

ESTTA Tracking number: **ESTTA435306**

Filing date: **10/12/2011**

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	Unilever Supply Chain, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	1 John Street Clinton, CT 06413 UNITED STATES		

Attorney information	Mitchell A. Frank Duane Morris LLP 1540 Broadway New York, NY 10036 UNITED STATES mafrank@duanemorris.com, gpgulia@duanemorris.com		
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Applicant Information

Application No	85260834	Publication date	09/27/2011
Opposition Filing Date	10/12/2011	Opposition Period Ends	10/27/2011
Applicant	Stack, Richard Lynn 226 Homewood Road Linthicum Heights, MD 21090 UNITED STATES		

Goods/Services Affected by Opposition

Class 020. All goods and services in the class are opposed, namely: Adult novelty goods in the nature of a simulated buttocks
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2421400	Application Date	02/16/2000
Registration Date	01/16/2001	Foreign Priority Date	NONE
Word Mark	POPSICLE		

Design Mark	POPSICLE		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1923/00/00 First Use In Commerce: 1923/00/00 Frozen confections		

U.S. Registration No.	1840718	Application Date	02/22/1993
Registration Date	06/21/1994	Foreign Priority Date	NONE
Word Mark	POPSICLE THE ORIGINAL BRAND		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1988/01/01 First Use In Commerce: 1988/01/01 frozen confections		

U.S. Registration No.	2668524	Application Date	09/26/2001
Registration Date	12/31/2002	Foreign Priority Date	NONE
Word Mark	POPSICLE		

Design Mark	<h1>POPSICLE</h1>		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2000/03/01 First Use In Commerce: 2000/03/01 ice cream		

U.S. Registration No.	2651685	Application Date	09/26/2001
Registration Date	11/19/2002	Foreign Priority Date	NONE

Word Mark	THE ORIGINAL BRAND POPSICLE		
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Design Mark			
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Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2000/03/01 First Use In Commerce: 2000/03/01 ice cream		

U.S. Registration No.	1839541	Application Date	02/22/1993
Registration Date	06/14/1994	Foreign Priority Date	NONE

Word Mark	CREAMSICLE		
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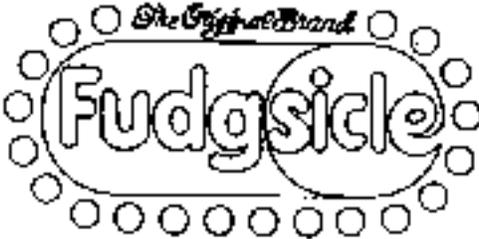
Design Mark			
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Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1937/01/15 First Use In Commerce: 1937/01/15 frozen confections		

U.S. Registration No.	1840719	Application Date	02/22/1993
Registration Date	06/21/1994	Foreign Priority	NONE

		Date	
Word Mark	CREAMSICLE THE ORIGINAL BRAND		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1988/01/01 First Use In Commerce: 1988/01/01 frozen confections		

U.S. Registration No.	434594	Application Date	11/09/1946
Registration Date	11/25/1947	Foreign Priority Date	NONE
Word Mark	FUDGSICLE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U046 (International Class 001, 005, 029, 030, 031, 032). First use: First Use: 1946/10/04 First Use In Commerce: 1946/10/04 FROZEN CONFECTIONS[AND POWDERED CONCENTRATES FOR MAKING THE SAME]		

U.S. Registration No.	1840717	Application Date	02/22/1993
Registration Date	06/21/1994	Foreign Priority Date	NONE
Word Mark	FUDGSICLE THE ORIGINAL BRAND		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1988/01/01 First Use In Commerce: 1988/01/01 frozen confections		

Attachments	75921375#TMSN.gif (1 page)(bytes) 74362545#TMSN.gif (1 page)(bytes) 76317760#TMSN.gif (1 page)(bytes) 76317761#TMSN.gif (1 page)(bytes) 74362546#TMSN.gif (1 page)(bytes) 74362543#TMSN.gif (1 page)(bytes) MOONSICLE Notice of Opposition.pdf (7 pages)(105112 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	/Mitchell A. Frank/
Name	Mitchell A. Frank
Date	10/12/2011

