

ESTTA Tracking number: **ESTTA733337**

Filing date: **03/14/2016**

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

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|---------------------------------------|---|
| Name | PepsiCo, Inc. |
| Granted to Date of previous extension | 03/13/2016 |
| Address | 700 Anderson Hill Road Purchase, NY 10577 UNITED STATES |

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| Correspondence information | Jeanette S. Zimmer Senior Trademark Counsel Frito-Lay North America, Inc. 7701 Legacy Drive Plano, TX 75024 UNITED STATES trademarks@pepsico.com, jeanette.zimmer@pepsico.com, donna.j.sanders@pepsico.com Phone:972.334.2587 |
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Applicant Information

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|------------------------|---|------------------------|------------|
| Application No | 86641232 | Publication date | 09/15/2015 |
| Opposition Filing Date | 03/14/2016 | Opposition Period Ends | 03/13/2016 |
| Applicant | Kellogg North America Company PO Box 3599 Battle Creek, MI 49016 UNITED STATES | | |

Goods/Services Affected by Opposition

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| Class 029. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Potato crisps and chips; potato-based snack foods; vegetable-based snack foods; fruit-based snack foods; nut-based snack foods; trail mix consisting primarily of processed nuts, seeds, dried fruit and also including chocolate |
| Class 030. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Cereal-based snack foods; multigrain-based snack foods; cereal bars; cereal-based energy bars; cookies; crackers; granola; granola bars; processed cereal to be used as a breakfast food, snack food or ingredient for making food; trail mix consisting primarily of granola, and also including dried fruit, chocolate, processed nuts; tortilla chips |

Grounds for Opposition

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| Deceptiveness | Trademark Act section 2(a) |
| The mark is deceptively misdescriptive | Trademark Act section 2(e)(1) |

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| Attachments | Notice of Opposition against Kellogg regarding OFFICIAL SNACK OF FOOT-BALL.pdf(752557 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.

| | |
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| Signature | /Jeanette S. Zimmer/ |
| Name | Jeanette S. Zimmer |
| Date | 03/14/2016 |

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

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|--------------------------------|---|-----------------------|
| PEPSICO, INC., | : | |
| | : | |
| Opposer, | : | Opposition No.: |
| | : | |
| v. | : | Mark: OFFICIAL SNACK |
| | : | OF FOOTBALL |
| | : | |
| | : | Serial No. 86/641,232 |
| KELLOGG NORTH AMERICA COMPANY, | : | |
| | : | |
| Applicant. | : | |

NOTICE OF OPPOSITION

Opposer, PepsiCo, Inc., a North Carolina corporation having a place of business at 700 Anderson Hill Road, Purchase, New York 10577, believes that it will be damaged by the registration of United States Trademark Application Serial No. 86/641,232, filed on May 26, 2015 in the name of Kellogg North America Company (hereinafter "Applicant") for the mark OFFICIAL SNACK OF FOOTBALL based on an intention to use the mark on or in connection with "Potato crisps and chips; potato-based snack foods; vegetable-based snack foods; fruit-based snack foods; nut-based snack foods; trail mix consisting primarily of processed nuts, seeds, dried fruit and also including chocolate" in International Class 29, and "Cereal-based snack foods; multigrain-based snack foods; cereal bars; cereal-based energy bars; cookies; crackers; granola; granola bars; processed cereal to be used as a breakfast food, snack food or ingredient for making food; trail mix consisting primarily of granola, and also including dried fruit, chocolate, processed nuts; tortilla chips" in International Class 30 (the "Mark" or

"Application"). The Application was published in the *Official Gazette* on September 15, 2015 and after Opposer was properly granted extensions of time to oppose, it hereby opposes the Application on the following grounds:

1. For over 50 years, Opposer PepsiCo, Inc., through its related companies and wholly-owned subsidiaries, including Frito-Lay North America, Inc., (hereinafter individually and/or collectively referred to as "Opposer"), has been engaged in the manufacture and sale of a wide variety of foods and beverages, including each of the snack food products recited in the Application. Opposer is one of the largest manufacturers of snack foods in the United States and in many countries throughout the world.
2. Opposer's snack foods are marketed and sold in tremendous quantities on a nationwide basis, supported by hundreds of millions of dollars of advertising and promotion each year. Opposer's products are sold in almost every supermarket in the United States as well as in numerous convenience stores, vending machines, mass merchandise stores, sporting venues, stadiums, schools, online and other outlets.
3. Opposer is an official sponsor of the National Football League ("NFL") and spends a significant amount of money advertising and promoting its snack food and beverage products in connection with its official sponsorship status with the NFL and the NFL's televised professional football games and entertainment services.
4. Pursuant to Opposer's official NFL sponsorship, in the snack food category, Opposer is permitted to refer to itself, among other titles, as "The Official Sponsor

of the NFL”, “The Official Salty Snack of the NFL”, “Official Crunch of the NFL” and any of these titles in connection with other NFL events.

5. On information and belief, NFL football games and events, including the Super Bowl, are among the most watched television broadcasts in the United States and are well-known by the general public.
6. Opposer is an also official sponsor of specific NFL teams, individual NFL players, college football teams, football stadiums and is currently, or has been, the title sponsor of high profile college football championship bowl games.
7. As a result of Opposer’s extensive advertising and promotion during televised NFL games and events, as well sponsored college football games, consumers and the general public recognize and closely associate Opposer and Opposer’s snack foods with football and the NFL, in particular.
8. The wording in Applicant’s Mark, OFFICIAL SNACK OF FOOTBALL, creates the impression that Applicant’s snacks have been officially endorsed by or are connected with the NFL or other officially licensed football properties. It is likely to mislead and confuse consumers into believing that Applicant is a snack sponsor of the NFL, which is incorrect.
9. Applicant’s Mark is deceptively misdescriptive of the character, quality, function, composition or use of Applicant’s goods because it misrepresents Applicant’s snack foods as the “official snack of football,” which is very frequently associated by consumers and the general public with the NFL’s professional football games, football teams, athletes, venues and events.

10. Describing its products through use of the phrase "official snack of football" is likely to mislead consumers to believe that Applicant and its products have been officially endorsed by, sponsored by, or is otherwise connected with the NFL, football teams, college teams, athletes, venues or events.
11. Because Applicant's Mark is deceptively misdescriptive of snack foods, it is not entitled to registration on the Principal Register pursuant to Section 2(e)(1) of the Lanham Act, 15 U.S.C. § 1052(e)(1).
12. Use of the phrase "official snack of football" misrepresents Applicant's sponsorship status and therefore would materially affect a consumer's decision to purchase Applicant's goods. A consumer would incorrectly interpret the mark to designate that Applicant's goods are sponsored, licensed or endorsed by the NFL or other football properties. Therefore, the mark is deceptive.
13. Because Applicant's Mark consists of deceptive matter, it is not entitled to registration pursuant to Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a).

WHEREFORE, Opposer prays that this Opposition be sustained, that registration be denied to Applicant on its Application Serial No. 86/641,232 and that the Board grants all further relief favorable to Opposer that is necessary and just in these circumstances.

Respectfully submitted,

PEPSICO, INC.

Date: March 14, 2016

By:



Jeanette S. Zimmer, Attorney for Opposer
7701 Legacy Drive, Mail Stop 3A-421
Plano, TX 75024
Tel: (972) 334-2587
trademarks@pepsico.com

CERTIFICATE OF SERVICE

I hereby certify that this Notice of Opposition is being deposited today with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to the Attorney of Record for Applicant:

Julie E. Reitz
Honigman Miller Schwartz & Cohn LLP
39400 Woodward Avenue, Suite 101
Bloomfield Hills, Michigan 48304

March 14, 2016

By:



Jeanette S. Zimmer