

ESTTA Tracking number: **ESTTA520543**

Filing date: **02/08/2013**

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	Hershey Chocolate & Confectionery Corporation
Granted to Date of previous extension	02/10/2013
Address	4860 Robb Street Suite 204 Wheat Ridge, CO 80033 UNITED STATES

Attorney information	Paul C. Llewellyn Kaye Scholer LLP 425 Park Avenue New York, NY 10022 UNITED STATES pllewellyn@kayescholer.com, jeischeid@kayescholer.com Phone:212.836.7087
----------------------	---

Applicant Information

Application No	85544130	Publication date	08/14/2012
Opposition Filing Date	02/08/2013	Opposition Period Ends	02/10/2013
Applicant	LaWanda Abel P.O. Box 611 Bronx, NY 10475 UNITED STATES		

Goods/Services Affected by Opposition

Class 030. First Use: 2009/06/09 First Use In Commerce: 2009/06/09 All goods and services in the class are opposed, namely: Baking powders; Baking spices; Biscuits and bread; Brownies; Cake doughs; Cake icing; Cake mixes; Cakes; Candy; Cinnamon rolls; Coffee; Corn bread; Cream puffs; Cup cakes; Doughnuts; Edible cake decorations; Edible spices; Ice; Ice cream; Ice cream desserts; Ice-cream cakes; Icing; Mixes for making bread; Pancake mixes; Pancakes; Pastries; Pies; Popcorn; Tea; Tea bags; Yeast
--

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)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration	2416701	Application Date	10/17/1996
-------------------	---------	------------------	------------

No.			
Registration Date	01/02/2001	Foreign Priority Date	NONE
Word Mark	KISSES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1907/07/01 First Use In Commerce: 1907/07/01 generally solid chocolate candy, with and without ingredients such as nuts		

U.S. Registration No.	1074784	Application Date	06/30/1972
Registration Date	10/04/1977	Foreign Priority Date	NONE
Word Mark	A BIG KISS FOR YOU		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U046 (International Class 030). First use: First Use: 1971/07/02 First Use In Commerce: 1971/07/11 CANDIES INCLUDING CHOCOLATE PRODUCTS		

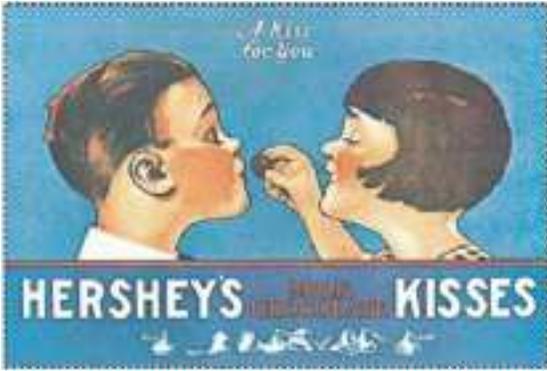
U.S. Registration No.	1199747	Application Date	05/17/1979
Registration Date	06/29/1982	Foreign Priority Date	NONE
Word Mark	A BIG KISS OFF		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1979/05/01 First Use In Commerce: 1979/05/01 Candy		

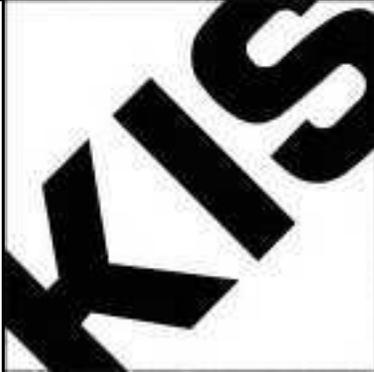
U.S. Registration No.	1177511	Application Date	05/17/1979
Registration Date	11/10/1981	Foreign Priority Date	NONE
Word Mark	A KISS ESPECIALLY FOR YOU		
Design Mark	 <p>The design mark features the text "A Kiss Especially for you" in a stylized, cursive font. The word "A" is at the top, followed by "Kiss" in a larger, bold font, and "Especially for you" in a smaller, flowing script below it.</p>		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1979/05/01 First Use In Commerce: 1979/05/01 Chocolate Candy		

U.S. Registration No.	1396853	Application Date	05/01/1985
Registration Date	06/10/1986	Foreign Priority Date	NONE
Word Mark	KISSES KISSES KISSES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 021. First use: First Use: 1981/11/00 First Use In Commerce: 1981/11/00 MUGS FILLED WITH CANDY		

