

ESTTA Tracking number: **ESTTA714038**

Filing date: **12/10/2015**

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	Mary's Gone Crackers, Inc.
Granted to Date of previous extension	02/07/2016
Address	100 Kentucky Street Building D Gridley, CA 95948 UNITED STATES
Attorney information	ANNA E RAIMER JONES DAY 717 TEXAS, SUITE 3300 HOUSTON, TX 77002 UNITED STATES aeraimer@jonesday.com, lrefinetti@jonesday.com, NYTEF@jonesday.com

Applicant Information

Application No	86572197	Publication date	08/11/2015
Opposition Filing Date	12/10/2015	Opposition Period Ends	02/07/2016
Applicant	LUV Ice Cream 13201 Ozark Trail North Stillwater, MN 55082 UNITED STATES		

Goods/Services Affected by Opposition

Class 030. First Use: 2013/12/22 First Use In Commerce: 2014/01/02
Opposed goods and services in the class: no-sugar-added bakery desserts

Grounds for Opposition

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

U.S. Registration No.	3861121	Application Date	05/06/2010
Registration Date	10/12/2010	Foreign Priority Date	NONE
Word Mark	MARY'S GONE CRACKERS LOVE COOKIES		

Design Mark	MARY'S GONE CRACKERS LOVE COOKIES
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2010/02/02 First Use In Commerce: 2010/02/02 Cookies

U.S. Registration No.	4303741	Application Date	12/22/2011
Registration Date	03/19/2013	Foreign Priority Date	NONE

Word Mark	MARY'S GONE CRACKERS LOVE COOKIES
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Design Mark	
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Description of Mark	<p>The mark consists of a background consisting of a tan rectangle with a green border. Superimposed upon the upper quarter of the background rectangle and overlapping its upper edge is a second tan rectangle containing the word "MARY'S" in black characters. The upper rectangle has a green border on its upper portion, which border is a continuation of the border of the background rectangle. Superimposed upon the middle of the background rectangle is a dark green rectangle with a red line around the border. The rectangle is broader than the background rectangle and contains the word "CRACKERS" in tan characters, with a black background outline. There is a crescent moon located within the middle letter "C" in the word "CRACKERS". The red line is jagged, the rectangle's surface is textured, and the edge of the rectangle is fringed. A small light green banner containing the word "GONE" in black lettering is superimposed on the top of this rectangle. Underneath the above described set of rectangles and banner the words "LOVE COOKIES" are located in a tan, orange and red italic relief script logotype.</p>
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Goods/Services	Class 030. First use: First Use: 2010/02/02 First Use In Commerce: 2010/02/02 Cookies
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U.S. Registration No.	4796488	Application Date	06/10/2014
Registration Date	08/18/2015	Foreign Priority Date	NONE
Word Mark	LOVE COOKIES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2015/05/19 First Use In Commerce: 2015/05/19 Cookies		

Attachments	85031747#TMSN.png(bytes) 85502569#TMSN.png(bytes) 86305905#TMSN.png(bytes) LUV Opposition.pdf(148815 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	/Lauren Refinetti/
Name	Lauren Refinetti
Date	12/10/2015

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

MARY’S GONE CRACKERS, INC.,

Opposer,

v.

LUV ICE CREAM,

Applicant.

Application Serial No.: 86/572,197

Opposition No. _____

Filing Date: March 22, 2015

Publication Date: August 11, 2015

Trademark: LUV (Stylized)

International Class: 30



NOTICE OF OPPOSITION

Opposer Mary’s Gone Crackers, Inc. (“Opposer” or “Mary’s Gone Crackers”), a Delaware corporation, having an address of P.O. Box 965, Gridley, California 95948, believes that it will be damaged by registration of the proposed mark LUV (Stylized) as set forth in Application Serial No. 86/572,197, for no-sugar-added bakery desserts, and therefore opposes registration of the same.

The grounds for opposition are as follows:

1. Mary’s Gone Crackers manufactures, promotes, markets, advertises, distributes, and sells organic, gluten free, vegan baked goods, including cookies and crackers. In connection with its organic, gluten free, vegan cookies, and since at least as early as 2010, Mary’s Gone Crackers has used its mark “LOVE COOKIES” (the “LOVE COOKIES Mark”) in commerce in the United States, including on its website, marketing materials, and packaging of its cookies.

