

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

Societes des Produits Nestle S.A., Opposer

Opposition No.:

vs

Mark: KITCAT

Cecilia Farell, Applicant

Serial Nos. 86640048 and 86709574

Response to Notice of Opposition

I the applicant Cecilia Farell disagree that **KITCAT** will damage registration of the **KIT KAT** trademark. **KITCAT Candles and Bath & Body** products was designed with a Logo of a Cat Chasing a butterfly and created to provide revenue for our foundation "From The Heart Animal Rescue Foundation Corp." a rescue for animals with special needs, primarily Cats which is how the brand name came about.

See exhibit "A-2" (2 pages). There is *no* resemblance not only in the font but in the spelling. **Kitcat** is one word and **Kit Kat** are two words. One references Cats and I am not sure what Kit Kat stands for.

I the applicant do **NOT** think that the attorney that approved my trademark applications was wrong. Clearly they sound the same, But they are different in design and spelling. The only thing similar is the phonetic sound. I don't think the Societes des Produits Nesle S.A. Owns phonetic writes to the word Kitcat.

Please see Logo page exhibit "A" which is clear that it would *not* cause confusion, or cause to mistake, or deceiver under section 2(d) of the Lanham Act, 15 U.S.C. 1052(d).

This opposition is strangely numbered so to avoid any omission of any response, I will be responding to all the numbers.

1. I the applicant agree that KIT KAT mark is to be used in connection with the sale of candy bars ONLY, however not only is the spelling different from mine, but my product is for Candles, and Bath & Body Products which is a total different.
2. I the applicant agree that the opposer owns the united States Trademark Registration No. 1022181 for KIT KAT and registration no. 1535582 both for wafer finger in milk chocolate. Does *not* own a United States Trademark Registration for KITCAT Candles and Bath & Body Products with the spelling KITCAT one word totally different.



3. I the applicant agree that their KIT KAT registrations are valid, subsisting, and incontestable constituting conclusive evidence of validity of the marks and registration. However the Opposer does **not** have ownership of the word KITCAT nor exclusive right to use the mark in question in reference to the goods set forth by KITCAT CANDLES, BATH & BODY PRODUCTS based on what I feel are just phonetic similarities.
4. I the applicant agree in the probability that the Opposer has sold billions of dollars worth of chocolate under KIT KAT, which has nothing to do to do with KITCAT CANDLES, BATH & BODY PRODUCTS. A different spelling and different products.
5. I the applicant agree that the opposer has had success with the sales of their Chocolate Wafers which are well known **Internationally**. However Kit Kat is for the use of Chocolate Wafers only still has no similarity in spelling or product use.

COUNT 1
Likelihood of Confusion
(15 U.S.C. 1052 (d))

6. I the applicant disagree with the opposer's realleges and incorporates by reference in the proceeding allegations of this Notice of Opposition.
7. I the applicant disagree that KITCAT mark set forth in the Applications closely resembles the 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 sections 2 (d) of the Lanham Act, 15 U.S.C. 1052(d). **Please see exhibit " B"** That clearly shows the difference between KIT KAT CHOCOLATE and KITCAT CANDLES -N-MORE. I am certain that the attorney/attorneys that approved both applications, one for the Candles and the other for the Bath & Body Products felt the same as I when they approved my application after their search and investigation and found in fact that there were no similarities which is why my applications were approved.

COUNT 11
LIKELIHOOD OF DILUTION
(15 U.S.C. 1125 (c))

8. I the applicant disagree that the opposer incorporates by reference the preceding allegations of this Notice of Opposition.
9. I the applicant agree that prior to the filing date of my applications or any date first use upon which applicant may rely, the opposer's distinctive KIT KAT mark became famous under 15 U.S.C. 1125 (d), however **NOT** the applicants **KITCAT** mark.
10. I the applicant disagree as the applicant that my proposed use and registration of the mark KITCAT, in connection with goods set forth I the Application, is likely to cause dilution by blurring of opposer's famous KIT KAT mark in any way shape or form under section 43 (c) of the Lanham Act, 15 U.S.C. 1125 (c).

