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Filing date: **09/02/2014**

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

Proceeding	91212680
Party	Defendant Real Foods Pty Ltd
Correspondence Address	BRUCE S LONDA NORRIS MCLAUGHLIN & MARCUS PA 875 3RD AVENUE NEW YORK, NY 10022-6225 UNITED STATES jhamburg@nmmlaw.com,abhett@nmmlaw.com
Submission	Motion to Amend Application
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Date	09/02/2014
Attachments	Motion to Amend the Goods.pdf(19783 bytes)

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

FRITO-LAY NORTH AMERICA, INC.

Opposer,

vs.

REAL FOODS PTY LTD.

Applicant.

Opposition No. 91212680 (Parent)
Opposition No. 91213587

APPLICANT'S MOTION TO AMEND THE GOODS

Pursuant to 37 C.F.R. § 2.133 and TBMP § 514.03, Applicant Real Foods Pty Ltd., by its attorneys, Norris, McLaughlin & Marcus, P.A., hereby moves the Trademark Trial and Board (the "Board") to amend U.S. Trademark Application Serial Nos. 85820051, for RICE THINS, and 79111074 for CORN THINS, both of which applications are the subject of this consolidated opposition proceeding.

Specifically, Applicant moves to amend its application for RICE THINS, Serial No. 85820051, to identify the goods as "crispbread slices primarily made of rice, **namely rice cakes**" and its application for CORN THINS, Serial No. 79111074, to identify the goods as "crispbread slices predominantly of corn, **namely popped corn cakes**". The language of the requested amendments is in bold.

Although the amendments are narrowing, Opposer has refused to consent to them. An amendment to the goods set forth in opposed applications can be made by the Board, even in the absence of Opposer's consent. *See* 37 C.F.R. § 2.133(a) and *Embarcadero Techs. Inc. v. RStudio, Inc.* 105 U.S.P.Q.2d 1825, 2828 (TTAB 2013).

Applicant's use of its CORN THINS mark dates from 2000 and its use of its RICE THINS mark dates from 2007. Applicant has used these marks exclusively in connection with popped corn cakes and rice cakes, respectively.

The Board is urged to act favorably on this timely motion, submitted prior to any significant activity in this case. It is in both parties' interest to clarify the goods to conform to the long standing actual use of the marks by Applicant. Favorable action on this motion is respectfully requested.

Dated: New York, New York
September 2, 2014

NORRIS, McLAUGHLIN & MARCUS, P.A.



By: _____

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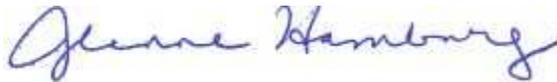
Opposition No. 91212680

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CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2014 a copy of the foregoing Applicant's Motion to Amend the Goods is being deposited with the United States Postal Service with sufficient postage as first-class mail in an envelope addressed to the attorneys for Opposer as follows:

William G. Barber
Paul Madrid
PIRKEY BARBER PLLC
600 Congress Avenue, Suite 2120
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Jeanne Hamburg