

ESTTA Tracking number: **ESTTA579285**

Filing date: **12/30/2013**

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	The Warrell Corporation
Granted to Date of previous extension	01/01/2014
Address	1250 Slate Hill Road Camp Hill, PA 17011 UNITED STATES

Attorney information	Rebecca Finkenbinder McNees Wallace & Nurick 100 Pine Street Harrisburg, PA 17108 UNITED STATES trademarks@mwn.com Phone:717-232-8000
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Applicant Information

Application No	77760083	Publication date	09/03/2013
Opposition Filing Date	12/30/2013	Opposition Period Ends	01/01/2014
Applicant	Madeline Chocolate Novelties, Inc. 96-03 Beach Channel Drive Rockaway Beach, NY 116930166 NY		

Goods/Services Affected by Opposition

Class 030. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: confectionery products, namely, chocolates, candies and frozen confections

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	85042267	Application Date	05/19/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	DUETS		

Design Mark	
Description of Mark	The mark consists of the wording "Duets".
Goods/Services	Class 030. First use: First Use: 2000/12/31 First Use In Commerce: 2000/12/31 Candy

Attachments	85042267#TMSN.jpeg(bytes) A3704921.PDF(15547 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	/Rebecca Finkenbinder/
Name	Rebecca Finkenbinder
Date	12/30/2013

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

In re Application of:

Applicant	:	Madeline Chocolate Novelties, Inc.
Serial No.	:	77/760,083
Mark	:	THE MADELAINE CHOCOLATE COMPANY DUETS and Design
Goods	:	International Class 30
Filing Date	:	June 15, 2009
Published	:	Official Gazette September 3, 2013

The Warrell Classic Company, LLC,	:	
Opposer	:	
	:	
v.	:	Opposition No.
	:	
Madeline Chocolate Novelties, Inc.,	:	
Applicant	:	

Commissioner for Trademarks
Box TTAB, FEE
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

1. Opposer The Warrell Classic Company, LLC ("Opposer"), a limited liability company duly organized and existing under the laws of the Commonwealth of Pennsylvania and having a principal place of business at 1250 Slate Hill Road, Camp Hill, Pennsylvania 17011, believes that it will be damaged by the registration of the mark THE MADELAINE CHOCOLATE COMPANY DUETS and Design, Serial No. 77/760,083, and hereby opposes the same.

2. Applicant Madeline Chocolate Novelties, Inc. ("Applicant") is a New York corporation with a place of business at 96-03 Beach Channel Drive, Rockaway Beach, New York 11693-0166.

As grounds for opposition, Opposer alleges that:

3. Applicant seeks to register the design mark, THE MADELAINE CHOCOLATE COMPANY DUETS and Design (disclaims "chocolate company") ("Applicant's Mark"), for use with "confectionery products, namely, chocolates, candies and frozen confections" in International Class 30, having filed a federal trademark application on June 15, 2009, Serial No. 77/760,083, based on Applicant's intent to use Applicant's Mark ("Madelaine Application").

4. Since at least as early as December 31, 2000, Opposer has used and is now using the mark DUETS with candy.

5. Opposer's use of the DUETS mark has been valid and continuous since its date of first use.

6. Opposer's DUETS mark is symbolic of extensive goodwill established by Opposer, has acquired a high degree of recognition and fame through continued use and expenditures of time, effort and money in advertising and promotion, and serves as a unique identifier of the candy products offered by Opposer.

7. On May 19, 2010, Opposer filed a use-based federal trademark application for the DUETS mark, Serial No. 85/042,267, for "candy" in International Class 30 ("Warrell Application").

8. The Warrell Application is currently pending with the United States Patent and Trademark Office ("USPTO"). The USPTO issued an advisory in its Office Action on September 2, 2010 and subsequent Suspension Letter on July 29, 2012, stating that if Applicant's Mark registers, Opposer's DUETS mark may be refused registration under

Section 2(d) because of a likelihood of confusion with Applicant's Mark. The USPTO then suspended action on the Warrell Application until Applicant's Mark is either registered or abandoned.

9. Opposer's use of the DUETS mark predates Applicant's use in commerce of Applicant's Mark, as no use in commerce date has been filed in the Madelaine Application.

10. Opposer's use of the DUETS mark predates Applicant's filing date of the application for the Madelaine Application.

11. Applicant's Mark is confusingly similar to Opposer's DUETS mark in that they share the word "duets," which is the largest word in Applicant's Mark. Further, the descriptive terms "chocolate company" and Applicant's company name "Madelaine" in Applicant's Mark are less prominent, thereby rendering the word "duets" the dominant, source-indicating element of Applicant's Mark.

12. Applicant's proposed confectionery products are identical to Opposer's candy products.

13. Opposer believes the consumers to whom Applicant intends to market its products under Applicant's Mark are the same as those to whom Opposer markets its candy products under Opposer's DUETS mark.

14. Opposer believes that Applicant desires to market its products under Applicant's Mark through the same channels of trade as those through which Opposer markets its candy products under Opposer's DUETS mark.

15. In view of the similarity of the respective marks and the identical nature of the goods offered by the respective parties, Applicant's Mark so resembles Opposer's DUETS mark, which has been previously used in the United States and not abandoned, as to be likely to cause confusion, or to cause mistake, or to deceive.

16. Opposer is, or will be, damaged by the registration of Applicant's Mark for Applicant's Class 30 goods, since, by virtue of such registration (1) Applicant's use of the mark is likely to cause confusion, to cause mistake or to deceive the consuming public as to the source, sponsorship or affiliation of Applicant's goods, and (2) doubts would be raised as to the exclusive right of Opposer to use Opposer's DUETS mark.

WHEREFORE, Opposer The Warrell Classic Company, LLC respectfully requests that this opposition be sustained, that application 77/760,083 be refused, and that the United States Patent and Trademark Office refuse to register Applicant's Mark.

Respectfully submitted,

McNEES, WALLACE & NURICK

By _____

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Attorneys for Opposer
The Warrell Classic Company, LLC

Dated: December 30, 2013

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a true and correct copy of the **Notice of Opposition** was mailed via First Class Mail, postage prepaid, to:

Richard S. Mandaro
Amster Rothstein & Ebenstein LLP
90 Park Avenue
New York, New York 10016-1301

Rebecca A. Finkenbinder
Of Counsel for Opposer
The Warrell Classic Company, LLC

Dated: December 30, 2013