

ESTTA Tracking number: **ESTTA533104**

Filing date: **04/18/2013**

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

Proceeding	91209731
Party	Defendant The Trustee of the Levin Family 2010 Irrevocable Gift Trustevocable Gift Trust
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Submission	Motion to Suspend for Civil Action
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Signature	/MEM/
Date	04/18/2013
Attachments	TACOLITOS Motion to Suspend - Opposition 91209731.pdf (4 pages)(11667 bytes) Motion to Suspend Complaint Exhibit.pdf (55 pages)(1833483 bytes)

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

In the Matter of Trademark Application Serial No. 85/644,098
Filed June 5, 2012
For the Mark TACOLITOS
Published in the Official Gazette (Trademarks) on November 13, 2012

GRUPO BIMBO, S.A.B. de C.V.,)	
)	Opposition No. 91209731
Opposer,)	
)	
v.)	
)	
THE TRUSTEE OF THE LEVIN FAMILY)	
2010 IRREVOCABLE GIFT TRUST)	
)	
Applicant.)	
)	

**APPLICANT’S MOTION TO SUSPEND PENDING OUTCOME
OF ANOTHER PROCEEDING**

Applicant The Trustee of the Levin Family 2010 Irrevocable Gift Trust (“Applicant”), through its undersigned counsel, Davis Wright Tremaine LLP, hereby moves pursuant to 37 CFR § 2.117 and Trademark Trial and Appeal Board Manual of Procedure § 510.2 to suspend these Opposition proceedings pending the outcome of *Grupo Bimbo, S.A.B. de C.V. v. Snak-King Corp. and The Trustee of the Levin Family 2010 Irrevocable Trust*, Civil Action No. 13-2147, currently pending in the United States District Court for the Central District of California (the “Civil Action”).

Opposer Grupo Bimbo, S.A.B. de C.V. and Barcel USA (collectively “Plaintiffs”) filed the Civil Action on March 25, 2013. A copy of the Complaint is attached as Exhibit 1. Applicant intends to file its responsive pleadings shortly.

In the Civil Action, Plaintiffs have alleged that the trademark that is the subject matter of this Opposition, namely, the TACOLITOS trademark, is “likely to cause confusion, mistake, and/or deception among the relevant public, including consumers, as to the affiliation, connection, or association between [Applicant] and Plaintiffs, and/or mislead the public into thinking that Plaintiffs are the origin of, or have sponsored or approved of, [Applicant’s] products and/or commercial activities, and thus constitutes trademark infringement, false designation of origin, passing off, and unfair competition in violation of” 15 U.S.C. §§ 1117 (a) and 1125(a)(1). *See, e.g.*, Complaint at ¶¶ 57 and 69. Plaintiffs have demanded that the Court order Applicant to expressly abandon its application for the TACOLITOS trademark. Complaint, Prayer for Relief, ¶ B.

Accordingly, resolution of the Civil Action will necessarily address Applicant’s rights in the mark TACOLITOS and the corresponding application. Any decision of the Court with respect to the Applicant’s alleged rights will be binding upon the Board and therefore influence the outcome of the pending Opposition. *See, e.g., New Orleans Louisiana Saints LLC v. Who Dat? Inc.*, 99 USPQ2d 1550, 1552 (TTAB 2011) (decision by district court may be binding on the Board); *see also* McCarthy on Trademarks and Unfair Competition §32:47 (4th ed. updated June 2011) (“It is standard procedure for the Trademark Board to stay administrative proceedings pending the outcome of court litigation between the same parties involving related issues.”).

For the reasons set forth above, Applicant respectfully submits that the Civil Action will have a bearing on this Opposition. Applicant therefore respectfully submits that suspension of this Opposition is appropriate pending the outcome of the Civil Action. *See, e.g.* TBMP § 510.2 (“Ordinarily, the Board will suspend proceedings in the case before it if the final determination

of the other proceeding may have a bearing on the issues before the Board.”); *see also* 37 CFR § 2.117.

DATED this 18th day of April, 2013.

Respectfully submitted,

s/Matthew E. Moersfelder
By: Cindy L. Caditz
Matthew E. Moersfelder
Attorneys for Applicant
DAVIS WRIGHT TREMAINE LLP
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CERTIFICATE OF FILING

I hereby certify that APPLICANT’S MOTION TO SUSPEND PENDING OUTCOME OF ANOTHER PROCEEDING concerning U.S. Trademark Application Serial No. 85/644,098 for the mark TACOLITOS is being filed with the Trademark Trial and Appeal Board using the ESTTA filing system of the U.S. Patent and Trademark Office on the below date.

Date: April 18, 2013 s/Matthew E. Moersfelder

CERTIFICATE OF SERVICE

I hereby certify that APPLICANT’S MOTION TO SUSPEND PENDING OUTCOME OF ANOTHER PROCEEDING concerning U.S. Trademark Application Serial No. 85/644,098 for the mark TACOLITOS is being duly served upon on Applicant’s counsel by mailing copies thereof via the U.S. Postal Service in sealed envelopes as first-class mail with postage thereupon fully prepaid and addressed to the following address:

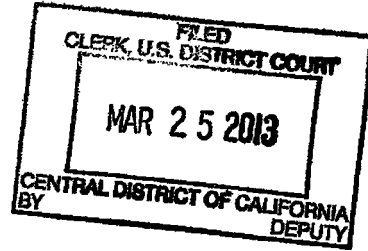
Philip A. Jones, Esq.
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Date: April 18, 2013 s/Matthew E. Moersfelder

EXHIBIT 1

COPY

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12 LLC

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 CENTRAL DIVISION

CV 13-02147 ABC (NBC)

16 GRUPO BIMBO, S.A. B. DE C.V.; and
17 BARCEL USA, LLC,

18 Plaintiff,

19 vs.

20 SNAK-KING CORP.; and THE
TRUSTEE OF THE LEVIN FAMILY
21 2010 IRREVOCABLE GIFT TRUST

22 Defendants.

**COMPLAINT FOR DAMAGES
AND PERMANENT INJUNCTION
FOR:**

- 1. FEDERAL TRADE DRESS INFRINGEMENT – PACKAGING;
- 2. FEDERAL TRADEMARK INFRINGEMENT – TRADEMARK;
- 3. FEDERAL TRADE DRESS INFRINGEMENT – PRODUCT CONFIGURATION;
- 4. FEDERAL UNFAIR COMPETITION, FEDERAL PASSING OFF AND FALSE DESIGNATION OF ORIGIN;
- 5. CALIFORNIA UNFAIR COMPETITION; and
- 6. CALIFORNIA COMMON LAW OF UNFAIR COMPETITION;

DEMAND FOR JURY TRIAL

1 For its Complaint against Defendants SNAK-KING CORP., and THE
2 TRUSTEE OF THE LEVIN FAMILY 2010 IRREVOCABLE GIFT TRUST,
3 Plaintiffs GRUPO BIMBO, S.A. B. DE C.V. (“Grupo Bimbo”) and BARCEL USA,
4 LLC (“Barcel USA”) allege as follows:

5 **JURISDICTION AND VENUE**

6 1. This action arises under the Lanham Act, 15 U.S.C. §§ 1051 et seq.,
7 and related state law claims as hereinafter more fully appear. Jurisdiction is based
8 upon 15 U.S.C. § 1121, 28 U.S.C. §§ 1331 and 1338 and the doctrine of
9 supplemental jurisdiction, 28 U.S.C. § 1367. Venue is proper in this district under
10 28 U.S.C. § 1391. Grupo Bimbo demands a trial by jury in this case. Fed. R. Civ.
11 P. 38.

12 **THE PARTIES**

13 2. Plaintiff Grupo Bimbo is a Mexico corporation, with its principal place
14 of business in Mexico City, Mexico. Products manufactured and sold by Grupo
15 Bimbo subsidiaries are for sale in this District. Grupo Bimbo is doing business in
16 this District.

17 3. Plaintiff Barcel USA is a Texas limited liability company, with its
18 principal place of business in Coppell, Texas. Products manufactured and sold by
19 Barcel USA are for sale in this District. Barcel USA is doing business in this
20 District.

21 4. Defendant SNAK-KING, CORP. (“Snak-King”), upon information and
22 belief, is a Delaware corporation, with a principal place of business in City of
23 Industry, CA. Upon information and belief, Snak-King operates its snack foods
24 business in this District.

25 5. Defendant THE TRUSTEE OF THE LEVIN FAMILY TRUST 2010
26 IRREVOCABLE GIFT TRUST (“Levin Trustee”), upon information and belief, has
27 an address in City of Industry, California. Plaintiffs are informed and believe the
28 Levin Trustee is Barry Levin, an individual. The Levin Trustee is the owner of the

1 of a rolled taco shell. An image of the TAKIS Product Configuration is reproduced
2 below:



9
10 **THE TAKIS MARK AND TAKIS TRADE DRESS**

11 15. The TAKIS corn snacks are sold in bags with a distinctive packaging or
12 trade dress which varies with the chips' flavor. The TAKIS packaging features
13 prominent use of the TAKIS mark, images of the rolled corn snacks in the TAKIS
14 Product Configuration, and a swirled design on each bag as well as other design
15 elements. The combination of these elements and other elements in a brightly
16 colored bag are collectively referred to herein as the "TAKIS Trade Dress." Images
17 depicting variations of the TAKIS Trade Dress are attached as Exhibit A.

