

ESTTA Tracking number: **ESTTA367331**

Filing date: **09/08/2010**

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	Mr.DennisKearney
Granted to Date of previous extension	09/08/2010
Address	3932 Forest Hill Avenue Oakland, CA 94602 UNITED STATES

Attorney information	Gregory N. Owen Owen, Wickersham & Erickson, P.C. 455 Market Street, Suite 1910 San Francisco, CA 94105 UNITED STATES gowen@owe.com, tmpralegal3@owe.com Phone:415-882-3200
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Applicant Information

Application No	77509239	Publication date	05/11/2010
Opposition Filing Date	09/08/2010	Opposition Period Ends	09/08/2010
International Registration No.	NONE	International Registration Date	NONE
Applicants	Yatim, Rim 11629 Ave. Des Violettes Montreal Nord, Quebec, H1G4N1 CANADA Yatim, Najib 2 Hayworth Circle Exton, PA 19341 UNITED STATES		

Goods/Services Affected by Opposition

Class 030. First Use: 2007/07/01 First Use In Commerce: 2008/12/20
All goods and services in the class are opposed, namely: Chocolate and chocolates; Chocolate bars; Chocolate candies; Chocolate truffles; Chocolates and chocolate based ready to eat candies and snacks

Grounds for Opposition

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

U.S. Application No.	77402783	Application Date	02/21/2008
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	COCO D'ÉLICE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2005/11/00 First Use In Commerce: 2005/11/00 CHOCOLATES, CANDY, CHOCOLATE CANDIES, CHOCOLATE CONFECTIONS, FILLED CHOCOLATE, CHOCOLATE TRUFFLES, CHOCOLATE COVERED NUTS		

Attachments	77402783#TMSN.jpeg (1 page)(bytes) Notice of Opposition & Certificate of Service.PDF (5 pages)(510552 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	/Gregory N. Owen/
Name	Gregory N. Owen
Date	09/08/2010

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

In the matter of Trademark Application

Applicant: Yatim, Najib and Yatim, Rim
Serial No.: 77-509239
Filed: June 26, 2008
Published: May 11, 2010
Mark: COCOA DELICES CHOCOLATERIE & Design

Kearney, Dennis, dba Coco)	
Delice Fine Chocolates,)	Opposition No.
)	
Opposer,)	NOTICE OF OPPOSITION
)	
v.)	
)	
Najib Yatim and Rim Yatim,)	
)	
Applicant.)	
_____)	

Dennis Kearney, doing business as Coco Delice Fine Chocolates, with an address of 3932 Forest Hill Avenue, Oakland, CA 94602 ("Opposer"), believes it will be damaged by registration of the mark COCOA DELICES CHOCOLATERIE & Design for goods in International Class 30 as shown in Application Serial No. 77-509239, filed by Najib Yatim and Rim Yatim ("Applicant") and hereby opposes the same.

As grounds in support of its opposition, Opposer alleges as follows:

1. Opposer is the owner of U.S. Application Serial No. 77-402783 for the mark COCO DÉLICE, filed February 21, 2008 for *chocolates, candy, chocolate candies, chocolate confections, filled chocolate, chocolate truffles, chocolate covered nuts* in International Class 30.

Opposer began use of the COCO DÉLICE trademark as early as November 2005; first used the mark in interstate commerce as early as November 2005; and has continuously used the trademark in interstate commerce since November 2005. On information and belief Opposer's rights are prior to any filing date or date of first use upon which Applicant can rely.

2. Opposer has invested substantial time and resources in promoting its goods under its COCO DÉLICE trademark. As a result of its efforts Opposer's trademark has become well known and favorably received, the relevant public has come to associate Opposer's trademark with Opposer, and Opposer derives substantial goodwill and value from said association.

3. On June 26, 2008, Applicant filed the application at issue to register the mark COCOA DELICES CHOCOLATERIE & Design for *chocolate and chocolates; chocolate bars; chocolate candies; chocolate truffles; chocolates and chocolate based ready to eat candies and snacks* in International Class 30, claiming first use July 1, 2007 and first use in interstate commerce December 20, 2008. Opposer objects to registration of Applicant's mark.

4. The mark that Applicant seeks to register is highly similar in sound, appearance and connotation to Opposer's trademark and is used in association with goods that are substantially identical to goods with which Opposer uses its trademark. Based on the similarity of the marks and the recited goods, the public is likely to associate the goods offered by Applicant under the mark COCOA DELICES CHOCOLATERIE & Design with Opposer or Opposer's goods, or to believe that Applicant's goods are sponsored, endorsed or licensed by Opposer, or that there is some relationship between Applicant and Opposer. Applicant's COCOA DELICES CHOCOLATERIE & Design trademark so resembles Opposer's COCO DELICES trademark as to be likely, when applied to Applicant's goods, to cause confusion, mistake, or deception within the meaning of Section 2(d) of the Trademark Act.

5. Opposer's Application Serial No. 77-402783 is currently suspended, citing Applicant's application as a block to registration pursuant to Section 2(d) of the Trademark Act.

6. On information and belief Opposer alleges that the goods designated by Applicant's trademark constitute goods substantially identical to those of Opposer, and that the goods of Applicant and Opposer are competitive, closely related and/or will be offered in the United States to the same class of customers through the same or similar channels of trade.

7. On information and belief, if Applicant is granted the registration herein opposed, it would thereby obtain at least *prima facie* exclusive right to use its mark. Such registration would be a source of damage and injury to Opposer.

8. Opposer is likely to be damaged by the registration sought by Applicant because such registration will support and assist Applicant in the confusing and misleading use of Applicant's mark sought to be registered, and will give color of exclusive statutory rights to Applicant in violation and derogation of the prior and superior rights of Opposer.

9. For the reasons set forth above, any use of the mark COCOA DELICES CHOCOLATERIE & Design by Applicant in association with food products in Class 30 is likely to cause confusion, cause mistake or deceive the public, and cause the public to believe that the goods sold under the Applicant's mark emanate from or are otherwise sponsored by or endorsed by Opposer, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

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WHEREFORE, Opposer prays that said Application Serial No.77-509239 be rejected in accordance with the provisions of the Trademark Act and that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

Respectfully submitted,

OWEN, WICKERSHAM & ERICKSON P.C.

Dated: September 8, 2010

By



Gregory N. Owen

455 Market Street, Suite 1910
San Francisco, CA 94105
(415) 882-3200

Attorneys for Opposer
DENNIS KEARNEY,
dba COCO DELICE FINE CHOCOLATES

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing

NOTICE OF OPPOSITION

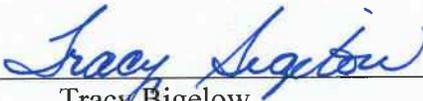
was sent to Applicant of record by first class mail, postage prepaid to the following address:

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Cocoa Delices Chocolaterie
1155 Wembley Drive
Wayne, PA 19087

Dated: September 8, 2010



Tracy Bigelow