

ESTTA Tracking number: **ESTTA74132**

Filing date: **04/03/2006**

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	04/02/2006
Address	7701 Legacy Drive Plano, TX 75024 UNITED STATES

Attorney information	Joseph J. Ferretti Frito-Lay, Inc. 7701 Legacy Drive, Mail Stop 3A-421 Plano, TX 75024 UNITED STATES trademarks@fritolay.com Phone:972-334-3403
----------------------	--

Applicant Information

Application No	78512471	Publication date	10/04/2005
Opposition Filing Date	04/03/2006	Opposition Period Ends	04/02/2006
Applicant	Productos Chachitos, S.A. de C.V. Complejo Industrial Retorno Fuentes Mares No. 111 Chihuahua, Chihuahua, 31109 MEXICO		

Goods/Services Affected by Opposition

Class 030. First Use: 2004/10/15 First Use In Commerce: 2004/10/15
All goods and services in the class are opposed, namely: cereals made of wheat

Attachments	chachitos Notice of Opposition.pdf (7 pages)
-------------	--

Signature	/Joseph J. Ferretti/
Name	Joseph J. Ferretti
Date	04/03/2006

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

In the matter of Application Serial No. 78512471, CHACHITOS
Published in the *Official Gazette* on October 4, 2005

-----X		
FRITO-LAY NORTH AMERICA, INC.	:	
	:	
Opposer,	:	
	:	Opposition No.
vs.	:	
	:	
PRODUCTOS CHACHITOS, S.A. DE C.V.,	:	
	:	
Applicant.	:	
-----X		

NOTICE OF OPPOSITION

Opposer, Frito-Lay North America, Inc., a Delaware corporation, having a place of business at 7701 Legacy Drive, Plano, TX 75024, believes it will be damaged by the issuance of a registration to Applicant, Productos Chachitos, S.A. de C.V. (hereinafter "Applicant" or "Productos"), a corporation organized and existing under the laws of Mexico, with a place of business at Complejo Industrial Retorno Fuentes Mares No. 111, Chihuahua, Chihuahua Mexico 31109, upon its Application Serial No. 78/512,471 for the mark CHACHITOS in International Class 30 for "cereals made of wheat," and having previously been granted extensions of time to oppose, hereby opposes same.

The grounds for opposition are as follows:

1. Opposer, Frito-Lay North America, Inc. through its predecessors in interest and title, and through its related companies, divisions and/or licensees (hereinafter individually and/or collectively referred to as "Opposer"), has been engaged in the manufacture and sale of snack foods for over fifty years and is now one of the largest manufacturers of snack foods in the United States.

2. Opposer's snack foods are marketed and sold in tremendous quantities on a nationwide basis, supported by tens of millions of dollars of advertising and promotion each year. Opposer's food products are sold in almost every supermarket in the United States as well as in numerous convenience stores, vending machines, mass merchandise stores, schools and other outlets.

3. Opposer has used the mark CHEETOS and variants thereof on and in connection with snack foods and related products, including, but not limited to, corn based snack products since September 30, 1948. Since a date long prior to the filing date of the above identified application and continuing through the present, CHEETOS has been identified with Opposer 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.

4. Opposer has, by virtue of incredibly extensive usage, advertising and promotion built up a very high level of consumer and trade recognition symbolized by its mark CHEETOS. Due to extensive public exposure to, and awareness by, consumers and the trade, the CHEETOS mark is famous and has acquired and now possesses an extremely favorable reputation and distinctiveness with an invaluable amount of goodwill, solely signifying Opposer as the source food products of high quality.

5. Opposer's sales of CHEETOS products have exceeded hundreds of millions of dollars each year, over the past several years alone. By virtue of its tremendous sales success, and extensive and popular advertising and promotional efforts, the CHEETOS trademark has long enjoyed strong brand recognition and distinctiveness which has resulted in a highly favorable reputation and goodwill among the trade and consumers as identifying high quality snack food products and sauces or dips manufactured and exclusively sold by Opposer.

6. Opposer has adopted and has used variations of CHEETOS as a mark to identify other related snack food products manufactured and sold exclusively by Opposer. By virtue of similarly extensive sales, advertising and promotion as described hereinabove, these variants have also acquired a favorable reputation among consumers and the trade and has created a multiplicity and/or family of marks incorporating the designation CHEETOS which further reinforces the distinctiveness, fame and favorable reputation enjoyed by Opposer, its mark CHEETOS and its various snack food products, many of which are salted and seasoned in various ways.

7. Indeed, the tremendous commercial acceptance and success of many of the Opposer's snack foods is due in large measure to its innovative and continuous introduction of a variety of unique and special seasonings and flavorings for its snack chips and snack foods. Since first introducing CHEETOS cheese flavored puffed corn snacks, Opposer has expanded its CHEETOS product line to include different styles and flavors.

