

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

IN THE MATTER OF Application Serial No. 76/196,048 filed January 17, 2001
PUBLISHED IN THE OFFICIAL GAZETTE of August 27, 2002, Vol. 1261, No. 4
Page TM 82

THE PROCTER & GAMBLE COMPANY)	
)	
Opposer,)	
)	
v.)	Opposition No.
)	
RECOT, INC.)	
)	
Applicant.)	

NOTICE OF OPPOSITION

The Procter & Gamble Company, an Ohio corporation, having its principal place of business at One Procter & Gamble Plaza, Cincinnati, Ohio 45202 (“Opposer”) believes it will be damaged by the registration of the alleged mark shown in Application Serial No. 76/196,048, and hereby opposes the registration of that mark under the provisions of 15 U.S.C. § 1063.

Recot, Inc. (“Applicant”) filed Application Serial No. 76/196,048 on January 17, 2001 for a mark alleged to consist of “the configuration of a container for goods, consisting of a cylindrical shaped bottle that tapers to a concave shape just above the bottle’s midpoint. The shape of the top portion of the container bulges outward before it tapers to the container’s flat top. The bottle contains five horizontal rings at the concave portion and two horizontal rings just below the bottle’s cap.” This container configuration was published for opposition purposes on August 27, 2002 with the identification of goods reading:

Class 29 – Meats and Processed Foods

For potato-based snack foods, namely potato chips and potato crisps

Class 30 – Staple Foods

For corn-based snack foods, namely, tortilla chips, corn chips and cheese flavored puffed corn snacks.

Opposer timely filed an extension of time to oppose this capsule configuration's registration, moving the opposition deadline to November 26, 2002.

As grounds for the opposition, Opposer alleges that:

1. Opposer develops, manufactures, and sells a wide variety of snack foods, including potato-based and corn-based snack foods.
2. Opposer's snack foods are sold throughout the United States to a wide variety of consumers, including individuals and businesses of all sizes for domestic, retail, and industrial use.
3. Opposer has spent significant sums advertising its snack foods. As a result of its extensive sales, marketing efforts, advertising, and promotional efforts, Opposer has developed enormous recognition in the United States among, inter alia, consumers for these products. On January 17, 2001, Applicant filed an intent-to-use application to register the mark described in the application to register as the "configuration of a container for goods, consisting of a cylindrical shaped bottle that tapers to a concave shape just above the bottle's midpoint. The shape of the top portion of the container bulges outward before it tapers to the container's flat

top. The bottle contains five horizontal rings at the concave portion and two horizontal rings just below the bottle's cap."

4. On August 27, 2002, the mark was published for opposition purposes with the following description of goods:

Class 29 – Meats and Processed Foods

For potato-based snack foods, namely potato chips and potato crisps

Class 30 – Staple Foods

For corn-based snack foods, namely, tortilla chips, corn chips and cheese flavored puffed corn snacks.

A copy of a drawing for this alleged mark, as published for opposition and for which Applicant seeks trademark registration, is attached to this Notice of Opposition as Exhibit A.

5. Upon information and belief, Applicant neither sold nor transported a multitude of the containers / bottles to consumers in the United States, before the January 17, 2001 filing date.
6. Upon information and belief, Applicant neither advertised nor promoted the container / bottle to consumers in the United States prior to the January 17, 2001 filing date.
7. Upon information and belief, the opposed mark fails to function as a mark within the meaning of Sections 1, 2 and 45 of the Trademark Act as, upon information and belief, the opposed mark lacks the requisite degree of distinctiveness in the United States for registration.


8. Upon information and belief, the opposed mark's configuration fails to function as a mark within the meaning of Section 2(e)(5) of the Trademark Act, as upon information and belief, the opposed mark's configuration is de jure functional.
9. Moreover, upon information and belief, Applicant has stated that the shape of the container / bottle is designed and, thus, used for functional purposes. Please see Exhibit B attached hereto and made a part hereof.
10. The registration of Applicant's alleged mark on the Principal Register would constitute prima facie evidence of Applicant's exclusive right to use the alleged mark in commerce. This prima facie evidentiary right is inappropriate. It would confer an unfair competitive advantage on Applicant and would be damaging to Opposer.
11. A duplicate copy of this Notice of Opposition and the transmittal letter are enclosed for charging the fee of \$600.00 to Deposit Account No. 16-2488.

