

ESTTA Tracking number: **ESTTA291955**

Filing date: **06/26/2009**

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 party opposes registration of the indicated application.

Opposer Information

Name	Unilever Supply Chain, Inc.
Granted to Date of previous extension	06/28/2009
Address	1 John Street Clinton, CT 06413 UNITED STATES
Attorney information	Kristin H. Altoff Morgan, Lewis & Bockius LLP 1111 Pennsylvania Ave., NW; Attn: TMSU Washington, DC 20004 UNITED STATES trademarks@morganlewis.com, apolott@morganlewis.com, kaltoff@morganlewis.com Phone:202.739.5093

Applicant Information

Application No	77546243	Publication date	12/30/2008
Opposition Filing Date	06/26/2009	Opposition Period Ends	06/28/2009
Applicant	Envirodine Studios Inc. 1525 Airport Drive, #500 Ball Ground, GA 30107 UNITED STATES		

Goods/Services Affected by Opposition

Class 028. First Use: 2004/12/15 First Use In Commerce: 2004/12/15
All goods and services in the class are opposed, namely: Christmas tree decorations; Christmas tree ornaments; Christmas tree ornaments and decorations

Grounds for Opposition

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.	2421400	Application Date	02/16/2000
Registration Date	01/16/2001	Foreign Priority Date	NONE
Word Mark	POPSICLE		

Design Mark	POPSICLE		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1923/00/00 First Use In Commerce: 1923/00/00 Frozen confections		

U.S. Registration No.	1840718	Application Date	02/22/1993
Registration Date	06/21/1994	Foreign Priority Date	NONE

Word Mark	POPSICLE THE ORIGINAL BRAND		
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Design Mark			
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Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1988/01/01 First Use In Commerce: 1988/01/01 frozen confections		

U.S. Registration No.	1839541	Application Date	02/22/1993
Registration Date	06/14/1994	Foreign Priority Date	NONE

Word Mark	CREAMSICLE		
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Design Mark			
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Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1937/01/15 First Use In Commerce: 1937/01/15 frozen confections		

U.S. Registration No.	1840719	Application Date	02/22/1993
Registration Date	06/21/1994	Foreign Priority Date	NONE

Word Mark	CREAMSICLE THE ORIGINAL BRAND
Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 1988/01/01 First Use In Commerce: 1988/01/01 frozen confections

U.S. Registration No.	434594	Application Date	11/09/1946
Registration Date	11/25/1947	Foreign Priority Date	NONE
Word Mark	FUDGSICLE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U046 (International Class 001, 005, 029, 030, 031, 032). First use: First Use: 1946/10/04 First Use In Commerce: 1946/10/04 FROZEN CONFECTIONS[AND POWDERED CONCENTRATES FOR MAKING THE SAME]		

U.S. Registration No.	1840717	Application Date	02/22/1993
Registration Date	06/21/1994	Foreign Priority Date	NONE
Word Mark	FUDGSICLE THE ORIGINAL BRAND		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1988/01/01 First Use In Commerce: 1988/01/01 frozen confections		

U.S. Registration No.	1126015	Application Date	10/30/1978
Registration Date	10/16/1979	Foreign Priority Date	NONE
Word Mark	SUPERSICLE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1978/10/11 First Use In Commerce: 1978/10/11 FROZEN CONFECTIONS AND CONCENTRATES FOR MAKING THE SAME		

U.S. Registration No.	2314773	Application Date	04/12/1999
Registration Date	02/01/2000	Foreign Priority Date	NONE
Word Mark	SUPERSICLE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1997/07/11 First Use In Commerce: 1997/07/11 Frozen confections		

U.S. Registration No.	3178063	Application Date	11/09/2004
Registration Date	11/28/2006	Foreign Priority Date	NONE
Word Mark	CHOCSICLE		

Design Mark	CHOCSICLE
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2005/02/00 First Use In Commerce: 2005/02/00 frozen confections

Attachments	75921375#TMSN.gif (1 page)(bytes) 74362545#TMSN.gif (1 page)(bytes) 74362546#TMSN.gif (1 page)(bytes) 74362543#TMSN.gif (1 page)(bytes) 73191547#TMSN.gif (1 page)(bytes) 75680655#TMSN.gif (1 page)(bytes) 78513947#TMSN.jpeg (1 page)(bytes) SCENTSICLES Notice of Opposition.pdf (6 pages)(24779 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 First Class Mail on this date.

Signature	/Kristin H. Altoff/
Name	Kristin H. Altoff
Date	06/26/2009

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

UNILEVER SUPPLY CHAIN, INC.,

Opposer,

v.

ENVIRODINE STUDIOS INC.,

Applicant.

In re Application Serial No. 77/546,243

Mark: SCENTSICLES

Published: December 30, 2008

Opposition No. _____

NOTICE OF OPPOSITION

Opposer, Unilever Supply Chain, Inc., a corporation organized and existing under the laws of Delaware, having a principal place of business at 1 John Street, Clinton, Connecticut 06413 (“Opposer”), believes that it will be damaged by registration of the designation SCENTSICLES used to identify “Christmas tree decorations; Christmas tree ornaments; Christmas tree ornaments and decorations” in International Class 28, shown in Application Serial No. 77/546,243 filed by Envirodine Studios Inc. (“Applicant”). Opposer hereby opposes the same under the provisions of Sections 2(d), 13 and 43(c) of the Trademark Act of July 5, 1946 (the “Lanham Act”), 15 U.S.C. §§ 1052(d), 1063 and 1125(c).

