

ESTTA Tracking number: **ESTTA269922**

Filing date: **03/04/2009**

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 parties oppose registration of the indicated application.

**Opposers Information**

Name	Hershey Chocolate & Confectionery Corporation
Granted to Date of previous extension	03/04/2009
Address	4860 Robb Street Suite 204 Wheat Ridge, CO 80033 UNITED STATES

Name	The Hershey Company
Granted to Date of previous extension	03/04/2009
Address	100 Crystal A Drive Hershey, PA 17033 UNITED STATES

Attorney information	Paul C. Llewellyn Kaye Scholer LLP 425 Park Avenue New York, NY 10022 UNITED STATES pllewellyn@kayescholer.com, jeischeid@kayescholer.com
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**Applicant Information**

Application No	77194584	Publication date	11/04/2008
Opposition Filing Date	03/04/2009	Opposition Period Ends	03/04/2009
Applicant	Ever Companion Food Corp. Nei-Hu Dist. 1 Fl., No. 26, Lane 583, Jui Kuang Rd Taipei, 114 TAIWAN		

**Goods/Services Affected by Opposition**

Class 030. First Use: 2007/02/23 First Use In Commerce: 2007/02/23

All goods and services in the class are opposed, namely: Tea; beverages made of tea; coffee; coffee based beverages containing milk; ice cream; salt; soy sauce; cooking or flavoring sauce; black and dark vinegar; vinegar; seasonings, spices and flavorings for food; sugar; natural sweeteners; honey; royal jelly for food purposes; molasses and maple syrups; chewing gum; candy mints, non-medicated lozenges and candy; rice crackers; snack mixes consisting of crackers, pretzels, candied nuts and/or popped popcorn; biscuits; cakes; breads; sandwiches; puddings; pies; dumplings; buns; spring rolls; egg rolls, egg dumplings; rice; processed wheat; rolled oats; flour; processed grains; pearl-like balls consisting of food starches made from cassava, tapioca, taro and/or sweet potatoes; sago, tapioca,

pearl tapioca; glutinous rice; packaged meals consisting of rice; instant noodles; packaged meals consisting of noodles or pastas; dumplings; noodles; rice noodles; spring roll skins and wrappers; dough; yeasts; thickening agents for cooking or making foodstuff; flavored vinegar

## Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

## Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2416701	Application Date	10/17/1996
Registration Date	01/02/2001	Foreign Priority Date	NONE
Word Mark	KISSES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1907/07/01 First Use In Commerce: 1907/07/01 generally solid chocolate candy, with and without ingredients such as nuts		

U.S. Registration No.	1236602	Application Date	05/28/1981
Registration Date	05/03/1983	Foreign Priority Date	NONE
Word Mark	HERSHEY'S MILK CHOCOLATE KISSES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1969/06/19 First Use In Commerce: 1969/06/19 Candy		

U.S. Registration No.	1549371	Application Date	04/11/1988
Registration Date	07/25/1989	Foreign Priority Date	NONE
Word Mark	HERSHEY'S KISSES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1907/07/01 First Use In Commerce: 1907/07/01 CHOCOLATES		

U.S. Registration No.	1074784	Application Date	06/30/1972
Registration Date	10/04/1977	Foreign Priority Date	NONE
Word Mark	A BIG KISS FOR YOU		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U046 (International Class 030). First use: First Use: 1971/07/02 First Use In Commerce: 1971/07/11 CANDIES INCLUDING CHOCOLATE PRODUCTS		

U.S. Registration No.	1202212	Application Date	03/02/1979
Registration Date	07/20/1982	Foreign Priority Date	NONE
Word Mark	SUPER KISS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1972/10/01 First Use In Commerce: 1972/10/01 Confectionery		

U.S. Registration No.	1346588	Application Date	02/27/1984
Registration Date	07/02/1985	Foreign Priority Date	NONE
Word Mark	THE ULTIMATE KISS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1979/12/17 First Use In Commerce: 1979/12/17 Candy		

