

ESTTA Tracking number: **ESTTA730572**

Filing date: **03/01/2016**

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 parties oppose registration of the indicated application.

Opposers Information

Name	The Hershey Company
Granted to Date of previous extension	05/04/2016
Address	100 Crystal A Drive Hershey, PA 17033 UNITED STATES

Name	Hershey Chocolate & Confectionery Corporation
Granted to Date of previous extension	05/04/2016
Address	4860 Robb Street Suite 204 Wheat Ridge, CO 80033 UNITED STATES

Attorney information	Paul C Llewellyn Kaye Scholer LLP 250 West 55th Street New York, NY 10019-9710 UNITED STATES paul.llewellyn@kayescholer.com, tmdocketing@kayescholer.com, john.rynkiewicz@kayescholer.com Phone:212-836-7828
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Applicant Information

Application No	86548756	Publication date	01/05/2016
Opposition Filing Date	03/01/2016	Opposition Period Ends	05/04/2016
Applicant	JUICE GENERATION, INC. 122 East 42nd Street New York, NY 10168 UNITED STATES		

Goods/Services Affected by Opposition

Class 032. First Use: 2015/02/27 First Use In Commerce: 2015/02/27 All goods and services in the class are opposed, namely: Mixed fruit juice; Non-alcoholic beverages containing fruit juices
Class 043. First Use: 2015/02/27 First Use In Commerce: 2015/02/27 All goods and services in the class are opposed, namely: Juice bar services

Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
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.	443802	Application Date	03/29/1946
Registration Date	03/07/1950	Foreign Priority Date	NONE
Word Mark	ALMOND JOY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1945/12/10 First Use In Commerce: 1945/12/10 CANDY		

U.S. Registration No.	4901258	Application Date	06/30/2015
Registration Date	02/16/2016	Foreign Priority Date	NONE
Word Mark	ALMOND JOY		
Design Mark			
Description of Mark	The mark consists of "Almond Joy" in brown letters with white outlining. The gray shading is not a feature of the mark.		
Goods/Services	Class 030. First use: First Use: 2015/05/18 First Use In Commerce: 2015/05/18 Candy, chocolate; candy bar; chocolate,coconut and almond candy bar		

U.S. Registration No.	3689023	Application Date	03/12/2009
Registration Date	09/29/2009	Foreign Priority Date	NONE
Word Mark	ALMOND JOY PETER PAUL		

Design Mark	
Description of Mark	The mark consists of the words "ALMOND JOY" in brown stylized letters outlined in white with a half of a coconut with a brown exterior and a white interior forming the "O" in "JOY" and the words "PETER PAUL" in white letters in a red oval above the words "ALMOND JOY" all appearing on a rectangular blue background.
Goods/Services	Class 028. First use: First Use: 2008/10/31 First Use In Commerce: 2008/10/31 Pet toys

U.S. Registration No.	4125366	Application Date	08/04/2011
Registration Date	04/10/2012	Foreign Priority Date	NONE
Word Mark	PETER PAUL ALMOND JOY MILK CHOCOLATE COCONUT & ALMONDS		
Design Mark			
Description of Mark	The mark consists of the wording "PETERPAUL" in white inside a red oval. This is above the wording "ALMOND JOY" in brown lettering with white outlining. The letter "O" in "JOY" is replaced by a brown and white half coconut. The wording "MILK CHOCOLATE COCONUT & ALMONDS" appears in brown on a tan banner. The banner is below the wording "ALMOND JOY". A design of two brown almonds and green palm leaves appears to the right of the banner. The background contains a white and brown half open coconut, lighter blue shading, and medium blue palm trees. The dotted lines indicate the positioning of the mark and are not part of the mark.		
Goods/Services	Class 030. First use: First Use: 2005/05/31 First Use In Commerce: 2005/05/31 Candy		

U.S. Registration No.	1863854	Application Date	11/24/1993
Registration Date	11/22/1994	Foreign Priority Date	NONE
Word Mark	PETER PAUL ALMOND JOY MILK CHOCOLATE COVERED COCONUT EGG WITH ALMOND		

Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1990/12/00 First Use In Commerce: 1990/12/00 candy		

U.S. Application No.	86680375	Application Date	07/01/2015
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	ALMOND JOY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2011/04/01 First Use In Commerce: 2011/04/01 Non-dairy creamer; non-dairy coffee creamer		

U.S. Application No.	86680396	Application Date	07/01/2015
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ALMOND JOY		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2013/06/01 First Use In Commerce: 2013/06/01 Cake frosting; Cake icing; Frostings; Icing

Attachments	71499273#TMSN.png(bytes) 86679359#TMSN.png(bytes) 77689309#TMSN.png(bytes) 85389699#TMSN.png(bytes) 74462931#TMSN.png(bytes) 86680375#TMSN.png(bytes) 86680396#TMSN.png(bytes) 3.1.2016 - Notice of Opposition for JOYFUL ALMOND.pdf(278041 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	/paul c llewellyn/
Name	Paul C Llewellyn
Date	03/01/2016

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

HERSHEY CHOCOLATE &
CONFECTIONERY CORPORATION
AND THE HERSHEY COMPANY,

Opposers,

v.

