

ESTTA Tracking number: **ESTTA545138**

Filing date: **06/26/2013**

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	LAXMI SNACKS PVT. LTD.
Granted to Date of previous extension	06/26/2013
Address	11-12, Anand Industrial Estate Borsad Chokdi ANAND, Gujarat State, 388001 INDIA

Attorney information	Alexander Lazouski Lazouski & Associates LLC 157 Third Avenue, Suite 2C Westwood, NJ 07675 UNITED STATES al@lzlawoffice.com Phone:201-645-5616
----------------------	---

Applicant Information

Application No	85711780	Publication date	02/26/2013
Opposition Filing Date	06/26/2013	Opposition Period Ends	06/26/2013
Applicant	Meenaxi Enterprise, Inc. 2500B Hamilton Boulevard South Plainfield, NJ 07080 UNITED STATES		

Goods/Services Affected by Opposition

<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; Frozen pre-packaged entrees consisting primarily of seafood; Frozen vegetables; Fruit-based snack food; Nut-based snack foods; Pickles; Potato-based snack foods; Pre-packaged dinners consisting of meat, poultry, seafood or vegetables; Sesame oil; Soy-based snack foods; Vegetable chips; Vegetable oils; 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: Bread mixes; Cereal based snack food; Corn-based snack foods; Crepes; Flour; Frozen flour-free foods, namely, waffles, pancakes, crepes, sandwich wraps, muffins and griddle cake sandwiches which are protein-enriched; Grain-based chips; Mixes for making baking batters; Mixes for making batters for fried foods; Packaged meal mixes consisting primarily of pasta or rice; Pancake mixes; Pasta; 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; Snack mix consisting primarily of crackers, pretzels and/or popped popcorn; Tapioca; Wafers; Wheat-based snack foods; Frozen pre-packaged entrees consisting primarily of pasta or rice; Pre-packaged meals consisting primarily of</p>

pasta or rice

Grounds for Opposition

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)
Other	common law rights

Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	85967210	Application Date	06/22/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	REAL NAMKEEN		
Design Mark			
Description of Mark	The mark consists of the wording 'REAL" in stylized font in red color inside the red oval; wording "NAMKEEN" in black color below the wording "REAL".		
Goods/Services	Class 030. First use: First Use: 1989/02/01 First Use In Commerce: 2010/03/18 Wafers, Namkeens and Bakery Products		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Design Mark	 The logo features the word "REAL" in a large, bold, red, sans-serif font, enclosed within a red oval. Below "REAL", the word "Namkeen" is written in a smaller, black, serif font.		
Goods/Services	Wafers, Namkeens and Bakery Products		

Attachments	REAL Logo.jpg Notice of Opposition REAL NAMKEEN.pdf(154414 bytes) Exhibit A.PDF(150373 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	/asl/
Name	Alexander Lazouski
Date	06/26/2013

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

LAXMI SNACKS PVT. LTD.,)	
)	Opposition No. _____
Opposer,)	
)	Application Serial No. 85/711,780
v.)	Mark: REAL NAMKEEN & Design
)	
Meenaxi Enterprise, Inc.,)	
)	
Applicant.)	
	/	

NOTICE OF OPPOSITION

Opposer, LAXMI SNACKS PVT. LTD., an Indian company at 11-12, Anand Industrial Estate, Borsad Chokdi, Anand, Gujarat State, 388001 India (“Opposer”), believes that it will be damaged by registration of the mark of Application Serial No. 85/711,780 by Meenaxi Enterprise, Inc., Applicant herein (“Applicant”), and hereby opposes the same on the grounds that the mark is likely to cause confusion, or to cause mistake or to deceive with respect to Opposer’s prior use of Opposer’s REAL NAMKEEN & Design mark, and that registration of the mark of Application Serial No. 85/711,780 will dilute the distinctiveness of Opposer’s REAL NAMKEEN & Design mark by tarnishing the mark and by blurring the distinctiveness of the mark. In addition, Applicant willfully and knowingly perpetrated a fraud in connection with the Application Serial No. 85/711,780, which resulted in USPTO’s acceptance of the filing of the application and allowing it to register.

1. Opposer is a company with over 23 years of history, being a leading Indian manufacturer of high-quality snacks, including namkeens, wafers and bakery products (“Opposer’s Goods”), well-known in many countries, including in the USA.
2. In connection with Opposer’s Goods, Opposer has used Opposer’s REAL NAMKEEN & Design mark as shown immediately below (“Opposer’s mark”):



3. Opposer has extensively and continuously used Opposer's mark since at least as early as 1989 and in commerce throughout the United States since at least as early as March 2010 in connection with Opposer's goods.

