

ESTTA Tracking number: **ESTTA60203**

Filing date: **01/04/2006**

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	Frito-Lay North America, Inc.
Granted to Date of previous extension	01/04/2006
Address	7701 Legacy Drive Plano, TX 75024 UNITED STATES

Attorney information	Paul J. Reilly Baker Botts LLP 30 Rockefeller Plaza, 44th Fl. New York, NY 10112 UNITED STATES paul.reilly@bakerbotts.com, nytmdpt@bakerbotts.com Phone:212.408.2500
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### Applicant Information

Application No	78426643	Publication date	09/06/2005
Opposition Filing Date	01/04/2006	Opposition Period Ends	01/04/2006
Applicant	Fritos Encanto de Monterrey, S.A. de C.V. Romulo Diaz de la Vega No. 1812 pte. Fraccionamiento Industrial Monterrey, 64290 MEXICO		

### Goods/Services Affected by Opposition

Class 030. First Use: 1996/00/00 First Use In Commerce: 1996/00/00  
All goods and services in the class are opposed, namely: corn chips with chili flavoring

Attachments	CHICHOSDesignOpposition1606.pdf ( 6 pages )
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Signature	/Paul J. Reilly/
Name	Paul J. Reilly
Date	01/04/2006

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

IN THE MATTER OF:

Mark : CHICHOS and Design  
Applicant: : Fritos Encanto de Monterrey, S.A. de C.V.  
Serial No. : 78/426,643  
Published in the Official Gazette on September 6, 2005

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FRITO-LAY NORTH AMERICA, INC. :  
Opposer, :  
v. : Opposition No. \_\_\_\_\_  
FRITOS ENCANTO DE :  
MONTERREY, S.A. de C.V. :  
Applicant. :

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NOTICE OF OPPOSITION

Opposer, Frito-Lay North America, Inc, a Delaware corporation, having a place of business at 7701 Legacy Drive, Plano, Texas 75024, believes it will be damaged by the registration of Application Serial No. 78/426,643 for CHICHOS and Design in International Class 30 for "corn chips with chili flavoring" purportedly owned by Applicant, Fritos Encanto de Monterrey, S.A. de C.V., a corporation organized and existing under the laws of Mexico, with a place of business at Romulo Diaz de la Vega # 1812 Pte Fraccionamiento Industrial, Monterey, Nuevo Leon 64290, Mexico (hereinafter "Applicant") and having previously been granted extensions of time to oppose, hereby opposes same.

The grounds for this opposition are as follows:

1. Opposer, Frito-Lay North America, Inc. through its predecessors in interest and title, and through its related company Frito-Lay, Inc. (hereinafter collectively referred to as "Opposer"), is engaged in the business of making and selling a wide range of snack food products, including corn chips, potato chips, tortilla chips, multi-grain salted snacks and other products in the United States and throughout the world.

2. Opposer's snack foods are marketed and sold in tremendous quantities on a nationwide basis, supported by many millions of dollars of advertising and promotion each year. Opposer's food products are sold through supermarkets, convenience stores, restaurants, vending machines, candy stores and other outlets throughout the United States.

3. Opposer has expended substantial capital and resources in the development and marketing of products, including cheese flavored corn snacks, sauces and dips which have been marketed, advertised, promoted and sold by Opposer in the United States for decades.

4. Opposer has used the mark CHEETOS and variants thereof, e.g., CHEE.TOS, on and in connection with snack foods and related products, including a cheese flavored corn product in puffed form since at least as early as September 30, 1948. Opposer's CHEETOS mark is inherently distinctive and since a date long prior to the filing date of the above identified application and continuing through the present, the mark CHEETOS and its variants has been identified with Opposer for an extensive period of time and has appeared on a tremendous amount of product packaging, advertising, national television commercials, in-store display racks, trucks, signage, point-of purchase material, etc.

5. Since 1948, Opposer has sold billions of dollars worth of products bearing the mark CHEETOS or variants. As a result of its long use, extensive, popular and continuous advertising, promotion and tremendous sales success of products bearing Opposer mark, the CHEETOS mark has acquired substantial public and consumer recognition throughout the United States, possesses an extremely favorable reputation and distinctiveness with an invaluable amount of goodwill, solely signifying Opposer as the source of food products, has become famous and has become an asset of considerable value to Opposer.

6. Since first introducing CHEETOS corn snacks, Opposer has expanded its use of the mark CHEETOS to identify an entire line of snack food product styles, flavors and shapes, manufactured and sold exclusively by Opposer.

