

ESTTA Tracking number: **ESTTA242180**

Filing date: **10/13/2008**

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	General Mills, Inc.
Granted to Date of previous extension	10/12/2008
Address	Number One General Mills Boulevard Minneapolis, MN 55426 UNITED STATES

Attorney information	Dana C. Jewell, Esq. General Mills Number One General Mills Boulevard Minneapolis, MN 55426 UNITED STATES trade.marks@genmills.com, dana.jewell@genmills.com
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Applicant Information

Application No	77192876	Publication date	04/15/2008
Opposition Filing Date	10/13/2008	Opposition Period Ends	10/12/2008
Applicant	Betty Jane's Sweet Delights, Inc. 2250 Journet Drive Dunn Loring, VA 22027 UNITED STATES		

Goods/Services Affected by Opposition

Class 030. First Use: 2007/12/02 First Use In Commerce: 2007/12/02 All goods and services in the class are opposed, namely: Peanut brittles
Class 035. First Use: 2007/11/21 First Use In Commerce: 2007/11/21 All goods and services in the class are opposed, namely: On-line retail store services featuring baked goods

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1654991	Application Date	08/27/1990
Registration Date	08/27/1991	Foreign Priority Date	NONE
Word Mark	BETTY CROCKER		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 1989/08/23 First Use In Commerce: 1989/08/23 bakery goods

U.S. Registration No.	1517738	Application Date	03/21/1988
Registration Date	12/27/1988	Foreign Priority Date	NONE
Word Mark	BETTY CROCKER		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 004. First use: First Use: 1972/03/16 First Use In Commerce: 1972/03/16 CANDLES</p> <p>Class 016. First use: First Use: 1972/03/16 First Use In Commerce: 1972/03/16 PAPER TABLE COVERS AND PAPER NAPKINS</p> <p>Class 021. First use: First Use: 1972/03/16 First Use In Commerce: 1972/03/16 [PAPER BAKING CUPS, PAPER PLATES, PAPER DRINKING CUPS,] CAKE DECORATING TIPS AND CANDLE HOLDERS</p> <p>Class 030. First use: First Use: 1971/01/01 First Use In Commerce: 1971/01/01 ICING, DECORATING GEL, EDIBLE CANDY CAKE DECORATIONS AND EDIBLE CANDY DECORATING DECORS</p>		

U.S. Registration No.	1198117	Application Date	02/26/1980
Registration Date	06/15/1982	Foreign Priority Date	NONE
Word Mark	BETTY CROCKER		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 029. First use: First Use: 1964/00/00 First Use In Commerce: 1964/00/00 Packaged Dehydrated Potatoes; Packaged Main Meal Mixes Having a Vegetable Base; Packaged Ready to Eat Fruit-Based Snacks; and Packaged Processed Salad Toppings Having Either a Vegetable Protein Base, a Vegetable Base or a Nut Base</p> <p>Class 030. First use: First Use: 1954/00/00 First Use In Commerce: 1954/00/00 Packaged Main Meal Mixes Having Either a Cereal Base or a Pasta Base; [Packaged Processed Salad Toppings Having a Cereal Base] ; Cake Mixes; Frosting Mixes; Mixes for Making Bakery Goods; Brownie Mixes; Cookie Mixes; [Ready to Serve Puddings]; Pie Crust Mixes; Pancake Mixes; Frostings; Edible Cake Decorations and Packaged Noodle Based Side Dish Mixes</p>		

U.S. Registration No.	814113	Application Date	02/27/1964
Registration Date	08/30/1966	Foreign Priority Date	NONE
Word Mark	BETTY CROCKER		
Design Mark			

