

ESTTA Tracking number: **ESTTA515961**

Filing date: **01/14/2013**

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	Stacy's Pita Chip Company, Inc.
Granted to Date of previous extension	02/13/2013
Address	663 North Street Randolf, MA 02368 UNITED STATES

Correspondence information	Jeanette S. Zimmer Trademark Attorney Frito-Lay North America, Inc. 7701 Legacy Drive Mail Stop 3A-421 Plano, TX 75024 UNITED STATES jeanette.zimmer@pepsico.com, donna.j.sanders@pepsico.com, trademarks@pepsico.com Phone:972.334.2587
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Applicant Information

Application No	85625534	Publication date	10/16/2012
Opposition Filing Date	01/14/2013	Opposition Period Ends	02/13/2013
Applicant	Popcornopolis, LLC 1330 Sunset Avenue Santa Monica, CA 90405 UNITED STATES		

Goods/Services Affected by Opposition


Class 030. First Use: 2012/07/11 First Use In Commerce: 2012/07/11
All goods and services in the class are opposed, namely: Snack foods, namely, popped grain

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)
Dilution	Trademark Act section 43(c)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3202061	Application Date	03/30/2006
Registration Date	01/23/2007	Foreign Priority	NONE

		Date	
Word Mark	SIMPLY NAKED		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1999/00/00 First Use In Commerce: 1999/00/00 Pita chips; Wheat-based snack foods		

Attachments	78850563#TMSN.jpeg (1 page)(bytes) Notice of Opposition for Stacy's on Nearly Naked.pdf (7 pages)(1253811 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	01/14/2013

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

IN THE MATTER OF APPLICATION SERIAL NO. 85/625,534:

Mark : NEARLY NAKED
Applicant : Popcornopolis, LLC
Filed : May 15, 2012
Published in
the Official Gazette : October 16, 2012

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STACY'S PITA CHIP COMPANY, INC.,	:	
	:	
Opposer,	:	Opposition No.
	:	
v.	:	
	:	
POPCORNOPOLIS, LLC	:	
	:	
Applicant.	:	
	x	

NOTICE OF OPPOSITION

Opposer, Stacy's Pita Chip Company, Inc. ("Stacy's" or "Opposer"), a Massachusetts corporation having a place of business at 663 North Street, Randolph, Massachusetts 02368 believes that it will be damaged by the registration of Application Serial No. 85/625,534, filed on May 15, 2012, in the name of Popcornopolis, LLC (hereinafter "Applicant") for the alleged mark NEARLY NAKED for "snack foods, namely, popped grain" in International Class 30, and having been previously granted an extension of time to oppose, hereby opposes the foregoing application.

The specific grounds for this opposition are as follows:

1. Stacy's has been engaged in the snack food business since 1997 and has become well and favorably known to members of the public, as well as to members of the snack food

industry, for quality snack food products. Stacy's owns a portfolio of brands that identify pita chips, bagel chips, flour-based chips, wheat-based snack foods, soy chips and soy-based snack foods, among other goods.

2. Since at least as early as 1999 and continuing through to the present, Stacy's has used the mark SIMPLY NAKED in connection with various snack foods and other products, including specifically, pita chips and wheat-based snack foods. The SIMPLY NAKED brand appears in connection with consumer advertising, marketing, sales and promotional services to authorized independent distributors and retailers.

3. Opposer's SIMPLY NAKED snack food products are marketed and sold in enormous quantities on a nationwide basis, supported by millions of dollars of advertising and promotion each year. Many of Opposer's products are sold in virtually every supermarket in the United States as well as in club stores, mass merchandise stores, numerous convenience stores, vending machines and other outlets.

4. The vast commercial acceptance and success of many of Opposer's SIMPLY NAKED products for well over ten years is due in large measure to substantial advertising and marketing efforts by Stacy's. Opposer has, by virtue of extensive usage, advertising and promotion, built up a very high level of consumer and trade recognition symbolized by its mark SIMPLY NAKED. Opposer's sales of its snack food products marketed under the mark SIMPLY NAKED have exceeded hundreds of millions of dollars each year, over the past several years alone. The SIMPLY NAKED variety is the best-selling variety of Opposer's STACY'S brand pita chips.

5. Since long prior to the filing date of the application-at-issue, SIMPLY NAKED has been identified with Opposer and has appeared on a tremendous amount of product

packaging, advertising, in-store display racks, signage and point-of-sale material, among other uses.

6. Stacy's also owns and operates a website at www.stacyssnacks.com, which is operational twenty-four hours a day, seven days a week, through which Stacy's advertises, markets and promotes its snack foods and other services/products under the mark SIMPLY NAKED and variants. As a result of such extensive and continuous advertising, sale, use and promotion of snack foods under or in connection with Opposer's mark SIMPLY NAKED for over ten years, said mark has not only acquired substantial public and consumer recognition throughout the United States, but also enjoys valuable goodwill, and has become famous, solely signifying Opposer as the source of products of high quality.

7. In addition to its prior common law rights in the mark SIMPLY NAKED, Opposer is the owner of U.S. Reg. No. 3202061, registered on January 23, 2007, based on first use and first use in commerce as early as 1999 in connection with "pita chips; wheat-based snack foods."