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

In the matter of Application Serial No. 85260834
Mark: MOONSICLE
Published: September 27, 2011

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UNILEVER SUPPLY CHAIN, INC.,	:
	:
Opposer,	:
	:
v.	:
	:
RICHARD LYNN STACK, D/B/A	:
THE MOONSICLE COMPANY,	:
	:
Applicant.	:
-----X	

Opposition No.: _____

NOTICE OF OPPOSITION

Opposer, Unilever Supply Chain, Inc., a corporation organized and existing under the laws of Delaware, having a principal place of business at 1 John Street, Clinton, Connecticut 06413 (“Opposer”), believes that it will be damaged by registration of the designation MOONSICLE for “adult novelty goods in the nature of simulated buttocks” in International Class 20 s shown in Application Serial No. 85260834 filed by Richard Lynn Stack d/b/a The Moonsicle Company (“Applicant”). Opposer hereby opposes the same under the provisions of Sections 2(d), 13 and 43(c) of the Trademark Act of July 5, 1946 (the “Lanham Act”), 15 U.S.C. §§ 1052(d), 1063 and 1125(c).

As grounds for opposition, Opposer, through its undersigned counsel, alleges as follows:

1. Opposer is the owner of all right, title and interest in and to the following trademarks and registrations therefor, among others, issued by the United States Patent and Trademark Office for trademarks incorporating “SICLE” (hereinafter collectively referred to as the “SICLE Family of Marks”).

MARK	REGISTRATION NUMBER	REGISTRATION DATE	FIRST USE DATE	GOODS
POPSICLE	2,421,400	January 16, 2001	1923	frozen confections
POPSICLE THE ORIGINAL BRAND (and Design)	1,840,718	June 21, 1994	January 1, 1988	frozen confections
POPSICLE	2,668,524	December 31, 2002	March 1, 2000	ice cream
POPSICLE THE ORIGINAL BRAND (and Design)	2,651,685	November 19, 2002	March 1, 2000	ice cream
CREAMSICLE	1,839,541	June 14, 1994	January 15, 1937	frozen confections
CREAMSICLE THE ORIGINAL BRAND (and Design)	1,840,719	June 21, 1994	January 1, 1988	frozen confections
FUDGSICLE	434,594	November 25, 1947	October 4, 1946	frozen confections and powdered concentrates for making the same
FUDGSICLE THE ORIGINAL BRAND (and Design)	1,840,717	June 21, 1994	January 1, 1988	frozen confections

2. The following registrations referenced above are incontestable pursuant to the provisions of Section 15 of the Lanham Act, 15 U.S.C. § 1065, and accordingly constitute conclusive evidence of the validity of the registered marks and the registrations therefor, of Opposer's ownership of the registered marks, and of Opposer's exclusive right to use the marks covered by the registrations in commerce in connection with the goods specified in the registrations: POPSICLE® (Reg. No. 2,421,400) (for frozen confections), POPSICLE THE ORIGINAL BRAND (and Design)® (Reg. No. 1,840,718) (for frozen confections), POPSICLE® (Reg. No. 2,668,524) (for ice cream), POPSICLE THE ORIGINAL BRAND (and Design)®

(Reg. No. 2,651,685) (for ice cream), CREAMSICLE[®] (Reg. No. 1,839,541) (for frozen confections), CREAMSICLE THE ORIGINAL BRAND (and Design)[®] (Reg. No. 1,840,719 (for frozen confections), and FUDGSICLE THE ORIGINAL BRAND (and Design)[®] Reg. No. 1,840,717) (for frozen confections).

3. The registration noted above for FUDGSICLE (Reg. No. 434,594) is valid and subsisting, in full force and effect, and constitutes prima facie evidence of the validity of the registered mark and of Opposer's exclusive right to use the mark in commerce in connection with the goods specified in the registration.

4. Opposer and its predecessors-in-interest and their licensees have used one or more of the SICLE Family of Marks in commerce in connection with the nationwide production, distribution, sale and promotion of frozen confections and/or ice cream for more than eighty-five years.

5. In addition to the use of the SICLE Family of Marks for frozen confections and ice cream, Opposer and its predecessors-in-interest, through their licensees, have used the SICLE Family of Marks on a wide variety of other products.

