

ESTTA Tracking number: **ESTTA379760**

Filing date: **11/22/2010**

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 Global Brands LLC
Granted to Date of previous extension	12/01/2010
Address	Three Lakes Drive Northfield, IL 60093 UNITED STATES

Attorney information	Susan Frohling Kraft Foods Three Lakes Drive Northfield, IL 60093 UNITED STATES sfrohling@kraft.com, sptakmiles@kraft.com Phone:847-646-8657
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**Applicant Information**

Application No	85017524	Publication date	08/03/2010
Opposition Filing Date	11/22/2010	Opposition Period Ends	12/01/2010
Applicant	Twentieth Century Fox Film Corporation 10201 West Pico Boulevard Los Angeles, CA 90035 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 029. All goods and services in the class are opposed, namely: Cheese; cheese and cracker combinations; cheese spread; candied fruit; chocolate milk; dairy products excluding ice cream, ice milk and frozen yogurt; dips; dried fruits; drinking yogurts; frozen meals consisting primarily of meat, fish, poultry or vegetables; fruit preserves; fruit-based snack food; jams; jellies; milk beverages with high milk content; meats; processed nuts; nut-based snack foods; peanut butter; potato chips; potato-based snack foods; powdered milk for food purposes; raisins; snack mix consisting primarily of processed fruits, processed nuts and/or raisins; soup; soup mixes; yogurt
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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.	1659932	Application Date	11/02/1990
Registration Date	10/08/1991	Foreign Priority	NONE

		Date	
Word Mark	PHILADELPHIA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1880/00/00 First Use In Commerce: 1880/00/00 cream cheese		

U.S. Registration No.	392212	Application Date	06/18/1941
Registration Date	12/16/1941	Foreign Priority Date	NONE
Word Mark	PHILADELPHIA BRAND		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U046 (International Class 029). First use: First Use: 1880/09/01 First Use In Commerce: 1880/09/01 Cream Cheese		

U.S. Registration No.	2257948	Application Date	09/30/1997
Registration Date	06/29/1999	Foreign Priority Date	NONE
Word Mark	PHILADELPHIA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1998/06/29 First Use In Commerce: 1998/06/29 desserts, namely, cheesecake		

U.S. Registration No.	1660972	Application Date	02/23/1990
Registration Date	10/15/1991	Foreign Priority Date	NONE
Word Mark	PHILADELPHIA BRAND KRAFT		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 029. First use: First Use: 1880/09/01 First Use In Commerce: 1880/09/01 cream cheese, neufchatel cheese, and pasteurized process cream cheese product

Attachments	PHILADELPHIAOPPS_JB (2)final.pdf ( 4 pages )(78845 bytes ) 71444645#TMSN.gif ( 1 page )( bytes ) 74031868#TMSN.gif ( 1 page )( 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	/shf/
Name	Susan Frohling
Date	11/22/2010

Kraft Foods Global Brands LLC (“Kraft” or “Opposer”) opposes the above-identified application and states as follows:

Kraft’s Famous PHILADELPHIA Trademark and Brand

1. Kraft is the owner of the strong, famous, and distinctive PHILADELPHIA trademark for cream cheese (and other dairy-based products), which has been in continuous use since the late 19<sup>th</sup> century. For the past several years, PHILADELPHIA has enjoyed the honor of being one of Kraft Foods’ “Billion Dollar Brands,” meaning its worldwide annual sales revenues exceed a billion dollars!

2. PHILADELPHIA products are sold throughout the country in every single state. Annual sales of PHILADELPHIA products in the United States exceeded \$700 Million for 2009 and were at similar levels in previous years.

3. Kraft sells a variety of cheese products under the PHILADELPHIA brand name. These include: Brick Cream Cheese, Soft Cream Cheese, Whipped Cream Cheese, Cheesecake Fillings, and Minis, which are 100 calorie portions of cream cheese. All such products are available in several flavors. To promote the PHILADELPHIA brand, Kraft has spent tens of millions dollars on advertising and consumer promotion. For the five-year period 2005-2009, Kraft placed mass media advertising for PHILADELPHIA products in excess of \$25 million across all outlets, including television, print, and internet . In addition, PHILADELPHIA promotional materials appear in newspaper circulars on a regular basis.

