes, pastry and confectionery, ices; honey, treacle; yeast, baking powder; salt, mustard, pepper, spices; ice" in International Class 30. The application was published in the Official Gazette of March 23, 2004. Mars, Incorporated

(hereinafter “Opposer”), whose address is 6885 Elm Street, McLean, Virginia 22101-3883, believes it will be damaged by the registration of such trademark and hereby opposes same.

The grounds for opposition are as follows:

1. Applicant has applied to register the character design mark (hereinafter sometimes referred to as “Applicant’s Mark”), which design consists of a character that is confusingly similar in appearance to numerous famous character trademarks owned by Opposer. The dominant features of Applicant’s Mark include the same elements as are present in Opposer’s character trademarks. Specifically, Applicant’s Mark consists of a round-shaped character having human features, including eyes, mouth, legs, hands with gloves, and feet with foot apparel, each of which are elements common to Opposer’s famous character trademarks. The published version of Applicant’s Mark is attached hereto at Tab1.

2. Opposer is, and for many years has been, an internationally known manufacturer, distributor and seller of food products, including the famous M&M’s® brand candies and other confectionery products.

3. Long prior to the filing of the instant application by Applicant, Opposer has adopted and used, and continues to use, numerous trademarks depicting an oval or round-shaped character with human features, including eyes, mouth, hands with four fingers and gloves, legs, and feet with shoes (hereinafter sometimes referred to as “Opposer’s Trademarks” or “Character Trademarks”).

4. Opposer is using its Character Trademarks in interstate commerce, and has used its Character Trademarks in the form described in paragraph 3, in connection with the

advertising and sale of its famous M&M's® brand candies and other confectionery products, since at least as early as the 1960's.

5. In addition, Opposer and/or its licensees have offered various licensed items for sale or as premiums, such as toy dolls, candy dispensers, ornaments, ornamental lights, and clothing, among many other products, which represent these characters. In addition, Opposer's Trademarks appear prominently on Opposer's Internet websites.

6. Opposer is the owner of the following United States Federal registrations, among many others, for its Character Trademarks, which consist of characters having human features, and which are incontestible and currently in full force and effect:

<u>REG. NO.</u>	<u>REG. DATE</u>	<u>GOODS</u>
1,567,387	November 21, 1989	candy
1,567,386	November 21, 1989	candy
983,429	May 7, 1974	candy
981,235	March 26, 1974	candy

Copies of each certificate of registration are attached hereto at Tab 2. A certified copy of each certificate of registration will be submitted during Opposer's testimony period.

7. Opposer has extensively advertised and promoted its Character Trademarks in television and print advertisements, as well as by displaying the characters on packaging and various other licensed, promotional and/or premium items. As a result of such advertising and promotion, Opposer's Character Trademarks have become strongly

associated with Opposer and Opposer's products and have become famous trademarks under U.S.C. § 1125 (c) of the Lanham Act.

8. Upon information and belief, Applicant is currently offering the goods bearing Applicant's Mark to the general public, which comprises the same class of consumers who purchase goods and services bearing Opposer's Character Trademarks. Additionally, the goods will travel in the same channels of trade as those bearing Opposer's Character Trademarks.

9. Applicant's Mark so resembles Opposer's Character Trademarks that there is a strong likelihood that confusion will result, causing the public to believe that there is some connection, sponsorship, affiliation or association between the source of Applicant's goods and Opposer.

10. In addition, Opposer's Character Trademarks are famous trademarks and were so at the time Applicant filed its application. Applicant's Mark will cause dilution of the distinctive quality of Opposer's famous Character Trademarks.

11. Based on the foregoing, Opposer believes that it will be damaged by the registration of Applicant's Mark.

WHEREFORE, Opposer respectfully requests that the registration sought by Applicant be refused and that this Opposition be sustained.

We herewith enclose a check for the \$600.00 opposition fee. If any deficiency in payment exists, please charge to Deposit Account No. 06-1205.

