

ESTTA Tracking number: **ESTTA154733**

Filing date: **08/03/2007**

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	Trademark Management Company
Granted to Date of previous extension	08/04/2007
Address	2541 North Stokesberry Place, Suite 100 Meridian, ID 83646 UNITED STATES

Attorney information	Thomas H. Curtin Lathrop & Gage L.C. 230 Park Avenue, Suite 1847 New York, NY 10169 UNITED STATES tcurtin@lathropgage.com Phone:212-850-6220
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Applicant Information

Application No	77033797	Publication date	06/05/2007
Opposition Filing Date	08/03/2007	Opposition Period Ends	08/04/2007
Applicant	Agora, Inc. Post Office Box 829 Dawsonville, GA 30534 UNITED STATES		

Goods/Services Affected by Opposition

Class 030. All goods and services in the class are opposed, namely: Prepared pancake wrapped sausage; Sandwiches consisting of hot cakes with meat filling; dough-based pockets with filling consisting primarily of sausage; Pancake batter wrapped meat with syrup or syrup flavor in breading or batter; Foodstuffs in the nature of a meatball coated primarily with pancake batter infused with syrup; Prepared breakfast meat pies; Prepared foodstuffs consisting of batter and syrup filled primarily with beef, chicken, pork, egg, and cheese
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1922249	Application Date	09/27/1993
Registration Date	09/26/1995	Foreign Priority Date	NONE

Word Mark	POPPERS
Design Mark	
Description of Mark	NONE
Goods/Services	Class 029. First use: First Use: 1992/11/14 First Use In Commerce: 1992/11/14 coated and breaded vegetable pieces

U.S. Application No.	78287014	Application Date	08/13/2003
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	POPPERS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1993/08/17 First Use In Commerce: 1993/08/17 Frozen appetizers consisting primarily of vegetables, meat and/or cheese		

U.S. Application No.	78287041	Application Date	08/13/2003
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	POPPERS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2002/12/31 First Use In Commerce: 2002/12/31 Frozen appetizers consisting primarily of vegetables, meat and/or cheese		

Attachments	78287041#TMSN.gif (1 page)(bytes) PANCAKE POPPER NOO.pdf (5 pages)(221227 bytes)
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Signature	/Thomas H. Curtin/
Name	Thomas H. Curtin
Date	08/03/2007

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

In the Matter of Application

Mark: PANCAKE POPPER

Serial No.: 77/033,797

Published: June 5, 2007

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TRADEMARK MANAGEMENT COMPANY, :
: **Opposer,** :
: **-against-** : **Opposition No. _____**
: **AGORA, INC.,** :
: **Applicant.** :
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Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

Opposer, TRADEMARK MANAGEMENT COMPANY, a corporation existing under the laws of Delaware, located at 2541 North Stokesberry Place, Suite 100, Meridian, ID 83646 believes that it will be damaged by registration of the mark PANCAKE POPPER as shown in Application Serial No. 77/033,797 as applied to "prepared pancake wrapped sausage; sandwiches consisting of hot cakes with meat filling; dough-based pockets with filling consisting primarily of sausage; pancake batter wrapped meat with syrup or syrup flavor in breading or batter; foodstuffs in the nature of a meatball coated primarily with pancake batter infused with syrup; prepared breakfast

meat pies; prepared foodstuffs consisting of batter and syrup filled primarily with beef, chicken, pork, egg, and cheese" in International Class 30; and hereby opposes registration of the application in its entirety.

As grounds for opposition, it is alleged that:

1. Since 1992, long prior to the filing date of Applicant's intent-to-use Application Serial No. 77/033,797, Opposer, through its predecessors-in-interest and licensees, have continuously manufactured, advertised, offered for sale and sold to the trade and public in interstate commerce throughout the United States substantial quantities of food products of high quality under the trademark POPPERS.

2. Opposer is the owner of the POPPERS trademark and the federal registration, No. 1,922,249, therefor (hereinafter "POPPERS Mark"). That registration, which was issued on September 26, 1995 on the Principal Register of the United States Patent and Trademark Office ("USPTO") and covers "coated and breaded vegetable pieces" in International Class 30, is valid, subsisting, unrevoked and uncanceled. The registration has become incontestable by operation of law under 15 U.S.C. § 1065.

