

ESTTA Tracking number: **ESTTA914499**

Filing date: **08/08/2018**

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                                  | PepsiCo, Inc.   |
| Granted to Date of previous extension | 08/08/2018  |
| Address                               | 700 Anderson Hill Road<br>Purchase, NY 10577<br>UNITED STATES |

|                            |   |
|----------------------------|---|
| Correspondence information | Paul A. Lee<br>Senior Trademark Counsel<br>PepsiCo, Inc.<br>700 Anderson Hill Rd<br>Purchase, NY 10577<br>UNITED STATES<br>Email: trademarks@pepsico.com, paul.lee@pepsico.com, donna.j.sanders@pepsico.com |
|----------------------------|---|

**Applicant Information**

|                        |  |                        |            |
|------------------------|--|------------------------|------------|
| Application No         | 87568580   | Publication date       | 04/10/2018 |
| Opposition Filing Date | 08/08/2018   | Opposition Period Ends | 08/08/2018 |
| Applicant              | Swanky Press, LLC<br>495 Sandcastle Rd.<br>Franklin, TN 37069<br>UNITED STATES |                        |            |

**Goods/Services Affected by Opposition**

|   |
|---|
| Class 035. First Use: 0 First Use In Commerce: 0<br>All goods and services in the class are opposed, namely: Online Retail Store Services featuring customized stationery, namely, invitations, announcements, note cards, gift tags, stickers, notebooks, folders and ink stamps; Online Retail Store Services featuring party favors and decorations, namely, water-bottle labels, paper and cardstock banners, printable DIY banners, and paper and cardstock food tents, printable DIY food tents; Online Retail Store Services featuring baby and children's gifts, namely, baby and children's cotton fleece blankets, plates, and bag tags; Online Retail Store Services featuring teacher's gifts, namely, tote bags, bag tags, lunch totes, notebooks, mugs and clipboards; Online Retail Store Services featuring gifts, namely, tote bags, lunch totes, luggage bag tags, clipboards, cell phone cases, plates, and mugs; Online Retail Store Services featuring downloadable printable materials, namely, stickers, food tents, stationery, cake toppers, and banners |
|---|

**Grounds for Opposition**

|                                      |                                    |
|--------------------------------------|------------------------------------|
| Priority and likelihood of confusion | Trademark Act Section 2(d)         |
| Dilution by blurring                 | Trademark Act Sections 2 and 43(c) |


## Marks Cited by Opposer as Basis for Opposition

|                       |  |                       |            |
|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 1317551  | Application Date      | 09/29/1982 |
| Registration Date     | 02/05/1985   | Foreign Priority Date | NONE       |
| Word Mark             | PEPSI  |                       |            |
| Design Mark           |  |                       |            |
| Description of Mark   | NONE   |                       |            |
| Goods/Services        | <p>Class 004. First use: First Use: 1981/00/00 First Use In Commerce: 1981/00/00 [ Candles ]</p> <p>Class 006. First use: First Use: 1981/00/00 First Use In Commerce: 1981/00/00 Key Chains</p> <p>Class 009. First use: First Use: 1977/00/00 First Use In Commerce: 1977/00/00 [ Radios and Can Shaped Telephones]</p> <p>Class 011. First use: First Use: 1981/00/00 First Use In Commerce: 1981/00/00 Electric Lamps [ and Charcoal Burning Barbecue Grills ]</p> <p>Class 014. First use: First Use: 1981/00/00 First Use In Commerce: 1981/00/00 Clocks</p> <p>Class 016. First use: First Use: 1981/00/00 First Use In Commerce: 1981/00/00 [ Pencil Cases and ] Pens</p> <p>Class 018. First use: First Use: 1979/00/00 First Use In Commerce: 1979/00/00 Umbrellas</p> <p>Class 020. First use: First Use: 1970/00/00 First Use In Commerce: 1970/00/00 [ Mirrors and Bean Bag Chairs ]</p> <p>Class 021. First use: First Use: 1972/00/00 First Use In Commerce: 1972/00/00 Drinking Glasses, [ Polyurethane Beverage Can Holders, Wastebaskets for Domestic Use, ] Insulated Bags for Food, Beverages and Ice</p> <p>Class 024. First use: First Use: 1974/00/00 First Use In Commerce: 1974/00/00 Beach Towels</p> <p>Class 025. First use: First Use: 1974/00/00 First Use In Commerce: 1974/00/00 T-Shirts, Sweatshirts, [ Jeans, Overalls, ] Baseball Caps [ , Knit Hats, Jackets, Aprons and Belts ]</p> <p>Class 026. First use: First Use: 1982/06/00 First Use In Commerce: 1982/06/00 [ Embroidered Patches for Clothing ]</p> <p>Class 028. First use: First Use: 1975/00/00 First Use In Commerce: 1975/00/00 [ Toy Can Banks, Toy Trucks, Toy Railroad Cars, Toy Soda Dispensers and Kaleidoscopes ]</p> |                       |            |

