

ESTTA Tracking number: **ESTTA535904**

Filing date: **05/02/2013**

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

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|---------------------------------------|---|
| Name | M/s. RUCHI SOYA INDUSTRIES LIMITED |
| Granted to Date of previous extension | 05/29/2013 |
| Address | 301, MAHAKOSH HOUSE, 7/5, SOUTH TUKOGANJNATH MANDIR ROAD INDORE (Madhya Pradesh), 452001 INDIA |

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|----------------------|---|
| Attorney information | Robert B. Golden Lackenbach Siegel LLP 1 Chase RoadLackenbach Siegel Building Scarsdale, NY 10583-4156 UNITED STATES rgolden@LSLLP.com, nsaraco@LSLLP.com Phone:914-723-4300 |
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Applicant Information

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|------------------------|---|------------------------|------------|
| Application No | 85712990 | Publication date | 01/29/2013 |
| Opposition Filing Date | 05/02/2013 | Opposition Period Ends | 05/29/2013 |
| Applicant | Meenaxi Enterprise, Inc. 2500B Hamilton Boulevard South Plainfield, NJ 07080 UNITED STATES | | |

Goods/Services Affected by Opposition

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|---|
| <p>Class 029. First Use: 2012/01/02 First Use In Commerce: 2012/01/02 All goods and services in the class are opposed, namely: Banana chips; Cooking oil; Cut vegetables; Dried fruits; Dried lentils; Edible oils; Formed textured vegetable protein for use as a meat substitute; Frozen pre-packaged entrees consisting primarily of seafood; Frozen vegetables; Fruit and soy based snack food; Fruit-based snack food; Meat substitutes; Nut-based snack foods; Pickles; Potato-based snack foods; Pre-packaged dinners consisting of meat, poultry, seafood or vegetables; Sesame oil; Soy bean oil; Soy burger patties; Soy chips; Soy-based food bars; Soy-based snack foods; Textured vegetable protein for use as a meat extender; Vegetable chips; Vegetable oils; Vegetable-based meat substitutes; Vegetable-based snack foods; Frozen pre-packaged entrees consisting primarily of meat, fish, poultry or vegetables; Frozen pre-packaged vegetable-based entrees</p> |
| <p>Class 030. First Use: 2012/01/02 First Use In Commerce: 2012/01/02 All goods and services in the class are opposed, namely: Asian noodles; Bread mixes; Cereal based snack food; Crepes; Flour; Frozen flour-free foods, namely, waffles, pancakes, crepes, sandwich wraps, muffins and griddle cake sandwiches which are protein-enriched; Grain-based chips; Meal kits consisting primarily of noodles; Mix for making combined noodle and sauce dish; Mixes for making baking batters; Mixes for making batters for fried foods; Noodle-based prepared meals; Noodles; Noodles and sauce mixes combined in unitary packages; Noodles and seasoning mixes combined in</p> |

unitary packages; Noodles, sauce, and processed vegetables combined in unitary packages; Noodles, sauce, and seasoning toppings combined in unitary packages; Noodles, sauce, and topping combined in unitary packages; Noodles, sauce, dehydrated vegetables, and topping combined in unitary packages; Noodles, seasonings, edible oil, and dehydrated vegetables combined in unitary packages; Noodles, seasonings, edible oil, and flavorings combined in unitary packages; Packaged meal mixes consisting primarily of pasta or rice; Pancake mixes; Pasta; Pasta and noodles; Pre-mixed pancake batter; Processed cereal-based food to be used as a breakfast food, snack food or ingredient for making other foods; Relish; Rice; Rice-based snack foods; Roasted maize; Soya flour; Tapioca; Wafers; Wheat-based snack foods; Frozen pre-packaged entrees consisting primarily of pasta or rice; Pre-packaged meals consisting primarily of pasta or rice

Grounds for Opposition

| | |
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| Priority and likelihood of confusion | Trademark Act section 2(d) |
| <i>Torres v. Cantine Torresella S.r.l.Fraud</i> | 808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986) |

Mark Cited by Opposer as Basis for Opposition

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|---------------------------------------|---|------------------|------|
| U.S. Application/ Registration No. | NONE | Application Date | NONE |
| Registration Date | NONE | | |
| Word Mark | NUTRELA | | |
| Goods/Services | various food products, including without limitation, products containing soya chunks, which are high-protein meat substitute foods containing soy | | |