8. Opposer's registration for the mark SIMPLY NAKED is valid, subsisting, in full force and effect, uncanceled and unrevoked, and serve as evidence of Opposer's exclusive right to use the mark in commerce on or in connection with the goods identified in the registration, as provided by Section 33(a) of the United States Trademark (Lanham) Act, 15 U.S.C. § 1115(a). Further, Opposer's registration will become incontestable pursuant to Section 15 of the Lanham Act, 15 U.S.C. § 1065.

9. Use of the mark SIMPLY NAKED has been continuous and the mark has not been abandoned. As a result of the long, extensive and widespread use, advertising, promotion and registration of the mark SIMPLY NAKED on and in association with Stacy's various snack

food products, and the marketing, advertising and promotional efforts therefor, consumers have become accustomed to associating names consisting of or containing the name SIMPLY NAKED with a single source, that is, Stacy's.

10. In view of such usage and sales, the mark SIMPLY NAKED has become famous and represents assets of inestimable value to Stacy's.

11. On information and belief, on May 15, 2012, Applicant, Popcornopolis, LLC, having an address at 1330 Sunset Avenue, Santa Monica, California 90405, filed Application Serial No. 85/625,534 to register NEARLY NAKED, in connection with "snack foods, namely, popped grain" in International Class 30.

12. Registration of Applicant's alleged mark is barred by the provisions of Section 2(d) of the Trademark Act of 1946 because the said mark consists of or comprises a mark which so resembles Opposer's mark SIMPLY NAKED, which has been in use and is also the subject of a prior registration in the United States Patent and Trademark Office, as to be likely, when used in connection with the alleged goods of the Applicant to cause confusion, mistake or deception.

13. The word NEARLY is similar in meaning to the word SIMPLY. The suffix -LY in the both of the words NEARLY and SIMPLY creates a similar appearance and sound. As a result, when NEARLY is used with the identical word NAKED on snack foods, consumers will mistakenly believe that the Applicant's products emanate from Stacy's.

14. Stacy's has priority over Applicant because Stacy's use dates, application filing dates and registration dates precede the Applicant's filing date for its application at issue and/or any alleged priority date or date of first use in commerce of Applicant's purported mark NEARLY NAKED.

15. Applicant's alleged mark and Stacy's mark SIMPLY NAKED are similar. On information and belief, the snack food products in connection with which Applicant's alleged mark are applied for or used and the snack food products in connection with which Opposer's mark SIMPLY NAKED are also is registered and used are similar, or at least related.

16. Accordingly, Applicant's claimed mark NEARLY NAKED shown in the application-in-opposition so resembles Stacy's foregoing and previously used and/or registered mark SIMPLY NAKED as to be likely to cause confusion, to cause mistake or to deceive with consequent injury to Opposer. The likelihood of confusion, mistake or deception that would also arise from concurrent use and registration of the applied for mark with Opposer's use and registration of its mark SIMPLY NAKED, is that (a) persons are likely to believe that Applicant's goods have their source in Stacy's, or (b) that Applicant and its goods are a version of Opposer's marks or are in some way legitimately connected or affiliated with, sponsored, approved, endorsed or licensed by Opposer when, in fact, they are not.

17. In view of the foregoing, registration of Applicant's alleged mark NEARLY NAKED is barred by the provisions of Section 2(d) of the Trademark Act of 1946, 15 U.S.C. § 1052(d), because the said mark consists of or comprises a mark which, when used in connection with the alleged goods of Applicant, is likely to cause confusion, mistake or deception.

18. Further, Stacy's inherently distinctive mark SIMPLY NAKED became famous prior to the filing date of Applicant's application-in-opposition and/or any claimed priority date or date of first use in commerce by Applicant of the alleged mark NEARLY NAKED shown in U.S. Application Serial No. 85/625,534. Registration and use of Applicant's claimed mark would likely dilute Opposer's famous and inherently distinctive mark SIMPLY NAKED, in violation of 15 U.S.C. § 1125(c). Accordingly, the applied-for mark NEARLY NAKED is not

entitled to registration under 15 U.S.C. § 1052(f) and Section 13 of the Lanham Act, 15 U.S.C. § 1063.

19. Stacy's will be damaged by the issuance of a registration sought by Applicant within the meaning of 15 U.S.C. §1063 because such registration would support and assist Applicant in the confusing, misleading, deceptive and/or dilutive use of NEARLY NAKED, and would give color of exclusive statutory rights to Applicant in violation and derogation of the prior and superior rights of Opposer.

WHEREFORE, Opposer prays that this opposition be sustained in its favor, that registration be denied to Applicant on its Application Serial No. 85/625,534 and that the Board grant all further relief to Opposer that is necessary and just in these circumstances.

Respectfully submitted,

STACY'S PITA CHIP COMPANY, INC.

Dated: January 14, 2013

By:



Attorney for Registrant
Jeanette S. Zimmer

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Plano, Texas 75024
(972) 334-2587

CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2013, a copy of the foregoing NOTICE OF OPPOSITION was served on the Attorney of Record for Applicant at the correspondence address of record via First Class Mail, in an envelope with sufficient postage addressed to:

Priscilla L. Dunckel
Baker Botts L.L.P.
2001 Ross Avenue
Suite 600
Dallas, TEXAS 75201-2980

By:


Jeanette S. Zimmer