JUICE GENERATION, INC.,

Applicant.

Opposition No. _____

Serial No. 86548756

Mark: JOYFUL ALMOND

NOTICE OF OPPOSITION

Opposers Hershey Chocolate & Confectionery Corporation, a Delaware corporation located and doing business at 4860 Robb Street, Suite 204, Wheat Ridge, Colorado (“HCCC”) and The Hershey Company, a Delaware corporation located and doing business at 100 Crystal A Drive, Hershey, Pennsylvania (“Hershey Company,” and, together with HCCC, “Opposers”), will be damaged by the registration of the mark JOYFL ALMOND shown in Application Serial No. 86548756, and oppose the same.

As grounds for opposition, Opposers allege that:

1. Opposers are the owners and/or licensee of a number of trademarks for candy, chocolate, confectionery, cocoa and other products, including the famous ALMOND JOY trademark, which Opposers license and use in connection with candy products and various other products, including beverages and beverage-related goods. In addition, Opposers are owners and/or licensee of several other well-known candy brands, such as HERSHEY’S, KISSES, REESE’S, TWIZZLERS, JOLLY RANCHER, all of which are used in connection with candy and numerous other goods, including beverages. HCCC is the exclusive United States licensee

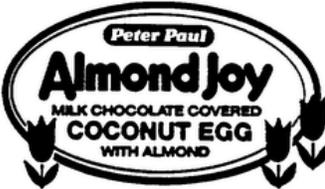
of the ALMOND JOY trademark, which it sublicenses to its affiliate Hershey Company, under agreements that grant HCCC and Hershey Company the right to enforce the ALMOND JOY trademark.

2. Opposers and their predecessors in interest have used the registered ALMOND JOY trademark in the United States of America for over 70 years, particularly in connection with candy products featuring chocolate, almond and coconut, and also in connection with a variety of other products, including but not limited to beverages, coffee creamers, instant pudding mixes, and cake frosting. Opposers, which license a number of their famous brands for beverage products, are actively investigating the licensing of the ALOMND JOY mark for additional beverage products.

3. The ALMOND JOY mark is a famous trademark which identifies candy, beverage and various other products sold by Opposers and their licensees under that mark.

4. As set forth in the chart below, Opposers' licensor owns a number of federal registrations and pending applications for the ALMOND JOY trademark for candy products and various other products:

Trademark	Reg. or App. No.	Int'l Class	Goods	Date of First Use
ALMOND JOY	443,802	30	Candy	12/10/1945
	4,901,258	30	Candy, chocolate; candy bar; chocolate, coconut and almond candy bar	5/18/2015
	3,689,023	28	Pet toys	10/31/2008
	4,125,366	30	Candy	5/31/2005

Trademark	Reg. or App. No.	Int'l Class	Goods	Date of First Use
	1,863,854	30	Candy	12/00/1990
ALMOND JOY	App. No. 86/680,375	29	Non-dairy creamer; non-dairy coffee creamer	4/1/2011
ALMOND JOY	App. No. 86/680,396	30	Cake frosting; Cake icing; Frostings; Icing	6/1/2013

5. The foregoing registrations are valid and subsisting and Opposers hereby give notice in accordance with Trademark Rule of Practice 2.122(d)(2) that they will rely thereon as evidence in this proceeding, and a status copy thereof showing present title will be introduced into evidence on its behalf during Opposers' testimony period.

6. As a result of long use, promotion and advertising, the ALMOND JOY trademark has become a valuable asset of Opposers and its licensor, serving as a symbol for Opposers' licensed goods and of the goodwill which is associated with those goods and services.

7. Despite Opposers' and their licensor's long prior common law and statutory rights in the ALMOND JOY trademark, Applicant, with at least constructive notice of the above-referenced federal registrations, and long after Opposers' licensor established rights in and to the ALMOND JOY trademark, adopted and filed an application for registration of the mark ALMOND JOY for "mixed fruit juice; non-alcoholic beverages containing fruit juices" and for "juice bar services."