WHEREFORE, Opposer requests that Application Serial No. 76/196,048 be rejected, that no registration be issued on this application to Applicant, and that this opposition be sustained in favor of Opposer.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

Date: Nov. 21, 2002

By: 
Jennifer A. Hochstrasser
Attorney for the Opposer
One Procter & Gamble Plaza
Cincinnati, Ohio 45202
513/983-3995

CERTIFICATE OF MAILING

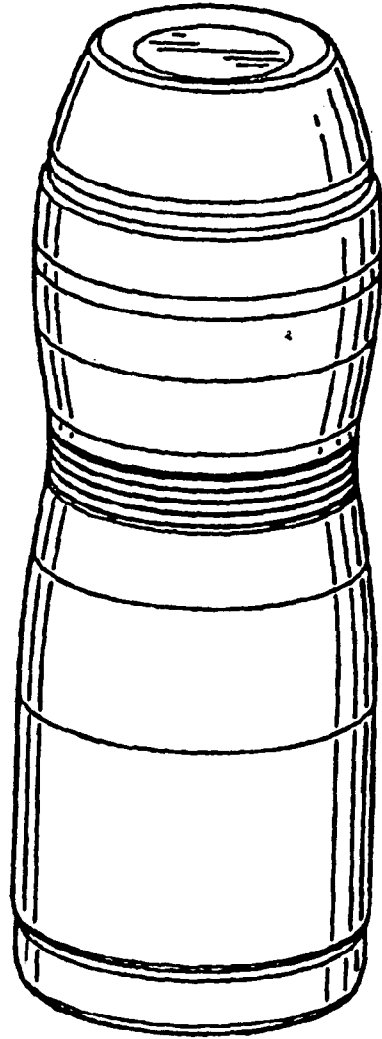
I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: BOX TTAB FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513, on November 21, 2002.



Lynn M. Hammann

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A



B

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[Frito-Lay Releases](#)
[Tropicana Releases](#)
[Quaker Releases](#)

Frito-Lay Press Release

Frito-Lay Makes Snacking Even More Fun and Convenient With The Introduction of Go Snacks

Mini Versions of America's Favorite Snacks in Canisters That Truly Go Anywhere

PLANO, TX (January 18, 2002) - Frito-Lay, Inc. makes snacking more fun and convenient as they unveil America's top-selling snack foods in mini shapes and in "first-of-its-kind" packaging that fits the active, fast-paced lifestyles of today's consumers. Anytime, anywhere - even on the run - Go Snacks let Americans stay on the go without going hungry for their favorite snack foods.

Consumers now can have the familiar great tastes of their favorite brands in enjoyable mini shapes. Frito-Lay is shipping to stores this month Go Snacks in a variety of flavors:

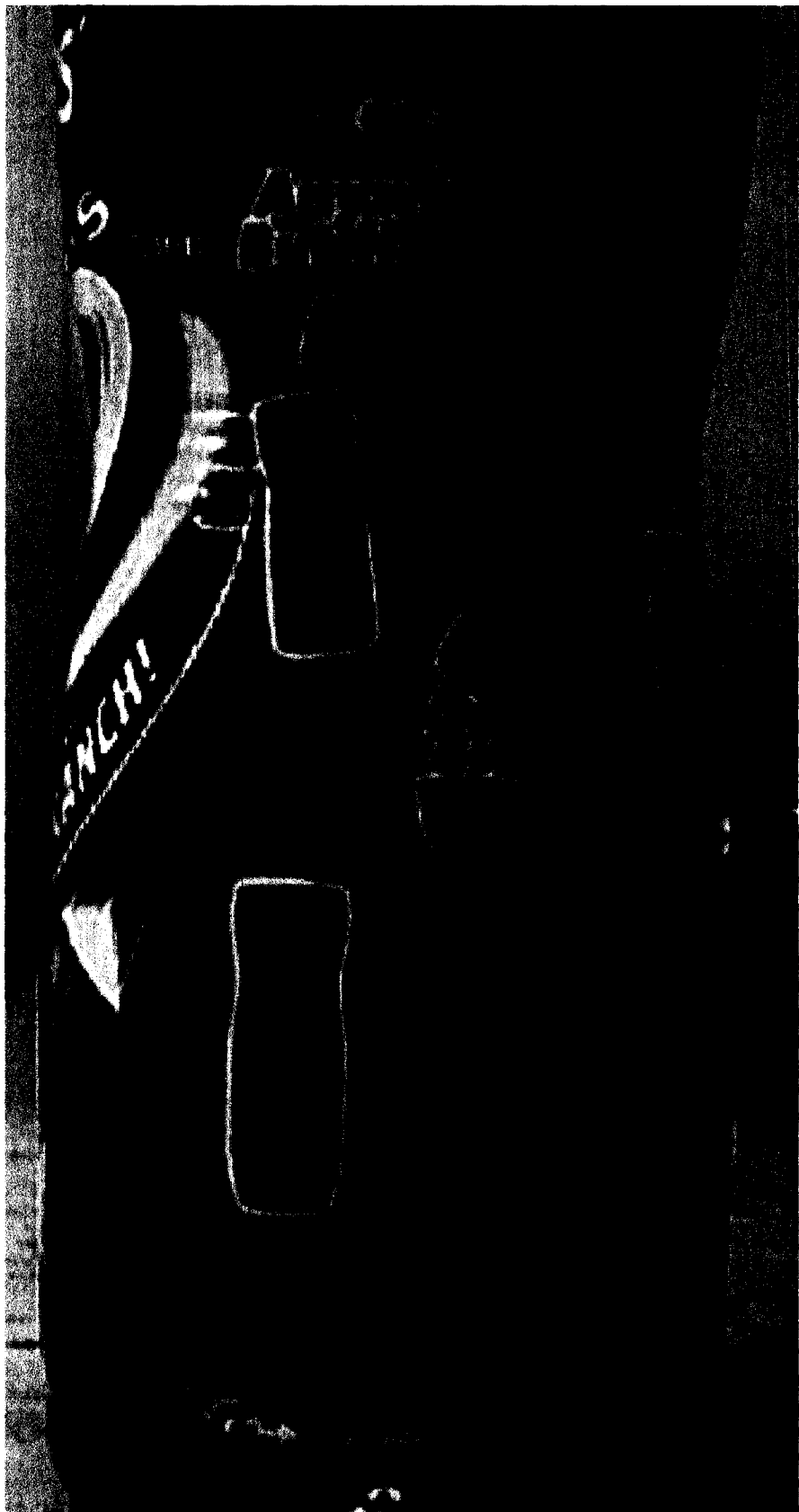
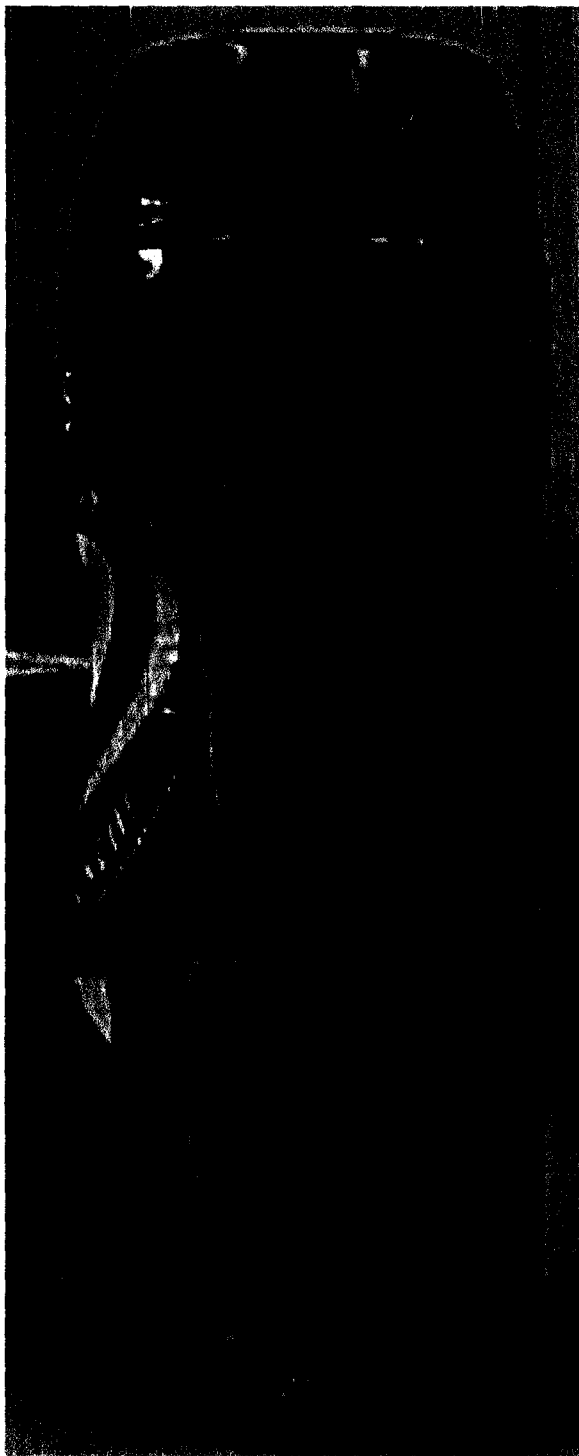
- Doritos Mini 3D's - Nacho Cheesier, Zesty Ranch
- Cheetos Asteroids - Original, Flamin' Hot
- Fritos Hoops - Honey BBQ