Description of Mark	NONE
Goods/Services	Class U046 (International Class 029, 030). First use: First Use: 1924/09/20 First Use In Commerce: 1924/09/20 DEHYDRATED POTATO PRODUCTS SUCH AS MASHED POTATOES, AU GRATIN POTATOES AND SCALLOPED POTATOES; WHEAT FLOUR, PIE CRUST MIXES, CAKE MIXES, ICING MIXES, COOKIE MIXES, PANCAKE MIX, [REFRIGERATED READY-TO-BAKE DOUGHS,] MUFFIN MIXES, [PIZZA MIX,] PUDDING CAKE MIXES, [VEGETABLE OIL,] CASSEROLE MIXES COMPOSED OF RICE, NOODLES [OR MACARONI AS A BASE COMBINED WITH SEASONINGS] OR SAUCES, [CHICKEN] AND [SEAFOOD MAIN DISHES COMPOSED OF A REFRIGERATED, READY-TO-BAKE DOUGH COMBINED WITH CHICKEN, TUNA OR CRABMEAT IN A SAUCE, CANNED CHICKEN AND SEAFOODS-NAMELY, CHICKEN, TUNA AND CRABMEAT, PIZZA SAUCES,] BISCUIT MIX [, AND BREAKFAST CEREALS]

U.S. Registration No.	716936	Application Date	05/31/1960
Registration Date	06/13/1961	Foreign Priority Date	NONE
Word Mark	BETTY CROCKER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U046 (International Class 030). First use: First Use: 1924/09/20 First Use In Commerce: 1924/09/20 Dehydrated Potato Products Such as Mashed Potatoes, Au Gratin Potatoes, and Scalloped Potatoes, Wheat Flour, [Breakfast Cereals,] Cake Flour, Pie Crust Mix, Cake Mixes, Icing Mixes, Cookie Mixes, Pancake and Waffle Mix, [Refrigerated Ready-to-Bake Doughs, Gravy Mix] and Muffin Mixes		

U.S. Registration No.	536524	Application Date	02/28/1949
Registration Date	01/16/1951	Foreign Priority Date	NONE
Word Mark	BETTY CROCKER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U046 (International Class 001, 005, 029, 030, 031, 032). First use: First Use: 1924/09/20 First Use In Commerce: 1924/09/20 WHEAT FLOUR, [CEREAL BREAKFAST FOODS,] [DEHYDRATED SOUP PRODUCTS-NAMELY, DEHYDRATED NAVY BEAN SOUP, DEHYDRATED SPLIT PEA SOUP, DEHYDRATED VEGETABLE NOODLE SOUP, PREPARED PIE MIX COMPRISING A COMBINED PACKAGE OF PIE CRUST MIX AND APPLE SLICES,] PREPARED CAKE MIXES AND PIE CRUST MIX		

U.S. Registration No.	3151956	Application Date	11/11/2004
Registration Date	10/03/2006	Foreign Priority Date	NONE
Word Mark	WARM DELIGHTS		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2005/07/25 First Use In Commerce: 2005/07/25 DESSERT MIXES, NAMELY BROWNIE, CAKE AND COOKIES MIXES; PACKAGED DESSERT KITS CONTAINING A COMBINATION OF INGREDIENTS FOR MAKING DESSERTS, NAMELY BROWNIE, CAKE, AND COOKIE MIXES

Attachments	71574616#TMSN.gif (1 page)(bytes) 78515384#TMSN.jpeg (1 page)(bytes) NOO - BETTY JANE'S SWEET DELIGHTS.pdf (6 pages)(73967 bytes) Pages from 75270023_1.PDF - Adobe Acrobat Professional.pdf (1 page) (122054 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	/Dana C. Jewell/
Name	Dana C. Jewell, Esq.
Date	10/13/2008

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

GENERAL MILLS, INC.)	Opposition No. _____
)	
vs.)	Serial No. 77/192,876
)	Serial No. 77/975,979
)	
BETTY JANE'S SWEET DELIGHT, INC.)	Mark: BETTY JANE'S SWEET DELIGHTS

NOTICE OF OPPOSITION

Opposer General Mills, Inc., a Delaware corporation having a place of business at Number One General Mills Boulevard, Minneapolis, Minnesota 55426, believes it will be damaged by registration of the mark BETTY JANE'S SWEET DELIGHTS in Application Serial No. 77/192,876 and hereby opposes the same. The grounds for opposition are as follows:

1. Opposer is the creator of the famous Betty Crocker® brand and the owner of more than forty (40) trademark registrations protecting the mark BETTY CROCKER for use in connection with a wide range of products, including the following registrations:

<u>Mark</u>	<u>Goods</u>	<u>Reg. Date</u>	<u>Reg. No.</u>
BETTY CROCKER	Bakery goods (IC 30).	Aug. 27, 1991	1,654,991
BETTY CROCKER	Candles (IC 4); Paper table covers and paper napkins (IC 16); Cake decorating tips and candle holders (IC 21); Icing, decorating gel, edible candy cake	Dec. 27, 1988	1,517,738

	decorations, and edible candy decorating decors (IC 30).		
BETTY CROCKER	Packaged dehydrated potatoes, packaged main meal mixes having a vegetable base, package ready to eat fruit-based snacks, and packaged processed salad toppings having either a vegetable protein base, a vegetable base, or a nut base (IC 29); Packaged main meal mixes having either a cereal base or a pasta base, cake mixes, frosting mixes, mixes for making bakery goods, brownie mixes, cookie mixes, pie crust mixes, pancake mixes, frostings, edible cake decorations, and packaged noodle-based side dish mixes (IC 30).	June 15, 1982	1,198,117
BETTY CROCKER	Dehydrated potato products such as mashed potatoes, au gratin potatoes, and scalloped potatoes; wheat flour, pie crust mixes, cake mixes, icing mixes, cookie mixes, pancake mix, muffin	Aug. 30, 1966	814,113

	mixes, pudding cake mixes, casserole mixes composed of rice, noodles, or sauces, and biscuit mix (IC 29 and 30).		
BETTY CROCKER	Dehydrated potato products such as mashed potatoes, au gratin potatoes, and scalloped potatoes, wheat flour, cake flour, pie crust mix, cake mixes, icing mixes, cookie mixes, pancake and waffle mix, and muffin mixes (IC 30).	June 13, 1961	716,936
BETTY CROCKER (Stylized)	Wheat flour, prepared cake mixes, and pie crust mix (IC 30).	Jan. 16, 1951	536,524

2. One of Opposer’s product lines under its BETTY CROCKER mark is called WARM DELIGHTS. Opposer’s WARM DELIGHTS mark is registered in the U.S. under Reg. No. 3,151,956, which was issued on October 3, 2006 for use in connection with “dessert mixes, namely brownie, cake, and cookies mixes; packaged dessert kits containing a combination of ingredients for making desserts, namely brownie, cake, and cookie mixes.”

3. Opposer’s Warm Delights product is marketed as “Betty Crocker Warm Delights.”

4. On May 30, 2007, Applicant filed trademark application Serial No. 77/192,876 seeking registration of the proposed mark BETTY JANE’S SWEET

DELIGHTS for use in connection with “Peanut brittle; cookie mixes; cookies; chocolate candies; candies; cake doughs; cake mixes; cakes; caramel popcorn; glazed popcorn IIC 30)” and for “retail store services featuring baked goods; on-line retail store services featuring baked goods; retail baker shops (IC 35)” (hereinafter, the “Opposed Mark”).

5. The Opposed Mark was published for opposition on April 15, 2008. At that time, Serial No. 77/192,876 included all of the goods set forth above, namely, “Peanut brittle; cookie mixes; cookies; chocolate candies; candies; cake doughs; cake mixes; cakes; caramel popcorn; glazed popcorn” and for “retail store services featuring baked goods; on-line retail store services featuring baked goods; retail baker shops.” Opposer timely requested, and was granted, extensions of time until October 12, 2008 in which to oppose the Opposed Mark.

6. Opposer’s last request for extension of time to oppose Serial No. 77/192,876 was filed and granted on August 12, 2008. Subsequently, Serial No. 77/192,876 was divided and a second application serial number was issued, Serial No. 77/975,979. The new application, Serial No. 77/975,979 was not republished. See Exhibit A, copy of page from April 15, 2008 Official Gazette showing official publication of the Opposed Mark. Opposer hereby opposes both application Serial No. 77/192,876 and Serial No. 77/975,979.

7. The Opposed Mark is confusingly similar to Opposer’s BETTY CROCKER and WARM DELIGHTS Marks. The parties’ respective trademarks are highly similar in terms of appearance, sound, and connotation. Both marks are used in connection with identical and highly related goods such as, for example, cake mixes, cookie mixes, frosting, and edible candy cake decorations.