Dated: September 16, 2004

Respectfully submitted,

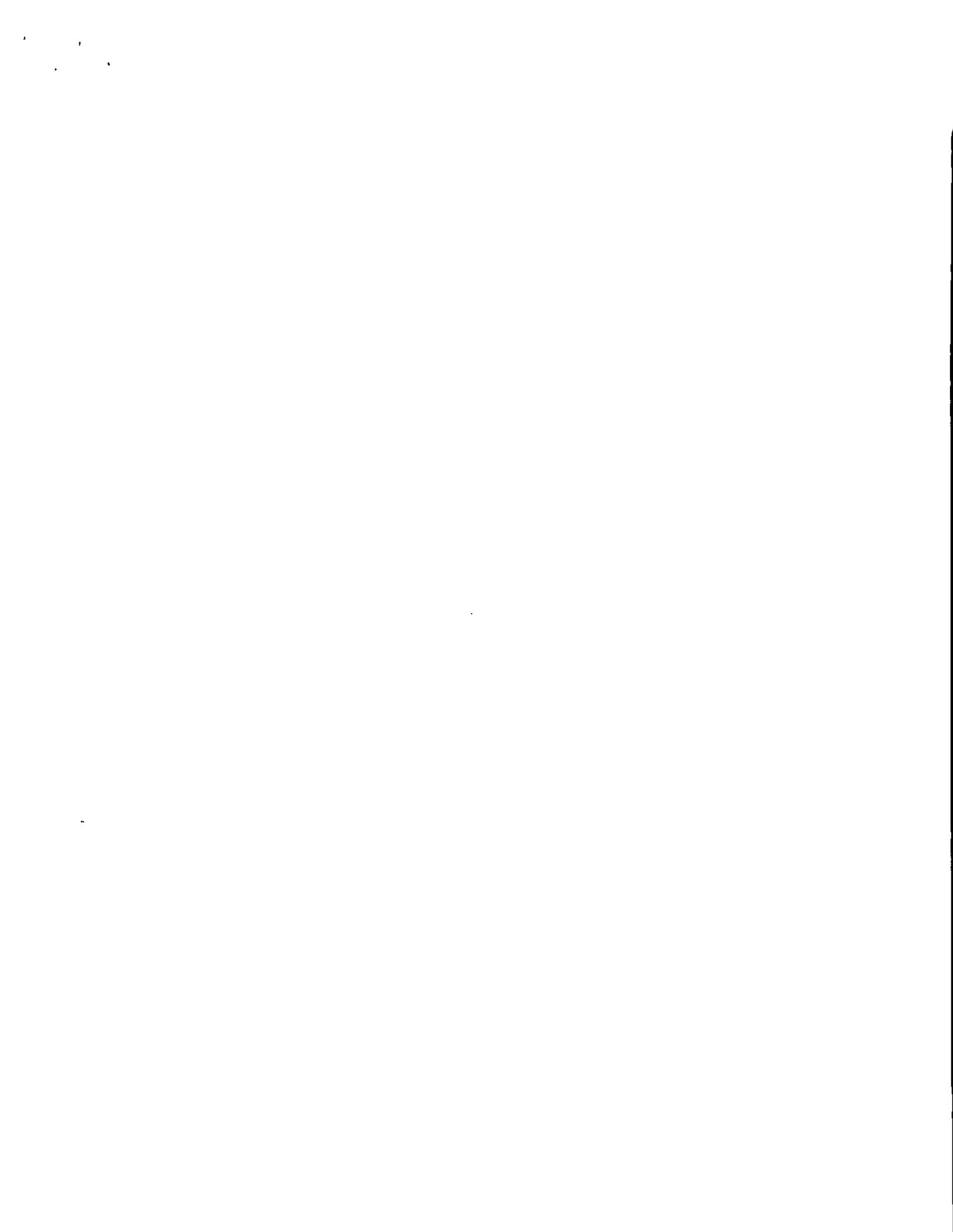