8. Applicant's mark JOYFUL ALMOND is extremely similar to the ALMOND JOY trademark licensed by Opposers and used by them and their predecessors for many decades in connection with candy and other products. Both marks combine the word ALMOND with the virtually identical words JOY and JOYFUL, a unique juxtaposition of terms that Opposers and their predecessors alone have extensively used as a mark for over 70 years in the United States. What is more, Opposers' famous ALMOND JOY mark has been used extensively in connection with a candy bar product featuring chocolate, almond and coconut, while, as shown in this image from Applicant's website, Applicant is using its JOYFUL ALMOND mark in connection with a beverage containing, *inter alia*, almond butter, cacao nibs and coconut milk – a selection of ingredients that appears intended to replicate or call to mind the ingredients of the famous ALMOND JOY bar, thereby confirming Applicant's intentional copying of Opposers' famous trademark:



9. Opposers believe and therefore allege that Applicant's goods and services, as described in its application opposed herein, are or would be offered through the same or similar

channels of trade to the same or similar customers or users as those goods rendered by Opposers under the ALMOND JOY trademark, and are highly related to the goods of Opposers.

10. Opposers believe and therefore allege that use and registration of the mark covered by Application Serial No. 86548756 will damage Opposers, for the following reasons among others:

- a. customers and purchasers of the respective goods and services would be confused, mistaken, or deceived as to the source and origin of Applicant's goods and services rendered under the applied-for mark;
- b. customers and purchasers of the respective goods and services will assume, contrary to fact, that Applicant's goods and services come from, are associated with, sponsored by, approved by, or otherwise related to or affiliated with the source of the famous ALMOND JOY products; and
- c. Applicant's use of the applied-for mark is likely to dilute the distinctive quality of the ALMOND JOY trademark.

11. Applicant's applied-for mark so resembles the previously used and registered ALMOND JOY trademark as to be likely, when applied to the goods and services set forth in Applicant's application, to cause confusion, mistake or deception within the meaning of 15 U.S.C. § 1052(d).

12. Opposers previously have used in commerce, in connection with their ALMOND JOY products, the trademark and name ALMOND JOY, such that ALMOND JOY has become a name or identity of substantial reputation that is closely identified with Opposers. Applicant's applied-for mark JOYFUL ALMOND is highly similar to the previously used and registered ALMOND JOY trademark, so as to be likely, when applied to the goods and services set forth in

the application at issue, to point uniquely to Opposers and to falsely suggest a connection with Opposers within the meaning of 15 U.S.C. § 1052(a).

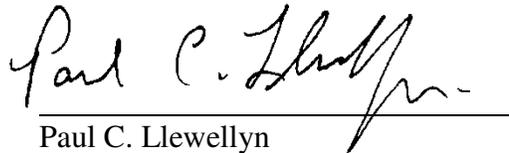
13. Applicant's applied-for mark is likely to dilute the distinctive quality of the famous, distinctive and federally-registered ALMOND JOY trademark within the meaning of 15 U.S.C. § 1125(c), by blurring the distinctiveness of the marks.

WHEREFORE, Opposers respectfully pray that this Opposition be sustained and that registration to Applicant be refused.

The Patent and Trademark Office and Trademark Trial and Appeal Board are hereby authorized to collect any fees necessitated by this Notice of Opposition from the deposit account of Opposers' attorneys, Kaye Scholer LLP, Deposit Account No. 11-0228.

Dated: March 1, 2016

Respectfully submitted,



Paul C. Llewellyn
KAYE SCHOLER LLP
250 West 55th Street
New York, New York 10019-9710
Telephone: (212) 836-8000

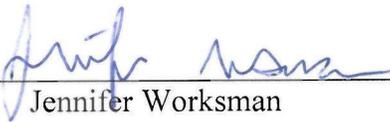
John P. Rynkiewicz
KAYE SCHOLER LLP
901 Fifteenth Street, N.W.
Washington, DC 20005
Telephone: (202) 682-3671

*Attorneys for Opposers Hershey
Chocolate & Confectionery Corporation and The
Hershey Company*

CERTIFICATE OF SERVICE

I certify that the foregoing Notice of Opposition is being electronically filed with the United States Patent and Trademark Office on March 1, 2016, and that a true and correct copy of the foregoing Notice of Opposition was served by first-class mail, postage prepaid, on the attorney of record for the Applicant, namely:

NIGAMNARAYAN ACHARYA
Baker Donelson
3414 Peachtree Road, NE, Suite 1600
Atlanta, GEORGIA UNITED STATES 30326


Jennifer Worksman