U.S. Registration No.	1797199	Application Date	07/15/1991
Registration Date	10/05/1993	Foreign Priority Date	NONE
Word Mark	HUGS 'N KISSES		
Design Mark	 <p>The design mark features the text "HUGS 'N KISSES" in a large, bold, serif font.</p>		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1992/08/04 First Use In Commerce: 1992/08/04		

	candy		
U.S. Registration No.	2507281	Application Date	06/15/1995
Registration Date	11/13/2001	Foreign Priority Date	NONE
Word Mark	MINI KISSES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1995/07/26 First Use In Commerce: 1995/07/26 confectionery bits for baking		
U.S. Registration No.	2285652	Application Date	11/30/1995
Registration Date	10/12/1999	Foreign Priority Date	NONE
Word Mark	GOODNIGHT KISSES		
Design Mark	GOODNIGHT KISS		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1996/08/28 First Use In Commerce: 1996/08/28 cocoa mixes, chocolate powder and hot chocolate		
U.S. Registration No.	2321971	Application Date	05/17/1999
Registration Date	02/22/2000	Foreign Priority Date	NONE
Word Mark	HUGS & KISSES		
Design Mark	HUGS & KISSES		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1997/12/00 First Use In Commerce: 1997/12/00 candy		
U.S. Registration No.	4021596	Application Date	08/01/2010
Registration Date	09/06/2011	Foreign Priority	NONE

		Date	
Word Mark	HERSHEY'S KISSES A KISS FOR YOU MILK CHOCOLATE		
Design Mark			
Description of Mark	<p>The mark consists of the wording "HERSHEY'S", "KISSES", and "A KISS FOR YOU" in white letters, and "MILK CHOCOLATE" in red letters with multiple white conical configurations representing individually wrapped candies. Each candy is wrapped with twisted foil and has a plume device. The two stylized boy and girl children designs known as the Kiss Kids are depicted eating a piece of candy, and appear in the colors brown, beige, black, peach and white. Below the design of the children is a horizontal red line. All of this matter appears on a blue background. The dotted lines indicate the positioning of the mark, and are not part of the mark.</p>		
Goods/Services	Class 030. First use: First Use: 1998/12/31 First Use In Commerce: 1998/12/31 candy; chocolate		

U.S. Registration No.	3261872	Application Date	12/11/2003
Registration Date	07/10/2007	Foreign Priority Date	NONE
Word Mark	KIS		
Design Mark			
Description of Mark	<p>The mark consists of a rectangle in which the letters KIS are written at an angle from the lower left corner to the upper right corner. Color is not claimed as part of the mark.</p>		
Goods/Services	<p>Class 020. First use: First Use: 2002/11/01 First Use In Commerce: 2002/11/01 Point of purchase displays</p> <p>Class 030. First use: First Use: 2002/11/01 First Use In Commerce: 2002/11/01 candy, chocolate and confectionery bits for baking</p>		

U.S. Registration No.	3195247	Application Date	10/07/2005
Registration Date	01/02/2007	Foreign Priority	NONE

		Date	
Word Mark	EVERY DAY DESERVES A KISS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2005/04/30 First Use In Commerce: 2005/04/30 Chocolate and candy		

U.S. Registration No.	2918984	Application Date	11/10/2003
Registration Date	01/18/2005	Foreign Priority Date	NONE
Word Mark	KISSABLE MESSAGES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2003/08/12 First Use In Commerce: 2003/08/12 candy		

U.S. Registration No.	3066615	Application Date	11/10/2003
Registration Date	03/07/2006	Foreign Priority Date	NONE
Word Mark	KISSABLES		

Design Mark	KISSABLES		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2005/10/07 First Use In Commerce: 2005/10/07 candy		

U.S. Registration No.	3588979	Application Date	12/29/2004
Registration Date	03/10/2009	Foreign Priority Date	NONE
Word Mark	KISSORTMENT		
Design Mark	KISSORTMENT		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2009/01/08 First Use In Commerce: 2009/01/08 Candy		

U.S. Registration No.	3382925	Application Date	08/08/2005
Registration Date	02/12/2008	Foreign Priority Date	NONE
Word Mark	SEALED WITH A KISS		
Design Mark	SEALED WITH A KISS		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2007/09/30 First Use In Commerce: 2007/09/30 Candy		

U.S. Registration No.	3363296	Application Date	08/08/2005
-----------------------	---------	------------------	------------