7. Opposer is also the owner of valid and subsisting U.S. registrations and applications for the mark CHEETOS and variants thereof, including, but not limited to, the following:

<b>MARK</b>	<b>REG./SER. NUMBER.</b>	<b>REG/FILE DATE</b>	<b>GOODS/FIRST USE</b>
CHEE.TOS	752,220	07/02/1963	cheese flavored corn product in puffed form (First Use September 30, 1948)

8. The above registration is valid and in force. Hereinafter the above marks, including, but not limited to, those registered as well as those used in commerce by Opposer, are referred to individually and collectively as the "CHEETOS Marks" which are inherently distinctive.

9. On information and belief, Applicant, a corporation organized and existing under the laws of Mexico, with a place of business at Romulo Diaz de la Vega #

1812 Pte Fracc. Industrial, Monterey, Nuevo Leon 64229, Mexico, has no offices, manufacturing facilities, warehouses, or distribution centers in the United States.

10. On information and belief, on May 27, 2004, Applicant filed Application Serial No. 78/426,643 to register CHICHOS and Design for "corn chips with chili flavor" in International Class 30, based on alleged use of the mark in connection with such goods since 1996.(Applicant's application-in-opposition is hereinafter referred to as the "CHICHOS Mark").

11. Opposer has priority over Applicant because its use, application and/or registration date precede the Applicant's filing date for its application or on information and belief, any claimed date of first use of the CHICHOS Mark by Applicant.

12. Registration of Applicant's alleged CHICHOS Mark which is the subject of the Application Serial No. 78/426,643 is barred by the provisions of Section 2(d) of the U.S. Trademark (Lanham) Act of 1946 because the said mark consists of or comprises a mark which so resembles a mark previously registered in the United States Patent and Trademark Office and/or used in the United States by Opposer and not abandoned, as to be likely, when used in connection with the alleged goods of the Applicant, to cause confusion, mistake or deception.

13. Applicant's alleged CHICHOS Mark and Opposer's CHEETOS Marks are similar. On information and belief, the goods to which Applicant's alleged CHICHOS Mark are applied, namely, corn chips with chili flavoring, and the goods upon which Opposer's CHEETOS Marks are registered and/or extensively used are similar or are closely related products. On information and belief, the parties respective products

are both marketed and appeal to the same class of purchasers, e.g., consumers who like snacks or quick meals, and are both marketed through the same channels of trade or on the same store shelves.

14. Applicant's alleged CHICHOS Mark is confusingly similar to the CHEETOS Marks owned by Opposer; it falsely suggests a connection with Opposer; it constitute a false representation that Applicant's goods are approved or sponsored by Opposer or that Applicant's business is connected or affiliated with Opposer or that its CHICHOS Mark is a version of Opposer's CHEETOS Marks, and its use and registration contemporaneously with Opposer's CHEETOS Marks is likely to cause consumer confusion, mistake and deception as to the source of Applicant's goods, all within the meaning of Sections 2(d) and 43(a) of the United States Trademark ("Lanham") Act, 15 U.S.C. §1052(d) and §1125(a).

15. Further, Opposer's distinctive mark CHEETOS or variants thereof became famous long prior to the filing date of Applicant's CHICHOS Mark which is the subject of Application Serial No. 78/426,643 and/or any claimed date of first use by Applicant in connection with the goods identified in that application. The registration and use of Applicant's CHICHOS Mark would likely dilute or dilute the distinctive quality of Opposer's CHEETOS Marks under Section 43(c) of the Lanham Act, 15 U.S.C. §1125(c).

16. Opposer will be damaged by the registration sought by Applicant within the meaning of 15 U.S.C. §1063 because such registration would support and assist Applicant in the confusing, misleading and/or dilutive use of Applicant's alleged

CHICHOS Mark and would give color of exclusive statutory rights to Applicant in violation and derogation of the prior and superior rights of Opposer.

17. In view of the foregoing, issuance of a registration to Applicant for its claimed mark which is the subject of Application Serial No. 78/426,643 would, therefore, be damaging to Opposer's common law marks and/or federal registrations within the meaning of Section 13 of the Lanham Act, 15 U.S.C. §1063.

WHEREFORE, Opposer prays that this opposition be sustained and that registration be denied to Applicant on its Application Serial No. 78/426,643.

Respectfully submitted,

BAKER BOTTS LLP

Dated: January 4, 2006

By

  
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