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| Attachments | Notice of Opposition.pdf (6 pages)(360568 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 | /Robert B. Golden/ |
| Name | Robert B. Golden |
| Date | 05/02/2013 |

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

Application Serial Nos.: 85712990
Mark: NUTRELA & Design
International Class: 29, 30
Applicant: Meenaxi Enterprise, Inc.
Date of Publication: January 29, 2013

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|-------------------------------------|---|-----------------|
| ----- | X | |
| M/s. RUCHI SOYA INDUSTRIES LIMITED, | : | |
| | : | |
| Opposer, | : | |
| | : | |
| v. | : | Opposition No.: |
| | : | |
| MEENAXI ENTERPRISE, INC., | : | |
| | : | |
| Applicant. | : | |
| ----- | X | |

NOTICE OF OPPOSITION

M/s. RUCHI SOYA INDUSTRIES LIMITED (“Opposer”), a corporation duly organized and existing under the laws of the country of India, with offices in 301, Mahakosh House, 7/5, South Tukoganj, Nath Mandir Road, Indore-452001 (Madhya Pradesh) India, believes that it will be damaged by the registration of the trademark NUTRELA & Design by Meenaxi Enterprise, Inc. (“Applicant”) as applied for in Application Serial Number 85712990 (“Applicant’s Application”), for use in connection with “Banana chips; Cooking oil; Cut vegetables; Dried fruits; Dried lentils; Edible oils; Formed textured vegetable protein for use as a meat substitute; Frozen pre-packaged entrees consisting primarily of seafood; Frozen vegetables; Fruit and soy based snack food; Fruit-based snack food; Meat substitutes; Nut-based snack foods; Pickles; Potato-based snack foods; Pre-packaged dinners consisting of meat, poultry, seafood or vegetables; Sesame oil; Soy bean oil; Soy burger patties; Soy chips; Soy-based food bars;

Soy-based snack foods; Textured vegetable protein for use as a meat extender; Vegetable chips; Vegetable oils; Vegetable-based meat substitutes; Vegetable-based snack foods; Frozen pre-packaged entrees consisting primarily of meat, fish, poultry or vegetables; Frozen pre-packaged vegetable-based entrees” in International Class 29 and for use in connection with “Asian noodles; Bread mixes; Cereal based snack food; Crepes; Flour; Frozen flour-free foods, namely, waffles, pancakes, crepes, sandwich wraps, muffins and griddle cake sandwiches which are protein-enriched; Grain-based chips; Meal kits consisting primarily of noodles; Mix for making combined noodle and sauce dish; Mixes for making baking batters; Mixes for making batters for fried foods; Noodle-based prepared meals; Noodles; Noodles and sauce mixes combined in unitary packages; Noodles and seasoning mixes combined in unitary packages; Noodles, sauce, and processed vegetables combined in unitary packages; Noodles, sauce, and seasoning toppings combined in unitary packages; Noodles, sauce, and topping combined in unitary packages; Noodles, sauce, dehydrated vegetables, and topping combined in unitary packages; Noodles, seasonings, edible oil, and dehydrated vegetables combined in unitary packages; Noodles, seasonings, edible oil, and flavorings combined in unitary packages; Packaged meal mixes consisting primarily of pasta or rice; Pancake mixes; Pasta; Pasta and noodles; Pre-mixed pancake batter; Processed cereal-based food to be used as a breakfast food, snack food or ingredient for making other foods; Relish; Rice; Rice-based snack foods; Roasted maize; Soya flour; Tapioca; Wafers; Wheat-based snack foods; Frozen pre-packaged entrees consisting primarily of pasta or rice; Pre-packaged meals consisting primarily of pasta or rice” in International Class 30 (“Applicant’s Goods”).