U.S. Registration No.	2507281	Application Date	06/15/1995
Registration Date	11/13/2001	Foreign Priority Date	NONE
Word Mark	MINI KISSES		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 1995/07/26 First Use In Commerce: 1995/07/26 confectionery bits for baking

U.S. Registration No.	1797199	Application Date	07/15/1991
Registration Date	10/05/1993	Foreign Priority Date	NONE

Word Mark	HUGS 'N KISSES		
Design Mark	<b>HUGS 'N KISSES</b>		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1992/08/04 First Use In Commerce: 1992/08/04 candy		

U.S. Registration No.	2321971	Application Date	05/17/1999
Registration Date	02/22/2000	Foreign Priority Date	NONE

Word Mark	HUGS & KISSES		
Design Mark	<b>HUGS &amp; KISSES</b>		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1997/12/00 First Use In Commerce: 1997/12/00 candy		

U.S. Registration No.	1396853	Application Date	05/01/1985
Registration Date	06/10/1986	Foreign Priority Date	NONE

Word Mark	KISSES KISSES KISSES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 021. First use: First Use: 1981/11/00 First Use In Commerce: 1981/11/00		

	MUGS FILLED WITH CANDY
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U.S. Registration No.	2828782	Application Date	12/06/1999
Registration Date	04/06/2004	Foreign Priority Date	NONE
Word Mark	SEALED WITH A KISS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1973/10/28 First Use In Commerce: 1973/10/28 candy, and chocolate candy		

U.S. Registration No.	3382925	Application Date	08/08/2005
Registration Date	02/12/2008	Foreign Priority Date	NONE
Word Mark	SEALED WITH A KISS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2007/09/30 First Use In Commerce: 2007/09/30 Candy		

U.S. Registration No.	3363296	Application Date	08/08/2005
Registration Date	01/01/2008	Foreign Priority Date	NONE
Word Mark	SEALED WITH A HERSHEY'S KISS		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2007/09/30 First Use In Commerce: 2007/09/30 Candy

U.S. Registration No.	2844171	Application Date	12/06/1999
Registration Date	05/25/2004	Foreign Priority Date	NONE

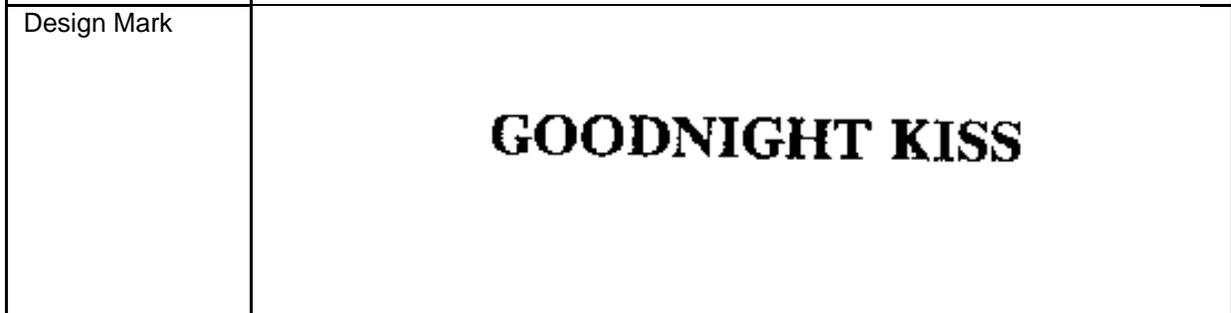
Word Mark A KISS WITH LOVE



Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 1977/11/28 First Use In Commerce: 1977/11/28 candy, and chocolate candy

U.S. Registration No.	2285652	Application Date	11/30/1995
Registration Date	10/12/1999	Foreign Priority Date	NONE

Word Mark GOODNIGHT KISSES



Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 1996/08/28 First Use In Commerce: 1996/08/28 cocoa mixes, chocolate powder and hot chocolate

U.S. Registration No.	1199747	Application Date	05/17/1979
Registration Date	06/29/1982	Foreign Priority Date	NONE

Word Mark A BIG KISS OFF

Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1979/05/01 First Use In Commerce: 1979/05/01 Candy		

