

ESTTA Tracking number: **ESTTA498961**

Filing date: **10/09/2012**

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	Adams & Brooks, Inc.
Granted to Date of previous extension	10/10/2012
Address	1915 S. Hoover Street Los Angeles, CA 90007 UNITED STATES

Attorney information	Bryce J. Maynard Buchanan Ingersoll & Rooney PC 1737 King Street Suite 500 Alexandria, VA 22314 UNITED STATES bryce.maynard@bipc.com
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**Applicant Information**

Application No	85508212	Publication date	06/12/2012
Opposition Filing Date	10/09/2012	Opposition Period Ends	10/10/2012
Applicant	P-Nutty's Snack Delivery LLC #205 4122 Avondale Ave. Dallas, TX 75219 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 039. First Use: 2011/08/19 First Use In Commerce: 2011/08/19  
All goods and services in the class are opposed, namely: Food delivery

**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.	799624	Application Date	04/16/1965
Registration Date	11/30/1965	Foreign Priority Date	NONE
Word Mark	P-NUTTLES		

Design Mark			
Description of Mark	NONE		
Goods/Services	Class U046 (International Class 030). First use: First Use: 1965/02/22 First Use In Commerce: 1965/02/22 NUT CANDIES		

U.S. Registration No.	2794401	Application Date	02/04/2003
Registration Date	12/16/2003	Foreign Priority Date	NONE
Word Mark	P-NUTTLES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1965/02/22 First Use In Commerce: 1965/02/22 nut candies		

Attachments	72216648#TMSN.gif ( 1 page )( bytes ) 76487553#TMSN.gif ( 1 page )( bytes ) Notice of Opposition P-NUTTYYS.pdf ( 6 pages )(20338 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	/Bryce J. Maynard/
Name	Bryce J. Maynard
Date	10/09/2012

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

RE: U.S. Trademark Application Serial No. 85/508,212  
Published in the *Official Gazette* on June 12, 2012

Adams & Brooks, Inc.	)	
	)	
Opposer,	)	
	)	Opposition No. _____
-v-	)	
	)	
P-Nutty's Snack Delivery, LLC	)	
	)	
Applicant	)	
	)	
Attorney Docket No. 1030788-000184	)	
_____	)	

**NOTICE OF OPPOSITION**

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

Commissioner:

In the matter of U.S. Trademark Application Serial No. 85/508,212, filed on January 4, 2012 by P-Nutty's Snack Delivery, LLC ("Applicant"), to register the mark P-NUTTY'S SNACK DELIVERY and Design ("Applicant's P-NUTTY'S SNACK DELIVERY Mark") in connection with "food delivery" in International Class 39 ("Applicant's Services"), and published in the *Official Gazette* on June 12, 2012, Adams & Brooks, Inc. ("Opposer") believes that it will be damaged by

registration of Applicant's P-NUTTY'S SNACK DELIVERY Mark and hereby opposes same. The grounds for this opposition are as follows:

1. Applicant is the record owner of Application Serial No. 85/508,212 for Applicant's P-NUTTY'S SNACK DELIVERY Mark in connection with Applicant's Services.

2. Upon information and belief, Applicant did not use Applicant's P-NUTTY'S SNACK DELIVERY Mark in connection with Applicant's Services prior to August 19, 2011, the date of first use alleged in Application Serial No. 85/508,212.

3. Upon information and belief, Applicant did not use Applicant's P-NUTTY'S SNACK DELIVERY Mark in connection with Applicant's Services in interstate commerce in the United States prior to August 19, 2011, the date of first use in commerce alleged in Application Serial No. 85/508,212.

4. Opposer is a California corporation located and doing business at 1915 S. Hoover Street, Los Angeles, California 90007.

5. Opposer is the owner of U.S. Registration No. 799,624 for the mark P-NUTTLES and Design and U.S. Registration No. 2,794,401 for the mark P-NUTTLES, both in connection with "nut candies" in International Class 30 (hereinafter "Opposer's Goods"). The marks therein are hereinafter referred to collectively as Opposer's P-NUTTLES Mark. U.S. Registration Nos. 1799,624 and 2,794,401 for Opposer's P-NUTTLES Mark are valid, subsisting, and incontestable pursuant to 15 U.S.C. § 1052(d).