I the applicant do NOT believe that it will be damage the registration of the mark shown in the application by the opposer and respectfully requests that the opposition be overruled and that the application be accepted as approved by the attorneys at the USPTO.

In addition I would like to state that I was contacted by Emily J. Cooper attorney of opposer on behalf of in which I was asking me to cease all use of KIT CAT in connection with my products and business and to withdraw my trademark application. **Please see exhibit "C" (2 pages, see page 2, paragraph outlined)** the letter sent by Emily J. Cooper, opposer's attorney on behalf of Societes des Produits Nestle S.A.

The reason for my wanting you to read this letter is to show that they have no validity in what they are asking. I have enclosed several copies of companies both in the U.S.A. and internationally that are operating under the name KITKAT and are indeed spelled exactly the same as Nestles KIT KAT Chocolate yet they are in full operation. Internationally is a important since Nestle sells worldwide.

Please view exhibits:

- "D-1" (KitKat Bows & Clothes, in the USA),
- "D-2" (Kit Kat Lounge & Supper Club, in the USA), Same color awning and spelling as the Kit Kat Chocolate Wafer Logos.
- "D-3" (Kit Kat Club / Berlin Germany),
- "D-4" (KITCATT NOHR, talent company in the United Kingdom) this one has a similar spelling to mine, however I don't feel anyone is going to be **confused** by expecting a candle or bath & body products when they register with this talent agency,
- "D-5" (Kit Cat – a business waiting to be claimed in Finland),

“D-6” Finally Kit-Cat Clocks, what one I feel is closest in comparison the brand of question, (KIT-CAT CLOCKS in the USA in business since 1932 for 80+ years).

Kit-Cat Clock has been in business for over 80 years. I am 51 years old and remember growing up with one of these clocks on my Grandmother kitchen wall. He didn't feel the need to oppose me, nor would I him.

I am certain that when someone enters his site or to view and/or order his clocks, there is no confusion, Mistake, or deception in thinking that they are going to be receiving a KIT KAT Chocolate Wafer Bar or KITCAT Candles or Bath & Body Products. I have no problem with his name and his is spelled like my brand of application except for the dash between the words. I feel his spelling with the dash makes the distinction between us therefore I would never send him a cease letter if I were to get my brand, I would find that unnecessary. In addition if Societe des Produits Nestle S.A. asks me to cease the business they will be doing the same to all the companies operating with the name Kit Kat nationally and internationally since it is and international brand as well. I feel they do not have the ownership or right to the phonetic sound of KitCat nor other spelling that are different from theirs.

I feel this opposition, although they have the right to do so, is completely unwarranted. I recently read where they went after another small business owner that had the word “Crunch” in what appeared to be a Power Bar or Energy Bar. I feel this was absurd. They went after this person “small business owner” yet I still see Captain Crunch on the shelves. I suppose it's easier to try to intimidate small business owner into shutting down rather than to get into a legal fight with Kellogs a another multi million dollar company. I suppose they prefer not to play with the big boys.

There are several examples of what I feel is a form of these multi million dollar companies bullying small business owners, rather than going after other multi million dollar corporations. I don't use the word bully easily, but in this case, and the other cases I have read, there in no other better word that comes to mind.

I do hope all the information I have provided will serve as verification that the attorneys that approved my application were right in doing so, and I hope that the USPTO Trade Mark and Appeal Board with rule in my favor.