3. Opposer is also the owner of two applications now pending before the USPTO for the POPPERS Mark which cover the following goods:

Mark	Application No.	Filing Date	Goods
POPPERS	78/287,014	August 13, 2003	Frozen appetizers consisting primarily of vegetables, meat and/or cheese
POPPERS and Design	78/287,041	August 13, 2003	Frozen appetizers consisting primarily of vegetables, meat and/or cheese

4. Opposer's ownership of the POPPERS Mark is a result, in part, of an assignment from Poppers Supply Company to Anchor Food Products, Inc., recorded at Reel 1845/Frame 0204, and the subsequent assignment by Anchor Food Products, Inc. to Opposer recorded at Reel 2325/Frame 0615.

5. Since long prior to the filing date of Applicant's intent-to-use Application Serial No. 77/033,797, Opposer, through its predecessors-in-interest and licensees, has advertised, promoted and sold Opposer's food products in connection with its POPPERS Mark throughout the United States.

6. Since long prior to the filing date of Applicant's intent-to-use Application Serial No. 77/033,797, Opposer's POPPERS Mark has been used by Opposer, through its predecessors-in-interest and licensees, for the purpose of identifying and distinguishing its food products from similar products of others and the trade and public have come to know and recognize said trademark as identifying the food products of Opposer as the source thereof exclusively.

7. Furthermore, since long prior to the filing date of Applicant's intent-to-use Application Serial No. 77/033,797, Opposer, through its predecessors-in-interest and licensees, has advertised, promoted and sold snacks and appetizers under the POPPERS Mark including, but not limited to, cream cheese jalapeños, cheddar cheese jalapeños, three cheese jalapeños, mozzarella sticks, mozzarella nuggets, nacho cheddar crisps, and breaded mushrooms.

8. Since long prior to the filing date of Applicant's intent-to-use Application Serial No. 77/033,797, as a result of the care and skill exercised by Opposer and its predecessors-in-interest in the manufacture and sale of products under the POPPERS Mark, the supervision and control exercised by Opposer and its predecessors-in-interest over the nature and quality of the products sold under

Opposer's POPPERS Mark, and the sale and public acceptance thereof, said products have acquired a fine reputation and said trademark has acquired an outstanding celebrity symbolizing the good will which Opposer and its predecessors have created throughout the United States by the sale of products of dependable quality and by fair and honorable dealing with the trade and public in the sales of such products.

9. Applicant's application to register PANCAKE POPPER was filed on October 31, 2006 alleging a bona fide intention to use the mark in commerce in connection with "prepared pancake wrapped sausage; sandwiches consisting of hot cakes with meat filling; dough-based pockets with filling consisting primarily of sausage; pancake batter wrapped meat with syrup or syrup flavor in breading or batter; foodstuffs in the nature of a meatball coated primarily with pancake batter infused with syrup; prepared breakfast meat pies; prepared foodstuffs consisting of batter and syrup filled primarily with beef, chicken, pork, egg, and cheese" in International Class 30.

10. Upon information and belief, Applicant's claimed mark PANCAKE POPPER to be used in connection with the goods covered by Application Serial No. 77/033,797 is confusingly similar to Opposer's aforesaid trademark as used by Opposer.

11. Upon information and belief, the products to which Applicant's claimed mark will be used are closely related to or complementary with various hand-held snack products on and in connection with which Opposer and its predecessors have used and use the POPPERS Mark.

12. Upon information and belief, the goods to which Applicant's claimed mark will be applied and the products on and in connection with which Opposer uses and its predecessors have used its POPPERS Mark are products that are offered for sale and sold in the same channels of trade, offered

for sale and sold to the same class of purchasers, and Applicant's claimed mark as applied to such goods is likely to cause confusion, deception or mistake, all to the damage of Opposer.

13. Applicant's claimed mark incorporates Opposer's POPPERS Mark almost in its entirety. Moreover, since Applicant has disclaimed rights to the generic term PANCAKE as part of its mark, the distinctive POPPER portion of Applicant's mark is nearly identical to Opposer's POPPERS Mark. As such, Applicant's mark so resembles Opposer's POPPERS Mark as to be likely, when applied to Applicant's goods, to cause confusion, to cause mistake, or to deceive purchasers, all to the damage of Opposer.

WHEREFORE, Opposer believes it will be damaged by the registration of Application Serial No. 77/033,797 for the mark PANCAKE POPPER and respectfully requests that the registration sought by Applicant be denied.

Dated: August 3, 2007

Respectfully submitted,

LATHROP & GAGE L.C.

By: 

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