18 16. The TAKIS FUEGO trade dress is primarily purple and black in color,
19 shows the mark TAKIS in a stylized yellow font rising from left to right, FUEGO in
20 purple against a yellow swoosh, an image of three distinctive rolled corn snacks
21 lying across each other like logs engulfed in flames, and a lime ("TAKIS FUEGO
22 Trade Dress"). For convenience, the TAKIS FUEGO Trade Dress is shown below:



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1 17. The TAKIS NITRO trade dress is primarily black and red in color,
2 shows TAKIS in a stylized yellow font rising from left to right, NITRO in white
3 against a green and yellow swoosh, an image of three distinctive rolled corn snacks,
4 with an exploding corn snack, a lime and a yellow pepper. (“TAKIS NITRO Trade
5 Dress”). For convenience, the TAKIS NITRO Trade Dress is shown below:



13 18. The TAKIS SALSA BRAVA trade dress is primarily yellow in color,
14 shows TAKIS in a stylized green font rising from left to right, SALSA BRAVA in
15 white against a red swoosh, an image of three distinctive corn snacks lying across
16 each other, and a swirling yellow background. (“TAKIS SALSA BRAVA Trade
17 Dress”). For convenience, the TAKIS SALSA BRAVA Trade Dress is shown
18 below:



25 19. The TAKIS CRUNCHY FAJITA trade dress is primarily green in
26 color, shows TAKIS in a stylized yellow font rising from left to right, CRUNCHY
27 FAJITA in red against a yellow swoosh, an image of three corn snacks lying across
28

1 each other, and a swirling green background. (“TAKIS CRUNCHY FAJITA Trade
2 Dress”). For convenience, the TAKIS CRUNCHY FAJITA Trade Dress is shown
3 below:



11 20. The TAKIS GUACAMOLE trade dress is primarily silver in color,
12 shows TAKIS in a stylized dark green font rising from left to right, GUACAMOLE
13 in dark green against a light green swoosh, an image of three corn snacks lying
14 across each other, and a swirling silver background. (“TAKIS GUACAMOLE
15 Trade Dress”). For convenience, the TAKIS GUACAMOLE Trade Dress is shown
16 below:



22
23 21. In part because of their excellent quality, corn snacks sold under the
24 TAKIS Mark and TAKIS Trade Dress and formed in the TAKIS Product
25 Configuration have developed an invaluable and excellent reputation throughout the
26 United States. Barcel USA, as Grupo Bimbo’s licensee, has invested substantial
27 time and money in the United States promoting corn snacks under the TAKIS Mark,
28 TAKIS Trade Dress and TAKIS Product Configuration. Through interstate

1 commerce, Barcel USA has developed a loyal customer base which recognizes the
2 TAKIS Mark, the TAKIS Trade Dress and the TAKIS Product Configuration, both
3 collectively and individually, as indicators of the source of Barcel USA's high
4 quality corn snacks. As a result, the TAKIS Mark, the TAKIS Trade Dress and the
5 TAKIS Product Configuration have become, through widespread and favorable
6 public acceptance and recognition, well-known assets of substantial and incalculable
7 value symbolizing Grupo Bimbo, its quality snack products, and its goodwill.

8 22. The TAKIS Mark and the TAKIS Trade Dress are inherently
9 distinctive and highly recognized by the consuming public as an indicator of the
10 source of Grupo Bimbo's products. Alternatively, the TAKIS Mark and the TAKIS
11 Trade Dress have both acquired distinctiveness through widespread continuous use
12 in commerce over many years, and are also highly recognized by the consuming
13 public as well-known indicators of the source of Grupo Bimbo's products.

14 23. The TAKIS Product Configuration has acquired distinctiveness,
15 through widespread continuous use in commerce over many years, and is also
16 highly recognized by the consuming public as a well-known indicator of the source
17 of Grupo Bimbo's products.

18 24. In addition to being a well-known mark in the United States, due to
19 extensive promotion and sales of TAKIS corn snacks in Mexico, the TAKIS mark
20 has been declared famous by the Instituto Mexicano de la Propiedad Industrial, the
21 Mexican authority charged with determining intellectual property rights.

22
23 **GRUPO BIMBO'S FEDERAL TRADEMARK REGISTRATIONS FOR**
24 **THE TAKIS MARK, TAKIS TRADE DRESS**
25 **AND TAKIS PRODUCT CONFIGURATION**

26 25. Grupo Bimbo owns a number of federal trademark registrations for its
27 TAKIS Mark, TAKIS Trade Dress and TAKIS Product Configuration, which, upon
28 information and belief, issued prior to Defendants' first sale of the accused

1 TACOLITOS product. Grupo Bimbo owns federal trademark registrations for the
2 marks TAKIS, TAKIS FUEGO, TAKIS NITRO and the TAKIS logo (“TAKIS
3 Registrations”). Copies of the TAKIS Registrations are attached as Exhibit B. In
4 addition, Group Bimbo’s right to use the TAKIS word mark in U.S. commerce is
5 incontestable pursuant to 15 U.S.C. § 1065.

6 26. Grupo Bimbo also owns federal trademark registrations for the various
7 forms of its TAKIS Trade Dress (“TAKIS Trade Dress Registrations”). Copies of
8 the TAKIS Trade Dress Registrations are attached as Exhibit C. One of the
9 registered trade dress forms is the TAKIS FUEGO Trade Dress.

10 27. Grupo Bimbo owns a federal trademark registration for the TAKIS
11 Product Configuration (“TAKIS Product Configuration Registration”). A copy of
12 the TAKIS Product Configuration Registration is attached as Exhibit D. In
13 addition, Group Bimbo’s right to use the TAKIS Product Configuration in U.S.
14 commerce is incontestable pursuant to 15 U.S.C. § 1065.

15 28. Each of Grupo Bimbo’s TAKIS Registrations, TAKIS Trade Dress
16 Registrations and TAKIS Product Configuration Registration is currently valid,
17 subsisting, and in full force and effect. Grupo Bimbo’s registration certificates for
18 its TAKIS Registrations, TAKIS Trade Dress Registrations and TAKIS Product
19 Configuration are *prima facie* evidence of the validity of the TAKIS Mark, TAKIS
20 Trade Dress, and TAKIS Product Configuration, of Grupo Bimbo’s ownership of
21 the TAKIS Mark, TAKIS Trade Dress, and TAKIS Product Configuration and of
22 Grupo Bimbo’s exclusive right to use the TAKIS Mark, the TAKIS Trade Dress and
23 the TAKIS Product Configuration in commerce in connection with the goods
24 identified in the registration certificates. 15 U.S.C. § 1115.

25 29. Pursuant to 15 U.S.C. § 1072, all defendants have constructive notice
26 of Grupo Bimbo’s claim of ownership in the TAKIS Mark, TAKIS Trade Dress and
27 TAKIS Product Configuration.

28

1 **SNAK-KING AND THE TACO-LITOS CORN SNACKS**

2 30. Defendant Snak-King is a snack food manufacturer. Upon information
3 and belief, Snak-King sells private label snack food products as well as snack food
4 products under its own brands. Snak-King competes directly with Grupo Bimbo.

5 31. Upon information and belief, at some point in the late fall of 2012, and
6 subsequent to Grupo Bimbo's acquisition of rights in its TAKIS Mark, TAKIS
7 Trade Dress and TAKIS Product Configuration, Snak-King started selling corn
8 snacks under the name TACO-LITOS that are imitations of the TAKIS corn snacks
9 ("TACO-LITOS Corn Snacks").

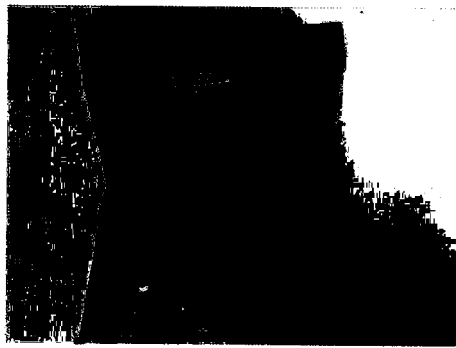
10 32. The TACO-LITOS Corn Snacks are rolled corn snacks with visible
11 folds and slanted ends which are virtually identical in shape to the TAKIS Product
12 Configuration. The TACO-LITOS product shape is prominently featured on the
13 bags of the packaging for the TACO-LITOS Corn Snacks. In addition, once outside
14 of the bag, the TACO-LITOS product is indistinguishable from the TAKIS Product
15 Configuration. Photograph of the product configuration of the two products is
16 depicted below. The TAKIS Product Configuration is on the left while Defendants'
17 indistinguishable, accused product is on the right.



26 33. The TACO-LITOS Corn Snacks are sold in a packaging that is
27 strikingly similar to the TAKIS Trade Dress ("TACO-LITOS Packaging"). Copies
28 of the various examples of the TACO-LITOS Packaging are attached as Exhibit E.

1 As with the TAKIS Trade Dress, there are different variations of the TACO-LITOS
2 corn snacks and the TACO-LITOS Packaging.

3 34. For example, the spicy chile and lime flavored TACO-LITOS Corn
4 Snacks are sold in a purple and black bag featuring a swirl pattern. The word
5 TACO-LITOS is written in the center of the bag in a bright mustard-yellow font and
6 moves upwards from left to right. An image of two corn snacks in the TAKIS
7 Product Configuration lie across each other in the center of the bag along with an
8 image of a flame, a chili pepper and a lime (“TACO-LITOS Chile N Lime
9 Packaging”). For convenience, the TACO-LITOS Chile N Lime Packaging is
10 reproduced below:



18
19 35. The TACO-LITOS word mark is very similar to the TAKIS word mark
20 in appearance, meaning and commercial impression.

21 36. Upon information and belief, the TACO-LITOS product is sold to the
22 same or overlapping consumers, through the same or overlapping trade channels.

