

ESTTA Tracking number: **ESTTA437898**

Filing date: **10/26/2011**

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	Concord Brands ULC
Granted to Date of previous extension	10/26/2011
Address	2900-10180 101 Street Edmonton, Alberta, T5J 3V5 CANADA
Attorney information	DOUGLAS R WOLF WOLF GREENFIELD & SACKS PC 600 ATLANTIC AVENUE BOSTON, MA 02210 UNITED STATES drwtrademarks@wolfgreenfield.com, azdtrademarks@wolfgreenfield.com Phone:617-646-8000

**Applicant Information**

Application No	77623817	Publication date	06/28/2011
Opposition Filing Date	10/26/2011	Opposition Period Ends	10/26/2011
International Registration No.	NONE	International Registration Date	NONE
Applicant	The Allan Candy Company Limited 3 Robert Speck Parkway, Suite 250 Mississauga, L4Z2G5 CANADA		

**Goods/Services Affected by Opposition**

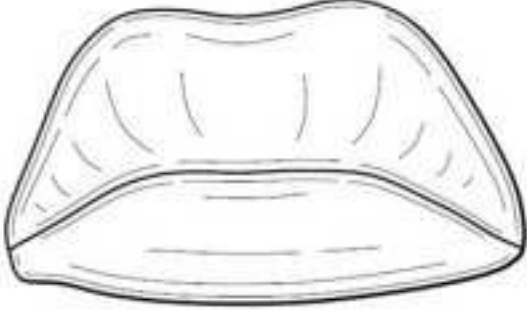
Class 030. All goods and services in the class are opposed, namely: confectionery, namely, candy
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

**Mark Cited by Opposer as Basis for Opposition**

U.S. Application No.	85375996	Application Date	07/20/2011
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	NONE
Design Mark	
Description of Mark	The mark consists of candy in the three dimensional shape of human lips.
Goods/Services	Class 030. First use: First Use: 1991/04/00 First Use In Commerce: 1991/04/00 candy

Attachments	85375996#TMSN.jpeg ( 1 page )( bytes ) C1185.50012US00 Notice of Opposition.PDF ( 7 pages )(382940 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/ajd/
Name	DOUGLAS R WOLF
Date	10/26/2011

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

Opposer: Concord Brands ULC  
Applicant: The Allan Candy Company Limited  
Serial No.: 77/623,817  
Filing Date: December 1, 2008  
Mark: MISCELLANEOUS DESIGN (LIP DESIGN)  
Published: June 28, 2011

Concord Brands ULC  Opposer,  v.  The Allan Candy Company Limited Applicant.
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Opposition No. \_\_\_\_\_

**NOTICE OF OPPOSITION**

This Notice of Opposition relates to the application of The Allan Candy Company Limited of Canada (“Applicant”), in International Class 030, shown in Application Serial No. 77/623,817, filed on December 1, 2008, and published in the Official Gazette on June 28, 2011.

The grounds for opposition are as follows:

1. Concord Brands ULC (“Concord”), is a company organized and existing under the laws of Canada, having its principal place of business at 2900-10180 101 Street, Edmonton, Alberta, Canada T5J 3V5.

2. Concord has made extensive use of its design mark comprised of human lips made out of candy (hereinafter the “Lips Design”) since at least as early as 2002 and substantially earlier through predecessors in interest. Concord filed an application with the Trademark Office for its Lips Design on July 20, 2011, U.S. Application No. 85/375,996.

3. Concord's Lips Design is a famous mark.
4. Notwithstanding Concord's prior use and rights in its Lips Design since at least 2002, Applicant filed an application under Serial No. 77/623,817 on December 1, 2008 to register a confusingly similar design of human lips for candy.
5. The Applicant's human lips design is confusingly similar to Concord's Lips Design, which is protected at common law by virtue of its continuous and exclusive use by Concord since at least 2002.
6. Potential purchasers of Applicant's product are likely to believe that such products originate with, or are authorized or approved by, Concord when, in fact, they are not.
7. Concord's Lips Design would be substantially diluted by Applicant's human lips design.
8. If Applicant is granted a registration on the application herein opposed, it would thereby obtain a prima facie exclusive right to use the human lips design, which would be a source of significant damage to Concord.

WHEREFORE, Concord believes it will be damaged by said application for registration and prays that this Opposition be sustained under 15 U.S.C §1052(d).

Respectfully submitted,

By 

Anderson J. Duff

Douglas R. Wolf

WOLF, GREENFIELD & SACKS, P.C.

600 Atlantic Ave.

Federal Reserve Plaza

Boston, MA 02210

617-646-8000

Attorneys for Opposer

Concord Brands ULC

Date: October 26, 2011

**CERTIFICATE OF SERVICE**

I hereby certify that on October 26, 2011, I served a copy of NOTICE OF OPPOSITION to counsel for Applicant via first-class mail, postage-prepaid, addressed to:

Lori K. Hall  
Gowling LaFleur Henderson  
One Main Street West  
Hamilton, Ontario L8P 4Z5  
CANADA



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Boston, MA 02210-2211  
Tel.: (617) 646-8000  
Attorneys for Opposer  
Concord Brands ULC

Attorney's Docket No.: C1185.50012US00

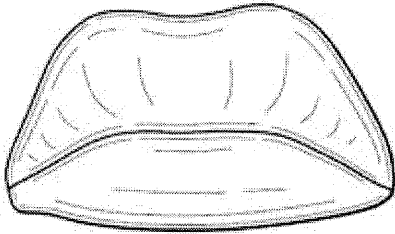
**Thank you for your request. Here are the latest results from the TARR web server.**

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**Serial Number:** 85375996 Assignment Information      Trademark Document Retrieval

**Registration Number:**(NOT AVAILABLE)

**Mark**



**Standard Character claim:** No

**Current Status:** New application will be assigned to an examining attorney approximately 3 months after filing date.

**Date of Status:** 2011-07-25

**Filing Date:** 2011-07-20

**Transformed into a National Application:** No

**Registration Date:** (DATE NOT AVAILABLE)

**Register:** Principal

**Law Office Assigned:** (NOT AVAILABLE)

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)**

**Current Location:** 042 -New Application Processing

**Date In Location:** 2011-07-25

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**LAST APPLICANT(S)/OWNER(S) OF RECORD**

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1. Concord Brands ULC

**Address:**

Concord Brands ULC  
2900-10180 101 Street  
Edmonton, Alberta T5J3V5  
Canada

**Legal Entity Type:** Corporation**State or Country of Incorporation:** Canada

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**GOODS AND/OR SERVICES**

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**International Class:** 030**Class Status:** Active

candy

**Basis:** 1(a)**First Use Date:** 1991-04-00**First Use in Commerce Date:** 1991-04-00

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**ADDITIONAL INFORMATION**

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**Color(s) Claimed:** Color is not claimed as a feature of the mark.**Description of Mark:** The mark consists of candy in the three dimensional shape of human lips.**Design Search Code(s):**

02.11.04 - Human lips or mouths

08.03.03 - Wrapped candies (bite size)

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**MADRID PROTOCOL INFORMATION**

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(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

2011-07-26 - Notice Of Design Search Code Mailed

2011-07-25 - New Application Office Supplied Data Entered In Tram

2011-07-23 - New Application Entered In Tram

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**ATTORNEY/CORRESPONDENT INFORMATION**

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**Attorney of Record**

Douglas R. Wolf

**Correspondent**

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**No assignment has been recorded at the USPTO**

**For Serial Number: 85375996**

If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350. v.2.2  
Web interface last modified: July 25, 2011 v.2.2

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