Registration Date	01/01/2008	Foreign Priority Date	NONE
Word Mark	SEALED WITH A HERSHEY'S KISS		
Design Mark	<p style="text-align: center;">SEALED WITH A HERSHEY'S KISS</p>		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2007/09/30 First Use In Commerce: 2007/09/30 Candy		

U.S. Registration No.	3681592	Application Date	04/24/2006
Registration Date	09/08/2009	Foreign Priority Date	NONE
Word Mark	KISSES FROM ME!		
Design Mark	<p style="text-align: center;">KISSES FROM ME!</p>		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2005/09/23 First Use In Commerce: 2005/09/23 Candy		

U.S. Registration No.	3217777	Application Date	05/16/2006
Registration Date	03/13/2007	Foreign Priority Date	NONE
Word Mark	KISS ABLES		

Design Mark	KISS ABLES
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2005/10/07 First Use In Commerce: 2005/10/07 Candy

U.S. Registration No.	3219746	Application Date	01/05/2006
Registration Date	03/20/2007	Foreign Priority Date	NONE
Word Mark	HERSHEY'S KISSABLES		
Design Mark			
Description of Mark	The mark consists of HERSHEY'S in block lettering over the word KISSABLES which is printed in an arc. A tilted conical configuration design with a starburst is superimposed over the second S and the A of KISSABLES. The conical configuration is stippled to make it look three-dimensional. Color is not claimed as a feature of the mark.		
Goods/Services	Class 030. First use: First Use: 2005/11/17 First Use In Commerce: 2005/11/17 Candy		

U.S. Registration No.	3219747	Application Date	01/05/2006
Registration Date	03/20/2007	Foreign Priority Date	NONE
Word Mark	KISSABLES		

Design Mark	
Description of Mark	The mark consists of the word KISSABLES printed in an arc. A tilted conical configuration design with a starburst is superimposed over the second S and the A of KISSABLES. The conical configuration is stippled to make it look three-dimensional. Color is not claimed as a feature of the mark.
Goods/Services	Class 030. First use: First Use: 2005/11/17 First Use In Commerce: 2005/11/17 Candy

U.S. Registration No.	3304676	Application Date	06/20/2006
Registration Date	10/02/2007	Foreign Priority Date	NONE

Word Mark	KISS SOMEONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2007/03/01 First Use In Commerce: 2007/03/01 Candy		

U.S. Registration No.	3328351	Application Date	10/18/2006
Registration Date	11/06/2007	Foreign Priority Date	NONE
Word Mark	KISS OF THE MONTH		

Design Mark	KISS OF THE MONTH		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2006/09/01 First Use In Commerce: 2006/09/01 Candy Class 035. First use: First Use: 2006/09/01 First Use In Commerce: 2006/09/01 Mail order services featuring candy and gift items		

U.S. Registration No.	3377344	Application Date	02/18/2007
Registration Date	02/05/2008	Foreign Priority Date	NONE

Word Mark	MERRY KISSES		
Design Mark	MERRY KISSES		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2006/09/04 First Use In Commerce: 2006/09/04 Candy		

U.S. Registration No.	3311601	Application Date	03/22/2007
Registration Date	10/16/2007	Foreign Priority Date	NONE
Word Mark	MERRY KISSMAS		

Design Mark	MERRY KISSMAS		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2006/10/04 First Use In Commerce: 2006/10/04 Candy		

U.S. Registration No.	3442022	Application Date	06/20/2007
Registration Date	06/03/2008	Foreign Priority Date	NONE
Word Mark	KISS & TELL		
Design Mark	KISS & TELL		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2008/01/02 First Use In Commerce: 2008/01/02 Toy dispenser for candy that is sold with candy as a unit		

U.S. Registration No.	3493764	Application Date	12/05/2007
Registration Date	08/26/2008	Foreign Priority Date	NONE
Word Mark	WHATEVER YOU WANT TO SAY, SAY IT WITH A KISS		

Design Mark	<p style="text-align: center;"> WIIATEVER YOU WANT TO SAY, SAY IT WITH A KISS </p>
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2008/01/31 First Use In Commerce: 2008/01/31 Candy

U.S. Registration No.	3604137	Application Date	05/21/2008
Registration Date	04/07/2009	Foreign Priority Date	NONE
Word Mark	SAY IT WITH A KISS		
Design Mark	<p style="text-align: center;"> SAY IT WITH A KISS </p>		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2008/01/15 First Use In Commerce: 2008/01/15 Candy		

U.S. Registration No.	3685216	Application Date	09/11/2008
Registration Date	09/22/2009	Foreign Priority Date	NONE
Word Mark	WHEN YOU WANT TO SAY ALOHA, SAY IT WITH A KISS		