23 **TACO-LITOS TRADEMARK APPLICATIONS**

24 37. On June 5, 2012 trademark applications for TACO-LITOS and TACO
25 LITOS were filed with the U.S. Patent and Trademark Office, Serial Nos.
26 85/644,098 and 85/644,101 (“TACO-LITOS Trademark Applications”). The
27 applications are owned by the Levin Trustee. In the TACO-LITOS Trademark
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1 Applications, Mr. Levin declared under oath that his trust was the owner of the
2 marks sought to be registered.

3 38. Based on these trademark filings, the Levin Trustee controls the quality
4 of the corn snacks offered under the TACO-LITOS mark. Upon information and
5 belief, the Levin Trustee has personally made the decision to adopt and use the
6 TACO-LITOS Mark, TACO-LITOS Packaging, TACO-LITOS Corn Snacks, all of
7 which are included in the infringing acts complained of herein. Because the Levin
8 Trustee owns the accused TACO-LITOS mark, and exercises control over the
9 quality of goods sold thereunder, the Levin Trustee has exposed himself by his
10 actions to suit by Grupo Bimbo.

11 39. On March 13, 2013, Grupo Bimbo timely filed with the Trademark
12 Trial and Appeal Board of the U.S. Patent and Trademark Office Notices of
13 Opposition against the TACO-LITOS Trademark Applications on the grounds that
14 the marks are likely to cause confusion with the TAKIS trademark and that the
15 applications are void *ab initio*.

16 **BEFORE LAUNCHING THE TACOLITOS PRODUCT, SNAK-KING**
17 **WAS FULLY AWARE OF GRUPO BIMBO'S PRIOR RIGHTS**

18 40. Prior to launching the TACOLITOS Product Defendants were fully
19 aware of Grupo Bimbo's rights asserted herein. Despite being formally put on
20 notice of Grupo Bimbo's rights in the TAKIS Product Configuration, Snak-King
21 subsequently launched the accused TACOLITOS product with a trade dress, mark
22 and product configuration that was likely to cause consumers.

23 41. On February 13, 2012, Grupo Bimbo sent a demand letter to Wal-Mart
24 concerning the sale of a private label corn snack product manufactured by Snak-
25 King that was virtually identical to the TAKIS Product Configuration. Grupo
26 Bimbo made it clear that it considered the sale of the private label rolled corn snack
27 product to infringe Grupo Bimbo's rights in the federally registered TAKIS Product
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1 Configuration. A copy of the February 13, 2012, demand letter is attached as
2 Exhibit F.

3 42. Wal-Mart apparently forwarded the demand letter to Snak-King.
4 Grupo Bimbo and Snak-King then exchanged a series of letters over the next several
5 months. In its final letter on July 18, 2012, Grupo Bimbo stated that it disagreed
6 with Snak-King's legal position of no infringement with respect to the TAKIS
7 Product Configuration. At that time, Grupo Bimbo believed Snak-King had
8 discontinued manufacturing the private label product.

9 43. Despite this correspondence, Defendants then copied the TAKIS
10 Product Configuration for a new line of corn snacks, developed packaging that is
11 very similar to the TAKIS Trade Dress, and chose a name strikingly similar to
12 TAKIS – i.e., TACO-LITOS. Defendants are now manufacturing and selling these
13 TACO-LITOS corn snacks in this District.

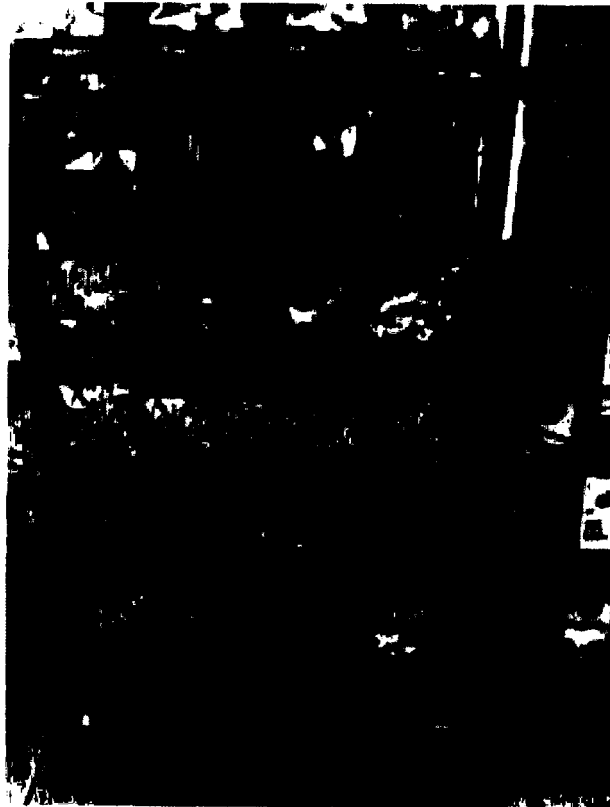
14 **STAK-KING'S ACTIONS ARE LIKELY TO CONFUSE CONSUMERS**

15 44. Defendants' continued sale of corn snacks in the TACO-LITOS
16 Packaging, bearing the TACO-LITOS name, and in a product configuration virtually
17 identical to the TAKIS Product Configuration is damaging Grupo Bimbo.
18 Consumers are likely to mistakenly believe that the TACO-LITOS Corn Snacks are
19 manufactured by, authorized by, or somehow affiliated with the producer of the
20 TAKIS Corn Snacks when that is not the case.

21 45. Defendants' use of the TACO-LITOS Packaging, the TACO-LITOS
22 Mark, and the identical product configuration is likely to confuse consumers.
23 Defendants' combination of these elements in one product makes confusion even
24 more likely. Defendants are attempting to improperly ride on Grupo Bimbo's coat-
25 tails in the rapidly growing market for the TAKIS Corn Snacks by selling corn
26 snacks which look the same as the distinctive TAKIS Product Configuration, in
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1 packaging that is very similar to the TAKIS Trade Dress, and under a name that is
2 very similar to the TAKIS Mark.

3 46. Upon information and belief, Defendants have instructed their sales
4 force to place the TACO-LITOS Corn Snacks in stores in a manner calculated to
5 heighten the likelihood of confusion with the TAKIS Corn Snacks. For example, in
6 a store in Northern California, a Barcel sales person found Defendants' TACO-
7 LITOS product mixed in with TAKIS corn snacks on the same shelf. A photograph
8 showing this display is reproduced below:



23
24 47. Because of the very similar packaging, very similar mark, and virtually
25 identical product shape, consumers are likely to mistakenly believe that the TACO-
26 LITOS Corn Snacks are associated with, sponsored by or somehow connected with
27 Grupo Bimbo, Barcel USA or the TAKIS Corn Snacks, all to Plaintiffs' detriment.

28

1 Indeed, there has been actual confusion, namely the mistaken belief that TACO-
2 LITOS is a product put out by Plaintiffs.

3 48. Defendants' launch of the TACO-LITOS Corn Snacks was with actual
4 knowledge of Grupo Bimbo's prior rights in the TAKIS Trade Dress, TAKIS Mark
5 and TAKIS Product Configuration. In willful disregard of this actual notice, Snak-
6 King started selling the TACO-LITOS Corn Snacks in an effort to capitalize on the
7 exploding success of the TAKIS Corn Snacks, trade on Grupo Bimbo's goodwill
8 and mislead consumers. As a result of the Defendants' actions, Plaintiffs have
9 suffered irreparable injury to its goodwill and its business reputation. Plaintiffs will
10 continue to suffer irreparable injury and harm if Defendants are not immediately
11 restrained by this Court from further violation of the rights alleged herein. Plaintiffs
12 have no adequate remedy at law.

13 **COUNT I**

14 **FEDERAL TRADE DRESS INFRINGEMENT -- PACKAGING**

15 49. Plaintiffs repeat and reallege each and every allegation of Paragraphs 1
16 through 48 above, as if here set forth at length.

17 50. As their first ground of relief, Plaintiffs allege federal trade dress
18 infringement. Plaintiffs allege that the TACO-LITOS Packaging constitutes trade
19 dress infringement of Grupo Bimbo's rights in its various federally registered
20 TAKIS packaging.

21 51. The sale of corn snacks in the TACO-LITOS Packaging, as
22 hereinabove pleaded, is likely to cause confusion, mistake and/or deception among
23 the relevant public, including consumers, as to the affiliation, connection, or
24 association between Defendants' products and those of Grupo Bimbo, and/or
25 mislead the public into thinking that Grupo Bimbo is the origin of, or has sponsored
26 or approved of, Defendants' products and/or commercial activities. Defendants'
27 actions irreparably harm the value of Grupo Bimbo's TAKIS Trade Dress and injure
28 Grupo Bimbo's reputation and goodwill.

1 57. Defendants' sale of corn snacks under the TACO-LITOS mark, as
2 hereinabove pleaded, is likely to cause confusion, mistake and/or deception among
3 the relevant public, including consumers, as to the affiliation, connection, or
4 association between the TACO-LITOS product and those of Grupo Bimbo, and/or
5 mislead the public into thinking that Grupo Bimbo is the origin of, or has sponsored
6 or approved of Defendants' products and/or commercial activities. Defendants'
7 actions irreparably harm the value of Grupo Bimbo's TAKIS Mark and injure Grupo
8 Bimbo's reputation and goodwill.

9 58. Defendants' actions, as described above, are likely to cause confusion,
10 or to cause mistake or to deceive consumers as to the origin, sponsorship or
11 approval of Defendants' products in violation of Section 32(1) of the Lanham Act,
12 15 U.S.C. § 1114(1).

