

ESTTA Tracking number: **ESTTA119455**

Filing date: **01/12/2007**

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	Schwan's IP, LLC
Granted to Date of previous extension	01/17/2007
Address	115 West College Drive Marhsall, MN 56258 UNITED STATES

Attorney information	Gregory C. Golla Merchant & Gould P.C. 3200 IDS Center80 South Eighth Street Minneapolis, MN 55402-2215 UNITED STATES ggolla@merchantgould.com, electronictm@merchantgould.com Phone:6123715395
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Applicant Information

Application No	78577495	Publication date	09/19/2006
Opposition Filing Date	01/12/2007	Opposition Period Ends	01/17/2007
Applicant	Linden Oaks Corporation Suite 290, 103 Foulk Rd. Wilmington, DE 19830 UNITED STATES		

Goods/Services Affected by Opposition

Class 029. All goods and sevicees in the class are opposed, namely: Butter flavored with fresh frozen herbs; oil flavored with fresh frozen herbs; fresh frozen herbs, fresh frozen herbs with spices
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Attachments	2661.437ustf.pdf (5 pages)(236975 bytes)
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Signature	/Gregory Golla/
Name	Gregory C. Golla
Date	01/12/2007

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

Schwan's IP, LLC,)	ESTTA 104837
)	
Opposer,)	Opposition No.: _____
)	
v.)	Mark: CHEF'S RECIPE HERB POUCH
)	
Linden Oaks Corporation,)	Serial No.: 78/577495
)	
Applicant.)	Filing Date: March 1, 2005
_____)	Published: September 19, 2006

NOTICE OF OPPOSITION

Schwan's IP, LLC, a corporation duly organized and existing under the laws of Minnesota, having its principal place of business at 115 West College Drive, Marshall, Minnesota 56258-1796, believes it will be damaged by the registration of the mark shown in Application Serial No. 78/577495, filed March 1, 2005, by Linden Oaks Corporation, and hereby opposes registration of the mark. The grounds for opposition are as follows:

1. By the application herein opposed, Applicant is seeking to obtain under the provisions of the Trademark Act of 1946 as amended, registration on the Principal Register of the trademark CHEF'S RECIPE HERB POUCH for "Butter flavored with fresh frozen herbs; oil flavored with fresh frozen herbs; fresh frozen herbs, fresh frozen herbs with spices" in International Class 29.

2. Applicant's mark published for opposition on September 19, 2006. Opposer filed and the Board approved extensions of time to oppose Applicant's Mark until January 17, 2007. This Notice of Opposition is timely filed.

3. Opposer is the owner of the mark POUCHES, having adopted and continuously used said mark on or in connection with frozen food products and in the marketing and sale

thereof in interstate commerce since at least as early as August 1996.

4. Opposer owns registrations for "POUCHES" marks, including Registration Nos. 2,163,167 for SCHWAN'S PERSONAL POUCHES, 2,887,658 for TONY'S POUCHES, and 2,247,815 for POUCHES (collectively referred to herein as "Opposer's POUCHES Marks").

5. The registrations listed above have not been canceled, are valid, and are now in full force and effect.

6. Opposer has advertised and promoted its POUCHES Marks extensively. Opposer has also made substantial sales of products under said marks. As a result of such use and promotion, Opposer's POUCHES Marks have developed and represent valuable goodwill inuring to the benefit of Opposer.

7. Opposer's POUCHES Marks are famous within the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c), and became famous before Applicant commenced use of Applicant's CHEF'S RECIPE HERB POUCH mark.

8. Opposer has priority with respect to the marks at issue in this opposition. Opposer adopted and commenced use of its POUCHES Marks as trademarks long before Applicant adopted its CHEF'S RECIPE HERB POUCH mark. Opposer's usage of its POUCHES Marks commenced at least as early as August 1996, close to nine (9) years prior to Applicant's filing date of its application. Opposer owns registrations that registered more than seven (7) years before the filing date of Applicant's application.

9. Upon information and belief, Applicant had knowledge of the fact that Opposer used the term POUCHES as a trademark before it adopted the CHEF'S RECIPE HERB POUCH mark.

10. Upon information and belief, Applicant has not yet commenced use of its CHEF'S RECIPE HERB POUCH mark in commerce.

11. Applicant's CHEF'S RECIPE HERB POUCH mark is confusingly and deceptively similar to Opposer's previously used and duly registered POUCHES Marks.

12. Applicant's alleged goods are closely related and/or identical to Opposer's goods marketed and sold by Opposer in connection with its POUCHES Marks. For example, both parties' goods are frozen food products.

13. Upon information and belief, the goods listed in Opposer's POUCHES registrations and Applicant's CHEF'S RECIPE HERB POUCH application are promoted and sold in the same channels of trade to the same consumers or class of consumers.

14. Applicant's CHEF'S RECIPE HERB POUCH mark is similar in sight, sound and commercial impression to Opposer's POUCHES Marks.

15. Due to the similarity between Applicant's claimed mark, CHEF'S RECIPE HERB POUCH, and Opposer's previously used and duly registered POUCHES Marks, the related nature of the goods of the respective parties, customers and potential customers are likely to believe that Applicant's products originate from Opposer, resulting in a likelihood of confusion in the marketplace, and damage to Opposer.

16. The use and registration by Applicant of the mark CHEF'S RECIPE HERB POUCH for Applicant's goods is likely to cause confusion or to cause mistake or deception in the trade, and among purchasers and potential purchasers, with Opposer's previously used and duly registered POUCHES Marks, again resulting in damage to Opposer.

17. Because of the related nature of the goods, and the similarity of the marks, use and registration of the term CHEF'S RECIPE HERB POUCH by Applicant is likely to cause confusion, mistake, or deception that Applicant's goods are those of Opposer, or are otherwise endorsed, sponsored, or approved by Opposer for use with Opposer's products causing further damage to Opposer.

18. Applicant's use and registration of the CHEF'S RECIPE HERB POUCH mark is likely to dilute the distinctive quality of Opposer's famous POUCHES Marks, again resulting in damage to Opposer.

19. If Applicant is granted registration of the mark herein opposed, it would thereby obtain at least a *prima facie* exclusive right to the use of its alleged mark. Such registration would be a source of further damage and injury to Opposer.

20. Registration of the mark shown in Application Serial No. 78/577,495 will result in damage to Opposer under the provisions of Sections 2(d) and 2(f) of the U.S. Trademark Act, 15 U.S.C. Sections 1052(d) and 1052(f), pursuant to the allegations stated above.

WHEREFORE, Opposer requests the registration sought by Applicant in application Serial No. 78/577,495 be refused and this Notice of Opposition be sustained.

Please direct all correspondence to:

Scott W. Johnston
Gregory C. Golla
MERCHANT & GOULD P.C.
P.O. Box 2910
Minneapolis, MN 55402-9944

Opposer herein appoints D. Randall King; John A. Clifford, Reg. No. 30,247; Scott W. Johnston, Reg. No. 39,721; Brent Routman, Andrew Ehard, Christopher Schulte, Charles Golla, Danielle Mattessich, Scott Oslick and Gregory C. Golla of the firm of Merchant & Gould P.C., its attorneys to transact all business in the U.S. Patent and Trademark Office relating to this matter with full power of substitution.

Please charge the \$300 filing fee for this Notice of Opposition to Deposit Account No.

13-2725 of Opposer's counsel noted below.

Respectfully submitted,

SCHWAN'S IP, LLC

By its Attorneys,



Date: 1-12-07

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