Design Mark	<p>WHEN YOU WANT TO SAY ALOHA, SAY IT WITH A KISS</p>		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2008/06/23 First Use In Commerce: 2008/06/23 Candy		

U.S. Registration No.	3679745	Application Date	03/16/2009
Registration Date	09/08/2009	Foreign Priority Date	NONE
Word Mark	SAY HAPPY EASTER WITH A KISS!		
Design Mark	<p>SAY HAPPY EASTER WITH A KISS!</p>		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2008/12/15 First Use In Commerce: 2008/12/15 Candy		

U.S. Registration No.	3759192	Application Date	04/09/2009
Registration Date	03/09/2010	Foreign Priority Date	NONE
Word Mark	DELIGHTFULLY DELICIOUS ONE-OF-A-KIND KISSES		

Design Mark	DELIGHTFULLY DELICIOUS ONE-OF-A-KIND KISSES		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2009/04/30 First Use In Commerce: 2009/04/30 Candy		

U.S. Registration No.	3851647	Application Date	01/27/2010
Registration Date	09/21/2010	Foreign Priority Date	NONE
Word Mark	DELIGHTFULLY DELICIOUS LITTLE BUNCHES OF KISSES		
Design Mark	DELIGHTFULLY DELICIOUS LITTLE BUNCHES OF KISSES		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2010/04/01 First Use In Commerce: 2010/04/01 Candy		

U.S. Registration No.	4079147	Application Date	12/02/2010
Registration Date	01/03/2012	Foreign Priority Date	NONE
Word Mark	HERSHEY'S KISSES BRAND MILK CHOCOLATES		

Design Mark			
Description of Mark	The mark consists of the words "HERSHEY'S" in white stylized lettering on a dark brownish-maroon background in a rectangular shape and the word "KISSES" in white stylized lettering with silver shading followed by the words "Brand Milk Chocolates" in white lettering on a darkish-maroon oval background.		
Goods/Services	Class 030. First use: First Use: 2010/01/30 First Use In Commerce: 2010/01/30 Candy; Chocolate		

U.S. Registration No.	1412678	Application Date	07/05/1985
Registration Date	10/07/1986	Foreign Priority Date	NONE
Word Mark	MUGS & KISSES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1978/00/00 First Use In Commerce: 1978/00/00 RETAIL STORE SERVICES IN THE FIELD OF NOVELTY ITEMS, MUGS AND CANDY		

U.S. Registration No.	1242210	Application Date	08/11/1982
Registration Date	06/14/1983	Foreign Priority Date	NONE
Word Mark	KISSES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 1982/05/00 First Use In Commerce: 1982/05/00 Toys-Namely, Fabric "Plush" Teddy Bears		

U.S. Registration No.	1500581	Application Date	10/30/1987
Registration Date	08/16/1988	Foreign Priority Date	NONE
Word Mark	CRYSTAL KISS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 021. First use: First Use: 1987/09/04 First Use In Commerce: 1987/09/04 CRYSTAL CANDY/NUT BOWLS WITH LIDS		

U.S. Registration No.	1567320	Application Date	11/23/1988
Registration Date	11/21/1989	Foreign Priority Date	NONE
Word Mark	CHRISTMAS KISS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 1988/09/30 First Use In Commerce: 1988/09/30 CHRISTMAS TREE ORNAMENTS		

U.S. Registration No.	1584608	Application Date	01/09/1989
Registration Date	02/27/1990	Foreign Priority Date	NONE
Word Mark	HERSHEY'S KISSES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1988/04/22 First Use In Commerce: 1988/04/22 PAPERWEIGHTS Class 021. First use: First Use: 1987/09/04 First Use In Commerce: 1987/09/04 ORNAMENTAL CRYSTAL BOWLS WITH LIDS Class 028. First use: First Use: 1988/09/30 First Use In Commerce: 1988/09/30 CHRISTMAS ORNAMENTS		

U.S. Registration No.	2273250	Application Date	10/22/1996
Registration Date	08/31/1999	Foreign Priority Date	NONE
Word Mark	HUGS & KISSES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1993/00/00 First Use In Commerce: 1993/00/00 clothing, namely, T-shirts and sweatshirts for adults and children		

U.S. Registration No.	2757584	Application Date	03/22/2002
-----------------------	---------	------------------	------------