13 59. Defendants created, adopted and used in commerce the confusingly
14 similar TACO-LITOS mark with full knowledge of Grupo Bimbo's rights in its
15 TAKIS Mark. The sale and promotion of corn snacks under the TACO-LITOS
16 mark has been made in bad faith and with a willful and deliberate intent to pass off
17 its corn snacks as those of Grupo Bimbo and trade on the significant goodwill
18 developed in the TAKIS Mark. In view of the willful nature of Defendants'
19 activities, this is an exceptional case within the meaning of 15 U.S.C. § 1117(a).

20 60. Unless restrained by this Court, Defendants will continue to engage in
21 their scheme to violate the longstanding rights of Grupo Bimbo, to mislead the
22 public, and to trade upon and injure Grupo Bimbo's reputation and goodwill.
23 Defendants' infringement has damaged Grupo Bimbo, has damaged Barcel, has
24 resulted in unjust enrichment to Defendants, and has caused and will continue to
25 cause, unless enjoined by this Court, substantial and irreparable damage and injury
26 to Plaintiffs and the public, for which damage and injury Grupo Bimbo has no
27 adequate remedy at law.

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COUNT III
FEDERAL TRADE DRESS INFRINGEMENT – PRODUCT
CONFIGURATION

61. Plaintiffs repeat and reallege each and every allegation of Paragraphs 1 through 60 above as if here set forth at length.

62. As their third ground of relief, Plaintiffs allege federal trade dress infringement. Plaintiffs allege that the shape of the TACO-LITOS corn snack infringes Grupo Bimbo’s rights in its TAKIS Product Configuration.

63. Defendants’ sale of corn snacks in the rolled corn snack shape, as hereinabove pleaded, is likely to cause confusion, mistake and/or deception - both at the point-of-sale and in the post-sale context - among the relevant public, including consumers, as to the affiliation, connection, or association between Defendants’ products and those of Grupo Bimbo, and/or mislead the public into thinking that Grupo Bimbo is the origin of, or has sponsored or approved of, Defendants’ products and/or commercial activities. Defendants’ actions irreparably harm the value of Grupo Bimbo’s TAKIS Product Configuration and injure Grupo Bimbo’s reputation and goodwill.

64. Defendants’ actions, as described above, are likely to cause confusion, or to cause mistake or to deceive consumers - both at the point-of-sale and in the post-sale context - as to the origin, sponsorship or approval of Defendants’ products in violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

65. Defendants created, adopted and used in commerce the confusingly similar rolled corn snack shape with full knowledge of Grupo Bimbo’s rights in its TAKIS Product Configuration. The sale and promotion of corn snacks in the rolled corn snack shape has been made in bad faith and with a willful and deliberate intent to pass off its corn snacks as those of Grupo Bimbo and trade on the significant goodwill developed in the TAKIS Product Configuration. In view of the willful

1 70. The overall impression created by the use of the TACO-LITOS
2 Packaging, TACO-LITOS mark and corn snack shape, are likely to cause confusion,
3 mistake and/or deception among the relevant public, including consumers, as to the
4 affiliation, connection, or association between Defendants and Plaintiffs, and/or
5 mislead the public into thinking that Plaintiffs are the origin of, or has sponsored or
6 approved of, Defendants' products and/or commercial activities and thus constitutes
7 unfair competition, false designation of origin, and passing off in violation of 15
8 U.S.C. § 1125(a)(1).

9 71. Defendants created, adopted and used in commerce the confusingly
10 similar TACO-LITOS Packaging, TACO-LITOS mark and corn snack shape with
11 full knowledge of Grupo Bimbo's rights in its TAKIS Trade Dress, TAKIS Mark
12 and TAKIS Product Configuration. The sale and promotion of corn snacks in the
13 TACO-LITOS Packaging, TACO-LITOS mark and corn snack shape has been made
14 in bad faith and with a willful and deliberate intent to pass off its corn snacks as
15 those of Grupo Bimbo and trade on the significant goodwill developed in the
16 TAKIS Trade Dress, TAKIS Mark and TAKIS Product Configuration. In view of
17 the willful nature of Defendants' activities, this is an exceptional case within the
18 meaning of 15 U.S.C. § 1117(a).

19 72. Unless restrained by this Court, Defendants will continue to engage in
20 its scheme to violate the longstanding rights of Grupo Bimbo, to mislead the public,
21 and to trade upon and injure Plaintiffs' reputation and goodwill. Defendants'
22 infringement has damaged Grupo Bimbo, has damaged Barcel, has resulted in unjust
23 enrichment to Defendants, and has caused and will continue to cause, unless
24 enjoined by this Court, substantial and irreparable damage and injury to Plaintiffs
25 and the public, for which damage and injury Plaintiffs have no adequate remedy at
26 law.

1 **COUNT V**

2 **CALIFORNIA UNFAIR COMPETITION**

3 73. Plaintiffs repeat and reallege each and every allegation of Paragraphs 1
4 through 72 above as if here set forth at length.

5 74. As their fifth ground of relief, Plaintiffs allege unfair competition under
6 the laws of the State of California. Plaintiffs allege that Defendants' creation,
7 adoption and use in commerce of the TACO-LITOS Packaging, TACO-LITOS
8 mark and shape of the TACO-LITOS corn snack unfairly competes with and creates
9 a false designation of origin with the TAKIS Product, TAKIS Packaging, TAKIS
10 Mark, and TAKIS Product Configuration.

11 75. Defendants have willfully, knowingly, and without Plaintiffs'
12 authorization, manufactured, promoted, advertised, sold and offered for sale goods
13 that infringe the TAKIS Trade Dress, TAKIS Mark and TAKIS Product
14 Configuration, created confusion in the marketplace and harmed the goodwill Grupo
15 Bimbo has developed in the TAKIS Trade Dress, TAKIS Mark and TAKIS Product
16 Configuration.

17 76. Defendants' use of the TACO-LITOS Packaging, TACO-LITOS mark
18 and corn snack shape is likely to cause confusion, or to cause mistake, or to deceive
19 consumers as to the origin, sponsorship or approval of Snak-King's products and
20 related commercial activities. Defendants' actions are an unlawful or unfair
21 business act or practice and constitute unfair competition in violation of Cal. Bus. &
22 Prof. Code §§ 17200, et seq.

23 77. Defendants' acts of unfair competition have caused Grupo Bimbo and
24 Barcel to suffer economic damage, have resulted in unjust enrichment to Snak-King,
25 and have caused and will continue to cause, unless enjoined by this Court,
26 substantial and irreparable damage and injury to Plaintiffs and the public, for which
27 damage and injury Plaintiffs have no adequate remedy at law.

28

1 **COUNT VI**

2 **CALIFORNIA COMMON LAW OF UNFAIR COMPETITION**

3 78. Plaintiffs repeat and reallege each and every allegation of Paragraphs 1
4 through 77 above as if here set forth at length.

5 79. As their sixth ground of relief, Plaintiffs allege unfair competition
6 under the common law of the State of California. Plaintiffs allege that Defendants'
7 creation, adoption and use in commerce of the TACO-LITOS Packaging, TACO-
8 LITOS mark and shape of the TACO-LITOS corn snack unfairly competes with the
9 TAKIS Product, TAKIS Packaging, TAKIS Mark and TAKIS Product
10 Configuration.

11 80. Defendants have willfully, knowingly, and without Plaintiffs'
12 authorization, manufactured, promoted, advertised, sold and offered for sale goods
13 that infringe the TAKIS Trade Dress, TAKIS Mark and TAKIS Product
14 Configuration, created confusion in the marketplace and harmed the goodwill Grupo
15 Bimbo has developed in the TAKIS Trade Dress, TAKIS Mark and TAKIS Product
16 Configuration.

17 81. Defendants' use of the TACO-LITOS Packaging, TACO-LITOS mark
18 and corn snack shape is likely to cause confusion, or to cause mistake, or to deceive
19 consumers as to the origin, sponsorship or approval of Defendants' products and
20 related commercial activities, and constitutes unfair competition in violation of the
21 common law of the State of California.

22 82. Defendants' acts of unfair competition have caused Grupo Bimbo and
23 Barcel to suffer economic damage, have resulted in unjust enrichment to
24 Defendants, has resulted in the misappropriation of valuable property rights of
25 Grupo Bimbo, and have caused and will continue to cause, unless enjoined by this
26 Court, substantial and irreparable damage and injury to Plaintiffs and the public, for
27 which damage and injury Plaintiffs have no adequate remedy at law.
28

1 **PRAYER FOR RELIEF**

2 **WHEREFORE, PLAINTIFFS Demand:**

3 A. That Snak-King, together with all of its officers, agents, servants,
4 employees, attorneys, successors, related companies and assigns and its business or
5 businesses, the Levin Trustee, and all those in active concert or participation with
6 them, be forthwith preliminarily and thereafter permanently enjoined and restrained
7 from:

- 8
- 9 1. Using, marketing or selling any products in connection with the
10 TACO-LITOS Packaging or any other packaging or trade dress
11 which is confusingly similar to any of Grupo Bimbo's TAKIS
12 Trade Dress;
 - 13 2. Using, marketing or selling any products in connection with the
14 TACO-LITOS mark, or any other mark that is confusingly
15 similar to the TAKIS Mark;
 - 16 3. Using, marketing or selling any products in connection with the
17 TACO-LITOS Configuration, or any other product shape that is
18 confusingly similar to the TAKIS Product Configuration;
 - 19 4. Doing any other act or thing (i) likely to induce the mistaken
20 belief that Defendants' corn snack products, or any other
21 products or services are in any way affiliated, connected or
22 associated with Grupo Bimbo or its services or other products, or
23 (ii) that otherwise would damage Grupo Bimbo's goodwill and
24 reputation;
 - 25 5. Unfairly competing with Plaintiffs in any manner whatsoever; and
 - 26 6. Causing a likelihood of confusion with respect to Grupo Bimbo's
27 TAKIS Trade Dress, TAKIS Mark or TAKIS Product
28 Configuration, or injury to the business reputation of Plaintiffs.