|                       |            |                       |            |
|-----------------------|------------|-----------------------|------------|
| U.S. Registration No. | 1488547    | Application Date      | 12/04/1986 |
| Registration Date     | 05/17/1988 | Foreign Priority Date | NONE       |
| Word Mark             | PEPSI      |                       |            |
| Design Mark           |            |                       |            |
| Description of Mark   | NONE       |                       |            |

|                |   |  |  |
|----------------|---|--|--|
| Goods/Services | Class 025. First use: First Use: 1986/10/00 First Use In Commerce: 1986/10/00 CLOTHING, NAMELY SWEATSHIRTS, SWEAT BOTTOMS, T-SHIRTS, [ SHIRTS, JEANS, SUSPENDER JEANS, JACKETS, PULLOVERS ] AND JERSEYS |  |  |
|----------------|---|--|--|

|                       |   |                       |            |
|-----------------------|---|-----------------------|------------|
| U.S. Registration No. | 2354103   | Application Date      | 07/09/1998 |
| Registration Date     | 05/30/2000  | Foreign Priority Date | NONE       |
| Word Mark             | PEPSI CENTER  |                       |            |
| Design Mark           | <b>PEPSI CENTER</b>   |                       |            |
| Description of Mark   | NONE  |                       |            |
| Goods/Services        | Class 041. First use: First Use: 1999/10/00 First Use In Commerce: 1999/10/00 Operation of a sports, entertainment, convention and exhibition arena, and production of sports and entertainment events for public exhibition and television and radio broadcast |                       |            |

|                       |   |                       |            |
|-----------------------|---|-----------------------|------------|
| U.S. Registration No. | 3659286   | Application Date      | 10/06/2008 |
| Registration Date     | 07/21/2009  | Foreign Priority Date | NONE       |
| Word Mark             | PEPSI   |                       |            |
| Design Mark           |   |                       |            |
| Description of Mark   | The mark consists of the word "PEPSI" in a stylized format.   |                       |            |
| Goods/Services        | Class 032. First use: First Use: 2008/12/00 First Use In Commerce: 2008/12/00 Concentrates, syrups or powders used in the preparation of soft drinks; Soft drinks |                       |            |

|                       |            |                       |            |
|-----------------------|------------|-----------------------|------------|
| U.S. Registration No. | 824150     | Application Date      | 09/09/1966 |
| Registration Date     | 02/14/1967 | Foreign Priority Date | NONE       |
| Word Mark             | PEPSI      |                       |            |
| Design Mark           |            |                       |            |
| Description of        | NONE       |                       |            |

|                |  |
|----------------|--|
| Mark           |  |
| Goods/Services | Class 032. First use: First Use: 1911/11/21 First Use In Commerce: 1911/11/21<br>SOFT DRINKS AND SYRUPS AND CONCENTRATES FOR THE PREPARATION THEREOF |

|             |  |
|-------------|--|
| Attachments | 75515828#TMSN.png( bytes )<br>77586010#TMSN.png( bytes )<br>Notice of Opposition regarding PIPSY Swanky Press Applicant.pdf(130500 bytes ) |
|-------------|--|

|           |               |
|-----------|---------------|
| Signature | /Paul A. Lee/ |
| Name      | Paul A. Lee   |
| Date      | 08/08/2018    |

