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Filing date: **03/18/2008**

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

Proceeding	91164607
Party	Plaintiff Kellogg North America Company
Correspondence Address	LISABETH H. COAKLEY HARNESS, DICKEY & PIERCE, P.L.C. 5445 COPORATE DRIVE TREY, MI 48098 UNITED STATES coakley@hdp.com, tjcomparoni@hdp.com
Submission	Other Motions/Papers
Filer's Name	DAVID A HERDMAN
Filer's e-mail	trademarks@kellogg.com
Signature	/DAVID A HERDMAN/
Date	03/18/2008
Attachments	SMART MIX VARIETY SACK Consent Motion.pdf ( 5 pages )(1663710 bytes )

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

KELLOGG NORTH AMERICA COMPANY)	)	
	)	
Opposer,	)	
	)	
v,	)	Opposition No. 91164607
	)	Serial No. 76/565,652
PEPSICO, INC.,	)	Mark: SMART MIX VARIETY
	)	SACK
Applicant,	)	Filing Date: December 8, 2003
	)	Publication Date: September 21, 2004

CONSENT MOTION TO ACCEPT AMENDMENT TO APPLICATION AND  
DISMISS OPPOSITION WITH PREJUDICE

Opposer, KELLOGG NORTH AMERICA COMPANY, and Applicant, PEPSICO, INC., hereby stipulate that the Preliminary Amendment, as filed with the United States Patent and Trademark Office on January 17, 2008, and attached hereto as Exhibit A, is an amendment agreed upon by the parties to settle the dispute between the parties. Once the Preliminary Amendment has been allowed and ordered by the United States Patent and Trademark Office, the parties agree to a termination of the captioned opposition on the basis below.

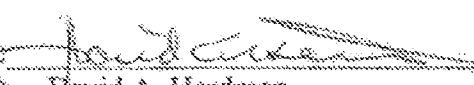
DISMISSAL WITH PREJUDICE

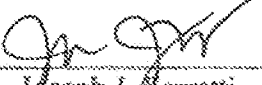
Upon acceptance and approval of the foregoing Preliminary Amendment to the subject Application, Opposer hereby moves, with Applicant's consent, that this opposition proceeding be dismissed with prejudice.

WHEREFORE, the parties jointly request that Applicant's Preliminary Amendment be accepted, approved and entered by the United States Patent and Trademark Office, and that this opposition proceeding be dismissed with prejudice.

Consented to and respectfully submitted,

KELLOGG NORTH AMERICA COMPANY      PEPSICO, INC.

By:   
David A. Herdman  
Assistant Secretary/Corporate Counsel  
One Kellogg Square, P.O. Box 3599  
Battle Creek, MI 49016  
269-961-2170  
Attorney for Opposer  
Dated: Feb 8, 2008

By:   
Joseph J. Perretti  
Its: Secretary  
7701 Legacy Drive, Mail Stop 3A-421  
Plano, TX 75024  
972-334-3403  
Attorney for Applicant  
Dated: March 13, 2008

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

KELLOGG NORTH AMERICA COMPANY )  
 )  
 ) Opposer, )  
 )  
v. )  
 ) Opposition No. 91164607  
 ) Serial No. 76/565,652  
PEPSICO, INC., )  
 ) Mark: SMART MIX VARIETY  
 ) SACK  
 )  
 ) Applicant. ) Filing Date: December 8, 2003  
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on 3-18, 2007, a true copy of the foregoing CONSENT MOTION TO ACCEPT AMENDMENT TO APPLICATION AND DISMISS OPPOSITION WITH PREJUDICE was served on counsel for PepsiCo, Inc. via first class mail addressed as follows:

Joseph J. Ferretti  
7701 Legacy Drive, Mail Stop 3A-421  
Plano, TX 75024

Signed: \_\_\_\_\_

*Patricia A. Connor*

Name: Patricia A. Connor

## Preliminary Amendment

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	76565652
LAW OFFICE ASSIGNED	LAW OFFICE 115
<b>MARK SECTION (no change)</b>	
<b>GOODS AND/OR SERVICES SECTION (current)</b>	
INTERNATIONAL CLASS	030
DESCRIPTION	SNACK MIX COMPRISED PRIMARILY OF TORTILLA CHIPS, POPPED POPCORN, CHEESE FLAVORED PUFFED CORN SNACKS, PRETZELS, PROCESSED CEREAL, CHOCOLATE AND/OR BREAD STICK PIECES; CORN-BASED SNACK FOODS, NAMELY, TORTILLA CHIPS AND CHEESE FLAVORED PUFFED CORN SNACKS; PRETZELS; POPPED POPCORN; RICE CAKES
FILING BASIS	Section 1(b)
<b>GOODS AND/OR SERVICES SECTION (proposed)</b>	
INTERNATIONAL CLASS	030
DESCRIPTION	SNACK MIX COMPRISED PRIMARILY OF TORTILLA CHIPS, POPPED POPCORN, CHEESE FLAVORED PUFFED CORN SNACKS, PRETZELS, PROCESSED CEREAL, OTHER THAN BREAKFAST CEREALS, CHOCOLATE AND/OR BREAD STICK PIECES; CORN-BASED SNACK FOODS, NAMELY, TORTILLA CHIPS AND CHEESE FLAVORED PUFFED CORN SNACKS; PRETZELS; POPPED POPCORN; RICE CAKES
FILING BASIS	Section 1(b)
<b>SIGNATURE SECTION</b>	
RESPONSE SIGNATURE	/Lauran M. White/
SIGNATORY'S NAME	Lauran M. White
SIGNATORY'S POSITION	Assistant Secretary of Applicant Corporation
DATE SIGNED	01/17/2008
AUTHORIZED SIGNATORY	YES
<b>FILING INFORMATION SECTION</b>	
SUBMIT DATE	Thu Jan 17 16:33:17 EST 2008
TKAS STAMP	USPTG/PRA-198.231.23.240-20080117163317229683-76565652-400ba963b5e7868c4691e154831332ac3-N/A-N/A-20080117162935446436

Preliminary Amendment

**EXHIBIT A**

**To the Commissioner for Trademarks:**

Application serial no. 76565652 has been amended as follows:

**CLASSIFICATION AND LISTING OF GOODS/SERVICES**

Applicant proposes to amend the following class of goods/services in the application:

**Current:** Class 030 for SNACK MIX COMPRISED PRIMARILY OF TORTILLA CHIPS, POPPED POPCORN, CHEESE FLAVORED PUFFED CORN SNACKS, PRETZELS, PROCESSED CEREAL, CHOCOLATE AND/OR BREAD STICK PIECES, CORN-BASED SNACK FOODS, NAMELY, TORTILLA CHIPS AND CHEESE FLAVORED PUFFED CORN SNACKS; PRETZELS; POPPED POPCORN; RICE CAKES

**Original Filing Basis:**

**Filing Basis: Section 1(b), Intent to Use:** The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

**Proposed:** Class 030 for SNACK MIX COMPRISED PRIMARILY OF TORTILLA CHIPS, POPPED POPCORN, CHEESE FLAVORED PUFFED CORN SNACKS, PRETZELS, PROCESSED CEREAL, OTHER THAN BREAKFAST CEREALS, CHOCOLATE AND/OR BREAD STICK PIECES, CORN-BASED SNACK FOODS, NAMELY, TORTILLA CHIPS AND CHEESE FLAVORED PUFFED CORN SNACKS; PRETZELS; POPPED POPCORN; RICE CAKES

**Filing Basis: Section 1(b), Intent to Use:** The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

**SIGNATURE(S)**

**Preliminary Amendment Signature**

Signature: /Lauran M. White/ Date: 01/17/2008

Signatory's Name: Lauran M. White

Signatory's Position: Assistant Secretary of Applicant Corporation

The signatory has confirmed that he/she is not represented by either an authorized attorney or Canadian attorney/agent, and that he/she is either (1) the applicant or (2) a person(s) with legal authority to bind the applicant; and if an authorized U.S. attorney or Canadian attorney/agent previously represented him/her in this matter, either he/she has filed a signed revocation of power of attorney with the USPTO or the USPTO has granted the request of his/her prior representative to withdraw.

Serial Number: 76565652

Internet Transmission Date: Thu Jan 17 16:33:17 EST 2008

TEAS Stamp: USPTO/PRA-198.231.23.240-200801171633172

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**EXHIBIT A**