

ESTTA Tracking number: **ESTTA505402**

Filing date: **11/14/2012**

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	Mars, Incorporated
Granted to Date of previous extension	11/14/2012
Address	6885 Elm Street McLean, VA 22101 UNITED STATES
Attorney information	Jason J. Mazur ARENT FOX LLP 1050 CONNECTICUT AVENUE NW WASHINGTON, DC 20036 UNITED STATES sherwin.loni@arentfox.com, mazur.jason@arentfox.com, koehler.kwan@arentfox.com

**Applicant Information**

Application No	79103720	Publication date	07/17/2012
Opposition Filing Date	11/14/2012	Opposition Period Ends	11/14/2012
International Registration No.	1093717	International Registration Date	05/20/2011
Applicant	QIAQIA FOOD CO., LTD. Lianhua Road Economic & Technological Development Zone Hefei, ANHUI CHINA		

**Goods/Services Affected by Opposition**

<p>Class 029. All goods and services in the class are opposed, namely: Charqui; food products made from fish, namely, fish cakes, fish fillets, canned fish; fruits, tinned; fruit chips; fruit-based snack food; potato chips; potato crisps; peanut butter; jams; cranberry sauce and compote; tahini and sesame seed paste; vegetables, dried; pickles; salted vegetables; flavored radish; dried bamboo shoots; eggs; soy milk; cheese; yoghurt; milk beverages with milk predominating; milk products excluding ice cream, ice milk and frozen yogurt; milk tea with milk predominating; milk shake; chocolate nut butter; cocoa butter; vegetable salads; fruit salads; fruit jellies; gum base for chewing gums; nuts, prepared; peanuts, processed; sunflower seeds, processed; melon seeds, processed; pine nuts, processed; pistachios, processed; flavored beans; cooked beans; dried edible mushroom; albumen for food; honeyed peanuts</p>
<p>Class 030. All goods and services in the class are opposed, namely: Cocoa products, namely, cocoa candy, cocoa powder, cocoa spreads; coffee; coffee-based beverages; chocolate-based beverages; tea substitutes; natural sweeteners; sweetmeats; chocolate; fondants; fruit jelly candies; crunchy rice</p>

candy; honey; rusks; biscuits; cookies; petits fours; puddings; rice puddings; stuffed dumplings; preparations made from cereals, namely, breakfast cereals; popcorn; cereal-based snack food; rice-based snack food; crispy rice; rice crusts; rice crackers; gluten for food; potato flour; ice cream; cooking salt; weeds as condiments; curry; chutneys; chili oil; flavoring sauce; leaven; essences for foodstuffs except etheric essences and essential oils; meat tenderizers, for household purposes

## Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

## Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2598461	Application Date	05/24/1999
Registration Date	07/23/2002	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	The mark consists of a design of a hand holding a cocoa bean.		
Goods/Services	Class 030. First use: First Use: 2000/01/00 First Use In Commerce: 2000/01/00 confectionery products, namely candy		

Attachments	75714223#TMSN.gif ( 1 page )( bytes ) QiaQia Notice of Opposition.pdf ( 6 pages )(211930 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 Overnight Courier on this date.

Signature	/Loni J. Sherwin/
Name	Loni J. Sherwin
Date	11/14/2012

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

In re Application No. 79/103720 filed May 20, 2011, and published July 17, 2012

MARS, INCORPORATED,	)	
	)	
Opposer,	)	
	)	
v.	)	Opp. No. _____
	)	
QIAQIA FOOD CO., LTD.	)	
	)	
Applicant.	)	
_____	)	

**NOTICE OF OPPOSITION**

Mars, Incorporated (“Opposer”), a corporation duly organized and existing under the laws of the State of Delaware, having a place of business at 6885 Elm Street, McLean, Virginia 22101, believes that it will be damaged by the registration of the mark shown in Application Serial No. 79/103720, and hereby opposes the same under the provisions of Section 13 of the Trademark Act of 1946, 15 U.S.C. § 1063.

As grounds for opposition, Opposer alleges the following:

1. Opposer is the owner of all right, title, and interest in and to the highly distinctive design mark shown below (“Opposer’s Mark”), which Opposer has used in interstate commerce for years in connection with a variety of goods as detailed herein.



2. Opposer’s rights in Opposer’s Mark have been recognized by the United States Patent and Trademark Office, which issued to Opposer Registration No. 2598461 for Opposer’s

Mark for confectionery products, namely, candy. Opposer's Registration No. 2598461 issued on July 23, 2002 and is now incontestable. This registration provides conclusive evidence of Opposer's ownership of Opposer's Mark, of the validity of Opposer's Mark, and of Opposer's exclusive right to use Opposer's Mark in commerce.

3. Opposer adopted and first used Opposer's Mark in interstate commerce at least as early as January, 2000.

4. Since at least as early as January, 2000, Opposer has used Opposer's Mark in interstate commerce on or in connection with confectionery products, namely, candy. Opposer's Mark is and has been used on and in connection with goods that include confectionery products sold under the famous DOVE® chocolate brand.

5. Since at least as early as February 19, 2010, Opposer has used Opposer's Mark in interstate commerce on or in connection with grain-based food bars also containing dark chocolate, nuts, and fruit; grain-based snack foods; and granola-based snack bars.