Registration Date	08/26/2003	Foreign Priority Date	NONE
Word Mark	HERSHEY'S KISSES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 004. First use: First Use: 2002/07/31 First Use In Commerce: 2002/07/31 candles		

U.S. Registration No.	2959840	Application Date	04/30/2004
Registration Date	06/07/2005	Foreign Priority Date	NONE
Word Mark	KISSES		
Design Mark	<p style="text-align: center;">KISSES</p>		
Description of Mark	NONE		
Goods/Services	Class 021. First use: First Use: 2003/01/31 First Use In Commerce: 2003/01/31 ceramic candy dishes		

U.S. Registration No.	3194067	Application Date	03/21/2006
Registration Date	01/02/2007	Foreign Priority Date	NONE
Word Mark	HERSHEY'S KISSES		
Design Mark	<p style="text-align: center;">HERSHEY'S KISSES</p>		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2006/03/30 First Use In Commerce: 2006/03/30 COOKIES		

U.S. Registration No.	3607476	Application Date	06/30/2008
Registration Date	04/14/2009	Foreign Priority Date	NONE
Word Mark	HERSHEY'S KISSES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 2008/10/31 First Use In Commerce: 2008/10/31 Pet toys		

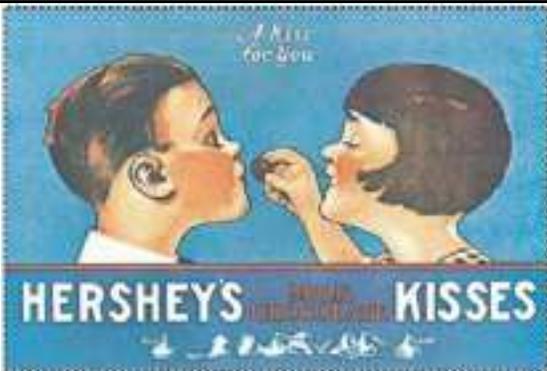
U.S. Registration No.	3842467	Application Date	02/27/2009
Registration Date	08/31/2010	Foreign Priority Date	NONE
Word Mark	HERSHEY'S KISSES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2009/08/01 First Use In Commerce: 2009/08/01 Earphones and headphones		

U.S. Registration No.	3848607	Application Date	05/05/2009
Registration Date	09/14/2010	Foreign Priority Date	NONE
Word Mark	KISSES		

Design Mark	<h1>KISSES</h1>		
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 2009/07/01 First Use In Commerce: 2009/07/01 Series of recipe books		

U.S. Registration No.	3982395	Application Date	03/26/2010
Registration Date	06/21/2011	Foreign Priority Date	NONE
Word Mark	HERSHEY'S KISSES		
Design Mark	<h1>HERSHEY'S KISSES</h1>		
Description of Mark	NONE		
Goods/Services	Class 011. First use: First Use: 2011/02/28 First Use In Commerce: 2011/02/28 Electric lights for Christmas trees		

U.S. Registration No.	4027938	Application Date	09/13/2010
Registration Date	09/20/2011	Foreign Priority Date	NONE
Word Mark	A KISS FOR YOU HERSHEY'S KISSES MILK CHOCOLATE		

Design Mark	
Description of Mark	<p>The mark consists of the wording "HERSHEY'S", "KISSES", and "A KISS FOR YOU" in white letters, and "MILK CHOCOLATE" in red letters with multiple white conical configurations representing individually wrapped candies. Each candy is wrapped with twisted foil and has a plume device. The two stylized boy and girl children designs known as the "Kiss Kids" are depicted eating a piece of candy, and appear in the colors brown, beige, black, peach and white. Below the design of the children is a horizontal red line. All of this matter appears on a blue background. The dotted lines indicate the positioning of the mark, and are not part of the mark.</p>
Goods/Services	<p>Class 004. First use: First Use: 2010/04/30 First Use In Commerce: 2010/04/30 Candles</p>