U.S. Registration No.	1177511	Application Date	05/17/1979
Registration Date	11/10/1981	Foreign Priority Date	NONE
Word Mark	A KISS ESPECIALLY FOR YOU		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1979/05/01 First Use In Commerce: 1979/05/01 Chocolate Candy		

U.S. Registration No.	3195247	Application Date	10/07/2005
Registration Date	01/02/2007	Foreign Priority Date	NONE
Word Mark	EVERY DAY DESERVES A KISS		

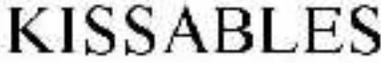
Design Mark	EVERY DAY DESERVES A KISS
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2005/04/30 First Use In Commerce: 2005/04/30 Chocolate and candy

U.S. Registration No.	3219746	Application Date	01/05/2006
Registration Date	03/20/2007	Foreign Priority Date	NONE
Word Mark	HERSHEY'S KISSABLES		
Design Mark	 <p>The logo features the word "HERSHEY'S" in a bold, blocky font at the top. Below it, the word "KISSABLES" is written in a large, stylized, bubbly font that curves upwards. A small, tilted conical shape with a starburst effect is superimposed over the second 'S' and the 'A' of "KISSABLES".</p>		
Description of Mark	The mark consists of HERSHEY'S in block lettering over the word KISSABLES which is printed in an arc. A tilted conical configuration design with a starburst is superimposed over the second S and the A of KISSABLES. The conical configuration is stippled to make it look three-dimensional. Color is not claimed as a feature of the mark.		
Goods/Services	Class 030. First use: First Use: 2005/11/17 First Use In Commerce: 2005/11/17 Candy		

U.S. Registration No.	3219747	Application Date	01/05/2006
Registration Date	03/20/2007	Foreign Priority Date	NONE
Word Mark	KISSABLES		

Design Mark	
Description of Mark	The mark consists of the word KISSABLES printed in an arc. A tilted conical configuration design with a starburst is superimposed over the second S and the A of KISSABLES. The conical configuration is stippled to make it look three-dimensional. Color is not claimed as a feature of the mark.
Goods/Services	Class 030. First use: First Use: 2005/11/17 First Use In Commerce: 2005/11/17 Candy

U.S. Registration No.	3066615	Application Date	11/10/2003
Registration Date	03/07/2006	Foreign Priority Date	NONE

Word Mark	KISSABLES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2005/10/07 First Use In Commerce: 2005/10/07 candy		

U.S. Registration No.	3217777	Application Date	05/16/2006
Registration Date	03/13/2007	Foreign Priority Date	NONE
Word Mark	KISS ABLES		

Design Mark	<b>KISS ABLES</b>
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2005/10/07 First Use In Commerce: 2005/10/07 Candy

U.S. Registration No.	2918984	Application Date	11/10/2003
Registration Date	01/18/2005	Foreign Priority Date	NONE
Word Mark	KISSABLE MESSAGES		
Design Mark	<b>KISSABLE MESSAGES</b>		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2003/08/12 First Use In Commerce: 2003/08/12 candy		

U.S. Registration No.	3442022	Application Date	06/20/2007
Registration Date	06/03/2008	Foreign Priority Date	NONE
Word Mark	KISS & TELL		

Design Mark	<h1>KISS &amp; TELL</h1>		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2008/01/02 First Use In Commerce: 2008/01/02 Toy dispenser for candy that is sold with candy as a unit		

U.S. Registration No.	3328351	Application Date	10/18/2006
Registration Date	11/06/2007	Foreign Priority Date	NONE
Word Mark	KISS OF THE MONTH		
Design Mark	<h1>KISS OF THE MONTH</h1>		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2006/09/01 First Use In Commerce: 2006/09/01 Candy Class 035. First use: First Use: 2006/09/01 First Use In Commerce: 2006/09/01 Mail order services featuring candy and gift items		

U.S. Registration No.	3304676	Application Date	06/20/2006
Registration Date	10/02/2007	Foreign Priority Date	NONE
Word Mark	KISS SOMEONE		