As grounds for opposition it is alleged that:

1. Opposer is a corporation duly organized and existing under the laws of the country of India, with offices in 301, Mahakosh House, 7/5, South Tukoganj, Nath Mandir Road, Indore-452001 (Madhya Pradesh) India.
2. Opposer is the owner of the trademark NUTRELA (“Opposer’s Trademark”) for use in connection with various food products, including without limitation, products containing soya chunks, which are high-protein meat substitute foods containing soy (“Opposer’s Goods”).
3. Opposer is the owner of numerous trademark registrations for Opposer’s Trademark in various foreign countries, including India, Pakistan, Malaysia, Sri Lanka, Nepal and Singapore.
4. Upon information and belief and according to the Patent and Trademark Office’s (“PTO”) records, Applicant is a corporation duly organized and existing under the laws of the State of New Jersey, with an address of 2500B Hamilton Boulevard, South Plainfield, New Jersey 07080.
5. Upon information and belief, Applicant is the record owner of Applicant’s Application.
6. At the time of filing Applicant’s Application, Applicant purported to be the owner of the mark NUTRELA.
7. Applicant is not the owner of the NUTRELA mark.
8. Applicant is merely the U.S. distributor of Opposer, and thus has no ownership interest in the NUTRELA mark.

9. As Opposer's U.S. distributor of goods bearing Opposer's Trademark, Applicant's distribution and sale of such goods inure to the benefit of Opposer.

10. As a distributor of Applicant's goods, Opposer never acquired any trademark rights in or to the NUTRELA mark.

11. Upon information and belief, during the application and prosecution of Applicant's Application, Applicant made materially false and misleading statements, knowing same to be materially false and misleading, intending the PTO to rely on such fraudulent statements, and upon which the PTO did rely.

12. More specifically, Applicant's Application contained the statement that Applicant had made actual use of Applicant's Mark in commerce prior to the filing of Applicant's Application. Upon information and belief, such statement was false in that Applicant had not made actual use of Applicant's Mark in commerce.

13. More specifically, Applicant's application contained the statement and/or implication that Applicant was the owner of Applicant's Mark. Upon information and belief, such statement and/or implication were fraudulent in that Applicant was never the owner of the NUTRELA mark.

14. Upon information and belief, at the time Applicant filed its Application, it knew these statements to be false and misleading.

15. As compared to Applicant, Owner has senior and superior rights in and to the NUTRELA mark.

16. Opposer commenced use of the NUTRELA mark in the U.S. prior to any actual use which Applicant can legally claim as its own.

17. Opposer's Trademark and Applicant's purported mark are confusingly similar in appearance, connotation and pronunciation, so that contemporaneous use of the respective marks will create a likelihood of confusion, mistake or deception among the trade and consumers.

18. Should Applicant's Application mature to registration, it will bar and will damage Opposer as such registration may bar Opposer's own registration of Opposer's Trademark in connection with Opposer's Goods, and further, continued registration provides Applicant with a means to interfere with Opposer's use of Opposer's Trademark in commerce in connection with Opposer's Goods.

19. The simultaneous use and/or registration by Applicant of the mark NUTRELA will dilute and tarnish Opposer's rights and will eventually result in a lack of designation or indication of origin and a loss of distinctiveness and exclusivity in Opposer's Trademark if Applicant is allowed to register its purported mark.

20. For the foregoing reasons, Applicant's Applications should be denied registration under Sections 2(d) of the Lanham Act (15 U.S.C. §§ 1052(d)) and pursuant to 15 U.S.C. § 1063.

WHEREFORE, Opposer respectfully requests that the Opposition be sustained and that registration of Application Serial No. 85712990 to Applicant for the mark NUTRELA be refused.

Dated: Scarsdale, New York
May 2, 2013

Respectfully submitted,

LACKENBACH SIEGEL, LLP

By: 

Howard N. Aronson
Robert B. Golden
Attorneys for Opposer
Lackebach Siegel Building
One Chase Road
Scarsdale, New York 10583
(914) 723-4300
(914) 723-4301 fax
rgolden@LSLLP.com
haronson@LSLLP.com

Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the enclosed **NOTICE OF OPPOSITION** was served on Applicant on May 2, 2013, via U.S. 1st Class Mail, addressed to counsel for Applicant as follows:

Jung Jin Lee, Esq.
Lee, Lee & Associates, P.C.
2531 Jackson Road, Suite 234
Ann Arbor, Michigan 48103

Dated: Scarsdale, New York
May 2, 2013


Nicole Saraco