Attachments	<p>75183278#TMSN.gif (1 page)(bytes) 73216039#TMSN.gif (1 page)(bytes) 73216069#TMSN.gif (1 page)(bytes) 74185981#TMSN.gif (1 page)(bytes) 75976991#TMSN.gif (1 page)(bytes) 75707207#TMSN.gif (1 page)(bytes) 85097731#TMSN.jpeg (1 page)(bytes) 78339285#TMSN.jpeg (1 page)(bytes) 78728779#TMSN.jpeg (1 page)(bytes) 78325476#TMSN.jpeg (1 page)(bytes) 78325493#TMSN.jpeg (1 page)(bytes) 78539505#TMSN.jpeg (1 page)(bytes) 78687568#TMSN.jpeg (1 page)(bytes) 78687580#TMSN.jpeg (1 page)(bytes) 78867713#TMSN.jpeg (1 page)(bytes) 78884239#TMSN.jpeg (1 page)(bytes) 78785478#TMSN.jpeg (1 page)(bytes) 78785496#TMSN.jpeg (1 page)(bytes) 78912275#TMSN.jpeg (1 page)(bytes) 77023780#TMSN.jpeg (1 page)(bytes) 77110281#TMSN.jpeg (1 page)(bytes) 77137317#TMSN.jpeg (1 page)(bytes) 77210906#TMSN.jpeg (1 page)(bytes) 77344258#TMSN.jpeg (1 page)(bytes) 77479910#TMSN.jpeg (1 page)(bytes) 77567353#TMSN.jpeg (1 page)(bytes) 77691408#TMSN.jpeg (1 page)(bytes) 77710281#TMSN.jpeg (1 page)(bytes) 77921354#TMSN.jpeg (1 page)(bytes) 85189280#TMSN.jpeg (1 page)(bytes) 73773592#TMSN.gif (1 page)(bytes) 78411309#TMSN.jpeg (1 page)(bytes) 78842073#TMSN.jpeg (1 page)(bytes)</p>
-------------	--

	77510925#TMSN.jpeg (1 page)(bytes) 77680672#TMSN.jpeg (1 page)(bytes) 77729425#TMSN.jpeg (1 page)(bytes) 77969225#TMSN.jpeg (1 page)(bytes) 85127898#TMSN.jpeg (1 page)(bytes) KISSING CAKE Notice of Opposition, Serial No 85544130, filed 02-08-2013.pdf (9 pages)(39311 bytes)
--	--

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	/paul c. llewellyn/
Name	Paul C. Llewellyn
Date	02/08/2013

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

HERSHEY CHOCOLATE & CONFECTIONERY
CORPORATION,

Opposer,

v.

LAWANDA ABEL,

Applicant.

Opposition No. _____

Mark: KISSING CAKE

Serial No: 85544130

Filed: Feb. 16, 2012

Published: Aug. 14, 2012

NOTICE OF OPPOSITION

Hershey Chocolate & Confectionery Corporation (“Hershey”), a Delaware corporation located and doing business at 4860 Robb Street, Suite 204, Wheat Ridge, Colorado, believes that it will be damaged by the registration of the mark KISSING CAKE shown in Application Serial No. 85544130, and opposes the same.

As grounds for opposition, Hershey alleges that:

1. Hershey is the owner of a number of trademarks for candy, chocolate, confectionery, cocoa and related products, including the famous KISSES[®] family of trademarks for various products manufactured by its licensee, The Hershey Company, a leading snack food company and one of the largest North American manufacturers of quality chocolate and non-chocolate confectionery products.

2. In 1907, Hershey’s predecessor in interest began producing a flat-bottomed, conical milk chocolate candy that was named Hershey’s KISSES chocolates. Hershey’s KISSES trademark has been in continuous use for more than one hundred years, and is a famous trademark which identifies the conically-shaped chocolate candy sold by Hershey’s licensee under Hershey’s marks. As set forth in the chart below, the KISSES trademark is just one of the

many federally-registered trademarks, all of which feature some variation of KISS, within the KISSES family of trademarks owned by Hershey for candy or confectionary products:

Trademark	Reg. No.	Class	Goods	Priority Date
KISSES	2416701	30	Generally solid chocolate candy, with and without ingredients such as nuts	7/1/1907
A BIG KISS FOR YOU	1074784	30	Candies including chocolate products	7/2/1971
A BIG KISS OFF (and design)	1199747	30	Candy	5/1/1979
A KISS ESPECIALLY FOR YOU (stylized)	1177511	30	Chocolate candy	5/1/1979
KISSES KISSES KISSES	1396853	21	Mugs filled with candy	11/30/1981
HUGS 'N KISSES	1797199	30	Candy	7/15/1991
MINI KISSES	2507281	30	Confectionary bits for baking	6/15/1995
GOODNIGHT KISSES	2285652	30	Cocoa mixes, chocolate powder and hot chocolate	11/30/1995
HUGS & KISSES	2321971	30	Candy	12/31/1997
HERSHEY'S KISSES A KISS FOR YOU MILK CHOCOLATE (and design)	4021596	30	Candy; chocolate	12/31/1998
KIS (stylized)	3261872	20, 30	Point of purchase displays; Candy, chocolate and confectionery bits for baking	11/1/2002
EVERY DAY DESERVES A KISS	3195247	30	Chocolate and candy	4/30/2005

