

ESTTA Tracking number: **ESTTA360319**

Filing date: **07/28/2010**

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	Kraft Foods Schweiz Holding Gmbh
Granted to Date of previous extension	07/28/2010
Address	Chollerstrasse 4 Zug, SWITZERLAND

Attorney information	Matthew A. Griffin Three Lakes Drive Northfield, IL 60093 UNITED STATES matthew.griffin@kraft.com, betsy.rossner@kraft.com, trademark@kraft.com
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Applicant Information

Application No	77871684	Publication date	03/30/2010
Opposition Filing Date	07/28/2010	Opposition Period Ends	07/28/2010
Applicant	NEXUS FOODS, INC 13039 Baltimore Ct Chino, CA 91710 UNITED STATES		

Goods/Services Affected by Opposition

Class 030. All goods and services in the class are opposed, namely: Candy
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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.	54527	Application Date	05/27/1905
Registration Date	06/26/1906	Foreign Priority Date	NONE
Word Mark	MILKA		

Design Mark	
Description of Mark	NONE
Goods/Services	Class U046 (International Class 030). First use: First Use: 1901/01/01 First Use In Commerce: 1901/01/01 [CHOCOLATE CANDIES,] CHOCOLATE [AND PREPARATIONS OF CHOCOLATE AND COCOAS]

U.S. Registration No.	569481	Application Date	10/16/1951
Registration Date	01/20/1953	Foreign Priority Date	NONE

Word Mark	MILKA
Design Mark	
Description of Mark	NONE
Goods/Services	Class U046 (International Class 030). First use: First Use: 1912/01/01 First Use In Commerce: 1912/01/01 PREPARED EDIBLE CHOCOLATE

U.S. Registration No.	2074380	Application Date	08/10/1995
Registration Date	06/24/1997	Foreign Priority Date	NONE

Word Mark	MILKA
Design Mark	
Description of	NONE

Mark	
Goods/Services	Class 030. First use: First Use: 1996/01/00 First Use In Commerce: 1996/01/00 milk chocolate

U.S. Registration No.	2074518	Application Date	01/16/1996
Registration Date	06/24/1997	Foreign Priority Date	NONE

Word Mark	MILKA
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Design Mark	
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Description of Mark	NONE
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Goods/Services	Class 030. First use: First Use: 1996/01/00 First Use In Commerce: 1996/01/00 chocolate and candies
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U.S. Registration No.	2074530	Application Date	01/26/1996
Registration Date	06/24/1997	Foreign Priority Date	NONE

Word Mark	MILKA
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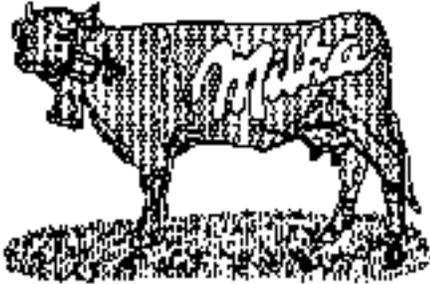
Design Mark	
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Description of Mark	NONE
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Goods/Services	Class 030. First use: First Use: 1996/01/00 First Use In Commerce: 1996/01/00 chocolate and candies
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U.S. Registration No.	2291309	Application Date	09/23/1996
Registration Date	11/09/1999	Foreign Priority Date	NONE

Word Mark	MILKA
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Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 1999/03/01 First Use In Commerce: 1999/03/01 chocolate [and candies]

Attachments	71006766#TMSN.gif (1 page)(bytes) 71620054#TMSN.gif (1 page)(bytes) 74713400#TMSN.gif (1 page)(bytes) 75042743#TMSN.gif (1 page)(bytes) 75170488#TMSN.gif (1 page)(bytes) Notice of Opposition _MILKA v MILKITA_.pdf (3 pages)(25243 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	/matthewagriffin/
Name	Matthew A. Griffin
Date	07/28/2010

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

In the Matter of Trademark Application Serial No. 77/ 871684: MILKITA
Published in the March 30, 2010, *Official Gazette*

KRAFT FOODS SCHWEIZ HOLDING GMBH, Opposer, v. NEXUS FOODS, INC., Applicant.	Opposition No. _____
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NOTICE OF OPPOSITION

Opposer, Kraft Foods Schweiz Holding GmbH, a Swiss limited liability company with a place of business at Chollerstrasse 4, Zug, Switzerland, believes it will be damaged by registration of the mark shown in Application Serial No. 77/ 871684, and hereby opposes the same.

The grounds for the opposition are as follows:

1. Since long prior to the priority date claimed in the application opposed herein, Opposer has continuously used and promoted the trademark MILKA in interstate commerce for chocolate and related goods ("MILKA Products").
2. Opposer has sold millions of dollars worth of MILKA Products under the MILKA mark in interstate commerce and has spent substantial sums of dollars advertising and promoting its MILKA trademark in interstate commerce.
3. By virtue of Opposer's long use, extensive sales, advertising, and promotional efforts, Opposer's MILKA trademark has become well-known throughout the United States, and Opposer now owns immensely valuable goodwill symbolized by its MILKA trademark. The MILKA trademark acquired this goodwill before the priority date claimed in the opposed application.
4. By virtue of Opposer's long use, extensive sales, advertising, and promotional efforts, Opposer's MILKA trademark is distinctive and famous. The MILKA trademark achieved that distinctiveness and fame prior to the priority date claimed in the opposed application.

5. Opposer owns the following valid and subsisting U.S. registrations, among others, for MILKA and MILKA-based trademarks:

MARK	REG. NO.	GOODS
	0054527	Chocolate
	0569481	Prepared edible chocolate
	2074380	Milk chocolate
	2074518	Chocolate and candies
MILKA	2074530	Chocolate and candies
	2291309	Chocolate

These registrations have become incontestable under 15 U.S.C. § 1065 and the certificates of registration thereof constitute “conclusive evidence of the validity of the registered mark[s] and of the registration of the mark[s], of the registrant’s ownership of the mark[s], and of the registrant’s exclusive right to use the registered mark[s] in commerce.” 15 U.S.C. § 1065(b).

6. On June 10, 2008, Applicant filed an intent-to-use application to register MILKITA for "candy."
7. Upon information and belief, neither Applicant nor any predecessor or related company of Applicant has any basis for claiming rights in the MILKA trademark prior to Opposer's first use of its MILKA mark.
8. Applicant's use of and application to register the mark MILKA is without Opposer's consent.
9. Applicant's use and registration of the MILKITA trademark for the applied-for goods is likely to cause confusion, mistake, or deception with Opposer and its MILKA trademark and is likely to cause purchasers and others erroneously to believe that Applicant's goods are Opposer's goods or that Applicant or its goods are in some way legitimately connected with, sponsored, or approved by Opposer.
10. Accordingly, Applicant's registration of MILKITA would damage Opposer.

WHEREFORE, Opposer requests the opposition be sustained and registration of Application Serial No. 77/ 871684 be refused.