Dated: March 11th, 2016

Respectfully submitted,

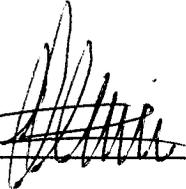


Cecilia Farell 2972 Zaharias Drive
tresurchest@aol.com Orlando, FL 33837
Applicant for KITCAT (407) 309-9372

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **Response to Notice of Opposition** has been served on **Societe des Produits Nestle S.A.** by mailing said copy on **March 11, 2016**, via **Priority Mail**, to: **Emily J. Cooper, Holland & Hart LLP, P.O. Box 8749, Denver, Colorado 80201.**

Signature



Date

March 11, 2016

NOTICE OF OPPOSITION

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

<p>Société des Produits Nestlé S.A.,</p> <p style="text-align: center;">Opposer,</p> <p>v.</p> <p>Cecilia Farell,</p> <p style="text-align: center;">Applicant.</p>	<p style="text-align: center;">Opposition No.:</p> <p style="text-align: center;">Mark: KITCAT</p> <p style="text-align: center;">Serial Nos. 86640048 and 86709574</p>
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NOTICE OF OPPOSITION

Société des Produits Nestlé S.A. (“Opposer”), a société anonyme organized and existing under the laws of Switzerland, with an address of Case Postale 353, Vevey, 1800, Switzerland, believes that it will be damaged by registration of the mark KITCAT shown in U.S. Trademark Application Serial No. 86640048 for “candles” in Class 4, and U.S. Trademark Application Serial No. 86709574 for “Body cream; Body creams; Body lotion; Body splash; Hair conditioners; Hand cleaning preparations; Hand creams; Hand lotions; Hand soaps; Lip balm; Pet shampoo and conditioner; Shampoos” in Class 3 (together, the “Applications”), and hereby opposes these Applications.

As grounds for its opposition, Opposer alleges that, upon actual knowledge with respect to itself and its own actions, and upon information and belief as to other matters:

1. Since as early as 1939, and well prior to the filing date of the Applications or any date of first use upon which Applicant may rely, Opposer’s predecessor in interest and/or Opposer’s U.S. licensee have used the KIT KAT mark in connection with the marketing and sale of candy bars.

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

Andrea Anderson
Emily J. Cooper
HOLLAND & HART LLP
P.O. Box 8749
Denver, Colorado 80201
Phone: (303) 473-2798
Facsimile: (303) 957-5583
aanderson@hollandhart.com
ejcooper@hollandhart.com
Attorneys for Opposer
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

Exhibits

A - D



fromtheheart@animalrescuefoundation.org

V

A NON-PROFIT ORGANIZATION (f)

ABOUT (/ABOUT.HTML)

CONTACT (/CONTACT.HTML)

From The Heart Animal Rescue Foundation Corp.

A rescue for animals with special needs.

fromtheheartanimalrescue.org



JUST SMILE!

(uploads/3/2/0/2/32023263/1834504_orig.jpg?425)

Please support
our foundation
and visit:
**KITCAT
CANDLES - N -
MORE**
for the Best
100% Soy
Premium Hand
Poured Candles,

& Amazing Bath & Body Products for a fabulous shopping experience.

Copy and paste the link below:

<http://www.kitcatcandles-n-more.com/index.html>

"A-2"

Shop on: [smile.amazon.com!](http://smile.amazon.com)

**Help support our foundation when
you shop on AMAZON.**

Copy and paste the link below:

<https://smile.amazon.com/ch/45-5353898>



PLEASE DONATE TO ANIMALS WITH SPECIAL NEEDS

<http://www.gofundme.com/wh7k54>



"A-2"

Proudly powered by Weebly (http://www.weebly.com/?utm_source=internal&utm_medium=footer&utm_campaign=2)