Trademark	Reg. No.	Class	Goods	Priority Date
KISSABLE MESSAGES	2918984	30	Candy	8/12/2003
KISSABLES	3066615	30	Candy	10/10/2003
KISSORTMENT	3588979	30	Candy	12/29/2004
SEALED WITH A KISS	3382925	30	Candy	8/8/2005
SEALED WITH A HERSHEY'S KISS	3363296	30	Candy	8/8/2005
KISSES FROM ME!	3681592	30	Candy	9/23/2005
KISS ABLES	3217777	30	Candy	10/7/2005
HERSHEY'S KISSABLES (and design)	3219746	30	Candy	11/17/2005
KISSABLES (and design)	3219747	30	Candy	11/17/2005
KISS SOMEONE	3304676	30	Candy	6/20/2006
KISS OF THE MONTH	3328351	30; 35	Candy; Mail order services featuring candy and gift items	9/1/2006
MERRY KISSES	3377344	30	Candy	9/4/2006
MERRY KISSMAS	3311601	30	Candy	10/4/2006
KISS & TELL	3442022	30	Toy dispenser for candy that is sold with candy as a unit	6/20/2007
WHATEVER YOU WANT TO SAY, SAY IT WITH A KISS	3493764	30	Candy	12/5/2007
SAY IT WITH A KISS	3604137	30	Candy	1/15/2008
WHEN YOU WANT TO SAY ALOHA, SAY IT WITH A KISS	3685216	30	Candy	6/23/2008

Trademark	Reg. No.	Class	Goods	Priority Date
SAY HAPPY EASTER WITH A KISS!	3679745	30	Candy	12/15/2008
DELIGHTFULLY DELICIOUS ONE-OF-A-KIND KISSES	3759192	30	Candy	4/9/2009
DELIGHTFULLY DELICIOUS LITTLE BUNCHES OF KISSES	3851647	30	Candy	1/27/2010
HERSHEY'S KISSES BRAND MILK CHOCOLATES (and design)	4079147	30	Candy; chocolate	1/30/2010

3. The KISSES family of trademarks also includes the following federally-registered marks, also owned by Hershey, for goods other than candy or confectionary:

Trademark	Reg. No.	Class	Goods	Priority Date
MUGS & KISSES	1412678	42	Retail store services in the field of novelty items, mugs and candy	12/31/1978
KISSES	1242210	28	Toys—namely, fabric “plush” teddy bears	5/31/1982
CRYSTAL KISS	1500581	21	Crystal candy/nut bowls with lids	9/4/1987
CHRISTMAS KISS	1567320	28	Christmas tree ornaments	9/30/1988
HERSHEY'S KISSES (and design)	1584608	16; 21; 28	Paperweights; Ornamental crystal bowls with lids; Christmas ornaments	1/9/1989
HUGS & KISSES	2273250	25	Clothing, namely, T-shirts and sweatshirts for adults and children	12/31/1993
HERSHEY'S KISSES	2757584	4	Candles	3/22/2002

Trademark	Reg. No.	Class	Goods	Priority Date
KISSES	2959840	21	Ceramic candy dishes	1/31/2003
HERSHEY'S KISSES	3194067	30	Cookies	3/21/2006
HERSHEY'S KISSES	3607476	28	Pet toys	6/30/2008
HERSHEY'S KISSES	3842467	9	Earphones and headphones	2/27/2009
KISSES	3848607	16	Series of recipe books	5/5/2009
HERSHEY'S KISSES	3982395	11	Electric lights for Christmas trees	3/26/2010
A KISS FOR YOU HERSHEY'S KISSES MILK CHOCOLATE (and design)	4027938	4	Candles	4/30/2010

4. In April 2000, the Trademark Trial and Appeal Board (“TTAB”) issued a decision in connection with the application to register the KISSES mark, Reg. No. 2416701, in which it found that “the evidence of record shows that sales, advertising and awareness of ‘KISSES’ in connection with applicant’s candy has been enormous” and establishes that the KISSES mark “functions as a trademark for [Hershey’s] goods, and is in fact a famous trademark for [Hershey’s] chocolate candy.” *In re Homestead*, Serial No. 75/183278, at 6 (TTAB Apr. 4, 2000). The TTAB’s finding was based, in part, on a survey in which close to 80% of those surveyed recognized the KISSES mark as a brand.

