

ESTTA Tracking number: **ESTTA428906**

Filing date: **09/06/2011**

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	Frito-Lay North America, Inc.
Granted to Date of previous extension	09/04/2011
Address	7701 Legacy Drive Mail Stop 3A-421 Plano, TX 75024 UNITED STATES

Attorney information	Jeanette S. Zimmer Frito-Lay North America, Inc. 7701 Legacy Drive Mail Stop 3A-421 Plano, TX 75024 UNITED STATES trademarks@pepsico.com
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Applicant Information

Application No	85133183	Publication date	03/08/2011
Opposition Filing Date	09/06/2011	Opposition Period Ends	09/04/2011
Applicant	Garrett Brands LLC 401 N. Michigan Avenue, Suite 1700 Chicago, IL 60611 UNITED STATES		

Goods/Services Affected by Opposition

Class 030. All goods and services in the class are opposed, namely: Popped popcorn, flavored popped popcorn; flavored popped popcorn with processed nuts; processed popcorn balls
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
The mark is merely descriptive	Trademark Act section 2(e)(1)

Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	77730759	Application Date	05/06/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	HAPPINESS IS LOCAL		

Design Mark	HAPPINESS IS LOCAL
Description of Mark	NONE
Goods/Services	Class 029. First use: Potato chips; Potato-based snack foods

Attachments	77730759#TMSN.jpeg (1 page)(bytes) Notice of Opposition to SNACK LOCALLY.pdf (3 pages)(528891 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	/Jeanette S. Zimmer/
Name	Jeanette S. Zimmer
Date	09/06/2011

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

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FRITO-LAY NORTH AMERICA, INC.	:	In the Matter of Application
	:	Serial No. 85133183
Opposer,	:	SNACK LOCALLY
	:	
v.	:	Published in the Official Gazette
	:	on March 8, 2011
GARRETT BRANDS LLC,	:	
	:	
Applicant.	:	Opposition No. _____
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NOTICE OF OPPOSITION

Frito-Lay North America, Inc., a Delaware corporation, having a place of business at 7701 Legacy Drive, Plano, TX 75024 ("Opposer" or "Frito-Lay"), hereby opposes the application of Garrett Brands LLC (hereinafter "Applicant"), a limited liability company, having a place of business at 401 N. Michigan Avenue, Suite 1700, Chicago, IL 60611 pursuant to 37 CFR § 2.104(a), for the mark SNACK LOCALLY, Application Serial No.85133183, in Class 30.

As grounds for opposition, Opposer states:

1. Frito-Lay through its predecessors in interest and title, and through its related companies, divisions and/or licensees (hereinafter individually and/or collectively referred to as "Opposer"), has been engaged in the manufacture and sale of snack foods for over fifty years and is now one of the largest manufacturers of snack foods in the United States.

2. Opposer's snack foods are marketed and sold in tremendous quantities on a nationwide basis, supported by many millions of dollars of advertising and promotion each year. Opposer's food products are sold in almost every supermarket in the United States as well as in numerous convenience stores, vending machines, mass merchandise stores, schools and other outlets.

3. On May 6, 2009, Opposer applied for registration of the mark HAPPINESS IS LOCAL, U.S. Serial No. 77730759 on and in connection with potato chips and potato-based snack foods.

4. Opposer's filing date precedes Applicant's filing date of September 23, 2010.

5. Since 2009, Opposer has been engaged in an advertising campaign promoting the local nature of its snack food products.

6. The word "SNACK" is a common word used by the public and snack food manufacturers.

7. On information and belief, the word "SNACK" is frequently disclaimed on the Principal Register from applications and registrations of marks that include the word SNACK for snack food products.

8. Registration of the Application is barred by Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1) because Applicant seeks to register a mark that is merely descriptive of the goods inasmuch as it describes an ingredient, quality, characteristic, function, feature, purpose or use of the specified goods or services. See *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). Combining the word LOCAL with the descriptive word SNACK.

9. Registration of the SNACK LOCALLY mark is barred by the provisions of Section 2(d) of the Lanham Act because the said mark consists of or comprises a mark which so resembles a mark previously registered in the United States Patent and Trademark Office and/or used in the United States by Opposer and not abandoned, as to be likely, when used in connection with the alleged goods of the Applicant, to cause confusion, mistake or deception.

10. Applicant's alleged mark SNACK LOCALLY is confusingly similar to Opposer's prior pending Application for the mark HAPPINESS IS LOCAL.

WHEREFORE, Opposer prays that the Application be rejected, and that registration of the mark SNACK LOCALLY be denied and refused.

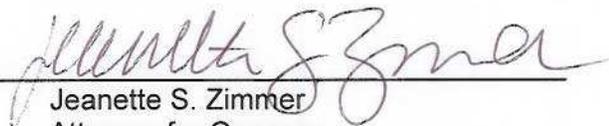
This Notice of Opposition is being filed electronically pursuant to the ESTTA system.

Respectfully submitted,

FRITO-LAY NORTH AMERICA, INC.

Date: September 6, 2011

By:

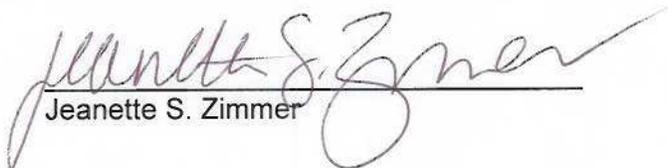


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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing NOTICE OF OPPOSITION was served on counsel for Applicant, this 6th day of September, by sending same via First Class mail, postage prepaid, to the following:

Marsha K. Hoover
DAVIS MCGRATH LLC
125 S. Wacker Drive, Ste 1700
Chicago, IL 60606-4478



Jeanette S. Zimmer