1 B. That the Levin Trustee be ordered to expressly abandon the Trademark
2 Applications.

3 C. That each Defendant be directed to file with the Court and serve upon
4 Plaintiffs within thirty (30) days after issuance of an injunction, a report in writing
5 and under oath setting forth in detail the manner and form in which it has complied
6 with the injunction.

7 D. That Defendants be required to deliver for destruction all of its current
8 inventory of TACO-LITOS corn snacks, TACO-LITOS packaging, advertising
9 including the TACO-LITOS Packaging, TACO-LITOS Mark or TACO-LITOS
10 Configuration, and any similar or related materials in its possession or control that
11 violate Grupo Bimbo's rights in the TAKIS Trade Dress, TAKIS Mark, or TAKIS
12 Product Configuration.

13 E. That Plaintiffs be awarded monetary relief in an amount to be fixed by
14 the Court in its discretion as just, including:

- 15 1. All profits received by Snak-King and the Levin Trustee, from sales
16 and revenues of any kind made as a result of its acts of infringement or
17 unfair competition, said amount to be trebled; and
18 2. All damages sustained by Grupo Bimbo and its subsidiaries as a result of
19 Defendants' acts of infringement or unfair competition, and that such
20 damages be trebled.

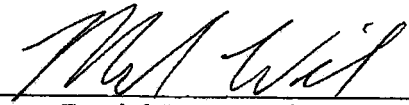
21 F. That, because of the exceptional nature of this case resulting from
22 Snak-King's deliberate infringing actions and disregard for Plaintiff's rights, this
23 Court award to Plaintiffs all reasonable attorneys' fees, costs and disbursements
24 incurred as a result of this action, pursuant to 15 U.S.C. § 1117.

25 G. That Plaintiffs shall have such other and further relief as this Court may
26 deem just.
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DATED: March 25, 2013

GOODKIN & LYNCH, LLP

By: 

Daniel L. Goodkin

Marshal P. Wilke

Attorneys for Plaintiffs GRUPO BIMBO
S.A. B. DE C.V.; and BARCEL USA,
LLC

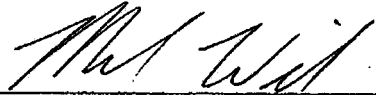
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DEMAND FOR JURY TRIAL

Plaintiffs GRUPO BIMBO S.A. B. DE C.V. and BARCEL USA, LLC hereby demand trial of this matter by jury, pursuant to Federal Rules of Civil Procedure, Rule 38.

DATED: March 25, 2013

GOODKIN & LYNCH, LLP

By: 

Daniel L. Goodkin

Marshal P. Wilke

Attorneys for Plaintiffs GRUPO BIMBO
S.A. B. DE C.V.; and BARCEL USA,
LLC

EXHIBIT A

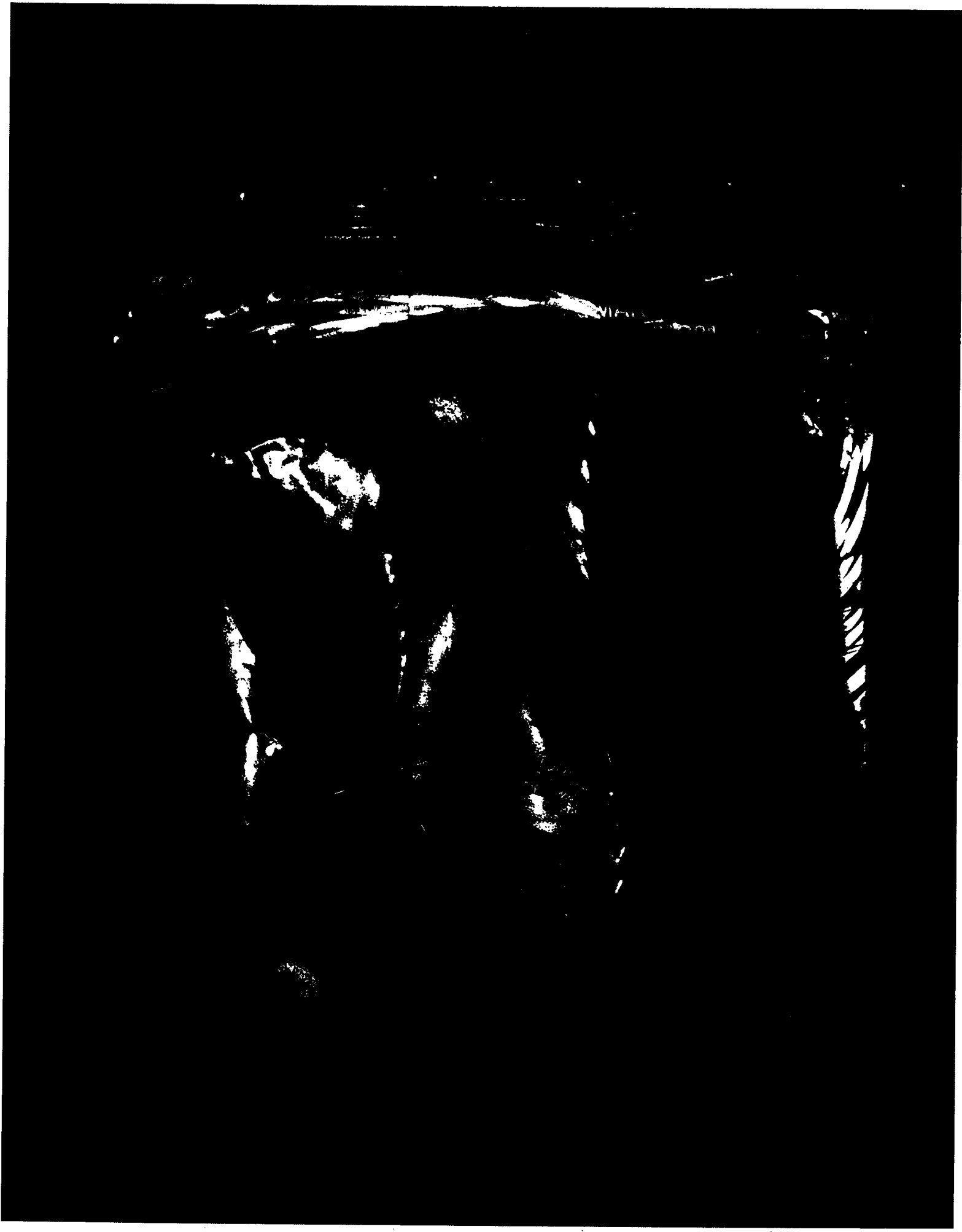


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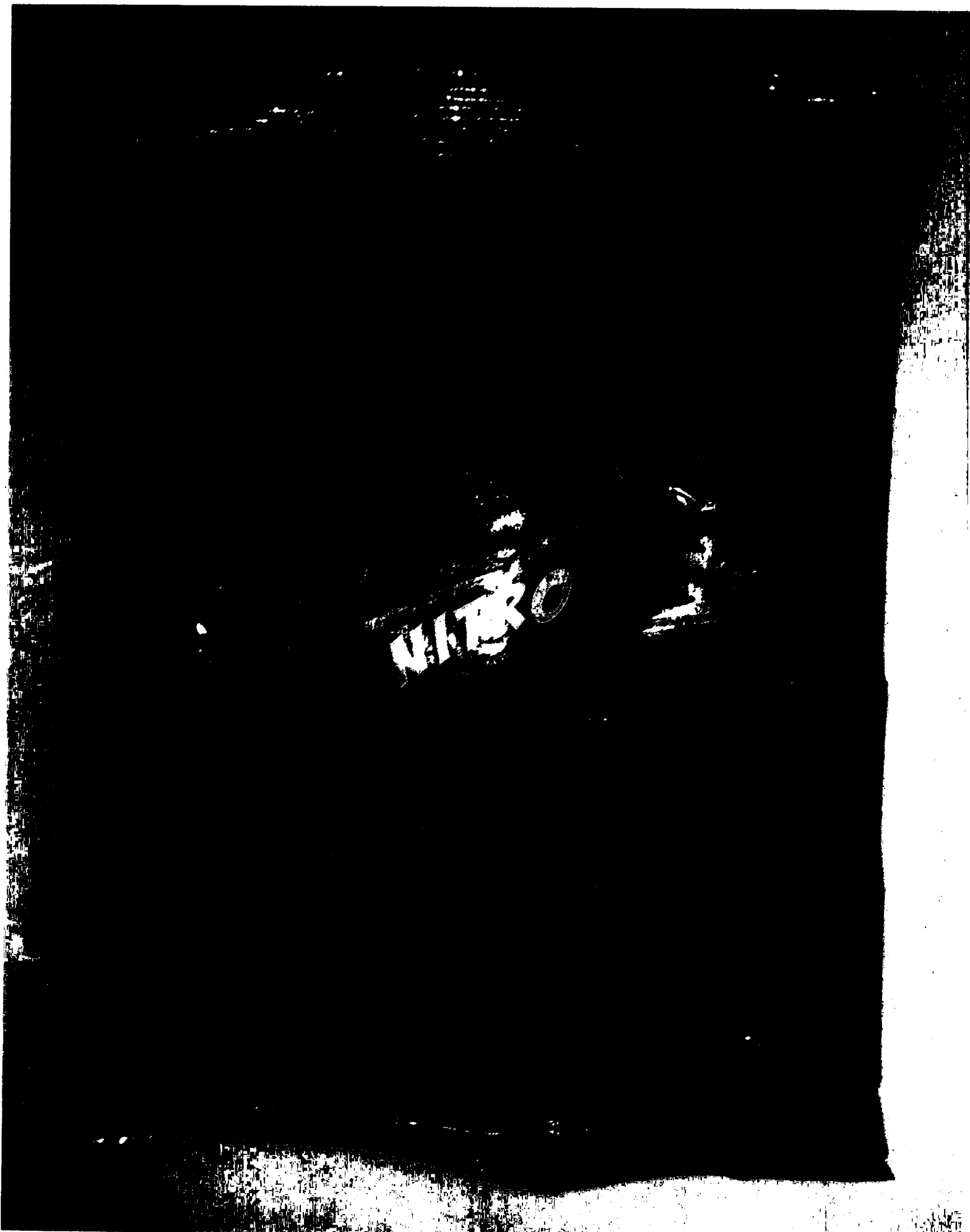