Nestle's Kit Kat Logo

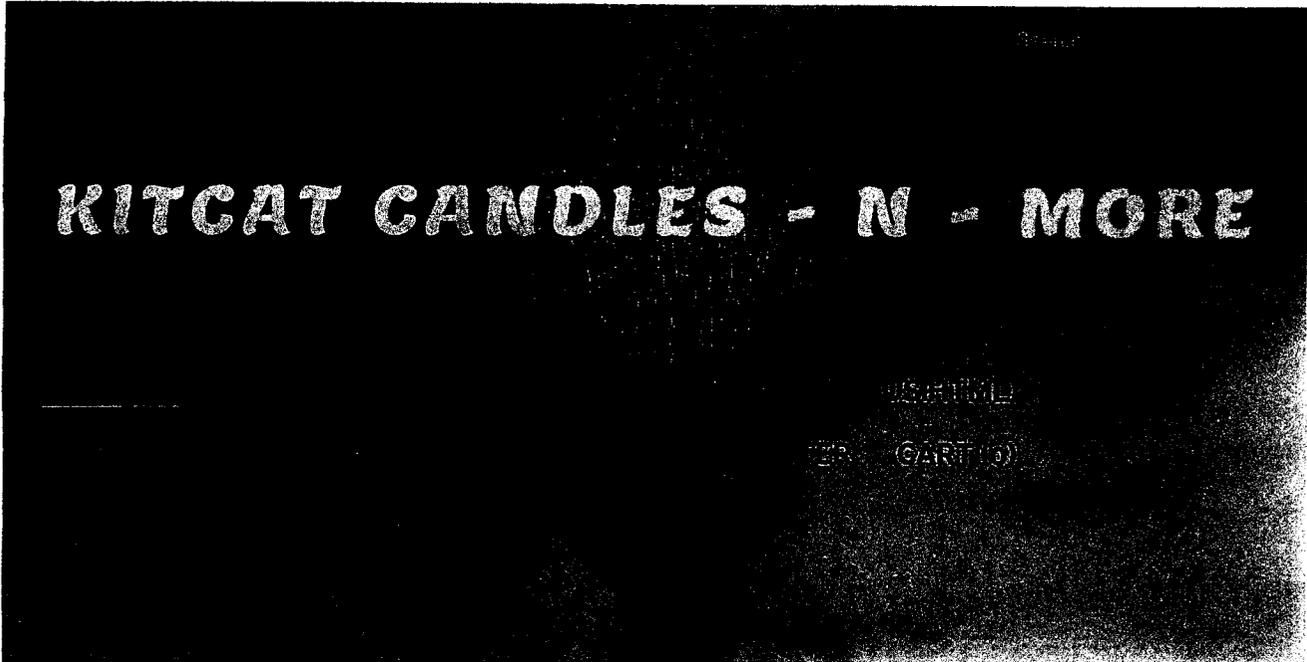


VS

KITCAT CANDLES and BATH & BODY PRODUCTS LOGO



"A"



KITCATCANDLES.COM

**100% PREMIUM SOY CANDELS, TARTS, VOTIVES,
 Bath & BODY PRODUCTS, SALT SCRUBS, UNUSAL LIP BALMS
 & FRAGRANCES**

**SPECIALTY SOY CANDLES (Candles in Unusual Containers),
*You will love them!***

" B "

HOLLAND & HART 

Emily J. Cooper
Phone (303) 473-2792
Fax (303) 558-4200
EJCooper@hollandhart.com
82145.0217

November 24, 2015

VIA EMAIL (tresurchest@aol.com)
Confirmation by U.S. Mail

Cecilia Farell
2972 Zaharias Drive
Orlando, FL 32837

Re: U.S. Trademark Serial Nos: 86640048 and 86709574
Mark: KIT CAT

Dear Ms. Farell:

We represent Nestlé USA and its affiliated companies (collectively, Nestlé) in intellectual property matters. Nestlé is a global leader in the confection category, and an internationally known maker of chocolate and candy bars. One of Nestlé's most famous brands is KIT KAT. KIT KAT chocolate bars have been sold in the U.S. since at least as early as 1937, and are consistently among the top ten most widely-sold candies in the U.S., with sales of more than nearly \$200 million each year. *Time Magazine* has called KIT KAT a "global obsession," and in 2014, it ranked KIT KAT the #1 "Most Influential Candy Bar of All Time."¹ In the United States, Nestlé's KIT KAT mark is the subject of U.S. Reg. Nos. 1022181 and 1535582, both of which are incontestable.