4. Opposer is the owner of the pending United States trademark application for REAL NAMKEEN & Design, Application Serial No. 85/967,210 for "*Wafers, namkeens and bakery products*" in International class 30 claiming continuous use of Opposer's mark in commerce since March 2010 (Exhibit A).

5. Opposer also owns common law rights in the Opposer's mark. These common law rights cover Opposer's Goods.

6. Opposer's Goods featuring Opposer's mark are subject to nationwide promotion. Additionally, Opposer's goods are featured through the Opposer's website at www.realamkeen.com. Opposer's "REAL NAMKEEN"-brand goods are sold through third party realtors located around the country.

7. As a result of the quality of Opposer's Goods, and the considerable effort Opposer has expended in promoting its Goods under the Opposer's mark, Opposer's Goods have met with highly favorable acceptance. The Opposer's mark has become a well-known symbol of the goodwill and rights associated with the mark.

8. On information and belief, Applicant, Meenaxi Enterprise, Inc., is a New Jersey corporation with an address of 2500B Hamilton Boulevard, South Plainfield, New Jersey 07080.

9. Notwithstanding Opposer's extensive prior use of Opposer's mark, on August 24, 2012, Applicant filed Application Serial No. 85/711,780 for the mark REAL NAMKEEN & Design, as shown below ("Applicant's mark"):



10. Applicant's mark covers "*Banana chips; Cooking oil; Cut vegetables; Dried fruits; Dried lentils; Edible oils; Frozen pre-packaged entrees consisting primarily of seafood; Frozen vegetables; Fruit-based snack food; Nut-based snack foods; Pickles; Potato-based snack foods; Pre-packaged dinners consisting of meat, poultry, seafood or vegetables; Sesame oil; Soy-based snack foods; Vegetable chips; Vegetable oils; 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 "*Bread mixes; Cereal based snack food; Corn-based snack foods; Crepes; Flour; Frozen flour-free foods, namely, waffles, pancakes, crepes, sandwich wraps, muffins and griddle cake sandwiches which are protein-enriched; Grain-based chips; Mixes for making baking batters; Mixes for making batters for fried foods; Packaged meal mixes consisting primarily of pasta or rice; Pancake mixes; Pasta; 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; Snack mix consisting primarily of crackers, pretzels and/or popped popcorn; 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*" ("Applicant's Goods") in International class 30 and was filed on 1(A) basis claiming use of Applicant's mark in commerce in connection with Applicant's Goods as early as January 2, 2012.

11. Opposer timely filed an extension of time to oppose Application Serial No. 85/711,780 on March 28, 2013.

12. Applicant's mark is confusingly similar to Opposer's mark. Further, the goods in Application Serial No. 85/711,780 and Opposer's Goods are substantially similar and related, would be marketed to and purchased by the same class of purchasers, and would be sold through the same channels of trade.

13. In view thereof, purchasers are likely to mistakenly assume that the goods in Application Serial No. 85/711,780 originate from, are sponsored by or are in some way associated with Opposer. The mark in Application Serial No. 85/711,780 is practically identical to the Opposer's REAL NAMKEEN & Design mark as to be likely to cause confusion, or to cause mistake or to deceive.

14. Opposer's mark is strong trademark, is inherently distinctive, and has developed goodwill and a good reputation exclusive to Opposer. Registration of Applicant's mark will dilute the distinctiveness of Opposer's mark by tarnishing the Mark and by blurring the distinctiveness of the Mark.

15. Given the extreme resemblance in the logo marks (see below) and the strength of Opposer's mark, it is apparent that Applicant adopted its applied-for mark with the intent of trading upon the goodwill and reputation of Opposer, thus demonstrating bad faith.



Opposer



Applicant

16. Accordingly, Opposer is likely to be damaged by registration of the mark of Application Serial No. 85/711,780.

17. Moreover, on August 24, 2012, while filing Application Serial No. 85/711,780, Applicant via its authorized representative, knowingly made a fraudulent statement wherein it claimed "The applicant

is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, or the applicant's predecessor in interest used the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. §1051(a), as amended.” and “The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.”

18. Upon information and belief, Applicant did not use Applicant’s Mark in commerce in connection with all of the goods covered by the Application Serial No. 85/711,780 during the filing of the Application.

19. Upon information and belief, Applicant does not currently use Applicant’s mark in commerce in connection with all of the goods covered by the Application Serial No. 85/711,780.