8. Opposer and its subsidiaries and affiliated companies began using the BETTY CROCKER and WARM DELIGHTS marks in interstate commerce on and in connection with Opposer’s goods long prior to Applicant’s filing date or its alleged date of first use.

9. Opposer has made substantial investment in advertising and promotional use of its BETTY CROCKER and WARM DELIGHTS marks beginning long prior to Applicant's filing date or its alleged date of first use of the Opposed Mark.

10. Given Opposer's established prior usage of its BETTY CROCKER and WARM DELIGHTS marks, and Applicant's highly similar BETTY JANE'S SWEET DELIGHTS mark which Applicant claims to use in connection with goods which are identical and/or highly similar to Opposer's goods, Opposer believes and therefore avers that Applicant's use and registration of the trademark BETTY JANE'S SWEET DELIGHTS will damage the Opposer for the following reasons, among others:

- a. Consumers and persons in the trade will be confused as to the source or origin of the parties' respective goods; and
- b. Consumers and persons in the trade will incorrectly assume that Applicant's goods are associated with, endorsed by, or in some way related to the Opposer.

11. Applicant's BETTY JANE'S SWEET DELIGHTS mark consists of and comprises a mark which so resembles Opposer's BETTY CROCKER and WARM DELIGHTS marks, previously used and registered in the United States by Opposer and not abandoned, as to be likely, when applied to Applicant's identical and/or highly similar goods, to cause confusion, mistake, and/or deception.

WHEREFORE, Opposer respectfully requests that the registration sought by the Applicant be refused in accordance with the provisions of Section 2(d) of the Trademark Act, that no registration be issued, and that and that this Opposition be sustained in favor of Opposer.

Respectfully Submitted,

GENERAL MILLS, INC.

By /Dana C. Jewell/
Dana C. Jewell, Esq.
General Mills, Inc.
Number One General Mills Boulevard
Minneapolis, MN 55426
Telephone: (763) 764-5751
Fax: (763) 764-2268

ATTORNEY FOR OPPOSER

CERTIFICATE OF SERVICE

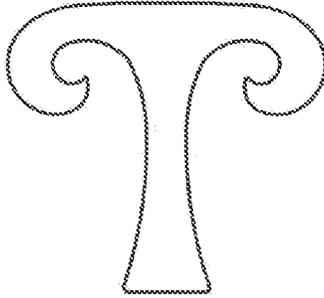
I hereby certify that on October 13, 2008, a copy of the foregoing Notice of Opposition was served on Applicant via Federal Express to Applicant's attorney at the correspondence address of record, as follows:

Norm D. St. Landau
Drinker Biddle & Reath L.L.P.
1500 K Street N.W.
Suite 1100
Washington, D.C. 20005-1209
(202) 842-8800

/Dana C. Jewell/
Dana C. Jewell

SN 77-191,614. TRENDWELL ENERGY CORPORATION,
GREENVILLE, MI. FILED 5-29-2007.

SN 77-193,153. CUSTOM ACCESSORIES, INC., NILES, IL.
FILED 5-30-2007.



THE MARK CONSISTS OF A STYLIZED LETTER "T".

CLASS 40—MATERIAL TREATMENT

FOR OIL AND GAS PRODUCTION (U.S. CLS. 100, 103
AND 106).
FIRST USE 2-15-1982; IN COMMERCE 2-15-1982.

CLASS 42—SCIENTIFIC AND COMPUTER SERVICES

FOR OIL AND GAS EXPLORATION (U.S. CLS. 100
AND 101).
FIRST USE 2-15-1982; IN COMMERCE 2-15-1982.
ANDREA SAUNDERS, EXAMINING ATTORNEY

SN 77-192,876. BETTY JANE'S SWEET DELIGHTS, INC.,
DUNN LORING, VA. FILED 5-30-2007.

Betty Jane's Sweet Delights

THE MARK CONSISTS OF STANDARD CHARACTERS
WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE,
SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO
USE "SWEET", APART FROM THE MARK AS SHOWN.

CLASS 30—STAPLE FOODS

FOR PEANUT BRITTLE; COOKIE MIXES; COOKIES;
CHOCOLATE CANDIES; CANDIES; CAKE DOUGHS;
CAKE MIXES; CAKES; CARAMEL POPCORN; GLAZED
POPCORN (U.S. CL. 46).
FIRST USE 12-2-2007; IN COMMERCE 12-2-2007.

