

ESTTA Tracking number: **ESTTA674374**

Filing date: **05/27/2015**

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	KELLOGG NORTH AMERICA COMPANY
Granted to Date of previous extension	05/27/2015
Address	One Kellogg Square PO Box 3599 Battle Creek, MI 49016 UNITED STATES

Correspondence information	KELLOGG NORTH AMERICA COMPANY One Kellogg Square PO Box 3599 Battle Creek, MI 49016 UNITED STATES jim.lewis@kellogg.com, elizabeth.kinsley@kellogg.com, ariel.bublick@kellogg.com Phone: 1 (269) 961-9459
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Applicant Information

Application No	86382345	Publication date	01/27/2015
Opposition Filing Date	05/27/2015	Opposition Period Ends	05/27/2015
Applicant	Anubhav 14 Liberty Avenue Jersey City, NJ 07306 UNITED STATES		

Goods/Services Affected by Opposition

Class 043. First Use: 2012/10/01 First Use In Commerce: 2012/10/01 All goods and services in the class are opposed, namely: Restaurant services
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Grounds for Opposition

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 No.	692163	Application Date	03/03/1959
Registration Date	01/26/1960	Foreign Priority Date	NONE
Word Mark	EGGO		
Design Mark			

Description of Mark	NONE
Goods/Services	Class U046 (International Class 001, 005, 029, 030, 031, 032). First use: First Use: 1935/04/27 First Use In Commerce: 1935/04/27 [PREPARED BATTER AND FLOUR FOR WAFFLES, BISCUITS, PANCAKES, MUFFINS, CAKES AND DOUGHNUTS;] FROZEN WAFFLES; [POTATO CHIPS; MAYONNAISE; PICKLES; RELISHES; MUSTARD; HORSE RADISH; SALAD DRESSINGS; SALAD OILS; CANNED TUNA;] TABLE SYRUPS [; GELATINE DESSERTS; CANNED AND BOTTLED TOMATO PRODUCTS- NAMELY, TOMATO CATSUP, TOMATO PASTE AND PUREE; SANDWICH SPREADS; JAMS; JELLIES; BARBECUE SAUCE AND SOUP BASE]

U.S. Registration No.	3204661	Application Date	09/29/2005
Registration Date	01/30/2007	Foreign Priority Date	NONE

Word Mark	EGGO
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Design Mark	
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Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2006/01/20 First Use In Commerce: 2006/01/20 CEREAL-DERIVED FOOD PRODUCT TO BE USED AS A BREAKFAST FOOD, SNACK FOOD OR INGREDIENT FOR MAKING FOOD

U.S. Registration No.	3359488	Application Date	07/02/2007
Registration Date	12/25/2007	Foreign Priority Date	NONE

Word Mark	EGGO
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Design Mark	
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Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 1953/00/00 First Use In Commerce: 1953/00/00

	waffles, pancakes, french toast sticks,[table syrup, cinnamon rolls]		
U.S. Registration No.	4392555	Application Date	11/30/2009
Registration Date	08/27/2013	Foreign Priority Date	NONE
Word Mark	EGGO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2002/00/00 First Use In Commerce: 2002/00/00 Shirts		
U.S. Registration No.	4592765	Application Date	01/28/2014
Registration Date	08/26/2014	Foreign Priority Date	NONE
Word Mark	EGGO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2008/03/00 First Use In Commerce: 2008/03/00 muffins, muffin tops		
U.S. Registration No.	2310962	Application Date	08/10/1998
Registration Date	01/25/2000	Foreign Priority Date	NONE
Word Mark	L 'EGGO MY EGGO		

Design Mark	L 'EGGO MY EGGO		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1972/12/00 First Use In Commerce: 1972/12/00 Waffles		

U.S. Registration No.	3419042	Application Date	10/14/2006
Registration Date	04/29/2008	Foreign Priority Date	NONE
Word Mark	L'EGGO MY EGGO		
Design Mark	L'EGGO MY EGGO		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1972/12/00 First Use In Commerce: 1972/12/00 waffles, pancakes, french toast		

U.S. Registration No.	4484676	Application Date	07/03/2013
Registration Date	02/18/2014	Foreign Priority Date	NONE
Word Mark	EGGO DRIZZLERS		
Design Mark	EGGO DRIZZLERS		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2013/01/21 First Use In Commerce: 2013/01/21 Waffles		

U.S. Registration No.	4549014	Application Date	05/03/2013
Registration Date	06/10/2014	Foreign Priority Date	NONE
Word Mark	EGGO BITES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2013/12/22 First Use In Commerce: 2013/12/22 Frozen breakfast foods, namely, waffles, pancakes, french toast		

U.S. Registration No.	4735343	Application Date	10/17/2014
Registration Date	05/12/2015	Foreign Priority Date	NONE
Word Mark	EGGO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2014/10/01 First Use In Commerce: 2014/10/01 Sandwiches		