We have recently learned that you filed two federal trademark applications to register KIT CAT: U.S. Ser. No. 86640048 for candles; and U.S. Ser. No. 86709574 covering body cream; body creams; body lotion; body splash; hair conditioners; hand cleaning preparations; hand creams; hand lotions; hand soaps; lip balm; pet shampoo and conditioner; shampoos. We are also aware of your website, www.kitcatcandles.com through which you sell your candles and body products.

Given the essentially identical nature of this mark and Nestlé's famous KIT KAT mark, Nestlé is concerned that your use of KIT CAT will dilute the strength of Nestlé's valuable brand. Nestlé is also concerned that consumers encountering your KIT CAT products may draw the inaccurate conclusion that they emanate from Nestlé or its licensee, The Hershey Company, or are produced under license from Nestlé. As you may be aware, many candy and confection brands are licensed for use in connection with candles and body products, which makes it all the more likely that consumers would incorrectly believe that you have a similar arrangement with Nestlé.

¹ <http://newsfeed.time.com/2014/02/18/13-most-influential-candy-bars-of-all-time/slide/kit-kat/>

Holland & Hart LLP Attorneys at Law

Phone (303) 473-2700 Fax (303) 473-2720 www.hollandhart.com

One Boulder Plaza 1800 Broadway Suite 300 Boulder, CO 80302

Aspen Billings Boise Boulder Carson City Cheyenne Colorado Springs Denver Denver Tech Center Jackson Hole Las Vegas Reno Salt Lake City Santa Fe Washington, D.C.

"c"



Cecilia Farell
November 24, 2015
Page 2

Nestlé is willing to assume that you had no intention to trade on its good will or harm its intellectual property rights, and it hopes you understand that, as a brand owner, it must enforce against all unauthorized uses of its marks or risk losing its rights. As a result, Nestlé must request that you cease all use of KIT CAT in connection with your products and business and withdraw your trademark applications to register KIT CAT. Nestlé understands that making these changes may take some time, and it would be willing to discuss a reasonable phase out period for you to effect this change. In addition, so that you do not lose Internet traffic after transitioning to the new name, Nestlé is also willing to allow you to keep the domain name kitcatcandles.com, provided that you use it only to redirect traffic to a new site.

As you are likely aware, Nestlé obtained an extension of time to oppose one of your applications, to allow time for the parties to discuss an amicable resolution. Please confirm, by no later than **December 8, 2015**, your willingness to comply with Nestlé's requests so that we may resolve this matter in advance of that deadline and avoid an opposition. In the meantime, I welcome you or your attorney to call me to discuss this matter.