2. Mary's Gone Crackers has prominently and extensively promoted and advertised its award-winning cookies bearing the LOVE COOKIES Mark, expending significant resources in connection with such advertising and promotional efforts and building a valuable business based on the high demand for its cookies sold under the LOVE COOKIES Mark.

3. As a result of Opposer's continuous and extensive use, advertising and promotion of the LOVE COOKIES Mark, as well as the distinctiveness of the mark, the LOVE COOKIES Mark has become well-known, and consumers have come to recognize the LOVE COOKIES Mark as uniquely associated with Mary's Gone Crackers and an indication of origin.

4. Mary's Gone Crackers owns the following valid U.S. trademark registrations for its LOVE COOKIES Mark:

MARK	REG. NO.	REG. DATE	GOODS
MARY'S GONE CRACKERS LOVE COOKIES	U.S. Reg. No. 3861121	October 12, 2010	Cookies
	U.S. Reg. No. 4303741	March 19, 2013	Cookies
LOVE COOKIES	U.S. Reg. No. 4796488	August 18, 2015	Cookies

5. Trademark Application Serial No. 86/572,197 (the “Application”) filed by LUV Ice Cream (“Applicant”), a limited liability company with an address of 13201 Ozark Trail North, Stillwater, Minnesota 55082-9550, seeks registration of the proposed mark LUV (Stylized).

6. The Application was filed on March 22, 2015, based on Lanham Act Section 1(a), alleging first use of the mark in U.S. commerce on December 22, 2013, for “Gluten-free desserts, namely, no-sugar-added dairy ice creams; non-dairy no-sugar-added frozen confections; no-sugar-added chocolates and candy bars; sugar-free and no-sugar-added candies, no-sugar-added bakery desserts” in International Class 30.

7. The Application was published for opposition in the *Trademark Official Gazette* on August 11, 2015. Mary’s Gone Crackers timely filed an extension of the opposition period.

8. Mary’s Gone Crackers has used its LOVE COOKIES Mark on cookies in International Class 30 well before the December 22, 2013 first use date alleged in the Application.

9. Applicant is not affiliated with or sponsored by Opposer, and Applicant has never been authorized by Opposer to use the LOVE COOKIES Mark.

10. Applicant’s alleged mark LUV (Stylized) is very similar in appearance, sound, and commercial impression to Opposer’s LOVE COOKIES Mark. As such, consumers are likely to be confused, mistaken or deceived into the belief, contrary to fact, that the no-sugar-added bakery desserts offered under the proposed mark LUV

(Stylized) emanate from and/or are in some way sponsored or approved by Opposer, and/or that Applicant is somehow affiliated with Opposer, thereby damaging Opposer.

11. In addition, the no-sugar-added bakery desserts identified in the Application are related to the cookies sold by Opposer under its LOVE COOKIES Mark and covered by Opposer's trademark registrations for the LOVE COOKIES Mark because cookies are a type of bakery dessert.

12. The no-sugar-added bakery desserts identified in the Application are also likely to be sold to the same or overlapping classes of purchasers and trade channels as cookies bearing the LOVE COOKIES Mark.

13. Because of the high degree of similarity between the parties' respective marks, goods, and trade channels, as well as the fame of the LOVE COOKIES Mark in the natural products industry, Applicant's use of the proposed mark LUV (Stylized) is likely to cause consumer confusion, mistake or deception, violating Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

In view of the above, Applicant is not entitled to federal registration of its alleged mark LUV (Stylized) for no-sugar-added bakery desserts in International Class 30 because Applicant's proposed use is likely to cause confusion, or to cause mistake, or to deceive.

WHEREFORE, for the foregoing reasons, Opposer respectfully requests that the present Opposition be sustained in favor of Opposer, and that Application Serial No. 86/572,197 be refused registration as to no-sugar-added bakery desserts.

The appropriate fee is also submitted herewith. Please direct all future correspondence to the undersigned.

Dated: December 10, 2015

Respectfully submitted,

By: /s/ Lauren Refinetti

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Attorneys for Opposer
MARY'S GONE CRACKERS, INC.

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing document entitled Notice of Opposition has been served upon Applicant by mailing said copy on December 10, 2015, via Priority Mail, postage prepaid at the correspondence address of record in the Patent and Trademark Office:

LUV ICE CREAM
13201 Ozark Trl N
Stillwater, Minnesota 55082-9550

/s/ Lauren Refinetti
Lauren Refinetti