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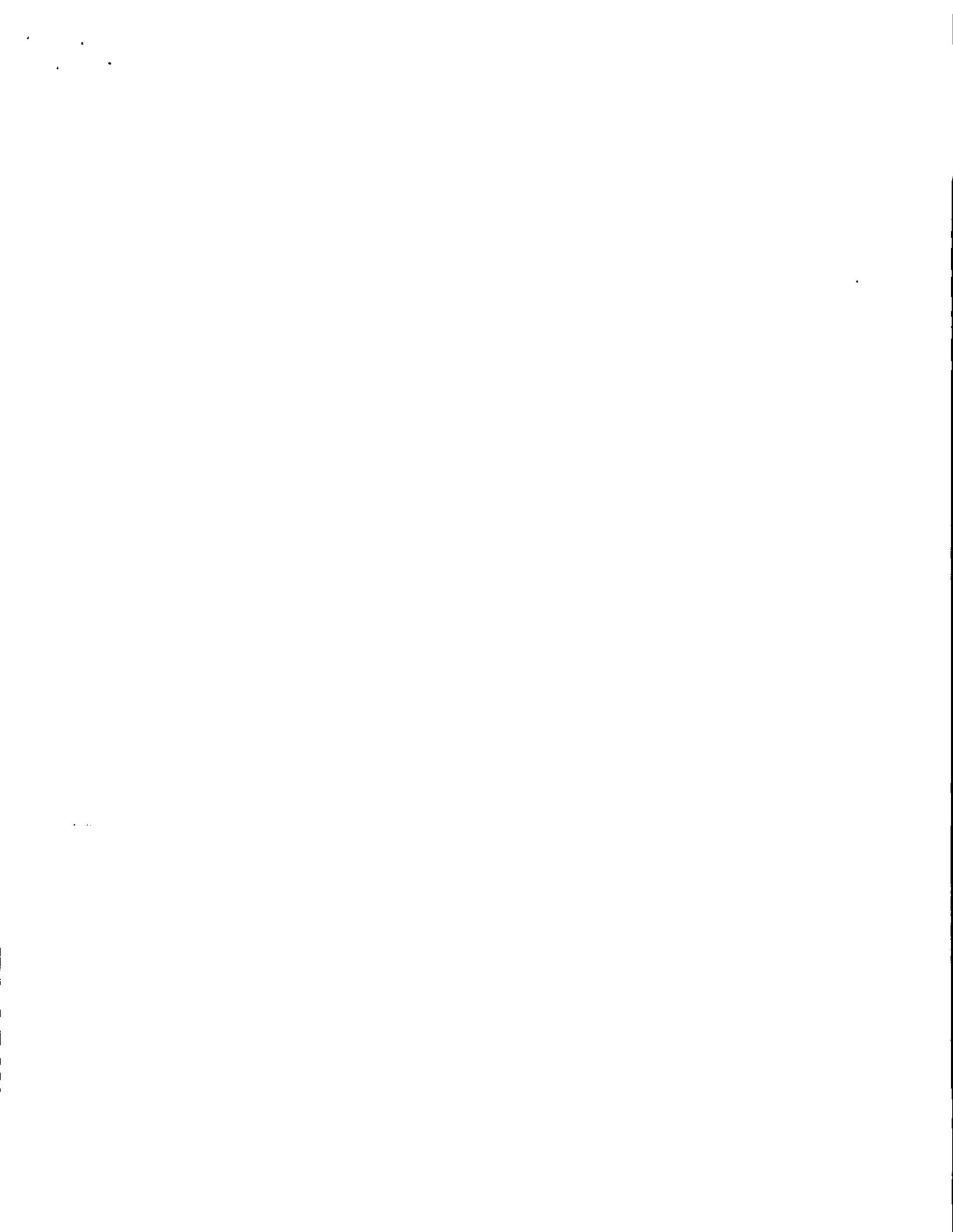
Attorneys for Opposer
Mars, Incorporated