EXHIBIT B

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 2,770,663

Registered Oct. 7, 2003

**TRADEMARK
PRINCIPAL REGISTER**

TAKIS

**GRUPO BIMBO, S.A. DE C.V. (MEXICO CORPORATION)
PROLONGACION PASEO DE LA REFORMA NO.
1000
COL. DESARROLLO SANTA FE
DELEGACION ALVARO OBREGON, MEXICO 01210
, BY MERGER CENTRAL IMPULSORA, S.A. DE
C.V (MEXICO CORPORATION) DELEGACION
ALVARO OBREGON, MEXICO 01210**

**FOR: FRIED CORN SNACKS AND FRIED
WHEAT FLOUR SNACKS, IN CLASS 30 (U.S. CL. 46).**

**OWNER OF MEXICO REG. NO. 547799, DATED 4-
29-1997, EXPIRES 4-15-2007.**

SER. NO. 76-175,373, FILED 11-30-2000.

MARK T. MULLEN, EXAMINING ATTORNEY

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 3,529,708

Registered Nov. 11, 2008

TRADEMARK
PRINCIPAL REGISTER

TAKIS FUEGO

GRUPO BIMBO, S.A. B. DE C.V. (MEXICO CORPORATION)
NO. 1000, COL. PENA BLANCA SANTA FE
PROLONGACION PASEO DE LA REFORMA
MEXICO CITY, MEXICO 01210

OWNER OF MEXICO REG. NO. 948838, DATED 8-25-2006, EXPIRES 8-9-2016.

OWNER OF U.S. REG. NOS. 2,719,974 AND 2,770,663.

FOR: FRIED CORN SNACKS AND FRIED WHEAT FLOUR SNACKS, IN CLASS 30 (U.S. CL. 46).

THE ENGLISH TRANSLATION OF THE WORD FUEGO IN THE MARK IS FIRE.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 77-099,106, FILED 2-5-2007.

TAMARA FRAZIER, EXAMINING ATTORNEY

United States of America

United States Patent and Trademark Office

TAKIS NITRO

Reg. No. 3,862,100

Registered Oct. 12, 2010

Int. Cl.: 30

TRADEMARK

PRINCIPAL REGISTER

GRUPO BIMBO, S.A. B. DE C.V. (MEXICO CORPORATION)
PROLONGACION PASEO DE LA REFORMA
NO. 1000, COL. PENA BLANCA SANTA FE
MEXICO CITY, MEXICO 01210

FOR: FRIED CORN SNACKS AND FRIED WHEAT FLOUR SNACKS, IN CLASS 30 (U.S. CL. 46).

FIRST USE 7-22-2010; IN COMMERCE 7-22-2010.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 2,770,663 AND 3,529,708.

SN 77-919,409, FILED 1-25-2010.

MARY ROSSMAN, EXAMINING ATTORNEY



David J. Kybas

Director of the United States Patent and Trademark Office

United States of America

United States Patent and Trademark Office

The logo for Takis, featuring the word "Takis" in a stylized, outlined font. The letter "i" has a swirl design instead of a dot.

Reg. No. 4,079,594

Registered Jan. 3, 2012

Int. Cl.: 30

TRADEMARK

PRINCIPAL REGISTER

GRUPO BIMBO, S.A.B. DE C.V. (MEXICO CORPORATION)
PROLONGACION PASEO DE LA REFORMA
NO. 1000, COL. PENA BLANCA SANTA FE
MEXICO CITY, MEXICO 01210

FOR: CORN-BASED SNACK FOODS, IN CLASS 30 (U.S. CL. 46).

FIRST USE 2-28-2007; IN COMMERCE 2-28-2007.

OWNER OF U.S. REG. NOS. 3,783,767, 3,783,798 AND OTHERS.

THE MARK CONSISTS OF THE WORD "TAKIS" WITH A SWIRL DESIGN INSTEAD OF A DOT OVER THE LETTER "I".

THE WORDING "TAKIS" HAS NO MEANING IN A FOREIGN LANGUAGE.

SER. NO. 85-305,942, FILED 4-27-2011.

SETH A. RAPPAPORT, EXAMINING ATTORNEY



David J. Kybas

Director of the United States Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

Requirements in the First Ten Years*
What and When to File:

First Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

Second Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.* See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*
What and When to File:

You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

**The United States Patent and Trademark Office (USPTO) will NOT send you any future notice or
reminder of these filing requirements.**

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the USPTO. The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

EXHIBIT C

United States of America

United States Patent and Trademark Office



Reg. No. 3,783,767
Registered May 4, 2010
Int. Cl.: 30

GRUPO BIMBO, S.A. B. DE C.V. (MEXICO CORPORATION)
PROLONGACION PASEO DE LA REFORMA
NO. 1000, COL. PENA BLANCA SANTA FE
MEXICO CITY, MEXICO 01210

FOR: CORN-BASED SNACK FOODS, IN CLASS 30 (U.S. CL. 46).

TRADEMARK

FIRST USE 4-30-2007; IN COMMERCE 4-30-2007.

PRINCIPAL REGISTER

OWNER OF U.S. REG. NOS. 2,770,663 AND 3,529,708.

THE COLOR(S) PURPLE, YELLOW, RED, GREEN, BLACK AND ORANGE IS/ARE CLAIMED AS A FEATURE OF THE MARK.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "THE PICTORIAL REPRESENTATIONS OF THE CORN SNACKS AND LIMES", APART FROM THE MARK AS SHOWN.

THE MARK CONSISTS OF THE DESIGN FEATURES OF PACKAGING FOR THE GOODS; THE DESIGN FEATURES INCLUDE: THE GEOMETRIC DESIGNS, PICTORIAL DESIGNS, COLOR PLACEMENT, AND WORDS AS THEY APPEAR IN THE MARK AS A WHOLE. THE SHAPE OF THE SNACK FOOD BAG IS NOT BEING CLAIMED AS A PART OF THE MARK. THE DOTTED LINES SHOW THE POSITION OR PLACEMENT OF THE MARK ON THE CONTAINER. THE COLORS PURPLE, YELLOW, RED, GREEN, BLACK AND ORANGE APPEAR IN THE ABSTRACT DRAWING DESIGNS ON THE BAG; THE COLOR PURPLE APPEARS IN THE BACKGROUND AND BEHIND THE WORDING "TAKIS FUEGO," IN THE WORDING OF "FUEGO" AND IN THE SWIRL DESIGN IN THE BACKGROUND; YELLOW APPEARS IN THE WORDING "TAKIS", IN THE STYLIZED DOT ABOVE THE "I" IN "TAKIS", IN THE PAINTBRUSHED BACKGROUND BEHIND "FUEGO" AND IN THE STYLIZED DESIGN OF FIERY FLAMES EMITTING UP THROUGH THE STYLIZED DESIGN OF THE SNACK FOOD; RED APPEARS IN THE STYLIZED DESIGN OF THE SNACK FOOD; GREEN APPEARS IN THE STYLIZED DESIGN OF THE LIME WEDGES; ORANGE APPEARS IN THE STYLIZED DESIGN OF THE SNACK FOOD AND IN THE STYLIZED DESIGN OF THE FIERY FLAMES; AND BLACK APPEARS IN THE OUTLINING OF THE WORD "TAKIS".



David J. Kybas

Director of the United States Patent and Trademark Office

THE ENGLISH TRANSLATION OF FUEGO IN THE MARK IS FIRE.

SER. NO. 77-798,778, FILED 8-6-2009.

Reg. No. 3,783,767 MARLYN IZZI, EXAMINING ATTORNEY

United States of America

United States Patent and Trademark Office



Reg. No. 3,783,796
Registered May 4, 2010
Int. Cl.: 30

GRUPO BIMBO, S.A. B. DE C.V. (MEXICO CORPORATION)
PROLONGACION PASEO DE LA REFORMA
NO. 1000, COL. PENA BLANCA SANTA FE
MEXICO CITY, MEXICO 01210

FOR: CORN-BASED SNACK FOODS, IN CLASS 30 (U.S. CL. 46).

TRADEMARK

FIRST USE 2-28-2007; IN COMMERCE 2-28-2007.

PRINCIPAL REGISTER

OWNER OF U.S. REG. NO. 2,770,663.

THE COLOR(S) GREEN, YELLOW, RED, BLACK AND BROWN IS/ARE CLAIMED AS A FEATURE OF THE MARK.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CRUNCHY FAJITA" AND THE PICTORIAL REPRESENTATION OF THE CORN SNACKS, APART FROM THE MARK AS SHOWN.