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

**IN THE MATTER OF APPLICATION**

Mark : PIPSY  
Applicant : Swanky Press, LLC  
Serial No. : 87/568,580  
Filed : August 14, 2017  
Published in  
the Official Gazette : April 10, 2018

|                   |   |                |
|-------------------|---|----------------|
| PEPSICO, INC.,    | X |                |
|                   | : |                |
| Opposer,          | : | Opposition No. |
|                   | : |                |
| v.                | : |                |
|                   | : |                |
| SWANKY PRESS, LLC | : |                |
|                   | : |                |
| Applicant.        | : |                |
|                   | X |                |

**NOTICE OF OPPOSITION**

Opposer, PepsiCo, Inc. ("PepsiCo" or "Opposer"), 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. 87/568,580, filed on August 14, 2017, in the name of Swanky Press, LLC (hereinafter "Applicant") for the mark PIPSY based on an intent to use the mark on or in connection with "Online Retail Store Services featuring customized stationery, namely, invitations, announcements, note cards, gift tags, stickers, notebooks, folders and ink stamps; Online Retail Store Services featuring party favors and decorations, namely, water-bottle labels, paper and cardstock banners, printable DIY banners, and paper and cardstock food tents, printable DIY food tents; Online Retail Store

Services featuring baby and children's gifts, namely, baby and children's cotton fleece blankets, plates, and bag tags; Online Retail Store Services featuring teacher's gifts, namely, tote bags, bag tags, lunch totes, notebooks, mugs and clipboards; Online Retail Store Services featuring gifts, namely, tote bags, lunch totes, luggage bag tags, clipboards, cell phone cases, plates, and mugs; Online Retail Store Services featuring downloadable printable materials, namely, stickers, food tents, stationery, cake toppers, and banners” in International Class 35, and, having been previously granted an extension of time to oppose, hereby opposes the foregoing application.

The specific grounds for this opposition are as follows:

1. PepsiCo, through its predecessors-in-interest, has been engaged in the beverage business for over 100 years and has become well and favorably known to members of the public, as well as to members of the beverage industry, for quality beverage products and related services. It owns a portfolio of brands that identify carbonated soft drinks, juices and juice drinks, ready-to-drink teas and coffee drinks, isotonic sports drinks, bottled water and enhanced waters, and related products and services, as well as other consumer merchandise.

2. For over a century, PepsiCo has used the PEPSI mark in connection with various beverages and other products, as well as advertising, marketing, sales and promotional services to authorized bottlers and independent distributors and retailers of those products.

3. Since long prior to the filing date of the application-at-issue, PEPSI has been identified with Opposer and has appeared on a tremendous amount of product packaging, advertising, in-store display racks, signage and point-of purchase material.

4. Opposer's products bearing the PEPSI mark are marketed and sold in vast 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 mass merchandise stores, numerous convenience stores, vending machines, and other outlets.

5. The extensive commercial acceptance and success of many of Opposer's products bearing the PEPSI mark for many decades is due in large measure to the substantial advertising and marketing efforts of PepsiCo. Such efforts have included the use of celebrities and artists to advance and promote the products. Opposer has, by virtue of such extensive usage, advertising and promotion, built up a very high level of consumer and trade recognition symbolized by its PEPSI mark. Retail sales of beverage products marketed under Opposer's PEPSI mark in the United States alone have exceeded many billions of dollars.

6. PepsiCo's use of the PEPSI mark also extends beyond beverages, per se, and includes other products and services. Indeed, for many decades now, PepsiCo has been marketing and selling clothing, baseball caps, umbrellas, drinking glasses, beach towels, clocks, pens, key chains, novelty items and other products under the PEPSI mark. The PEPSI mark is also used in various high-profile entertainment and promotional venues involving sports, popular culture and musical entertainment.

7. PepsiCo also maintains a strong and innovative internet presence, through which it markets, advertises and promotes many of the foregoing products and services bearing the PEPSI mark, among others. PepsiCo's websites include PEPSI.COM which is operational twenty-four hours a day, seven days a week. PepsiCo also maintains a Facebook page and YouTube Channel dedicated to promoting the PEPSI brand.