Design Mark	<b>KISS SOMEONE</b>
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2007/03/01 First Use In Commerce: 2007/03/01 Candy

U.S. Registration No.	1121505	Application Date	03/09/1978
Registration Date	07/03/1979	Foreign Priority Date	NONE
Word Mark	LOTS OF KISSES FOR YOU		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1978/02/07 First Use In Commerce: 1978/02/07 CHOCOLATE CANDY		

U.S. Registration No.	3377344	Application Date	02/18/2007
Registration Date	02/05/2008	Foreign Priority Date	NONE
Word Mark	MERRY KISSES		

Design Mark	<h1>MERRY KISSES</h1>		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2006/09/04 First Use In Commerce: 2006/09/04 Candy		

U.S. Registration No.	3311601	Application Date	03/22/2007
Registration Date	10/16/2007	Foreign Priority Date	NONE
Word Mark	MERRY KISSMAS		
Design Mark	<h1>MERRY KISSMAS</h1>		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2006/10/04 First Use In Commerce: 2006/10/04 Candy		

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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 First Class Mail on this date.

Signature	/paul c llewellyn/
Name	Paul C. Llewellyn
Date	03/04/2009

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

-----X  
HERSHEY CHOCOLATE & CONFECTIONERY :  
CORPORATION and THE HERSHEY COMPANY, :  
 :  
Opposers, :  
 :  
v. :  
 :  
EVER COMPANION FOOD CORP., :  
 :  
Applicant. :  
-----X

**NOTICE OF OPPOSITION**

Applicant Serial No: 77/194,584  
Filed: May 31, 2007  
Published for Opposition: November 4, 2008  
Mark: KARMAKISSES & Design

Commissioner for Trademarks  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Opposers Hershey Chocolate & Confectionery Corporation (“HC&CC”), a Delaware corporation located and doing business at 4860 Robb Street, Ste. 204, Wheat Ridge, Colorado, and The Hershey Company (“Hershey Company,” and, together with HC&CC, “Hershey”), a Delaware corporation located and doing business at 100 Crystal A Drive, Hershey, Pennsylvania, believe that they will be damaged by the registration of the mark KARMAKISSES shown in Application Serial No. 77/194,584, and hereby oppose the same.

As grounds for opposition, Opposers, by and through their undersigned counsel, allege

that:

1. Opposer HC&CC is the owner of a number of trademarks for candy, chocolate, confectionery, cocoa and related products, including the famous KISSES<sup>®</sup> family of trademarks for various products manufactured by its licensee, Opposer Hershey Company, a leading snack food company and the largest North American manufacturer of quality chocolate and non-chocolate confectionery products.

2. In 1907, Opposers' predecessor in interest began producing a flat-bottomed, conical milk chocolate candy which was named Hershey's KISSES<sup>®</sup> chocolates. Hershey's KISSES<sup>®</sup> trademark has been in continuous use for almost one hundred years, and is a famous trademark which identifies Hershey Company's conically-shaped chocolate candy sold under HC&CC's marks. As set forth in the chart below, the KISSES<sup>®</sup> trademark is just one of the many federally-registered trademarks within the KISSES<sup>®</sup> family of trademarks owned by HC&CC:

<b>Trademark</b>	<b>Reg. No.</b>	<b>Class</b>	<b>Goods</b>	<b>Priority Date</b>
KISSES	2416701	30	Generally solid chocolate candy, with and without ingredients such as nuts.	1-Jul-1907
HERSHEY'S MILK CHOCOLATE KISSES and Design	1236602	30	Candy.	19-Jun-1969
HERSHEY'S KISSES	1549371	30	Chocolates.	1-Jul-1907
A BIG KISS FOR YOU	1074784	30	Candies including chocolate products.	2-Jul-1971
SUPER KISS	1202212	30	Confectionery.	1-Oct-1972
THE ULTIMATE KISS	1346588	30	Candy.	17-Dec-1979
MINI KISSES	2507281	30	Confectionery bits for baking.	15-Jun-1995
HUGS 'N KISSES	1797199	30	Candy.	4-Aug-1992
HUGS & KISSES	2321971	30	Candy.	31-Dec-1997
KISSES KISSES KISSES	1396853	21	Mugs filled with candy.	30-Nov-1981
SEALED WITH A KISS	2828782	30	Candy, and	28-Oct-1973