Attachments (Tabs 1-2)

NY_MAIN 451063v1







Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

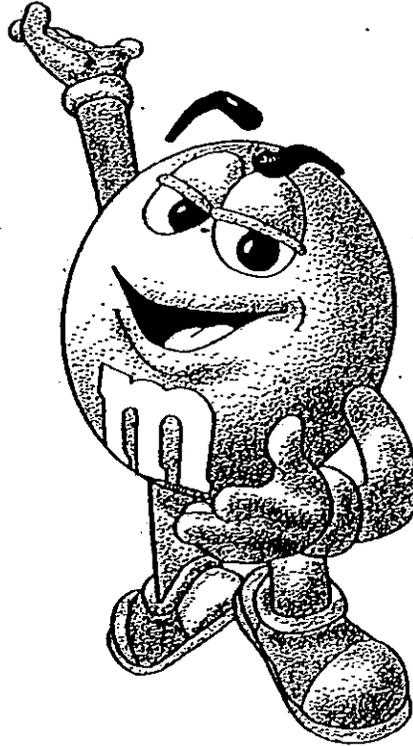
Amended

Reg. No. 1,567,387

Registered Nov 21, 1989

OG Date Nov. 14, 2000

TRADEMARK
PRINCIPAL REGISTER



MARS, INCORPORATED (DELAWARE
CORPORATION)
6885 ELM STREET
MCLEAN, VA 221013883

OWNER OF U.S. REG. NOS. 418,332,
1,272,035 AND OTHERS.

FOR: CANDY, IN CLASS 30 (U.S. CL. 46).

FIRST USE 0-0-1987; IN COMMERCE
0-0-1987.

SER. NO. 73-753,739, FILED 9-23-1988.

*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on Nov. 14, 2000.*

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

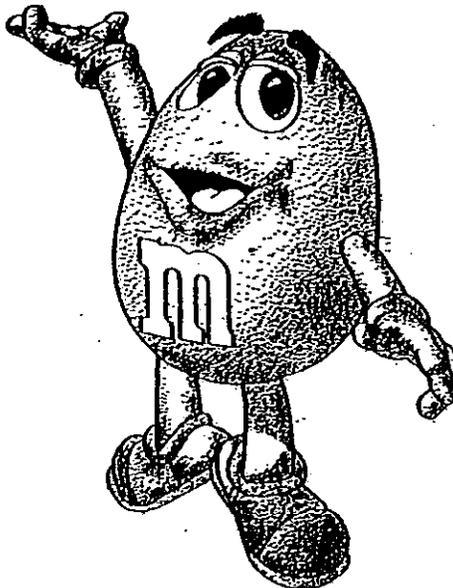
Amended

Reg. No. 1,567,386

Registered Nov. 21, 1989

OG Date Aug. 29, 2000

TRADEMARK
PRINCIPAL REGISTER



MARS, INCORPORATED (DELAWARE COR-
PORATION)
6885 ELM STREET
MCLEAN, VA 221013883

OWNER OF U.S. REG. NOS. 418,332,
1,272,035 AND OTHERS.

FOR: CANDY, IN CLASS 30 (U.S. CL. 46).

FIRST USE 0-0-1987; IN COMMERCE
0-0-1987.

SER. NO. 73-753,685, FILED 9-23-1988.

*In testimony whereof I have hereunto set my hand and
caused the seal of The Patent and Trademark Office to
be affixed on Aug. 29, 2000.*

COMMISSIONER OF PATENTS AND TRADEMARKS

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Amended

Reg. No. 983,429

Registered May 7, 1974

OG Date Oct. 26, 1999

TRADEMARK
PRINCIPAL REGISTER



MARS, INCORPORATED (DELAWARE
CORPORATION)
6885 ELM STREET
MCLEAN, VA 221013883

FOR: CANDY, IN CLASS 46 (INT. CL.
30).
FIRST USE 8-18-1972; IN COMMERCE
8-18-1972.

SER. NO. 72-433,766, FILED 8-25-1972.



*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on Oct. 26, 1999.*

A handwritten signature in cursive script that reads 'J. Todd Johnson'.

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

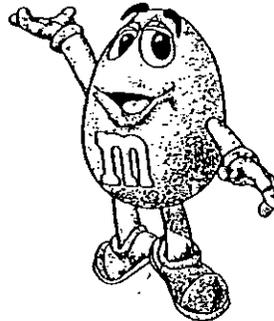
Amended

Reg. No. 981,235

Registered Mar. 26, 1974

OG Date Oct. 26, 1999

TRADEMARK
PRINCIPAL REGISTER



MARS, INCORPORATED (DELAWARE
CORPORATION)
6885 ELM STREET
MCLEAN, VA 221013883

FOR: CANDY, IN CLASS 46 (INT. CL.
30).

FIRST USE 8-18-1972; IN COMMERCE
8-18-1972.

SER. NO. 72-433,765, FILED 8-25-1972.



*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on Oct. 26, 1999.*

A handwritten signature in cursive script, reading 'T. Todd Johnson'.

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