6. Since at least as early as October 31, 2010, Opposer has used Opposer's Mark on or in connection with dietary and nutritional supplements; powdered nutritional supplement drink mixes; powdered dietary supplement drink mixes; and nutritionally fortified beverage mixes.

7. Opposer has extensively used, advertised, and promoted Opposer's Mark in interstate commerce in connection with Opposer's goods.

8. As a result of such extensive use, advertising, and promotion, Opposer's Mark has become well-known as a distinctive indicator of the origin of Opposer's goods, and the mark has become a valuable symbol of Opposer's goodwill.

9. Notwithstanding Opposer's prior established rights in Opposer's Mark, and long after Opposer's adoption and first use of Opposer's Mark, Applicant QiaQia Food Co., Ltd. ("Applicant") filed U.S. application Serial No. 79/103720 on May 20, 2011 for the mark shown below ("Applicant's Mark") for the following goods: "Charqui; food products made from fish, namely, fish cakes, fish fillets, canned fish; fruits, tinned; fruit chips; fruit-based snack food; potato chips; potato crisps; peanut butter; jams; cranberry sauce and compote; tahini and sesame seed paste; vegetables, dried; pickles; salted vegetables; flavored radish; dried bamboo shoots; eggs; soy milk; cheese; yoghurt; milk beverages with milk predominating; milk products excluding ice cream, ice milk and frozen yogurt; milk tea with milk predominating; milk shake; chocolate nut butter; cocoa butter; vegetable salads; fruit salads; fruit jellies; gum base for chewing gums; nuts, prepared; peanuts, processed; sunflower seeds, processed; melon seeds, processed; pine nuts, processed; pistachios, processed; flavored beans; cooked beans; dried edible mushroom; albumen for food; honeyed peanuts" in Class 29, and "Cocoa products, namely, cocoa candy, cocoa powder, cocoa spreads; coffee; coffee-based beverages; chocolate-based beverages; tea substitutes; natural sweeteners; sweetmeats; chocolate; fondants; fruit jelly candies; crunchy rice candy; honey; rusks; biscuits; cookies; petits fours; puddings; rice puddings; stuffed dumplings; preparations made from cereals, namely, breakfast cereals; popcorn; cereal-based snack food; rice-based snack food; crispy rice; rice crusts; rice crackers; gluten for food; potato flour; ice cream; cooking salt; weeds as condiments; curry; chutneys; chili oil; flavoring sauce; leaven; essences for foodstuffs except etheric essences and essential oils; meat tenderizers, for household purposes" in Class 30.



10. Upon information and belief, Applicant knew or had reason to know of Opposer's prior rights in Opposer's Mark when Applicant filed its application.

**Count I – Likelihood of Confusion – §2(d)**

11. The mark that Applicant seeks to register so closely resembles Opposer's Mark that the use and registration thereof is likely to cause confusion, mistake, and deception as to the source or origin of Applicant's goods and will injure and damage Opposer and the goodwill and reputation symbolized by Opposer's Mark.

12. Applicant's goods are similar or identical to Opposer's goods such that the public is likely to be confused, to be deceived, and to assume erroneously that Applicant's goods are those of Opposer, or that Applicant is in some way connected or affiliated with, or approved or sponsored by, Opposer, all to Opposer's irreparable damage.

13. Likelihood of confusion is enhanced by the well-known character of Opposer's Mark and by the fact that consumers associate this mark with goods sold, approved, or endorsed by Opposer.

14. Likelihood of confusion is enhanced by the fact that purchasers of Applicant's goods are purchasers or prospective purchasers of Opposer's goods, and vice-versa.

15. Likelihood of confusion is enhanced by the fact that Opposer's Mark and the design element of Applicant's Mark are nearly identical and are both comprised of the stylized depiction of a left hand holding a rounded object between the thumb and index finger.

**Count II – Deception/False Suggestion of Connection – §2(a)**

16. Applicant's mark so closely resembles Opposer's Mark that it is likely to cause

deception in violation of Section 2(a) of the Trademark Act, in that the mark misdescribes the nature or origin of the goods, prospective purchasers are likely to believe that the misdescription actually describes the nature or origin of the goods, and this is likely to materially alter prospective consumers' decisions whether to purchase Applicant's goods.

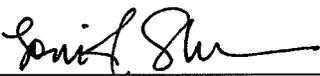
17. Applicant's mark so closely resembles Opposer's Mark that it falsely suggests a connection with Opposer in violation of Section 2(a) of the Trademark Act because Applicant's mark points uniquely to Opposer, and purchasers and prospective purchasers will assume that goods offered under Applicant's mark are affiliated or connected with Opposer.

18. Applicant's mark is deceptive in that it falsely suggests a connection with or approval by Opposer.

WHEREFORE, Opposer prays that the Board sustain this opposition and deny registration of the mark identified in Applicant's application.

MARS, INCORPORATED

Dated: 11/14/2012

By: 

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*Attorneys for Opposer  
Mars, Incorporated*

**CERTIFICATE OF SERVICE**

It is hereby certified that the foregoing **NOTICE OF OPPOSITION** (re: Serial No. 79/103720) has been served on Applicant at the following correspondence address as listed in US Patent and Trademark Office records:

China Trademark & Patent Law Office Co., Ltd.  
14 Yuetan Nanjie,  
Xichengqu, Yuexin Bld.  
100045 Beijing  
China

by Federal Express, postage prepaid, this 14<sup>th</sup> day of November, 2012.

  
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