Attachments	78723394#TMSN.png(bytes) 77220790#TMSN.png(bytes) 77882388#TMSN.png(bytes) 86177391#TMSN.png(bytes) 75533599#TMSN.png(bytes) 77021301#TMSN.png(bytes) 86001838#TMSN.png(bytes) 85923122#TMSN.png(bytes) 86426587#TMSN.png(bytes) Notice of Opposition - EGGOMANIA.pdf(50774 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	/Ariel Y. Bublick/
Name	KELLOGG NORTH AMERICA COMPANY
Date	05/27/2015

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

In re Application No.: 86-382345

Filed: September 2, 2014

Mark: EGGOMANIA

Published in the *Official Gazette* (Trademarks) on: January 27, 2015

KELLOGG NORTH)
AMERICA COMPANY,)
)
Opposer,)
)
v.)
)
ANUBHAV,)
)
Applicant.)

Opposition No. _____

NOTICE OF OPPOSITION

KELLOGG NORTH AMERICA COMPANY, a Delaware limited liability company with a principal place of business at One Kellogg Square, P.O. Box 3599, Battle Creek, Michigan 49016 (“Kellogg”) believes that it will be damaged by the registration of the mark EGGOMANIA, as shown in Application Serial No. 86-382345, (“Opposed Mark”), applied for by ANUBHAV, a New Jersey limited liability company with an address of 14 Liberty Avenue, Jersey City, New Jersey (“Applicant”), and Kellogg opposes registration on the basis of likelihood of confusion under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), and dilution under Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c). In support of its Opposition, Kellogg asserts as follows:

The EGGO Marks

1. Kellogg, through its predecessors and/or related companies, is engaged in the manufacturing, advertising, promotion, and selling of cereal, waffles, French toast, pancakes, breakfast sandwiches, breakfast foods, and other similar and related goods.

2. Kellogg’s goods are distributed through local, regional, and national supermarkets, mass merchants, and other types of retailers.

3. Kellogg, through its predecessors and/or related companies, adopted and first used the mark EGGO in connection with frozen waffles and table syrups in April 1935. Since that date, Kellogg, through its predecessors and/or related companies, has continuously used the EGGO word mark.

4. Kellogg owns the following U.S. registrations, all of which are legally and validly registered on the Principal Register of the United States Patent and Trademark Office (“USPTO”) (collectively, the “EGGO Registrations”):

Mark	Reg. No.	Goods / Services	Status	Reg. Date
EGGO	692,163	Frozen waffles, table syrups	Incontestable	Jan. 26, 1960
EGGO	3,204,661	Cereal-derived food product to be used as a breakfast food, snack food or ingredient for making food	Incontestable	Jan. 30, 2007
EGGO	3,359,488	Waffles, pancakes, French toast sticks	Incontestable	Dec. 25, 2007
EGGO	4,392,555	Shirts	Registered	Aug. 27, 2013
EGGO	4,592,765	Muffins, muffin tops	Registered	Aug. 26, 2014
L’EGGO MY EGGO	2,310,962	Waffles	Incontestable	Jan. 25, 2000
L’EGGO MY	3,419,042	Waffles, pancakes,	Incontestable	April 29, 2008

Mark	Reg. No.	Goods / Services	Status	Reg. Date
EGGO		French toast		
EGGO DRIZZLERS	4,484,676	Waffles	Registered	Feb. 18, 2014
EGGO BITES	4,549,014	Frozen breakfast foods, namely, waffles, pancakes, French toast	Registered	June 10, 2014
EGGO	4,735,343	Sandwiches	Registered	May 12, 2015

5. Kellogg also owns extensive common law rights in its EGGO marks in connection with a variety of breakfast foods and snacks, and related goods and services. Kellogg promotes and sells these goods and services under its EGGO marks in stores, and promotes such goods and services on the website www.leggomyyeggo.com, where the marks are prominently displayed. As a result of Kellogg’s long-standing, nationwide, and widespread use, Kellogg owns extensive common law rights in the EGGO marks in connection with goods and services related to food. The marks reflected in the EGGO Registrations, along with Kellogg’s extensive common law rights in the EGGO marks, are hereafter referred to as the “EGGO Marks.”

6. Long prior to the filing date of the application of the Opposed Mark, Kellogg, through its predecessors and/or related companies, extensively advertised, promoted, and sold products bearing the EGGO Marks.

7. Kellogg, through its predecessors and/or related companies, has expended substantial sums of money in marketing, advertising, and promoting its EGGO Marks, and, through such activities, has generated substantial goodwill and consumer recognition in the EGGO Marks. The public has come to associate the EGGO Marks exclusively with Kellogg.