8. Due to such extensive and continuous advertising, sale, use and promotion of soft drinks and related products and services under or in connection with Opposer's PEPSI mark for many decades, these marks have not only acquired substantial public and consumer recognition

throughout the United States, but have also enjoyed valuable goodwill, and become famous, solely signifying Opposer as the source of products and services of high quality.

9. In addition to its prior common law rights in the PEPSI mark, Opposer is also the owner of numerous live United States trademark and service mark registrations, each of which incorporate the PEPSI mark or variants thereof, including, but not limited to, the following:

| MARK         | REG. NO. | REG. DATE     | FIRST USE DATE   | IDENTIFICATION OF GOODS  |
|--------------|----------|---------------|--|--|
| PEPSI        | 824150   | Feb. 14, 1967 | November 1911  | Soft drinks and syrups and concentrates for the preparation thereof, in Class 32   |
| PEPSI        | 1317551  | Feb. 5, 1985  | 1981<br>1981<br>1981<br>1979<br>1972<br><br>1974<br>1974 | Key chains, in Class 6<br>Electric lamps, in Class 11<br>Clocks, in Class 14<br>Pens, in Class 16<br>Umbrellas, in Class 18<br>Drinking glasses, Insulated bags for food, beverages and ice, in Class 21<br>Beach towels, in Class 24<br>T-shirts, sweatshirts, baseball caps, in Class 25 |
| PEPSI        | 1488547  | May 17, 1988  | October 1986   | Clothing, namely sweatshirts, sweat bottoms, T-shirts and jerseys, in Class 25   |
| PEPSI CENTER | 2354103  | May 30, 2000  | October 1999   | Operation of a sports, entertainment, convention and exhibition arena, and production of sports and entertainment events for public exhibition and television and radio broadcast, in Class 41   |
| pepsi        | 3659286  | Jul. 21, 2009 | December 2008  | Concentrates, syrups or powders used in the preparation of soft drinks; Soft drinks, in Class 32   |



10. Opposer's registrations for these marks are valid, subsisting, in full force and effect, uncanceled and unrevoked, and serve as evidence of Opposer's exclusive right to use such marks in commerce on or in connection with the goods or services identified in the registrations, as provided by Section 33(a) of the United States Trademark (Lanham) Act, 15 U.S.C. § 1115(a). Further, many of Opposer's registrations have become incontestable pursuant to Section 15 of the Lanham Act, 15 U.S.C. § 1065. Hereinafter PepsiCo's foregoing marks, including those registered and/or used in commerce, are referred to individually and/or collectively as the "PEPSI Marks", unless otherwise specified.

11. Use of the PEPSI Marks has been continuous and they have not been abandoned. As a result of the long, extensive and widespread use, advertising, promotion and registration of the PEPSI Marks on and in association with PepsiCo's various goods and services, consumers have become accustomed to associating marks consisting of or containing the term "PEPSI" with a single source, that is, PepsiCo.

12. In view of such substantial usage, the PEPSI Marks, including PEPSI, became famous long prior to the filing date of the application at issue. Indeed, the PEPSI brand is one of the most renowned brands in the United States, representing assets of enormous goodwill and of inestimable value to PepsiCo.

13. On information and belief, on August 14, 2017, Applicant Swanky Press, LLC, having an address at 495 Sandcastle Road, Franklin, Tennessee 37069, filed Application Serial No. 87/568,580 to register PIPSY, based an intent to use the mark on or in connection with "Online Retail Store Services featuring customized stationery, namely, invitations, announcements, note cards, gift tags, stickers, notebooks, folders and ink stamps; Online Retail Store Services featuring party favors and decorations, namely, water-bottle labels, paper and

cardstock banners, printable DIY banners, and paper and cardstock food tents, printable DIY food tents; Online Retail Store Services featuring baby and children's gifts, namely, baby and children's cotton fleece blankets, plates, and bag tags; Online Retail Store Services featuring teacher's gifts, namely, tote bags, bag tags, lunch totes, notebooks, mugs and clipboards; Online Retail Store Services featuring gifts, namely, tote bags, lunch totes, luggage bag tags, clipboards, cell phone cases, plates, and mugs; Online Retail Store Services featuring downloadable printable materials, namely, stickers, food tents, stationery, cake toppers, and banners” in International Class 35. Upon information and belief, at the time Applicant filed its application for the PIPSY mark, it was or should have been fully aware of Opposer’s PEPSI Marks and its rights therein.