Very truly yours,

Emily J. Cooper
For Holland & Hart

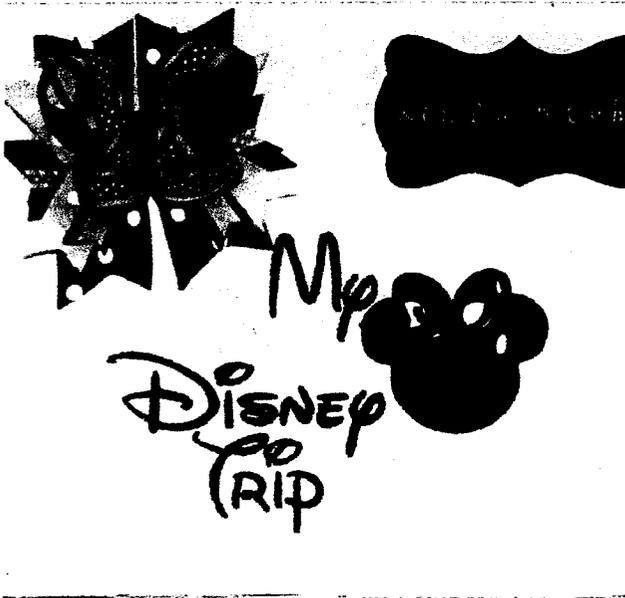
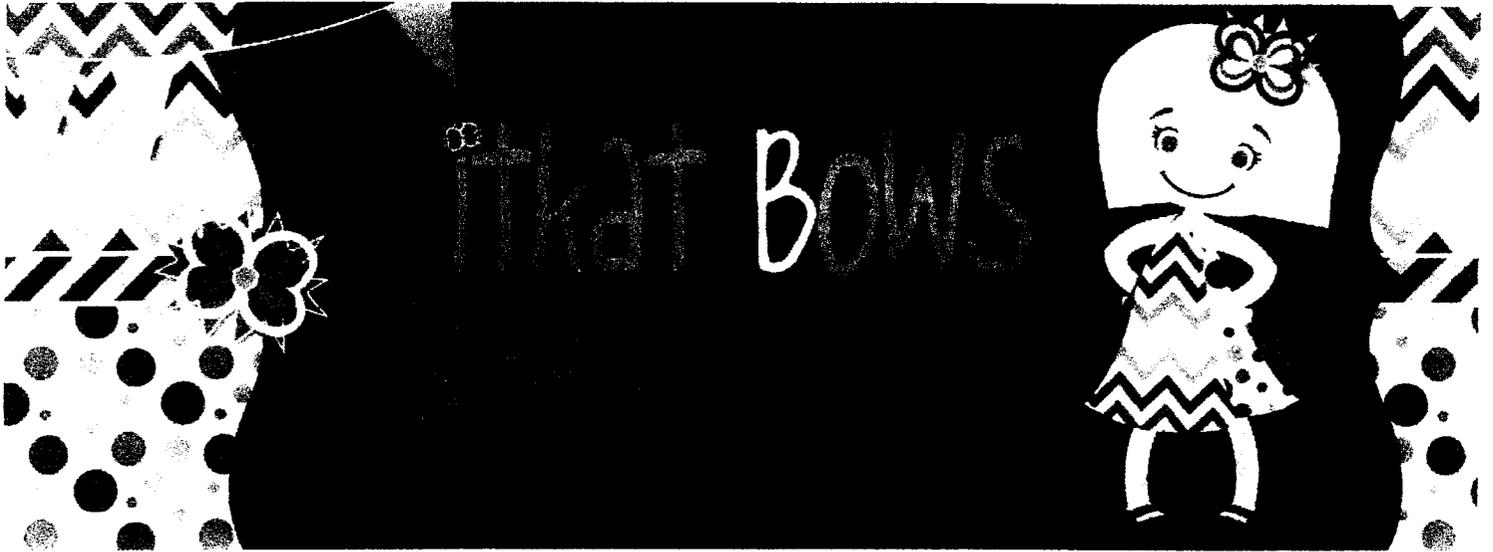
EJC

"C"