<b>Trademark</b>	<b>Reg. No.</b>	<b>Class</b>	<b>Goods</b>	<b>Priority Date</b>
and Design			chocolate candy.	
SEALED WITH A KISS	3382925	30	Candy	08-Aug-2005
SEALED WITH A HERSHEY'S KISS	3363296	30	Candy	08-Aug-2005
A KISS WITH LOVE and Design	2844171	30	Candy, and chocolate candy.	28-Nov-1977
GOODNIGHT KISSES	2285652	30	Cocoa mixes, chocolate powder and hot chocolate.	30-Nov-1995
A BIG KISS OFF and Design	1199747	30	Candy	17-May-1979
A KISS ESPECIALLY FOR YOU	1177511	30	Chocolate candy	17-May-1979
EVERY DAY DESERVES A KISS	3195247	30	Chocolate and candy	7-Oct-2005
HERSHEY'S KISSABLES and Design	3219746	30	Candy	5-Jan-2006
KISSABLES and Design	3219747	30	Candy	5-Jan-2006
KISSABLES	3066615	30	Candy	10-Nov-2003
KISS ABLES	3217777	30	Candy	16-May-2006
KISSABLE MESSAGES	2918984	30	Candy	10-Nov-2003
KISS & TELL	3442022	30	Toy dispenser for candy that is sold with candy as a unit	20-Jun-2007
KISS OF THE MONTH	3328351	30; 35	Candy; Mail order services featuring candy and gift items	18-Oct-2006
KISS SOMEONE	3304676	30	Candy	20-Jun-2006
LOTS OF KISSES FOR YOU	1121505	30	Chocolate candy	9-Mar-1978
MERRY KISSES	3377344	30	Candy	18-Feb-2007

<b>Trademark</b>	<b>Reg. No.</b>	<b>Class</b>	<b>Goods</b>	<b>Priority Date</b>
MERRY KISSMAS	3311601	30	Candy	22-Mar-2007

3. In April 2000, the Trademark Trial and Appeal Board issued a decision in connection with the application to register the first-listed mark, KISSES<sup>®</sup>, Reg. No. 2416701, in which it found that “the evidence of record shows that sales, advertising and awareness of “KISSES” in connection with applicant’s candy has been enormous” and establishes that the KISSES<sup>®</sup> mark “functions as a trademark for [Hershey’s] goods, and is in fact a famous trademark for [Hershey’s] chocolate candy.” *In re Homestead*, Serial No. 75/183,278 at 6 (TTAB, April 4, 2000.) The TTAB’s finding was based, in part, on a survey in which close to 80% of those surveyed recognized HC&CC’s KISSES<sup>®</sup> mark as a brand.

4. As a result of the long use, promotion and advertising under HC&CC’s KISSES<sup>®</sup> family of trademarks, the KISSES<sup>®</sup> trademarks have become valuable assets of HC&CC, serving as a symbol for HC&CC and Hershey Company’s goods and services and of the goodwill which is associated with those goods and services.

5. Despite Hershey’s long prior common law and statutory rights in the mark KISSES<sup>®</sup> and the KISSES<sup>®</sup> family of trademarks, Applicant, with both constructive and actual notice of HC&CC’s federal registrations, and long after Hershey established rights in and to the mark KISSES<sup>®</sup> and the KISSES<sup>®</sup> family of trademarks, adopted and filed an application for registration of the mark KARMAKISSES & Design for a wide variety of food products in International Class 30, including, as set forth in the notice of publication, candy mints, non-medicated lozenges and candy, candied nuts and/or popped popcorn, biscuits, cakes and puddings, and various other goods, including many goods that may or could contain chocolate or cocoa, or be characterized by a chocolate or cocoa flavor.