THE MARK CONSISTS OF THE DESIGN FEATURES OF PACKAGING FOR THE GOODS; THE DESIGN FEATURES INCLUDE: THE GEOMETRIC DESIGNS, PICTORIAL DESIGNS, COLOR PLACEMENT, AND WORDS AS THEY APPEAR IN THE MARK AS A WHOLE. THE SHAPE OF THE SNACK FOOD BAG IS NOT BEING CLAIMED AS A PART OF THE MARK. THE DOTTED LINES SHOW THE POSITION OR PLACEMENT OF THE MARK ON THE CONTAINER. THE COLORS GREEN, YELLOW, RED AND BROWN APPEAR IN THE ABSTRACT DRAWING DESIGNS ON THE BAG; THE COLOR GREEN APPEARS IN THE BACKGROUND AND BEHIND THE WORDING "TAKIS CRUNCHY FAJITA" AND IN THE SWIRL DESIGN IN THE BACKGROUND; YELLOW APPEARS IN THE WORDING "TAKIS", IN THE STYLIZED DOT ABOVE THE "I" IN "TAKIS", AND IN THE PAINTBRUSHED BACKGROUND BEHIND THE WORDING "CRUNCHY FAJITA"; RED APPEARS IN THE WORDING "CRUNCHY FAJITA"; BROWN APPEARS IN THE STYLIZED DESIGN OF THE SNACK FOOD; AND THE COLOR BLACK APPEARS IN THE OUTLINING OF THE WORD "TAKIS".



David J. Kyjas

Director of the United States Patent and Trademark Office

SER. NO. 77-803,955, FILED 8-13-2009.

MARILYN IZZI, EXAMINING ATTORNEY

United States of America

United States Patent and Trademark Office



Reg. No. 3,783,797
Registered May 4, 2010
Int. Cl.: 30

GRUPO BIMBO, S.A. B. DE C. V. (MEXICO CORPORATION)
PROLONGACION PASEO DE LA REFORMA
NO. 1000, COL. PENA BLANCA SANTA FE
MEXICO CITY, MEXICO 01210

FOR: CORN-BASED SNACK FOODS, IN CLASS 30 (U.S. CL. 46).

TRADEMARK

FIRST USE 2-28-2007; IN COMMERCE 2-28-2007.

PRINCIPAL REGISTER

OWNER OF U.S. REG. NO. 2,770,663.

THE COLOR(S) YELLOW, GREEN, RED, BLACK, WHITE AND BROWN IS/ARE CLAIMED AS A FEATURE OF THE MARK.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SALSA" AND THE PICTORIAL REPRESENTATION OF THE CORN SNACKS, APART FROM THE MARK AS SHOWN.

THE MARK CONSISTS OF THE DESIGN FEATURES OF PACKAGING FOR THE GOODS; THE DESIGN FEATURES INCLUDE: THE GEOMETRIC DESIGNS, PICTORIAL DESIGNS, COLOR PLACEMENT, AND WORDS AS THEY APPEAR IN THE MARK AS A WHOLE. THE SHAPE OF THE SNACK FOOD BAG IS NOT BEING CLAIMED AS A PART OF THE MARK. THE DOTTED LINES SHOW THE POSITION OR PLACEMENT OF THE MARK ON THE CONTAINER. THE COLORS YELLOW, GREEN, RED, AND BROWN APPEAR IN THE ABSTRACT DRAWING DESIGNS ON THE BAG; THE COLOR YELLOW APPEARS IN THE BACKGROUND AND BEHIND THE WORDING "TAKIS SALSA BRAVA" AND IN THE SWIRL DESIGN IN THE BACKGROUND; GREEN APPEARS IN THE WORDING "TAKIS" AND IN THE STYLIZED DOT ABOVE THE "I" IN "TAKIS", RED APPEARS IN THE WORDING "SALSA BRAVA;" BROWN APPEARS IN THE STYLIZED DESIGN OF THE SNACK FOOD.; WHITE APPEARS IN THE OUTLINING OF THE WORDING "SALSA BRAVA" AND BLACK APPEARS ON THE OUTLINING OF THE WORDING "TAKIS".

THE ENGLISH TRANSLATION OF "BRAVA" IN THE MARK IS FIERCE.

SER. NO. 77-804,016, FILED 8-13-2009.

MARILYN IZZI, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

United States of America

United States Patent and Trademark Office



Reg. No. 3,783,785

Registered May 4, 2010

Int. Cl.: 30

TRADEMARK

PRINCIPAL REGISTER

GRUPO BIMBO, S.A. B. DE C.V. (MEXICO CORPORATION)
PROLONGACION PASEO DE LA REFORMA
NO. 1000, COL. PENA BLANCA SANTA FE
MEXICO CITY, MEXICO 01210

FOR: CORN-BASED SNACK FOODS, IN CLASS 30 (U.S. CL. 46).

FIRST USE 3-31-2007; IN COMMERCE 3-31-2007.

OWNER OF U.S. REG. NO. 2,770,663.

THE COLOR(S) GREEN, YELLOW, RED, BROWN, WHITE AND BLACK IS/ARE CLAIMED AS A FEATURE OF THE MARK.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "GUACAMOLE" AND THE PICTORIAL REPRESENTATION OF THE CORN SNACKS, APART FROM THE MARK AS SHOWN.

THE MARK CONSISTS OF THE DESIGN FEATURES OF PACKAGING FOR THE GOODS; THE DESIGN FEATURES INCLUDE: THE GEOMETRIC DESIGNS, PICTORIAL DESIGNS, COLOR PLACEMENT, AND WORDS AS THEY APPEAR IN THE MARK AS A WHOLE. THE SHAPE OF THE SNACK FOOD BAG IS NOT BEING CLAIMED AS A PART OF THE MARK. THE DOTTED LINES SHOW THE POSITION OR PLACEMENT OF THE MARK ON THE CONTAINER. THE COLORS GREY, GREEN, AND YELLOW APPEAR IN THE ABSTRACT DRAWING DESIGNS ON THE BAG; THE COLOR GREY APPEARS IN THE BACKGROUND AND BEHIND THE WORDING "TAKIS GUACAMOLE" AND IN THE SWIRL DESIGN IN THE BACKGROUND; GREEN APPEARS IN THE WORDING "TAKIS", IN THE STYLIZED DOT ABOVE THE "I" IN "TAKIS", IN THE WORDING "GUACAMOLE" AND IN THE PAINTBRUSHED BACKGROUND BEHIND "GUACAMOLE"; YELLOW APPEARS IN THE STYLIZED DESIGN OF THE SNACK FOOD. THE COLOR BLACK APPEARS IN THE OUTLINING OF THE WORK "TAKIS". THE COLOR WHITE APPEARS AS THE BACKGROUND OF THE ENTIRE MARK.



David J. Kybas

Director of the United States Patent and Trademark Office

SER. NO. 77-802,694, FILED 8-12-2009.

MARILYN IZZI, EXAMINING ATTORNEY

EXHIBIT D

Int. Cl.: 30

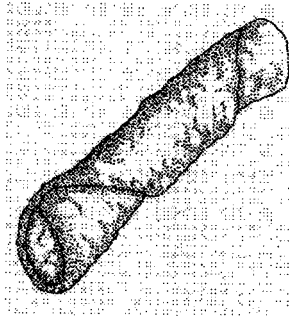
Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 3,188,850

Registered Dec. 26, 2006

**TRADEMARK
PRINCIPAL REGISTER**



GRUPO BIMBO, S.A. DE C.V. (MEXICO CORPORATION)
PROLONGACIÓN PASEO DE LA REFORMA
NO. 1000, COL. DESARROLLO SANTA FÉ
MÉXICO, DF, MEXICO 01210

FOR: FRIED CORN FLOUR SNACKS, IN CLASS
30 (U.S. CL. 46).

FIRST USE 10-0-1998; IN COMMERCE 11-0-2000.

THE STIPPLING IS FOR SHADING PURPOSES
ONLY.

THE MARK CONSISTS OF THE CONFIGURATION OF THE GOODS IN THE FORM OF A ROLLED-UP TACO SHELL.