As grounds for opposition, Opposer alleges that:

1. Opposer is the owner of all right, title and interest in and to the following trademarks and the registrations therefor, among others, issued by the United States Patent and Trademark Office for trademarks incorporating the term “SICLE” (hereinafter collectively referred to as the “SICLE Marks”):

Mark	Registration Number	Registration Date	First Use Date	Goods
POPSICLE	2,421,400	January 16, 2001	1923	Frozen confections
POPSICLE THE ORIGINAL BRAND (and Design)	1,840,718	June 21, 1994	January 1, 1988	Frozen confections
CREAMSICLE	1,839,541	June 14, 1994	January 15, 1937	Frozen confections
CREAMSICLE THE ORIGINAL BRAND (and Design)	1,840,719	June 21, 1994	January 1, 1988	Frozen confections
FUDGSICLE	434,594	November 25, 1947	October 4, 1946	Frozen confections and powdered concentrates for making the same
FUDGSICLE THE ORIGINAL BRAND (and Design)	1,840,717	June 21, 1994	January 1, 1988	Frozen confections
SUPERSICLE	1,126,015	October 16, 1979	October 11, 1978	Frozen confections and concentrates for making the same
SUPERSICLE (and Design)	2,314,773	February 1, 2000	July 11, 1997	Frozen confections
CHOCSICLE	3,178,063	November 28, 2006	February 2005	Frozen confections

2. The following registrations referenced above are incontestable pursuant to the provisions of Section 15 of the Lanham Act, 15 U.S.C. § 1065, and constitute conclusive evidence of Opposer's exclusive right to use the marks in commerce in connection with the goods specified in the registrations: POPSICLE (Reg. No. 2,421,400), POPSICLE THE ORIGINAL BRAND (and Design) (Reg. No. 1,840,718), CREAMSICLE (Reg. No. 1,839,541), CREAMSICLE THE ORIGINAL BRAND (and Design) (Reg. No. 1,840,719), FUDGSICLE

THE ORIGINAL BRAND (and Design) (Reg. No. 1,840,717), SUPERSICLE (Reg. No. 1,126,015), and SUPERSICLE (and Design) (Reg. No. 2,314,773).

3. The remaining registrations referenced above are valid and subsisting, in full force and effect, and constitute *prima facie* evidence of Opposer's exclusive right to use these marks in commerce in connection with the goods specified in the registrations.

4. Opposer and its predecessors-in-interest have used one or more of the SICLE Marks in commerce in connection with the nationwide production, distribution, sale and promotion of frozen confections for more than eighty-five years.

5. In addition to use of the SICLE Marks for frozen confections, Opposer and its predecessors-in-interest, through its licensees, have used and/or are currently using one or more of the SICLE Marks on a wide variety of products, including, but not limited to, Christmas tree ornaments, candy, toys, clothing and collectibles.

6. Opposer's SICLE Marks are symbolic of the extensive goodwill and consumer recognition that Opposer has established through substantial expenditures of time, effort and other resources in the advertising and promotion of the goods Opposer sells under the SICLE Marks.

7. Through its extensive and continuous use and promotion of the SICLE Marks, Opposer has established a family of "SICLE" marks, and this use has created a public perception of the distinctive "SICLE" family as an indication of the source of Opposer's goods.

8. As a result of Opposer's regular, extensive and well-publicized use of the SICLE Marks, one or more of the SICLE Marks are famous in the United States and are associated exclusively with Opposer and its high quality products.

9. On August 13, 2008, Applicant filed an application under Section 1(a) of the Lanham Act, 15 U.S.C. § 1051 (a), for federal registration of the designation SCENTSICLES, Application Serial No. 77/546,243 for “Christmas tree decorations; Christmas tree ornaments; Christmas tree ornaments and decorations.”

10. Applicant’s SCENTSICLES designation was published for opposition in the *Official Gazette* on December 30, 2008.

11. The Trademark Trial and Appeal Board extended the opposition period for the SCENTSICLES designation by granting Opposer’s timely requests for an extension. The opposition period for Application Serial No. 77/546,243 is currently set to expire on June 28, 2009. Opposer, therefore, timely files this opposition.

12. Through its longstanding and continuous use of the SICLE Marks, Opposer has acquired exclusive rights in the SICLE Marks individually and in the SICLE family of marks that substantially predate any rights upon which Applicant may rely.

13. Opposer’s rights to the SICLE Marks are superior to those of Applicant.

14. Opposer’s SICLE Marks are famous and became famous before the filing date or any use of the SCENTSICLES designation by Applicant.

15. The “SICLE” portion of Applicant’s SCENTSICLES designation is identical to that in Opposer’s SICLE Marks.

16. Opposer believes it will be damaged by registration of Applicant’s SCENTSICLES designation under Section 13 of the Lanham Act, 15 U.S.C. § 1063, because consumers, familiar with Opposer’s famous family of SICLE Marks are likely to believe, mistakenly, that Applicant or its products emanate from, are sponsored or authorized by, or are otherwise associated or affiliated with Opposer, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

17. Opposer believes it will be damaged by registration of the SCENTSICLES designation under Section 13 of the Lanham Act, 15 U.S.C. § 1063, because the use and registration of the SCENTSICLES designation is likely to dilute the distinctive quality of Opposer's famous family of SICLE Marks in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

WHEREFORE, Opposer believes it will be damaged by registration of the designation SCENTSICLES shown in Application Serial No. 77/546,243 and respectfully requests that the registration sought by Applicant be refused.

Dated: June 26, 2009

Respectfully submitted,

By: /s/ Kristin H. Altoff

Anita B. Polott

Kristin H. Altoff

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Attorneys for Opposer

UNILEVER SUPPLY CHAIN, INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Opposition has been sent via first class mail, postage pre-paid this 26th day of June 2009 to:

Jeffrey S Sherwood
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/Kristin H. Altoff/
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