6. Applicant's KARMAKISSES mark is highly similar to the mark KISSES<sup>®</sup> and the KISSES<sup>®</sup> family of trademarks adopted and used by Opposers through the years.

7. Applicant's goods, as described in its application opposed herein, are or would be offered through the same or similar channels of trade to the same or similar customers or users as those goods rendered by Opposers under the mark KISSES<sup>®</sup> and the KISSES<sup>®</sup> family of trademarks, and are highly related to the goods of Opposers, particularly to the extent that any of them contain chocolate or cocoa, or are characterized by a chocolate or cocoa flavor.

8. Opposers believe and therefore allege that use and registration of the mark covered by Application Serial No. 77/194,584 will damage Opposers, for the following reasons among others:

- a. that customers and purchasers of the respective goods and services would be confused, mistaken, or deceived as to the source and origin of Applicant's goods rendered under the applied-for mark;
- b. that customers and purchasers of the respective goods and services will assume, contrary to fact, that Applicant's goods come from, are associated with, sponsored by, approved by, or otherwise related to or affiliated with Opposers;
- c. that customers and purchasers of the respective goods and services will assume, contrary to fact, that Applicant's goods contain as an ingredient Opposers' KISSES<sup>®</sup> products; and
- d. that Applicant's use of the applied-for mark causes and/or will cause dilution of the distinctive quality of the mark KISSES<sup>®</sup> and the KISSES<sup>®</sup> family of trademarks.

9. Applicant's applied-for mark so resembles Opposers' previously used and registered mark KISSES<sup>®</sup> as well as the other marks in the KISSES<sup>®</sup> family of trademarks, as to be likely, when applied to the goods set forth in Applicant's application, to cause confusion, mistake or deception within the meaning of 15 U.S.C. § 1052(d).

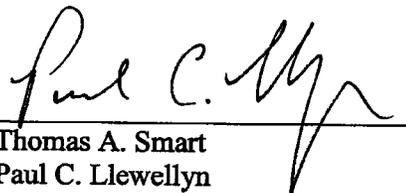
10. Applicant's applied-for mark so resembles Opposers' previously used and registered mark KISSES<sup>®</sup> as well as the other marks in the KISSES<sup>®</sup> family of trademarks, as to be likely, when applied to the goods set forth in Applicant's application, to falsely suggest a connection with the Opposers within the meaning of 15 U.S.C. § 1052(a).

11. Applicant's applied-for mark is likely to dilute the distinctive quality of Opposers' famous, distinctive and federally-registered mark KISSES<sup>®</sup> as well as the other famous, distinctive and federally-registered marks in the KISSES<sup>®</sup> family of trademarks, within the meaning of 15 U.S.C. § 1125(c)(1).

WHEREFORE, Opposers respectfully prays that this Opposition be sustained and that registration to Applicant be refused.

The Patent & Trademark Office and Trademark Trial and Appeal Board are hereby authorized to collect any fees necessitated by this Notice of Opposition from the deposit account of Opposers' attorneys, Kaye Scholer LLP, Deposit Account No. 11-0228.

Dated: March 3, 2009

A handwritten signature in black ink, appearing to read "Paul C. Llewellyn", is written over a horizontal line.

Thomas A. Smart  
Paul C. Llewellyn  
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New York, NY 10022  
Telephone: (212) 836-8000

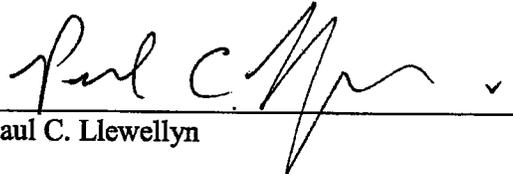
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Washington, DC 20005  
Telephone: (202) 682-3671

*Attorneys for Opposer*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 4<sup>th</sup> day of March, 2009, I caused the foregoing Notice of Opposition to be served by first class United States mail, postage prepaid, upon the following attorney of record for applicant:

JAMES M. SLATTERY  
BIRCH, STEWART, KOLASCH & BIRCH, LLP  
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FALLS CHURCH, VA 22040-0747

  
Paul C. Llewellyn