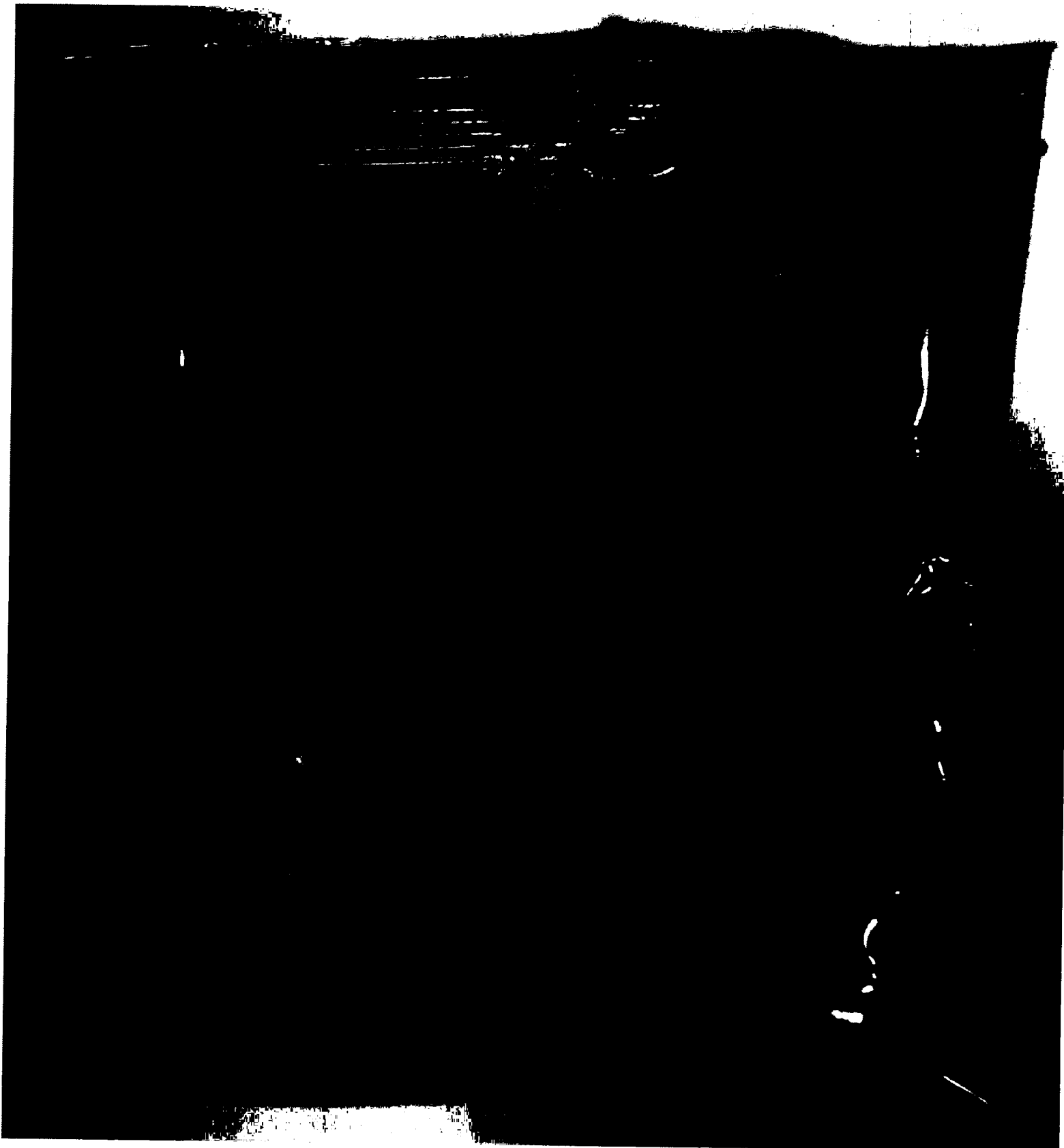
SEC. 2(F).

SER. NO. 78-649,213, FILED 6-13-2005.

DAVID YONTEF, EXAMINING ATTORNEY

EXHIBIT E

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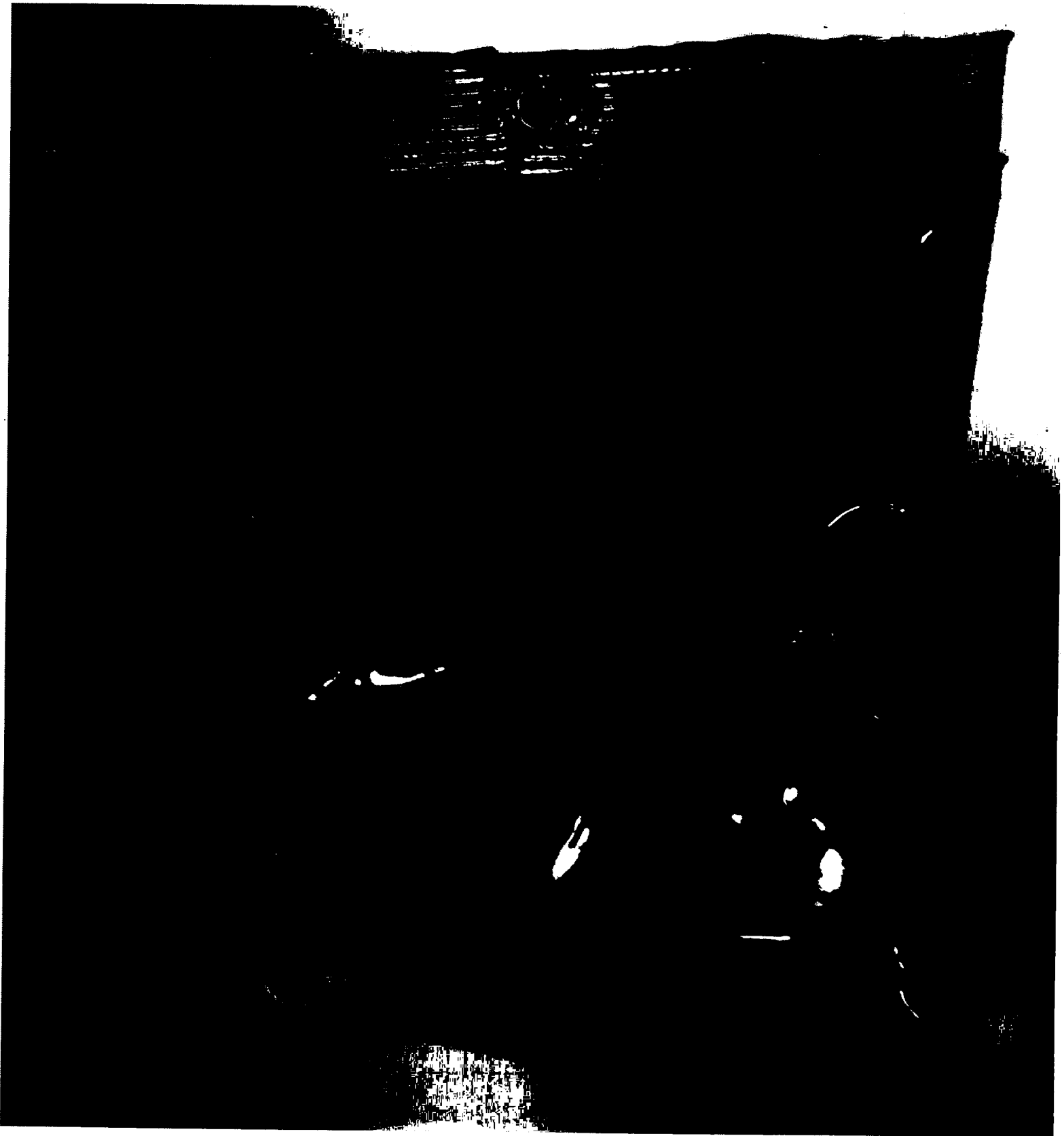


EXHIBIT F

Scott J. Slavick
(312) 321-4245
sslavick@brinkshofer.com



February 13, 2012

VIA EMAIL: USTM@walmartlegal.com

Danica Acosta, Esq.
Wal-Mart Legal Department
Wal-Mart Stores, Inc.
702 SW 8th Street
Bentonville, Arkansas 72716-6209

Re: Wal-Mart Stores, Inc.'s Unauthorized Use of the Takis Configuration Mark

Dear Ms. Acosta:

We are counsel for Grupo Bimbo, S.A.B de C.V. ("Grupo Bimbo") in connection with its intellectual property matters in the United States.

For over 12 years, Grupo Bimbo has used the Takis configuration trademark in connection with fried corn flour snacks. Grupo Bimbo has spent considerable time, money and effort promoting and selling snacks in connection with this specific configuration mark, and as a result the mark has generated substantial goodwill and has come to be associated by consumers with products of only the highest quality offered by Grupo Bimbo. Furthermore, Grupo Bimbo owns a U.S. federal trademark registration, U.S. Registration Number 3,188,850, for this configuration mark for use in connection with fried corn flour snacks. Grupo Bimbo has used this configuration mark in the U.S. since at least as early as 2000. This registration is in full force and effect. A copy of this registration is attached as Exhibit A.

It has recently come to our client's attention that Wal-Mart Stores, Inc. ("Wal-Mart") has begun using the same configuration mark in connection with its own snacks. An example of Wal-Mart's use, purchased on February 9, 2012, from Wal-Mart store number 2515, located at 3721 E. Thomas Road, Phoenix, Arizona 85018, is attached as Exhibit B.

Grupo Bimbo is concerned that Wal-Mart's use of the same configuration mark in connection with snacks is likely to cause confusion among consumers. Consumers are likely to believe that Wal-Mart's goods originate with, or are sponsored or approved by Grupo Bimbo when, in fact, they are not. As a result, Grupo Bimbo's valuable reputation and goodwill are at risk.

Danica Acosta, Esq.
Wal-Mart Legal Department
February 13, 2012
Page 2

Grupo Bimbo assumes that use of the configuration mark must have been an oversight on Wal-Mart's part. As you may know, Grupo Bimbo currently enjoys a strong working relationship with Wal-Mart and because of the parties' positive ongoing business relationship Grupo Bimbo would greatly prefer to resolve this matter amicably. To that end, we request that Wal-Mart confirm as soon as possible that it will cease any and all use of the configuration mark.

We appreciate your attention to this matter and look forward to your favorable response. Please feel free to contact me directly if you wish to discuss this matter further.

This letter is sent without prejudice and without waiving any of Grupo Bimbo's rights or remedies, all of which are expressly reserved.

Sincerely,

A handwritten signature in cursive script that reads "Scott Slavick".

Scott Slavick

Enclosures

Int. Cl.: 30

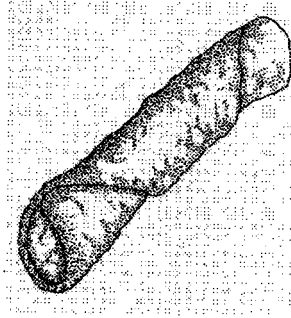
Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 3,188,850

Registered Dec. 26, 2006

**TRADEMARK
PRINCIPAL REGISTER**



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SEC. 2(F).

SER. NO. 78-649,213, FILED 6-13-2005.

DAVID YONTEF, EXAMINING ATTORNEY

Exhibit B