cc: Nestlé USA, Inc.
The Hershey Company

JOIN STORENVY0

Kitkat Bows and Clothes

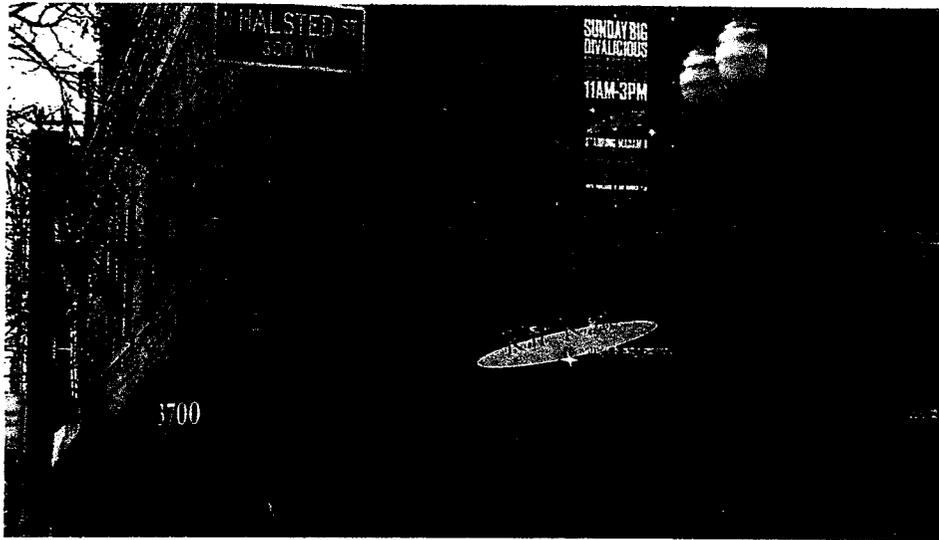


My First Trip Minnie Applique Shirt and Matchin...
\$27.00



My First Trip Cinderella Applique Shirt and Matc...
\$27.00

" D I "



Kit Kat Lounge & Supper Club

Drag-queen divas perform nightly at this upscale American restaurant with a lengthy cocktail menu.

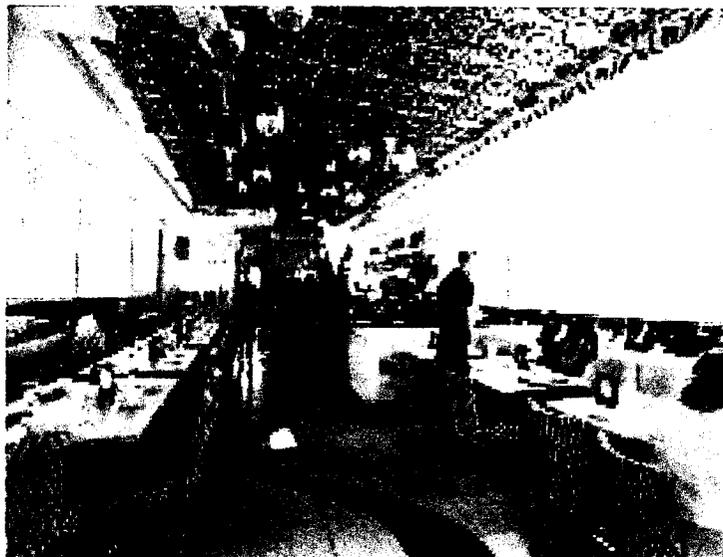
Address: 3700 N Halsted St, Chicago, IL 60613

Phone: (773) 525-1111

Hours:

Open today 5:30PM-2AM

"D-2"



NIGHT CLUBS

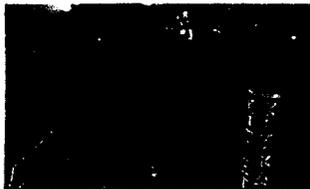
YOUR NIGHTLIFE

KIT KAT CLUB / BERLIN

HOME ALL COUNTRIES » CHOOSE COUNTRY » CONTACTS »

Kit Kat Club / Berlin

16:35 Kit Kat / Berlin 2 comments



Kit Kat Club today known throughout Europe for its atmosphere of drunkenness and debauchery prevailing in each party-taking place here. Even the dress-code institutions implies a possible revealing outfits, and if you come here in latex - you will be welcomed with open arms. At some parties, by the way, there are no normal clothes, "Extravagance in any form" - says flyers events and dress-code respect here is 100%. You can find here visitors of all ages and social status - in Kit Kat can come across as cheerful students and coming off the bankers and executives.

This club is a reproduction of the same named cabaret in Berlin founded in 1920s.

"We went there on a Friday night, it was not one of the special nights, and it was pretty busy, we did not arrive until 3:00. We were ushered to one side of the door staff and presented to the lady that was supposed to solve our fate. We were asked our nationality and sexuality, then told it would be 50 euros for 4 person. Atmosphere was quite relaxed and in a mixture of hetro, homo, was actually difficult to understand who is who, that made the party more interesting."

