

ESTTA Tracking number: **ESTTA433776**

Filing date: **10/04/2011**

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	Don Miguel Mexican Foods, Inc.
Granted to Date of previous extension	10/05/2011
Address	P.O. Box 31292125 E. Orangewood Avenue Anaheim, CA 92803-3129 UNITED STATES

Attorney information	Sarah L. Nelsen Hormel Foods Corporation 1 Hormel Place Austin, MN 55912 UNITED STATES slnelsen@hormel.com
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Applicant Information

Application No	85266719	Publication date	06/07/2011
Opposition Filing Date	10/04/2011	Opposition Period Ends	10/05/2011
Applicant	Interex Corp. Suite 1730 222 W. Las Colinas Blvd. Irving, TX 75039 UNITED STATES		

Goods/Services Affected by Opposition

Class 030. First Use: 1990/04/01 First Use In Commerce: 1990/04/01 All goods and services in the class are opposed, namely: corn-based snack foods

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. Registration No.	1958342	Application Date	05/25/1994
Registration Date	02/27/1996	Foreign Priority Date	NONE
Word Mark	EL CHARRITO		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 030. First use: First Use: 1980/09/12 First Use In Commerce: 1980/09/12 frozen Mexican style meals and entrees consisting primarily of burritos, enchiladas and tacos and also containing beans and rice sold to non-institutional customers
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Attachments	EL CHARRITO Opposition.pdf (4 pages)(22858 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	/sln/
Name	Sarah L. Nelsen
Date	10/04/2011

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

Don Miguel Mexican Foods, Inc.)	Mark:	CHARRITOS
)		
)	Serial No:	85/266,719
Opposer,)		
)	Filing Date:	March 14, 2011
v.)		
)	Publication Date:	June 7, 2011
Interex Corp.)		
)		
Applicant.)		

NOTICE OF OPPOSITION

In the matter of Application Serial No. 85/266,719 filed March 14, 2011, by Interex Corp. ("Applicant"), with an address of 222 W. Las Colinas Blvd., Suite 1730, Irving, TX 75039 to register Charritos as a trademark for use in connection with "corn-based snack foods" in International Class 030, which was published in the Official Gazette on June 7, 2011.

Don Miguel Mexican Foods, Inc., a California corporation ("Opposer"), having its principal place of business at 1501 W. Orangewood Avenue, Orange, CA 92868-2006 believes it will be damaged by registration of the Charritos mark in International Class 030 and opposes the same.

The grounds for this opposition are as follows:

1. Opposer, Don Miguel Mexican Foods, Inc. (hereinafter “Don Miguel”) is a corporation organized and existing under the laws of the State of California, with its principal place of business at 1501 W. Orangewood Ave, Orange, CA 92868-2006.

2. Opposer, Don Miguel owns trademark rights in EL CHARRITO for the following products:

Reg. No.	Reg. Date	Goods/Services
1958342	02/27/1996	frozen Mexican style meals and entrees consisting primarily of burritos, enchiladas and tacos and also containing beans and rice sold to non-institutional customers.

3. Opposer’s Mark has been in use in interstate commerce, has been advertised and promoted by Opposer or its affiliates and licensees, and represents valuable goodwill to the benefit of Opposer. Opposer’s Mark has trademark significance to purchasers and potential purchasers.

4. There is no issue of priority because Opposer has used Opposer’s Mark since at least as early as September 12, 1980, prior to Applicant’s asserted first date of use of April 1990.

5. Upon information and belief, Applicant is Interex Corp, a Texas Corporation, with an address of 222 W. Las Colinas Blvd, Suite 1730, Irvine, TX 75039.

6. Applicant is seeking to register Charritos as a trademark for use in connection with “corn-based snack foods” in International Class 030.

7. Applicant's mark is confusingly similar to Opposers' Mark. Applicant's mark is similar in sight, sound and commercial impression to Opposer's mark.
8. Opposer enjoys substantial and exclusive goodwill and reputation in connection with its EL CHARRITO mark, which good will and reputation will be harmed by the use and registration of the mark Charrito sought to be registered by Applicant.
9. Applicant's Charrito mark, being confusingly similar to Opposer's EL CHARRITO mark is likely, when applied to Applicant's goods, to cause confusion, mistake, or to deceive as to the source of origin of Applicant's services creating the erroneous impression that Applicant's goods originate with, are sponsored by, approved or endorsed by, licensed by, affiliated or associated with, or in some other way legitimately connected to Opposer.
10. The granting of the trademark registration for the Charritos mark to Applicant would be contrary to 15 U.S.C. § 1052(d) and will violate or diminish the prior and superior rights of Opposer in EL CHARRITO mark.
11. Opposer will be damaged if Applicant obtains a registration of the Charritos mark because Applicant will obtain statutory rights in the mark in violation of the established prior rights of Opposer in EL CHARRITO mark.

WHEREFORE, Opposer prays that Application Serial No. 85/266719 be rejected, and that the registration of the mark therein sought be denied and refused, and that this Opposition be sustained.

Respectfully submitted,

/sln/

Sarah L. Nelsen

Don Miguel Mexican Foods, Inc.