Adding to the convenience is the compact, 8"-tall canister featuring an hour-glass design that makes carrying them a breeze whether you are off to the beach, on the way to an appointment or between activities after school. The packaging is designed of crush-proof plastic for easy portability and fits perfectly into a car's cup-holder. Their screw-on lid means you can close and reopen Go Snacks anytime your schedule allows, and the lid doubles as a bowl for mess-free snacking anywhere.

Doritos, Cheetos and Fritos Hoops will be available nationwide in January 2002 with additional brands being added to the line later in the year. Go Snacks will be sold in supermarkets, mass merchandisers, convenience stores and drug stores at a suggested retail price of \$1.29 per canister.

Frito-Lay, Inc. is the convenience food division of PepsiCo, Inc., based in Purchase, N.Y. Frito-Lay is the market leader in half of the world's top 10 snack chip markets with operations in 45 countries and a family of global multi-billion dollar brands including Lay's Potato Chips, Doritos Tortilla Chips, Ruffles Potato Chips, Tostitos Tortilla Chips and Cheetos Cheese Flavored Snacks.

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November 21, 2002

Box TTAB FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Attention: Trademark Trial & Appeal Board

Re: THE PROCTER & GAMBLE COMPANY :
Opposer, :
vs. : Opposition No. _____
RECOT, INC. :
Applicant. :
: Opposition to Application No. 76/196,048

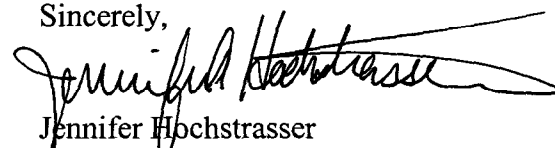
Dear Sir or Madam:

Enclosed herein are one original and one copy of the above referenced Opposition, duly executed by Opposer, THE PROCTER & GAMBLE COMPANY.

Please charge the fee of \$600.00 to Deposit Account No. 16-2488 in the name of The Procter & Gamble Company, Trademark Section, Legal Division, One Procter & Gamble Plaza, Cincinnati, Ohio 45202. A copy of this letter is enclosed for that purpose.

Please process this Opposition in accordance with usual procedures and notify me directly if you have any questions or require additional information or submissions.

Please acknowledge receipt of the enclosures by stamping and returning the enclosed postcard.

Sincerely,

Jennifer Hochstrasser

Enclosures
c: PTO Accounting