

ESTTA Tracking number: **ESTTA350617**

Filing date: **06/02/2010**

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	06/16/2010
Address	1 John Street Clinton, CT 06413 UNITED STATES
Attorney information	Kristin H. Altoff Morgan, Lewis & Bockius LLP Attn: TMSU; 1111 Pennsylvania Ave., NW Washington, DC 20004 UNITED STATES trademarks@morganlewis.com, apolott@morganlewis.com, kaltoff@morganlewis.com Phone:202-739-5093

Applicant Information

Application No	77831621	Publication date	02/16/2010
Opposition Filing Date	06/02/2010	Opposition Period Ends	06/16/2010
Applicant	Danielle Dzurik 2007 Dellwood Dr. Tallahassee, FL 32303 UNITED STATES		

Goods/Services Affected by Opposition

Class 021. All goods and services in the class are opposed, namely: Plastic ice pop forms
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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	 <p>The logo features the word "Popsicle" in a bubbly, outlined font, centered within a horizontal oval. Above the oval, the words "The Original Brand" are written in a cursive script. The entire design is surrounded by a decorative border of small circles.</p>		
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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.	3178063	Application Date	11/09/2004
Registration Date	11/28/2006	Foreign Priority Date	NONE
Word Mark	CHOCSICLE		
Design Mark			
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) 78513947#TMSN.jpeg (1 page)(bytes) PUPSICLES Notice of Opposition.pdf (6 pages)(21934 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	06/02/2010

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

UNILEVER SUPPLY CHAIN, INC.,

Opposer,

v.

DANIELLE DZURIK,

Applicant.

In re Application Serial No. 77/831,621

Mark: PUPSICLES

Published: February 16, 2010

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 PUPSICLES used to identify “plastic ice pop forms” in International Class 21, shown in Application Serial No. 77/831,621 filed by Danielle Dzurik (“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
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), and FUDGSICLE THE ORIGINAL BRAND (and Design) (Reg. No. 1,840,717).

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 their licensees, have used one or more of the SICLE Marks on a wide variety of products.

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 September 22, 2009, Applicant filed an intent-to-use application under Section 1(b) of the Lanham Act, 15 U.S.C. § 1051 (b), for federal registration of the designation PUPSICLES, Application Serial No. 77/831,621 for "plastic ice pop forms."

10. Applicant's PUPSICLES designation was published for opposition in the *Official Gazette* on February 16, 2010.

11. The Trademark Trial and Appeal Board extended the opposition period for the PUPSICLES designation by granting Opposer's timely request for an extension. The opposition

period for Application Serial No. 77/831,621 is currently set to expire on June 16, 2010.

Opposer, therefore, timely files this opposition.

12. Upon information and belief, Applicant has not filed an Amendment to Allege Use under Section 1(c) of the Lanham Act, 15 U.S.C. § 1051 (c).

13. 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.

14. Opposer's rights to the SICLE Marks are superior to those of Applicant.

15. Opposer's SICLE Marks are famous and became famous before the filing date or any use of the PUPSICLES designation by Applicant.

16. The "SICLE" portion of Applicant's PUPSICLES designation is identical to that in Opposer's SICLE Marks.

17. The singular form of Applicant's PUPSICLES designation is identical to Opposer's POPSICLE mark except for the use of a "U" instead of an "O" in the first syllable.

18. Opposer believes it will be damaged by registration of Applicant's PUPSICLES 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 Applicant's 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).

19. Opposer believes it will be damaged by registration of the PUPSICLES designation under Section 13 of the Lanham Act, 15 U.S.C. § 1063, because the use and registration of the

PUPSICLES 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 PUPSICLES shown in Application Serial No. 77/831,621 and respectfully requests that the registration sought by Applicant be refused.

Dated: June 2, 2010

Respectfully submitted,

By: /s/ Kristin H. Altoff
Anita B. Polott
Kristin H. Altoff
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Ave., N.W.
Washington, D.C. 20004
Tel: (202) 739-3000
Fax: (202) 739-3001

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 this 2nd day of June 2010 to:

DANIELLE DZURIK
2007 DELLWOOD DR
TALLAHASSEE, FL 32303-4817

/Kristin H. Altoff/
Kristin H. Altoff