6. Opposer and its predecessors-in-interest have always cultivated a clean, wholesome image for the SICLE Family of Marks.

7. Opposer's SICLE Family of Marks symbolize the extensive goodwill and consumer recognition that Opposer has established through substantial expenditures of time, effort and other resources in the advertising and promotion of the goods sold under the SICLE Family of Marks.

8. Through the extensive and continuous use and promotion of the SICLE Family of Marks, Opposer has established a public perception of the distinctive “SICLE” Family of Marks as an indication of source of only Opposer’s goods.

9. As a result of the regular, extensive and well-publicized use of the SICLE Family of Marks, the SICLE Family of Marks are famous in the United States and are associated exclusively with Opposer and its high quality products.

10. On March 8, 2011, Applicant filed an intent-to-use application under Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b) for federal registration of the designation MOONSICLE, Application Serial No. 85260834 for “adult novelty goods in the nature of simulated buttocks” in International Class 20 (“Application”).

11. Applicant’s MOONSICLE Application was published for opposition in the Official Gazette on September 27, 2011.

12. The opposition period for Application Serial No. 85260834 is currently set to expire on October 27, 2011. Opposer, therefore, timely files this Notice of Opposition.

13. Upon information and belief, Applicant has not filed an Amendment to Allege use under Section 1(c) of the Lanham Act, 15 U.S.C. § 1051(c).

14. Opposer has acquired exclusive rights in the SICLE Family of Marks, individually and collectively, that substantially predate any rights upon which Applicant may rely.

15. Opposer’s rights to the SICLE Family of Marks, individually and collectively, are superior to those of Applicant.

16. Opposer's SICLE Family of Marks, and each of them, are famous and were famous on and before the filing date of the Application or any use of the MOONSICLE designation by Applicant.

17. The "SICLE" portion of Applicant's MOONSICLE designation is identical to that in Opposer's SICLE Family of Marks.

18. The goods covered by the Application are inconsistent with and contrary to the clean and wholesome image associated with Opposer's SICLE Family of Marks, which Opposer and its predecessors-in-interest have spent many years and vast amounts of money to cultivate and maintain.

19. Applicant's designation MOONSICLE is clearly intended to evoke Opposer's SICLE Family of Marks and trade on Opposer's vast goodwill and equity.

20. Opposer believes that it will be damaged by registration of Applicant's MOONSICLE designation under Section 13 of the Lanham Act, 15 U.S.C. § 1063, because consumers familiar with Opposer's famous SICLE Family of Marks, individually and collectively, are likely to believe, mistakenly, that Applicant and/or its products emanate from, are sponsored or authorized by and/or are otherwise associated or affiliated with Opposer, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

21. Opposer believes it will be damaged by registration of the MOONSICLE designation under Section 13 of the Lanham Act, 15 U.S.C. § 1063, because the use and registration of the MOONSICLE designation is likely to dilute the distinctive quality of Opposer's famous SICLE Family of Marks, individually and collectively, in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(d).

22. Opposer believes it will be damaged by registration of the MOONSICLE designation under Section 13 of the Lanham Act, 15 U.S.C. § 1063, because the use and registration of the MOONSICLE designation on and in connection with “adult novelty goods in the nature of simulated buttocks” is likely to harm the reputation of Opposer’s famous SICLE Family of Marks.

WHEREFORE, Opposer believes that it will be damaged by registration of the designation MOONSICLE shown in Application Serial No. 85260834 and respectfully requests that the registration sought by Applicant be refused.

Dated: October 12, 2011

Respectfully submitted,

I hereby certify that this correspondence is being filed by electronic transmission in the United States Patent and Trademark Office, Trademark Trial and Appeal Board on the date shown below.

/Edwin E. Grullon/
Edwin Grullon

Dated: October 12 , 2011

By: /Mitchell A. Frank/

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Attorneys for Opposer
UNILEVER SUPPLY CHAIN, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 12, 2011 a true and correct copy of the foregoing Notice of Opposition was served, via prepaid first class mail, on Richard Lynn Stack, at the address indicated below:

Richard Lynn Stack
226 Homewood Road
Linthicum Heights, MD 21090

/Edwin E. Grullon/
Edwin Grullon

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