CLASS 35—ADVERTISING AND BUSINESS

FOR RETAIL STORE SERVICES FEATURING BAKED
GOODS; ON-LINE RETAIL STORE SERVICES FEATURING
BAKED GOODS; RETAIL BAKERY SHOPS (U.S.
CLS. 100, 101 AND 102).
FIRST USE 11-21-2007; IN COMMERCE 11-21-2007.
STEVEN R. FINE, EXAMINING ATTORNEY



OWNER OF U.S. REG. NOS. 2,007,366 AND 2,412,616.
THE MARK CONSISTS OF THE WORD SHOP INSIDE A
WRENCH, FOLLOWED BY THE WORDS CRAFT.

CLASS 6—METAL GOODS

FOR METAL HOSE CLAMPS, METAL MUFFLER
CLAMPS, METAL PADLOCKS AND METAL COMBINA-
TION LOCKS, METAL GARAGE HOOKS, METAL STO-
RAGE HOOKS (U.S. CLS. 2, 12, 13, 14, 23, 25 AND 50).

CLASS 7—MACHINERY

FOR BATTERY OPERATED AND POWER ROTARY
TOOLS FOR GRINDING, DRILLING, ROUTING, POL-
ISHING, ENGRAVING, SANDING, SAWING, MARK-
ING, DEBURRING, CARVING, SHARPENING,
SHAPING, CUTTING, CLEANING, AND MATERIAL
REMOVAL; POWER DRILL BITS (U.S. CLS. 13, 19, 21,
23, 31, 34 AND 35).

CLASS 8—HAND TOOLS

FOR AUTOMOTIVE MAINTENANCE AND REPAIR
TOOLS, NAMELY, MANUALLY OPERATED OIL FIL-
TER WRENCHES; HAND OPERATED SIPHON PUMPS,
HAND PUMPS AND NEEDLES FOR USE THEREWITH,
FOOT PUMPS, HAND OPERATED PUMP OILERS,
SPRAY CAN TRIGGER HANDLES, AUTOMOTIVE
MAINTENANCE AND REPAIR TOOLS, NAMELY,
MANUALLY OPERATED LOCKING PLIERS, SNAP
RING PLIERS AND JAWS FOR USE THEREWITH, FLAT
WRENCHES, TORQUE WRENCHES, OIL DRAIN PLUG
WRENCHES, OIL FILTER CAP WRENCHES, SAWS AND
BLADES FOR USE THEREWITH, SOCKET WRENCHES
AND SOCKET SETS FOR USE THEREWITH, GEAR
PULLERS, STEERING WHEEL PULLERS, RUBBER
MALLETS, IGNITION POINT FILES, BRAKE TOOLS,
NAMELY, BRAKE SPRING PLIERS, BRAKE SHOE
SPRING TOOLS, BRAKE SPOONS, BODY FILLER AP-
PLICATORS, SCREWDRIVERS, PICK-UP TOOLS, TOOL
KITS COMPRISED OF PLIERS, SCREWDRIVERS, SOCK-
ET SETS, AND WRENCHES, MARKING CLIPS, SPOUTS,
FILLERS, OIL CHANGE TOOL KITS COMPRISED OF
OIL WRENCHES, OIL SPOUTS AND OIL PANS, BITS
FOR HAND DRILLS, UTILITY KNIVES, KNIVES FOR
HOBBY USE (U.S. CLS. 23, 28 AND 44).

CLASS 9—ELECTRICAL AND SCIENTIFIC APPARATUS

FOR DISTRIBUTOR POINT AND SPARK PLUG AD-
JUSTING TOOLS, NAMELY, THICKNESS GAUGES (U.S.
CLS. 21, 23, 26, 36 AND 38).

CLASS 17—RUBBER GOODS

FOR RUBBER AND PLASTIC GASKET MATERIAL AS
AUTO PARTS (U.S. CLS. 1, 5, 12, 13, 35 AND 50).
ARETHA SOMERVILLE, EXAMINING ATTORNEY