

ESTTA Tracking number: **ESTTA753796**

Filing date: **06/22/2016**

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

Proceeding	91226199
Party	Defendant Cecilia Farell
Correspondence Address	CECILIA FARELL 2972 ZAHARIAS DR ORLANDO, FL 32837-7008 UNITED STATES uspto@legal-sherpa.com, tresurchest@aol.com
Submission	Opposition/Response to Motion
Filer's Name	CECILIA FARELL
Filer's e-mail	TRESURCHEST@AOL.COM
Signature	/Cecilia Farell/
Date	06/22/2016
Attachments	RESPONSE TO AMENDED OPPOSITION 1.PDF(2039424 bytes )

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

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Societes des Produits Nestle S.A., Opposer

Opposition No.: 91226199

VS

Mark: KITCAT

Cecilia Farell, Applicant

Serial nos. 86640048 and 86709574

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**RESPONSE TO FIRST AMENDED NOTICE OF OPPOSITION**

I the applicant Cecilia Farell **deny** that KITCAT will damage registration of the *Kit Kat* trademark. Not only is the Label, Logo, Spelling, and Product Classification different, but is my understanding that Nestle does not make candles. Therefore it is clear with the above differences that KITCAT will not be damaging their registration as illustrated below. The difference is clear.



1. I the applicant Cecilia Farell **admit** that the *Kit Kat* mark is used in connection with the sale of candy bars only. **Not** in Candle or Bath and Body Products.
2. I the applicant Cecilia Farell **admit** that the Opposer's owns the United States Trademark Registration No. 1022181 for *Kit Kat* and registration No. 1535582 for both "Wafer Fingers in Milk Chocolate" only. **However, not** for Candles or Bath and Body Products a different classification all together.
3. I the applicant Cecilia Farell **admit** that their *Kit Kat* registrations are valid, subsisting, and incontestable constituting conclusive evidence of validity of the marks and registration. However the Opposer's do **not** have ownership of the word KITCAT nor exclusive rights to use the mark in question in reference to the goods set for by KITCAT Candles, Bath and Body Products. Similarity is phonetically only.
4. I the applicant Cecilia Farell **admit** in the probability that the Opposer has sold billions of dollars worth of chocolate under *Kit Kat*. **However, Kit Kat** is in a different classification and different sale of products than KITCAT CANDLES, BATH and BODY PRODUCTS.
5. I the applicant Cecilia Farell **admit** that the candy bar Kit Kat has become famous and well known. **However,** it has been and it recognized as a Candy Bar made of chocolate covered wafers, **not** Candles, Bath and Body Products.

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

6. I the applicant Cecilia Farell **deny** with the Opposer realleges and incorporates by reference in the proceeding allegation to this First Amended Notice of Opposition.
7. I the applicant Cecilia Farell **deny** that the KITCAT mark set forth in the applications closely resemble the opposer's prior used and/or registered *Kit Kat* marks 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 illustration below which demonstrates the clear difference between items not only in classification but structurally.



8. I the applicant Cecilia Farell **deny** that many candy and confection brands are used for in connection with candles, bath and body products in representation of specific brands. Although food related products are out there they are used, I have not encountered any e products out there are made brand specific. **Only** Hershey's has their own Hershey Chocolate scented candle sold at their manufacturing plant and website for advertising. The only other place that sells candles like "Skiddles" are at the **Dollar General** store **Made and brought from China**. I have included four of the TOP leading Candle Makers in the USA product list for your review to substantiate my defense.

Attached you will see the entire list of **YANKEE CANDLE, BATH & BODY WORKS, OUT OF THE OVEN CANDLES, and HERSHEY'S** (so you could see their chocolate candle) . You will see that although we as candle makers rely on our food scented candles, none are brand specific, i.e. Milky-way, Snickers, Kit Kat, Dove, etc... I have also included pages from my website again to illustrate that there is no way to that these goods are mistakenly to be believed that the Applicants products are sold under license from the Opposer or with Opposer's permission in connection with Kit Kat or any other candy brands out there.