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

MARK	REG./SER. NUMBER.	REG/FILE DATE	GOODS
CHEETOS	0,752,220	07/02/63	Cheese flavored corn product in puffed form
CHEE-TOS	1,089,385	04/11/78	Cheese flavored puffed corn snacks
CHEETOS	2,312,008	01/25/00	Cheese flavored puffed corn snacks
CHEETOS	2,840,688	05/11/04	Cheese flavored puffed corn snacks
TWISTED CHEETOS	2,825,885	03/23/04	Corn based snacks, namely puffed corn snacks
CHEETOS	2,680,627	01/28/03	Corn based snacks, namely puffed corn snacks
CHEETOS	2,683,228	02/04/03	Corn based snacks, namely puffed corn snacks

CHEETOS	2,677,619	01/21/03	Corn based snacks, namely puffed corn snacks
CHEETOS TWISTED	2,780,545	11/04/03	Corn based snack food, namely puffed corn snacks
CHEETOS CHOMPERS	76/651252	11/23/05	Cereal-based snack foods; crackers; extruded corn snacks; cheese-flavored puffed corn snacks
CHEETOS	2,925,813	02/08/05	Cheese flavored puffed corn snacks, sold as an ingredient of snack mix consisting of tortilla chips, multigrain snack chips, cheese flavored puffed corn snacks, pretzels, and/or ready-to-eat cereal
CHEETOS	2,926,421	02/15/05	Crackers

The above registrations are valid and in force, and Registration No. 752,220 and No. 1,089,385 are incontestable. Hereinafter the above marks, including those registered and/or used in commerce by Opposer, are referred to as the "CHEETOS Marks" which are inherently distinctive.

10. As a result of the extensive and continuous advertising, sale, use and promotion of products bearing Opposer's CHEETOS Marks for over 40 years and their high quality, said marks have acquired substantial public and consumer recognition throughout the United States, enjoy valuable goodwill, have become famous and have become assets of considerable value to Opposer.

11. On information and belief, on November 5, 2004, Applicant filed Application Serial No. 78/512,471 to register CHACHITOS for "cereals made of wheat" in International Class 30, alleging a date of first use of October 15, 2004 and a date of first use in commerce of October 15, 2004.

12. Opposer has priority over Applicant because its use and/or registration dates precede the Applicant's filing date and alleged dates of first use of Applicant's CHACHITOS mark.

13. Registration of Applicant's alleged mark which is the subject of the application-in-opposition is barred by the provisions of Section 2(d) of the Trademark 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.

14. Applicant's alleged CHACHITOS mark and Opposer's CHEETOS Marks are similar in their overall commercial impression, appearance, and sound. These similarities are further enhanced in view of Opposer's prior use and registration of various CHEETOS Marks such that on information and belief, consumers are likely to perceive Applicant's claimed mark as a similar or related play off of Opposer's marks.

15. On information and belief, the goods to which Applicant's alleged CHACHITOS trademark will be applied and the goods upon which Opposer's CHEETOS Marks are registered and/or extensively used are or are likely to be similar, competitive, related or complementary products. On information and belief, they appeal or will appeal to the same class of purchasers, and are goods of a type which are often sold through the same channels of trade.

16. Accordingly, Applicant's alleged CHACHITOS mark, so resembles Opposer's previously used and registered marks CHEETOS Marks, as to be likely to cause confusion, to cause mistake or to deceive. The likelihood of confusion, mistake or deception that would also arise from concurrent use and registration of the applied for mark with Opposer's use and registration of its CHEETOS Marks is that (a) persons are likely to believe that Applicant's products have their source in Opposer, or (b) that Applicant and its goods are in some way legitimately connected or affiliated with, sponsored, approved, endorsed or licensed by Opposer when, in fact, they are not.

Accordingly, registration of Applicant's CHACHITOS mark is barred by the provisions of Section 2(d) of the trademark Act of 1946, 15 U.S.C. § 1052(d).

17. Applicant's alleged mark which is the subject of the application-in-opposition so resembles Opposer's previously used and registered CHEETOS Marks, as to be likely to constitute a false representation that Applicant's goods are approved or sponsored by Opposer or that Applicant's mark which is the subject of the application-in-opposition is a version of Opposer's marks and/or products/services, thereby deceiving the public, causing confusion or mistake and causing damage to Opposer within the meaning of 15 U.S.C. §1063.

18. Further, Opposer's inherently distinctive CHEETOS Marks became famous long prior to the filing date of Applicant's application-in-opposition and/or any claimed date of first use by Applicant of the CHACHITOS mark which is the subject of U.S. Application Serial No. 78/512,471. Registration and use of Applicant's alleged CHACHITOS mark would likely dilute the distinctiveness of Opposer's famous and highly distinctive CHEETOS Marks in violation of 15 U.S.C. § 1125(c). Accordingly, Applicant's alleged mark is not entitled to registration under 15 U.S.C. § 1052(f) and Section 13 of the Lanham Act, 15 U.S.C. § 1063.

19. 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 CHACHITOS mark, and would give color of exclusive statutory rights to Applicant in violation and derogation of the prior and superior rights of Opposer.

20. In view of the foregoing, issuance of a registration to Applicant for its claimed CHACHITOS mark which is the subject of Application Serial No. 78/512,471 would, therefore, be damaging to Opposer's common law marks and 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. 78/512,471.

Respectfully submitted,

FRITO-LAY NORTH AMERICA, INC.

Date: 4/7/08

By: 
Joseph J. Ferretti
7701 Legacy Drive, Mail Stop 3A-421
Plano, TX 75024
Tel: (972) 334-3403
Fax: (972) 334-3871
Attorney for Opposer