"The music was excellent, starting with some of Goa trance, and then on some more difficult stuff. I would not say that it is a place for a group of girls, if you're not ready to hang literally everyone; but I would not say that it was running well. An open mind and an open wallet -that is required here." Stylish night club, is known by its erotic orientation. Hitch style and avant-garde bright pictures and photos, electro music, fetish suits without lack of openness. Having sex is not prohibited! Sometimes club gathers up to 1,000 people per day.

Search Club

YOUR NIGHTLIFE



Kit Kat Club / Berlin
Kit Kat Club today known throughout Europe for its atmosphere of drunkenness and debauchery prevailing in each party-taking place here. ...



Kit Kat Club Adagio / Berlin
Minimum age of visitors - 18 years. Adagio is one of the most popular dance clubs in Berlin.

The total area is 1500 m2 (it's huge), can...



Kit Kat Club Berghain / Berlin
Berghain (Friedrichshain, Berlin), the place music lovers from all over the world are trying to get

to, was opened on the spot of anothe...

YOUR NIGHTLIFE

"D-3"

LAUNCH

- 24 / London
- 333 Mother / London
- 90 Grad / Berlin
- Adagio / Berlin
- Allkairaz / Milano
- Altromondo Studios / Rimini
- Amnesia / Ibiza
- Berghain / Berlin
- Best Top 100 Dj's
- Cafe Atlantique / Milan
- Café Del Mar / ibiza
- Carbon / London
- Club Mania / Bulgaria
- CLUB HL / Amsterdam
- Crobar vs Pacha
- Cuty / Chisinau
- Dance Club - Crobar
- Dance Planet / Chisinau
- Decadadance / Chisinau
- Drive / Chisinau
- Du Theatre / Bern
- Duplex / Prague
- Es Paradis / Ibiza
- Escape / Amsterdam
- Fabric / London
- Faraon / Chisinau
- Fridge / London
- Gabana 1800 / Madrid
- Ghost INC / London
- GreenHouse - Ecological Club
- Hilton / Prague
- Hollywood Rhythmutage / Milan

KITCATT NOHR.

KITCATT NOHR TALENT

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For new business
london@kitcattnohr.com

For career
talent@kitcattnohr.com

91 Brick Lane
London
United Kingdom
E1 6QL

"D-4"



viestikatu
Kenttatie

"D-5"

Kit Cat

[Website](#)

[Directions](#)

Cultural education

Address: Kenttatie 22, 90100 Oulu, Finland

Phone:+358 50 3805244

Claim this business

[Write a review](#)

Reviews

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Feedb



**MADE IN
AMERICA**

Manufacturing Kit-Cat Clocks
in America since 1932!

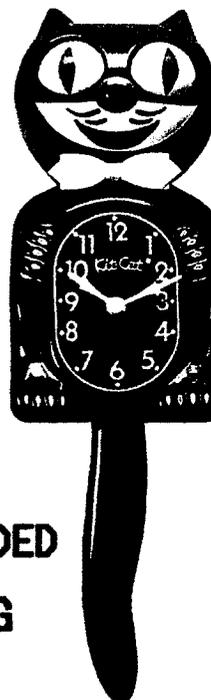
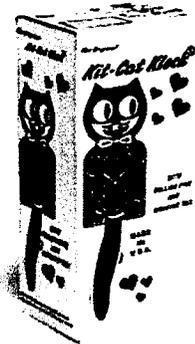


**MAKING CLOCKS FOR
80+ YEARS**

"D-6"

Kit-Cat Clock's iconic swinging tail, rolling eyes and contagious smile has inspired joy in America since 1932. Keep an American icon in America!

**THE OFFICIAL
Kit-Cat®**



**FREE BATTERIES INCLUDED
FREE 2-DAY SHIPPING**