**COUNT II**  
**Likelihood OF Dilution**  
**(15 U.S.C. 1125 (c))**

9. I the applicant Cecilia Farell **deny** that the Opposer incorporates by reference the proceeding allegations of this Notice of Opposition.

10. I the applicant Cecilia Farell **admit** 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.

11. I the applicant Cecilia Farell **deny** as the applicant that my proposed use and registration of the mark KITCAT, in connection with good set forth I the Applicant, 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 Cecilia Farell deny that there will be damage to the registration of the mark shown in the application by the Opposer's and respectfully requests that the opposition be denied and that in accordance to the approval of my application by the USPTO Attorneys I be granted the trademark of KITCAT.

**Please view Attached Exhibits:**

A-1

A-2

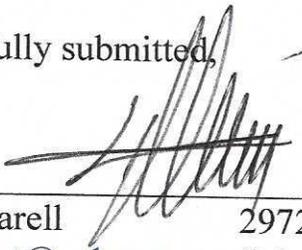
A-3

A-4

A-5

Dated: June 22, 2016

Respectfully submitted,



---

Cecilia Farell      2972 ZAHARIAS DRIVE  
[tresurchest@aol.com](mailto:tresurchest@aol.com)      Orlando, FL 33837  
Applicant for KITCAT      (407) 309-9372