20. Applicant knowingly made a false, material misrepresentation of fact in connection with Application Serial No. 85/711,780 during the filing of the Applicant’s mark.

21. The USPTO relied on the false and fraudulent declaration when it acknowledged the filing of the Application Serial No. 85/711,780 and allowed it to proceed to publication on the Official Gazette.

22. As a result, Applicant willfully and knowingly perpetrated a fraud in connection with the Application Serial No. 85/711,780.

23. Applicant is not entitled to Registration of the Application Serial No. 85/711,780 as Applicant knowingly committed fraud when it filed the Application Serial No. 85/711,780.

WHEREFORE, Opposer prays that the mark of Application Serial No. 85/711,780 be refused registration, that no registration be issued thereon to Applicant and that this Opposition be sustained in favor of Opposer.

A filing fee for the Notice of Opposition in the amount of \$600.00 was paid in due course.

Respectfully submitted,

Dated: June 26, 2013

By: 
Alexander S. Lazouski
Attorney for Opposer
Lazouski & Associates LLC
157 Third Avenue, Suite 2C
Westwood, NJ 07675

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Initial Disclosures has been served on Applicant's counsel by mailing said copy on June 26, 2013 via First Class Mail, postage prepaid to:

Suraj Chivukula, Esq.
Law Offices of Suraj Chivukula, LLC
536 New Brunswick Rd
Somerset, New Jersey 08873-1658
United States

Date: June 26, 2013


Alexander S. Lazouski

The USPTO is pleased to report that the TSDR problem with the display of mark images has been resolved. Please clear your individual browser cache prior to accessing TSDR. If you continue to experience technical difficulties, [please email](#).

STATUS**DOCUMENTS**[Back to Search](#)[Print](#)

Generated on: This page was generated by TSDR on 2013-06-26 10:44:24 EDT

Mark: REAL NAMKEEN



US Serial Number: 85967210

Application Filing Date: Jun. 22, 2013

Register: Principal

Mark Type: Trademark

Status: New application will be assigned to an examining attorney approximately 3 months after filing date

Status Date: Jun. 26, 2013

Mark Information

Mark Literal Elements: REAL NAMKEEN

Standard Character Claim: No

Mark Drawing Type: -

Description of Mark: The mark consists of the wording "REAL" in stylized font in red color inside the red oval; wording "REAL".

Color Drawing: Yes

Color(s) Claimed: The color(s) red, black is/are claimed as a feature of the mark.

Disclaimer: "NAMKEEN"

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((..)) identify any goods/services not claimed in a Section 15 affidavit of
- Asterisks *.* identify additional (new) wording in the goods/services.

For: Wafers, Namkeens and Bakery Products

International Class(es): 030 - Primary Class

U.S Class(es): 046

Class Status: ACTIVE**Basis:** 1(a)**First Use:** Feb. 01, 1989**Use in Commerce:** Mar. 18, 2010

Basis Information (Case Level)

Filed Use: Yes**Currently Use:** Yes**Filed ITU:** No**Currently ITU:** No**Filed 44D:** No**Currently 44D:** No**Filed 44E:** No**Currently 44E:** No**Filed 66A:** No**Currently 66A:** No**Filed No Basis:** No**Currently No Basis:** No

Current Owner(s) Information

Owner Name: LAXMI SNACKS PVT. LTD.**Owner Address:** 11-12, ANAND INDUSTRIAL ESTATE
BORSAD CHOKDI
ANAND, Gujarat State 388001
INDIA**Legal Entity Type:** company**State or Country Where Organized:** INDIA

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Alexander Lazouski**Docket Number:** YJTR-1012U**Attorney Primary Email:** info@lzlawoffice.com**Attorney Email Authorized:** Yes**Address:**

Correspondent

Correspondent Name/Address: ALEXANDER LAZOUSKI
LAZOUSKI & ASSOCIATES LLC
157 THIRD AVENUE
SUITE 2C
WESTWOOD, NEW JERSEY 07675
UNITED STATES**Phone:** 2016455616**Correspondent e-mail:** info@lzlawoffice.com al@lzlawoffice.com**Correspondent e-mail Authorized:** Yes**Domestic Representative - Not Found**

Prosecution History

Date	Description	Proceeding Number
Jun. 26, 2013	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: NEW APPLICATION PROCESSING

Date in Location: Jun. 26, 2013

[Assignment Abstract Of Title Information - Click to Load](#)

[Proceedings - Click to Load](#)