

ESTTA Tracking number: **ESTTA725322**

Filing date: **02/05/2016**

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	Societe des Produits Nestle S.A.
Granted to Date of previous extension	02/17/2016
Address	Case Postale 353 Vevey, 1800 SWITZERLAND

Attorney information	Emily Cooper Holland & Hart LLP P.O. Box 8749 _ ATTN: Trademark Docketing Denver, CO 80201 UNITED STATES docket@hollandhart.com, aanderson@hollandhart.com, ej-cooper@hollandhart.com, mamooore@hollandhart.com
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Applicant Information

Application No	86640048	Publication date	10/20/2015
Opposition Filing Date	02/05/2016	Opposition Period Ends	02/17/2016
Applicant	FARELL, CECILIA 2972 ZAHARIAS DRIVE ORLANDO, FL 32837 UNITED STATES		

Goods/Services Affected by Opposition

Class 004. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Candles
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Applicant Information

Application No	86709574	Publication date	12/22/2015
Opposition Filing Date	02/05/2016	Opposition Period Ends	
Applicant	FARELL, CECILIA 2972 ZAHARIAS DRIVE ORLANDO, FL 32837 UNITED STATES		

Goods/Services Affected by Opposition

Class 003. First Use: 2015/01/01 First Use In Commerce: 2015/01/01 All goods and services in the class are opposed, namely: Body cream; Body creams; Body lotion;
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Body splash; Hair conditioners; Hand cleaning preparations; Hand creams; Hand lotions; Hand soaps; Lip balm; Pet shampoo and conditioner; Shampoos
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution by blurring	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1022181	Application Date	02/14/1975
Registration Date	10/07/1975	Foreign Priority Date	NONE
Word Mark	KIT KAT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1949/00/00 First Use In Commerce: 1949/00/00 WAFER FINGERS IN MILK CHOCOLATE		

U.S. Registration No.	1535582	Application Date	03/15/1988
Registration Date	04/18/1989	Foreign Priority Date	NONE
Word Mark	KIT KAT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1939/12/31 First Use In Commerce: 1970/12/00 WAFER FINGERS IN MILK CHOCOLATE		

Attachments	Notice of Oppositi on KITKCAT.pdf(19350 bytes) 73716864#TMSN.png(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	/Emily Cooper/
Name	Emily Cooper

Date	02/05/2016
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2. Opposer owns United States Trademark Registration No. 1022181 for KIT KAT and Registration No. 1535582 for , both for “wafer fingers in milk chocolate” in Class 30 (collectively the “KIT KAT Mark”).

3. These registrations are valid, subsisting, and incontestable, constituting conclusive evidence of the validity of the marks and registrations, and of Opposer’s ownership of and exclusive right to use the marks in connection with the goods set forth in the registrations.

4. Opposer’s U.S. licensee has sold billions of dollars’ worth of chocolate bars under the KIT KAT Mark and has invested significant resources in advertising and promoting candy bars under this mark.

5. As a result of Opposer’s licensee’s extensive marketing and promotion, coupled with the overwhelming commercial success of the candy bars sold under the KIT KAT mark, Opposer’s KIT KAT Mark has become famous and well known.

COUNT I
Likelihood of Confusion
(15 U.S.C. § 1052(d))

6. Opposer realleges and incorporates by reference the preceding allegations of this Notice of Opposition.

7. The KIT CAT mark set forth in the Applications so closely resembles Opposer’s prior used and/or registered KIT KAT Mark as to be likely, when used in connection with the goods set forth in the Applications, to cause confusion, or to cause mistake, or to deceive under section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

COUNT II
Likelihood of Dilution
(15 U.S.C. § 1125(c))

8. Opposer incorporates by reference the preceding allegations of this Notice of Opposition.

9. Well prior to the filing date of the Applications or any date of first use upon which Applicant may rely, Opposer's distinctive KIT KAT Mark became famous under 15 U.S.C. § 1125(c).

10. Applicant's proposed use and registration of the mark KITCAT, in connection with the goods set forth in the Applications, is likely to cause dilution by blurring of Opposer's famous KIT KAT Mark under section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

WHEREFORE, Opposer believes that it will be damaged by the registration of the mark shown in the Applications and respectfully requests that the opposition be sustained and that registration to Applicant be denied.

The filing fee, in the amount of \$600, is being transmitted electronically with this submission. Any deficiency in the fee should be charged to Deposit Account No. 082623.

Dated: February 5, 2016

Respectfully submitted,

Emily J. Cooper

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Société des Produits Nestlé S.A.

CERTIFICATE OF SERVICE

I certify that on February 5, 2016, I served a copy of the above **NOTICE OF OPPOSITION** to the following by Certified U.S. Mail, postage prepaid:

Cecilia Farell
2972 Zaharias Drive
Orlando, FL 32837

Barbara A. Adams
Barbara A. Adams