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| <p><b>A</b></p> <ul style="list-style-type: none"> <li><input type="radio"/> Angel's Wings</li> <li><input type="radio"/> Apple Cider</li> <li><input type="radio"/> Apple Pumpkin</li> <li><input type="radio"/> Apple Spice</li> <li><input type="radio"/> April Showers™</li> <li><input type="radio"/> Autumn In The Park™</li> <li><input type="radio"/> Autumn Leaves®</li> <li><input type="radio"/> Autumn Wreath™</li> </ul> <p><b>B</b></p> <ul style="list-style-type: none"> <li><input type="radio"/> Bahama Breeze™</li> <li><input type="radio"/> Bakery Air™</li> <li><input type="radio"/> Balsam &amp; Cedar</li> <li><input type="radio"/> Bay Leaf Wreath</li> <li><input type="radio"/> Beach Flowers™</li> <li><input type="radio"/> Beach Holiday™</li> <li><input type="radio"/> Beach Walk®</li> <li><input type="radio"/> Beach Wood™</li> <li><input type="radio"/> Berry Trifle</li> <li><input type="radio"/> Berrylicious</li> <li><input type="radio"/> Black Cherry</li> <li><input type="radio"/> Black Coconut</li> <li><input type="radio"/> Blue Summer Sky</li> <li><input type="radio"/> Blueberry Scone</li> <li><input type="radio"/> Blueberry</li> <li><input type="radio"/> Brandy Pear Tart</li> <li><input type="radio"/> Bundle Up™</li> <li><input type="radio"/> Buttercream®</li> </ul> <p><b>C</b></p> <ul style="list-style-type: none"> <li><input type="radio"/> Candy Cane Lane</li> <li><input type="radio"/> Caramel Pecan Pie</li> </ul> | <p><b>C</b></p> <ul style="list-style-type: none"> <li><input type="radio"/> Catching Rays™</li> <li><input type="radio"/> Celebrate Christmas™</li> <li><input type="radio"/> Chocolate Layer Cake</li> <li><input type="radio"/> Christmas Cookie™</li> <li><input type="radio"/> Christmas Eve®</li> <li><input type="radio"/> Christmas Wreath®</li> <li><input type="radio"/> Cinnamon Stick</li> <li><input type="radio"/> Cinnamon Vanilla</li> <li><input type="radio"/> Citrus Tango™</li> <li><input type="radio"/> Clean Cotton®</li> <li><input type="radio"/> Coconut &amp; Vanilla Bean</li> <li><input type="radio"/> Coconut Bay™</li> <li><input type="radio"/> Cotton Candy</li> <li><input type="radio"/> Cranberry Chutney</li> <li><input type="radio"/> Cranberry Pear</li> <li><input type="radio"/> Crisp Morning Air</li> </ul> <p><b>D</b></p> <ul style="list-style-type: none"> <li><input type="radio"/> Dreamy Summer Nights™</li> </ul> <p><b>E</b></p> <ul style="list-style-type: none"> <li><input type="radio"/> Early Sunrise™</li> <li><input type="radio"/> Eucalyptus</li> <li><input type="radio"/> Exotic Bloom</li> </ul> <p><b>F</b></p> <ul style="list-style-type: none"> <li><input type="radio"/> Farmer's Market™</li> <li><input type="radio"/> Flowers in the Sun</li> <li><input type="radio"/> Fluffy Towels™</li> <li><input type="radio"/> French Vanilla</li> <li><input type="radio"/> Fresh Cut Roses</li> <li><input type="radio"/> Fresh Mint</li> <li><input type="radio"/> Fruit Fusion™</li> </ul> <p><b>G</b></p> <ul style="list-style-type: none"> <li><input type="radio"/> Garden Sweet Pea</li> </ul> | <p><b>G</b></p> <ul style="list-style-type: none"> <li><input type="radio"/> Gingerbread Maple</li> <li><input type="radio"/> Gingerbread</li> <li><input type="radio"/> Golden Sands™</li> <li><input type="radio"/> Grapevine &amp; Oak™</li> <li><input type="radio"/> Green Grass</li> </ul> <p><b>H</b></p> <ul style="list-style-type: none"> <li><input type="radio"/> Harvest®</li> <li><input type="radio"/> Hazelnut Coffee</li> <li><input type="radio"/> Holiday Bayberry™</li> <li><input type="radio"/> Holiday Homecoming</li> <li><input type="radio"/> Home for the Holidays®</li> <li><input type="radio"/> Home Sweet Home®</li> <li><input type="radio"/> Honey Blossom</li> <li><input type="radio"/> Honeydew Melon</li> </ul> <p><b>I</b></p> <ul style="list-style-type: none"> <li><input type="radio"/> Island Spa™</li> </ul> <p><b>J</b></p> <ul style="list-style-type: none"> <li><input type="radio"/> Jamaican Vacation™</li> <li><input type="radio"/> Juicy Watermelon</li> </ul> <p><b>K</b></p> <ul style="list-style-type: none"> <li><input type="radio"/> Kitchen Spice™</li> </ul> <p><b>L</b></p> <ul style="list-style-type: none"> <li><input type="radio"/> Lake Sunset™</li> <li><input type="radio"/> Lavender Sunset</li> <li><input type="radio"/> Lavender Vanilla</li> <li><input type="radio"/> Lavender</li> <li><input type="radio"/> Leather</li> <li><input type="radio"/> Lemon Lavender</li> <li><input type="radio"/> Lilac Blossoms</li> <li><input type="radio"/> Lime &amp; Sea Salt</li> <li><input type="radio"/> Line-Dried Cotton™</li> <li><input type="radio"/> Luau Party</li> <li><input type="radio"/> Luscious Plum</li> </ul> | <p><b>L</b></p> <ul style="list-style-type: none"> <li><input type="radio"/> Lush Berries</li> </ul> <p><b>M</b></p> <ul style="list-style-type: none"> <li><input type="radio"/> Macintosh</li> <li><input type="radio"/> Magical Frosted Forest</li> <li><input type="radio"/> Mandarin Cranberry</li> <li><input type="radio"/> Mango Peach Salsa</li> <li><input type="radio"/> Margarita Time</li> <li><input type="radio"/> Market Blossoms™</li> <li><input type="radio"/> Meadow Showers</li> <li><input type="radio"/> Merry Marshmallow™</li> <li><input type="radio"/> Meyer Lemon</li> <li><input type="radio"/> Midnight Jasmine</li> <li><input type="radio"/> Midnight Lilac</li> <li><input type="radio"/> MidSummer's Night®</li> <li><input type="radio"/> Mistletoe™</li> <li><input type="radio"/> Moonlit Garden™</li> <li><input type="radio"/> Mother Ocean™</li> <li><input type="radio"/> Mountain Lodge™</li> </ul> <p><b>N</b></p> <ul style="list-style-type: none"> <li><input type="radio"/> Napa Valley Sun™</li> <li><input type="radio"/> New Car Scent</li> <li><input type="radio"/> North Pole™</li> <li><input type="radio"/> November Rain™</li> </ul> <p><b>O</b></p> <ul style="list-style-type: none"> <li><input type="radio"/> Ocean Star™</li> <li><input type="radio"/> Orange Dreamsicle</li> </ul> <p><b>P</b></p> <ul style="list-style-type: none"> <li><input type="radio"/> Passion Fruit Martini</li> <li><input type="radio"/> Patchouli</li> <li><input type="radio"/> Peach Cobbler</li> <li><input type="radio"/> Peppermint Bark</li> <li><input type="radio"/> Picnic in the Park</li> </ul> | <p><b>P</b></p> <ul style="list-style-type: none"> <li><input type="radio"/> Pineapple Breeze™</li> <li><input type="radio"/> Pineapple Cilantro</li> <li><input type="radio"/> Pink Peony</li> <li><input type="radio"/> Pink Sands™</li> <li><input type="radio"/> Pumpkin Buttercream</li> <li><input type="radio"/> Pumpkin