8. Kellogg has derived substantial revenue from the sale of its products under the EGGO Marks.

9. Kellogg's and its predecessors' and/or related companies' extensive use and advertising of the EGGO Marks has resulted in consumer recognition that the EGGO Marks identify Kellogg as the source of high-quality, delicious products. The EGGO Marks are distinctive of Kellogg's goods and are well known and famous, and valuable goodwill has been generated in the EGGO Marks. Such goodwill was generated long before the filing date and first use in commerce of the Opposed Mark.

10. The EGGO Marks have become, prior to Applicant's filing and first use in commerce of the Opposed Mark, distinctive and famous under Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

Applicant's Application to Register the Opposed Mark

11. On September 2, 2014, Applicant filed a use-based application to register the Opposed Mark in connection with "Restaurant services" in International Class 43, based on a first use in commerce date of October 1, 2012. The application was assigned Serial No. 86-382345.

12. Applicant's filing of the Opposed Mark is without the consent or permission of Kellogg.

13. On December 15, 2014, the USPTO approved the Opposed Mark for publication.

14. On January 7, 2015, the USPTO issued a Notice of Publication, and the Opposed Mark was published in the *Official Gazette* of the USPTO on January 27, 2015.

15. Visually, the Opposed Mark is confusingly similar to the EGGO Marks because the Opposed Mark incorporates the EGGO mark in its entirety and merely adds the descriptive suffix "mania."

16. The Opposed Mark and the EGGO Marks are confusingly similar because the first two syllables are pronounced the same and they incorporate the same distinctive use of EGGO.

17. The services for which Applicant seeks registration of the Opposed Mark are closely related to the goods and services in which Kellogg uses its EGGO Marks.

18. The Opposed Mark is confusingly similar in overall sight, sound, and commercial impression to the EGGO Marks.

OPPOSITION BASED UPON A LIKELIHOOD OF CONFUSION

19. Kellogg repeats and realleges the allegations of Paragraphs 1-18 above, as though fully set forth herein.

20. Kellogg, through its predecessors and/or related companies, has used the EGGO Marks prior to Applicant's first use in commerce and application to register the Opposed Mark.

21. Applicant's Opposed Mark is confusingly similar to Kellogg's EGGO Marks and registration and use thereof by Applicant is likely to cause confusion, mistake, or deception that Applicant's services are those of Kellogg or are otherwise endorsed, sponsored, or approved by Kellogg, or cause confusion, mistake, or deception, as to the affiliation, connection, or association between Applicant and Kellogg.

22. If Applicant is permitted to use and register the Opposed Mark, confusion in trade resulting in irreparable damage and injury to Kellogg would be caused by reason of similarity between the Opposed Mark and Kellogg's EGGO Marks. Consumers are likely to utilize Applicant's services incorrectly believing that such services, and/or the goods associated therewith, are provided by, endorsed by, or otherwise associated with Kellogg.

23. If Applicant is granted registration for the Opposed Mark, as shown in Serial No. 86-382345, Applicant would thereby obtain *prima facie* exclusive rights to use the Opposed Mark, and such Registration would be the source of irreparable damage and injury to Kellogg.

24. Accordingly, Applicant's application to register the Opposed Mark must be refused registration under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), as amended.

OPPOSITION BASED UPON DILUTION

25. Kellogg repeats and realleges the allegations of Paragraphs 1-24 above, as though fully set forth herein.

26. Applicant's commercial use of the Opposed Mark in commerce dilutes, or is likely to dilute, the distinctive quality and reputation of Kellogg's famous EGGO Marks under Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

27. If Applicant is permitted to use and register the Opposed Mark, dilution of the distinctive nature and quality of Kellogg's famous EGGO Marks would result in irreparable damage and injury to Kellogg.

28. Accordingly, Applicant's application to register the Opposed Mark must be refused registration under Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c), as amended.

PRAYER FOR RELIEF

WHEREFORE, Kellogg prays that the application to register the mark EGGOMANIA, as shown in Application Serial No. 86-382345, be refused.

Kellogg submits herewith the requisite filing fee in the amount of \$300.

Respectfully submitted,

KELLOGG NORTH AMERICA COMPANY

Dated: May 27, 2015

By: /Ariel Y. Bublick /

James K. Lewis
Ariel Y. Bublick
KELLOGG NORTH AMERICA COMPANY
One Kellogg Square
P.O. Box 3599
Battle Creek, Michigan 49016
Telephone: (269) 961-9459
Facsimile: (269) 961-3276
ariel.bublick@kellogg.com

Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing NOTICE OF OPPOSITION has been served upon Anubhav, via United States first class mail, postage prepaid, addressed to:

Anubhav
14 Liberty Avenue
Jersey City, NJ 07306

Dated: May 27, 2015

By: /Elizabeth Kinsley/
Elizabeth Kinsley