4. PHILADELPHIA products are sold in all trade channels, including grocery stores, mass retail outlets (e.g., Wal-Mart and Target), club retail outlets (e.g., Sam’s Club, Costco and BJ’s), value discount retail outlets, drug stores and convenience stores.

5. Consumers across all demographics – income, gender and geographic location purchase and consume PHILADELPHIA products.

Applicant's IT'S ALWAYS SUNNY IN PHILADELPHIA Trademark

6. Applicant filed the Application Number 85-017524 on April 19, 2010 for “Cheese; Cheese & Cracker Combinations; Cheese Spread; Candied Fruit; Chocolate Milk; Dairy Products Excluding Ice Cream, Ice Milk, and Frozen Yogurt; Dips; Dried Fruits; Drinking Yogurts; Frozen Meals Consisting Primarily of Meat, Fish, Poultry or Vegetables; Fruit Preserves; Fruit-Based Snack Foods; Jams; Jellies; Milk Beverages with High Milk Content; Meats; Processed Nuts; Nut-Based Snack Foods; Peanut Butter; Potato Chips; Potato-Based Snack Foods; Powdred Milk for Food Purposes; Raisins; Snack Mix Consisting Primarily of Processed Fruits; Processed Nuts and /or Raisins; Soup; Soup mixes; and Yogurt.”

7. Many of the goods identified in Applicant's application for the IT'S ALWAYS SUNNY IN PHILADELPHIA are identical to the goods identified in Kraft's PHILADELPHIA trademark registrations.

8. Upon information and belief, Applicant's IT'S ALWAYS SUNNY IN PHILADELPHIA cheese products will likely be sold in the same channels of trade as Kraft's PHILADELPHIA cheese products. In these trade channels, Kraft's and Applicant's products will quite possibly be sold in the same section and potentially side-by-side. Based upon the popularity of the PHILADELPHIA brand, and its established brand recognition, it would be to Applicant's advantage to be located nearby or immediately adjacent to PHILADELPHIA products.

9. Applicant's proposed IT'S ALWAYS SUNNY IN PHILADELPHIA mark is confusingly similar to Kraft's distinctive and famous PHILADELPHIA mark.

10. Based upon the great popularity of Kraft's PHILADELPHIA products, Applicant is well aware of Kraft's PHILADELPHIA products and the popularity and goodwill represented and symbolized by the PHILADELPHIA mark.

11. Due to the similar nature of Kraft's mark and Applicant's mark, the identical nature of the goods sold under the marks, the identical target population, the identical trade channels, and the extensive fame and renown of Kraft's PHILADELPHIA mark, concurrent use of the mark IT'S ALWAYS SUNNY IN PHILADELPHIA by Applicant and PHILADELPHIA by Kraft would likely result in consumer confusion as to source, sponsorship, approval, or affiliation within the meaning of 15 U.S.C. §§ 1114 and 1125(a), and therefore, Kraft is likely to be damaged by registration of Applicant's proposed mark within the meaning of 15 U.S.C. § 1063(a).

12. Applicant's proposed mark is unregistrable pursuant to 15 U.S.C. § 1052(d), as it so resembles a mark previously used in the United States by another and not abandoned as to be likely to cause confusion, mistake, or to deceive.

13. Due to the similarity of Applicant's proposed mark to Kraft's PHILADELPHIA mark, and due to the extensive fame and renown of Kraft's PHILADELPHIA mark, registration and use of Applicant's proposed mark will also dilute the distinctive qualities of Kraft's famous PHILADELPHIA mark within the meaning of 15 U.S.C. § 1125(c), and therefore, Kraft is likely to be damaged by registration of Applicant's proposed mark within the meaning of 15 U.S.C. § 1063(a).

WHEREFORE, Kraft prays that the instant opposition be sustained and registration refused.