Ginger Bark</li> <li><input type="radio"/> Pumpkin Pie</li> <li><input type="radio"/> Pumpkin Wreath</li> </ul> <p><b>R</b></p> <ul style="list-style-type: none"> <li><input type="radio"/> Red Apple Wreath</li> <li><input type="radio"/> Red Berry &amp; Cedar</li> <li><input type="radio"/> Red Raspberry</li> </ul> <p><b>S</b></p> <ul style="list-style-type: none"> <li><input type="radio"/> Sage &amp; Citrus</li> <li><input type="radio"/> Salt Water Taffy</li> <li><input type="radio"/> Salted Caramel</li> <li><input type="radio"/> Season of Peace™</li> <li><input type="radio"/> Silver Birch</li> <li><input type="radio"/> Snowflake Cookie™</li> <li><input type="radio"/> Soft Blanket™</li> <li><input type="radio"/> Sparkling Balsam</li> <li><input type="radio"/> Sparkling Cinnamon</li> <li><input type="radio"/> Sparkling Snow™</li> <li><input type="radio"/> Spiced Pumpkin</li> <li><input type="radio"/> Storm Watch®</li> <li><input type="radio"/> Strawberry Buttercream</li> <li><input type="radio"/> Strawberry Lemon Ice</li> <li><input type="radio"/> Sugar &amp; Spice</li> <li><input type="radio"/> Sugared Apple</li> <li><input type="radio"/> Summer Scoop™</li> </ul> | <p><b>S</b></p> <ul style="list-style-type: none"> <li><input type="radio"/> Summer Storm</li> <li><input type="radio"/> Summer Wish™</li> <li><input type="radio"/> Sun &amp; Sand®</li> <li><input type="radio"/> Sunset Breeze™</li> <li><input type="radio"/> Sweet Apple</li> <li><input type="radio"/> Sweet Strawberry</li> </ul> <p><b>T</b></p> <ul style="list-style-type: none"> <li><input type="radio"/> Tulips</li> <li><input type="radio"/> Turquoise Sky™</li> </ul> <p><b>U</b></p> <ul style="list-style-type: none"> <li><input type="radio"/> Under The Palms™</li> </ul> <p><b>V</b></p> <ul style="list-style-type: none"> <li><input type="radio"/> Vanilla Cupcake</li> <li><input type="radio"/> Vanilla Cupcake</li> <li><input type="radio"/> Vanilla Lime</li> <li><input type="radio"/> Vineyard®</li> </ul> <p><b>W</b></p> <ul style="list-style-type: none"> <li><input type="radio"/> Wedding Day™</li> <li><input type="radio"/> White Chocolate Apple</li> <li><input type="radio"/> White Christmas®</li> <li><input type="radio"/> White Gardenia</li> <li><input type="radio"/> Wild Sea Grass</li> <li><input type="radio"/> Windblown</li> <li><input type="radio"/> Winter Garden</li> <li><input type="radio"/> Winter Glow</li> </ul> |
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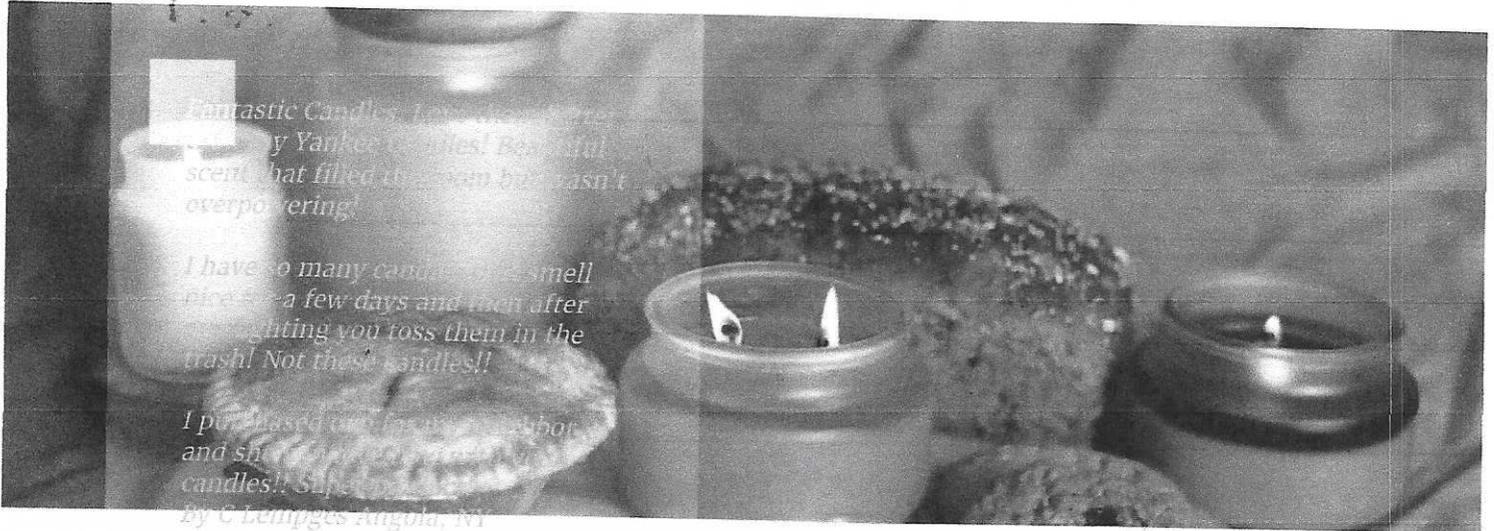
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"A-3"



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★★★★★



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CONT. "A-3"



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# Nestle's Kit Kat Logo



**VS**

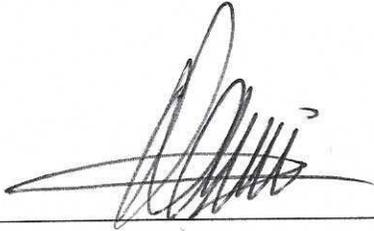
## KITCAT CANDLES and BATH & BODY PRODUCTS LOGO



"A-5"

## CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing RESONSE TO FIRST AMENDED NOTICE OF OPPOSITION has been served on Societe des Produits Nestle S.A. By mailing a copy on June 22, 2016 via Priority Mail, to Emily J. Cooper, Holland & Hart LLP, P.O. BOX 8749, DENVER, COLORADO 80201.

A handwritten signature in black ink, appearing to be "Emily J. Cooper", written over a horizontal line.

Signature

June 22, 2016

Date