5. As a result of the long use, promotion and advertising, the KISSES trademarks have become valuable assets of Hershey, serving as a symbol for Hershey’s goods and services and of the goodwill which is associated with those goods and services.

6. Despite Hershey’s long prior common law and statutory rights in the KISSES family of trademarks, Applicant, with at least constructive notice of Hershey’s federal

registrations, and long after Hershey established rights in and to the mark KISSES and the KISSES family of trademarks, adopted and filed an application for registration of the mark KISSING CAKE for a variety of products in International Class 30, namely, “Baking powders; Baking spices; Biscuits and bread; Brownies; Cake doughs; Cake icing; Cake mixes; Cakes; Candy; Cinnamon rolls; Coffee; Corn bread; Cream puffs; Cup cakes; Doughnuts; Edible cake decorations; Edible spices; Ice; Ice cream; Ice cream desserts; Ice-cream cakes; Icing; Mixes for making bread; Pancake mixes; Pancakes; Pastries; Pies; Popcorn; Tea; Tea bags; Yeast.”

7. Applicant’s KISSING CAKE mark is highly similar to the mark KISSES and the KISSES family of trademarks adopted and used by Hershey through the years.

8. Hershey believes and therefore alleges that Applicant’s goods, as described in its application opposed herein, are or would be offered through the same or similar channels of trade to the same or similar customers or users as those goods rendered by Hershey’s licensee under the mark KISSES and the KISSES family of trademarks, and are highly related to the goods of Hershey’s licensee.

9. Hershey believes and therefore alleges that use and registration of the mark covered by Application Serial No. 85544130 will damage Hershey, for the following reasons among others:

- a. customers and purchasers of the respective goods and services would be confused, mistaken, or deceived as to the source and origin of Applicant’s goods rendered under the applied-for mark;
- b. customers and purchasers of the respective goods and services will assume, contrary to fact, that Applicant’s goods come from, are associated

with, sponsored by, approved by, or otherwise related to or affiliated with Hershey;

- c. customers and purchasers of the respective goods and services will assume, contrary to fact, that Applicant's goods contain as an ingredient KISSES products manufactured by Hershey's licensee; and
- d. Applicant's use of the applied-for mark is likely to dilute the distinctive quality of the KISSES mark and the KISSES family of trademarks.

10. Applicant's applied-for mark so resembles Hershey's previously used and registered mark KISSES as well as the other marks in the KISSES family of trademarks, as to be likely, when applied to the goods set forth in Applicant's application, to cause confusion, mistake or deception within the meaning of 15 U.S.C. § 1052(d).

11. Applicant's applied-for mark so resembles Hershey's previously used and registered mark KISSES as well as the other marks in the KISSES family of trademarks, as to be likely, when applied to the goods set forth in Applicant's application, to falsely suggest a connection with the Hershey within the meaning of 15 U.S.C. § 1052(a).

12. Applicant's applied-for mark is likely to dilute the distinctive quality of Hershey's famous, distinctive and federally-registered mark KISSES as well as the other famous, distinctive and federally-registered marks in the KISSES family of trademarks, within the meaning of 15 U.S.C. § 1125(c)(1).

WHEREFORE, Hershey respectfully prays that this Opposition be sustained and that registration to Applicant be refused.

The Patent and Trademark Office and Trademark Trial and Appeal Board are hereby authorized to collect any fees necessitated by this Notice of Opposition from the deposit account of Hershey's attorneys, Kaye Scholer LLP, Deposit Account No. 11-0228.

Dated: February 8, 2013

Respectfully submitted,

/s/ Paul C. Llewellyn
Paul C. Llewellyn
Kyle D. Gooch
KAYE SCHOLER LLP
425 Park Avenue
New York, New York 10022
Telephone: (212) 836-8000

John P. Rynkiewicz
KAYE SCHOLER LLP
901 Fifteenth Street, N.W.
Washington, DC 20005
Telephone: (202) 682-3671

*Attorneys for Opposer Hershey
Chocolate & Confectionery Corporation*

CERTIFICATE OF SERVICE

I certify that the foregoing Notice of Opposition is being electronically filed with the United States Patent and Trademark Office on February 8, 2013, and that a true and correct copy of the foregoing Notice of Opposition was served on Applicant's attorney of record by first-class mail to:

K. Clyde Vanel, Esq.
Vanel Law Firm, P.C.
219-16 Linden Blvd, 2nd Fl
Cambria Heights, NY 11411

/s/ Paul C. Llewellyn