14. Registration of Applicant's alleged mark, which is the subject of the application-in-opposition, is barred by the provisions of Section 2(d) of the Trademark Act of 1946 because the said mark consists of or comprises a mark which so resembles Opposer's PEPSI Marks which have been in use and are also the subject of prior registrations or previously filed applications to register marks in the United States Patent and Trademark Office, as to be likely, when used in connection with the alleged products and services of the Applicant to cause confusion, mistake or deception.

15. Opposer has priority over Applicant because Opposer's use, application filing dates and/or registration dates for the PEPSI Marks precede the Applicant's filing date for its application at issue and/or any alleged date of first use of Applicant's purported mark which is the subject of the application-in-opposition.

16. Applicant's alleged PIPSY mark, which is the subject of the application-in-opposition, is near-identical in sound, appearance, and commercial impression to Opposer’s

PEPSI Marks. In addition, the words PIPSY and PEPSI each contain two syllables, include four out of five of the same letters, and share the same ending SI or SY sounds, making them sound-alikes. On information and belief, the products and services in connection with which Applicant's alleged mark is intended to be used or applied for and the goods/services in connection with which Opposer's PEPSI Marks are registered and/or used are similar, complementary and/or related.

17. Accordingly, Applicant's alleged mark shown in the application-in-opposition so resembles Opposer's foregoing and previously used and/or registered PEPSI Marks, including PEPSI, as to be likely to cause confusion, to cause mistake or to deceive with consequent injury to Opposer. The likelihood of confusion, mistake or deception that would also arise from concurrent use and registration of the applied for PIPSY mark with Opposer's use and registration of its PEPSI Marks is that (a) persons are likely to believe that Applicant's products and services have their source in Opposer, or (b) that Applicant and its products and services are a version of Opposer's marks or are in some way legitimately connected or affiliated with, sponsored, approved, endorsed or licensed by Opposer when, in fact, they are not.

18. In view of the foregoing, registration of Applicant's alleged PIPSY mark, which is the subject of the application-in-opposition, is barred from registration because it consists of or comprises a mark which so resembles Opposer's previously used and/or registered PEPSI Marks, as to be likely, when used in connection with the alleged products and services of the Applicant, to cause confusion, mistake or deception.

19. Further, Opposer's inherently distinctive PEPSI Marks, including PEPSI, became famous prior to the filing date of Applicant's application-in-opposition and/or any claimed date of first use by Applicant of the alleged mark shown in U.S. Application Serial No. 87/568,580.

Registration and use of Applicant's alleged mark would likely dilute Opposer's famous and inherently distinctive PEPSI Marks in violation of 15 U.S.C. § 1125(c). Accordingly, Applicant's alleged PIPSY mark is not entitled to registration under 15 U.S.C. § 1052(f) and Section 13 of the Lanham Act, 15 U.S.C. § 1063.


20. PepsiCo will be damaged by the issuance of a registration sought by Applicant within the meaning of 15 U.S.C. § 1063 because such registration would support and assist Applicant in the confusing, misleading, deceptive and/or dilutive use of Applicant's alleged PIPSY mark, and would give color of exclusive statutory rights to Applicant in violation and derogation of the prior and superior rights of PepsiCo.

WHEREFORE, Opposer prays that this opposition be sustained in its favor, that registration be denied to Applicant on its Application Serial No. 87/568,580 and that the Board grant all further relief to Opposer that is necessary and just in these circumstances.

Respectfully submitted,

PEPSICO, INC.

Dated: August 8, 2018

By:   
Paul A. Lee  
Attorney-for-Opposer  
700 Anderson Hill Road  
Purchase, NY 10577  
(914) 253-3443