

ESTTA Tracking number: **ESTTA133369**

Filing date: **04/03/2007**

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

Proceeding	91174104
Party	Plaintiff KELLOGG NORTH AMERICA COMPANY
Correspondence Address	DAVID A HERDMAN KELLOGG NORTH AMERICA COMPANY One Kellogg Square PO Box 3599 Battle Creek, MI 49016 UNITED STATES David.Herdman@Kellogg.com, Patricia.Conor@Kellogg.com
Submission	Other Motions/Papers
Filer's Name	DAVID A HERDMAN
Filer's e-mail	trademarks@kellogg.com
Signature	/DAVID A HERDMAN/
Date	04/03/2007
Attachments	Consent Motion scan.pdf (3 pages)(444083 bytes)

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

KELLOGG NORTH AMERICA COMPANY)	
)	
Opposer,)	
)	
v.	)	Opposition No. 91174104
	)	Serial No. 76/646,016
MARQUEZ BROTHERS	)	Mark: LA TOÑA
INTERNATIONAL, INC.	)	Filing Date: May 9, 2005
	)	Publication Date: May 2, 2006
Applicant.)	

CONSENT MOTION TO
AMEND APPLICATION AND DISMISS OPPOSITION WITHOUT PREJUDICE

Opposer, KELLOGG NORTH AMERICA COMPANY, and Applicant MARQUEZ BROTHERS INTERNATIONAL, INC., having agreed to settle this opposition proceeding, jointly request pursuant to Trademark Rule §2.133 and all other applicable authority that Applicant be permitted to amend its subject Application Serial No. 76/646,016 for the mark LA TOÑA, by restricting its description of goods. Upon the Board's approval of the foregoing amendment, the parties ask that this opposition proceeding be dismissed without prejudice.

AMENDMENT

With Opposer's consent, Applicant requests, pursuant to Rule §2.133 and TMEP 15.05.02(d), the amendment of the description of Class 30 goods contained in its pending Application No. 76/646,016, as follows:

By deleting "breakfast cereals" from the description, the remaining description to read: *Chewing gum, flavored and sweetened gelatins, honey, pasta shells, rice, tortillas,*

tortilla chips, corn chips, salsa, cheese sauce, tomato sauce, spices, processed herbs, bakery products, bakery goods, bakery desserts, cake mixes, chili sauce, chili seasoning, chocolate food beverages not dairy or vegetable based, chocolate powder, chocolate syrup, chutney, cinnamon, coffee beans, crackers, dried chili peppers, flavored ices, flavored sweetened gelatin desserts, hominy, hominy grits, ice cream drinks, sauces, seasonings, shakes, sherbert, sorbert, taco shells, processed corn.

DISMISSAL WITHOUT PREJUDICE

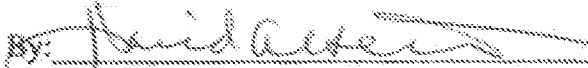
Upon acceptance and approval of the foregoing amendment to the subject Application, Opposer hereby moves, with Applicant's consent, that this opposition proceeding be dismissed without prejudice.

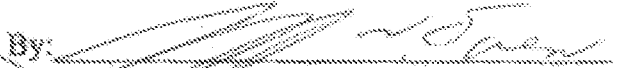
WHEREFORE, the parties jointly request that Applicant's motion to amend its Application by limiting its description of goods be accepted, approved and entered by the Trademark Trial and Appeal Board, and that this opposition proceeding be dismissed without prejudice.

Consented to and respectfully submitted,

KELLOGG NORTH AMERICA COMPANY

MARQUEZ BROTHERS
INTERNATIONAL, INC.

By: 

By: 

David A. Herdman
Assistant Secretary/Corporate Counsel
One Kellogg Square, P.O. Box 3599
Battle Creek, MI 49016
269-961-2170

Gregory N. Owen
Owen, Wickersham & Erickson, P.C.
455 Market Street, 19th Floor
San Francisco, CA 94105
415-882-3200

Attorney for Opposer

Attorney for Applicant

Dated: April 2, 2007

Dated: April 29, 2007

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

KELLOGG NORTH AMERICA COMPANY)	
)	
Opposer,)	
)	
v.	)	Opposition No. 91174104
	)	Serial No. 76/646,016
MARQUEZ BROTHERS	)	Mark: LA TOÑA
INTERNATIONAL, INC.	)	Filing Date: May 9, 2005
	)	Publication Date: May 2, 2006
Applicant.)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 3, 2007, a true copy of the foregoing CONSENT MOTION TO AMEND APPLICATION AND DISMISS OPPOSITION WITHOUT PREJUDICE was served on counsel for MARQUEZ BROTHERS INTERNATIONAL, INC. via first class mail addressed as follows:

Gregory N. Owen
Owen, Wickersham & Erickson, P.C.
455 Market Street, 19th Floor
San Francisco, CA 94105

Signed: Patricia A. Connor

Name: Patricia A. Connor