6. Commencing long prior to Applicant's first use of Applicant's P-NUTTY'S SNACK DELIVERY Mark, Opposer has been and is now engaged in the business of advertising, offering for sale and selling Opposer's Goods under Opposer's P-NUTTLES Mark.

7. Commencing long prior to Applicant's first use of Applicant's P-NUTTY'S SNACK DELIVERY Mark, Opposer has used and is now using Opposer's P-NUTTLES Marks in connection with the advertising, offering for sale and selling of Opposer's Goods in interstate commerce in the United States.

8. Due to Opposer's longstanding and continuous use of Opposer's P-NUTTLES Mark in connection with Opposer's Goods, Opposer's P-NUTTLES Mark has become well known as designating Opposer's Goods throughout the United States. Opposer's P-NUTTLES Mark has also become famous among the general consuming public of the United States.

9. Opposer enjoys substantial and exclusive goodwill and an excellent reputation throughout the United States in connection with Opposer's P-NUTTLES Mark and Opposer's Goods sold under Opposer's P-NUTTLES Mark.

10. Applicant's P-NUTTY'S SNACK DELIVERY Mark in Application Serial No. 85/508,212 is highly similar to Opposer's P-NUTTLES Marks in appearance, pronunciation, connotation, and commercial impression.

11. Applicant's Services are closely related to Opposer's Goods. Upon information and belief, Applicant's "food delivery" services includes the delivery of candy products identical or virtually identical to Applicant's Goods. Upon information and belief, Applicant's Services and Opposer's Goods are also marketed and sold to the identical types of consumers through identical channels of trade.

12. Applicant adopted Applicant's P-NUTTY'S SNACK DELIVERY Mark with full knowledge of Opposer's prior rights in Opposer's P-NUTTLES Mark, and with the intent to trade off the good will associated with Opposer's P-NUTTLES Mark.

13. Applicant's P-NUTTY'S SNACK DELIVERY Mark in Application Serial No. 85/508,212 so resembles Opposer's previously registered and used P-NUTTLES Mark as to be likely, when applied to Applicant's Services, to cause confusion, to cause mistake, or to deceive, by creating the erroneous impression that Applicant's Services originate from or are associated with Opposer, or that Applicant's Services are authorized, endorsed or sponsored by Opposer.

14. Applicant's filing of Application Serial No. 85/508,212 for Applicant's P-NUTTY'S SNACK DELIVERY Mark was without license, authorization or permission from Opposer.

15. The granting of a trademark registration for Applicant's P-NUTTY'S SNACK DELIVERY Mark would violate and diminish the prior and superior rights of Opposer in Opposer's P-NUTTLES Mark and would be in violation of 15 U.S.C. § 1052(d).

16. Applicant's P-NUTTY'S SNACK DELIVERY Mark in Application Serial No. 85/508,212 is likely to cause dilution of Opposer's famous P-NUTTLES Mark.

17. Opposer would be damaged if Application Serial No. 85/508,212 is allowed to register because Applicant will obtain statutory rights in Applicant's P-NUTTY'S SNACK DELIVERY Mark in violation and derogation of the established prior rights of Opposer in Opposer's P-NUTTLES Mark.

WHEREFORE, Opposer requests that its Opposition be sustained, that Application Serial No. 85/508,212 be rejected and that the registration of Applicant's P-NUTTY'S SNACK DELIVERY Mark as a trademark to Applicant be refused, and for such other relief as may be deemed just and proper.

Respectfully submitted,

**ADAMS & BROOKS, INC.**

Date: October 9, 2012

/Bryce J. Maynard/

Bryce J. Maynard

Buchanan Ingersoll & Rooney PC

P.O. Box 1404

Alexandria, Virginia 22313-1404

(703) 836-6620

Attorney for Opposer

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing NOTICE OF OPPOSITION was served  
this 9th day of October, 2012 by first-class mail, postage prepaid, on:

P-Nutty's Snack Delivery LLC  
4122 Avondale Ave. Apt. 205  
Dallas, Texas 75219-3061

/Florence Goodman/  
Florence Goodman