

ESTTA Tracking number: **ESTTA590066**

Filing date: **02/28/2014**

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 parties oppose registration of the indicated application.

Opposers Information

Name	Frito-Lay North America, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	7701 Legacy Drive, Mail Stop 3A-421 Plano, TX 75024 UNITED STATES		

Name	Smartfoods, Inc.		
Granted to Date of previous extension	03/02/2014		
Address	7701 Legacy DriveMail Stop 3A-421 Plano, TX 75024 UNITED STATES		

Attorney information	Adam S. Weiss Polsinelli PC 161 N. Clark Street, Suite 4200 Chicago, IL 60601-3316 UNITED STATES aweiss@polsinelli.com, kesullivan@polsinelli.com, uspt@polsinelli.com Phone:312-873-3644		
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Applicant Information

Application No	85741397	Publication date	09/03/2013
Opposition Filing Date	02/28/2014	Opposition Period Ends	03/02/2014
Applicant	Angie's Artisan Treats, LLC 1918 Lookout Drive North Mankato, MN 56003 GERMANY		

Goods/Services Affected by Opposition

Class 030. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: snack foods, namely, popcorn and flavored popcorn
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Grounds for Opposition

The mark is merely descriptive	Trademark Act section 2(e)(1)
Genericness	Trademark Act section 23

Attachments	CLASSIC SWEET & SALTY Opposition.pdf(191275 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	/Adam S. Weiss/
Name	Adam S. Weiss
Date	02/28/2014

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

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FRITO-LAY NORTH AMERICA, INC.

and

SMARTFOODS, INC.

Opposers,

v.

ANGIE'S ARTISAN TREATS, LLC

Applicant.
-----X

In the Matter of Application
Serial No. 85741397 for the mark
CLASSIC SWEET & SALTY

Published in the Official Gazette
on September 3, 2013

Opposition No. _____

NOTICE OF OPPOSITION

Frito-Lay North America, Inc., a Delaware corporation, having a place of business at 7701 Legacy Drive, Plano, TX 75024 and Smartfoods, Inc., a Delaware corporation, having a place of business at 7701 Legacy Drive, Plano, TX 75024, hereby oppose the application of Angie's Artisan Treats, LLC (hereinafter "Applicant"), a Delaware limited liability company, pursuant to 37 CFR § 2.104(a), for an application to register CLASSIC SWEET & SALTY ("the Application"), U.S. Application Serial No. 85741397, in Class 30.

As grounds for opposition, Opposers state:

1. Frito-Lay North America, Inc., through its predecessors in interest and title, and through its related companies, divisions and/or licensees (hereinafter individually and/or collectively referred to as "Frito-Lay"), has been engaged in the manufacture and sale of snack foods for over fifty years and is now one of the largest manufacturers of snack foods in the United States.

2. Smartfoods, Inc., through its predecessors in interest and title, and through its related companies, divisions and/or licensees (hereinafter individually and/or

collectively referred to as "Smartfoods"), has been engaged in the manufacture and sale of snack foods, including popcorn, for over twenty five years and is now a prominent manufacturer of such products in the United States.

3. The United States Patent & Trademark Office previously granted extensions to oppose the Application. Smartfoods, Inc. is a party in privity with Frito-Lay North America, Inc. since, among other things, Frito-Lay North America, Inc. is the ultimate parent company of Smartfoods, Inc. and the SMARTFOOD brand of popcorn products constitutes one of the many snacks in the Frito-Lay family of snack products. Therefore, Frito-Lay properly joins this opposition, as it is in privity with Smartfoods. See 37 CFR §2.102 (b). "In the field of trademarks, the concept of privity generally includes . . . the relationship of "related companies" within the meaning of Trademark Act § 5 and Trademark Act § 45, 15 U.S.C. § 1055 and 15 U.S.C. § 1127." TBMP §206.02; See also TBMP §303.05(b). Frito-Lay and Smartfoods are collectively referred to herein as "Opposers."

4. Opposers' snack foods, including varieties of popped popcorn, are marketed and sold in tremendous quantities on a nationwide basis, supported by many millions of dollars of advertising and promotion each year. Opposers' snack foods are sold in almost every supermarket in the United States as well as in numerous convenience stores, vending machines, mass merchandise stores, schools and other outlets.

5. Opposers have manufactured snack foods for many years. Opposers have expanded their product lines to identify other snack food styles, flavors and shapes, manufactured and sold exclusively by Opposers.

6. Applicant's CLASSIC SWEET & SALTY mark was published for "snack foods, namely, popcorn and flavored popcorn" in International Class 30.

7. Applicant disclaimed the descriptive wording "SWEET & SALTY" from the Application.

8. The word CLASSIC in singular form is a very common word used by the public and other food manufacturers to describe a traditional, original, authentic or

typical product, particularly where the term CLASSIC precedes and modifies other terms, as it does in the Application for CLASSIC SWEET & SALTY.

9. On information and belief, the word CLASSIC is frequently disclaimed on the Principal Register from applications and registrations of marks that include the word CLASSIC for food products, including where the term CLASSIC precedes and modifies other terms. Applicant did not disclaim CLASSIC in the Application.

10. Registration of the Application is barred by Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1) because Applicant seeks to register a mark that is merely descriptive of the goods inasmuch as it describes an ingredient, quality, characteristic, function, feature, purpose or use of the specified goods or services. See In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987).

11. The entirety of Applicant's mark describes ingredients, qualities and features of the goods, in that CLASSIC SWEET & SALTY describes a traditional, original, authentic or typical flavor of popcorn, for example kettle corn flavored popcorn which is both sweet and salty.

12. Applicant's alleged mark consists of a combination of three descriptive words that together do not evoke a new and unique commercial impression. The component words, CLASSIC, SWEET and SALTY, each retain their descriptive significance in relation to the goods, so the combination results in a composite that is itself descriptive. See In re Oppedahl & Larson LLP, 373 F.3d 1171, 71 USPQ2d 1370 (Fed. Cir. 2004)

13. Applicant has not provided proof that the mark has acquired distinctiveness as applied to CLASSIC used on Applicant's goods in commerce and therefore is not registrable on the Principal Register under §2(f) of the Trademark Act, 15 U.S.C. §1052(f).

14. Registration of the Application would provide color of *prima facie* exclusive rights to Applicant to use the mark and phrase. Therefore, allowing registration of Applicant's mark is a source of damage and injury to Opposers inasmuch as it would preclude Opposers from using the same or similar descriptive

wording or phrasing in their advertising for snack food products, including popcorn. See In re Abcor Development Corp., 588 F.2d 811, 813, 200 USPQ 215, 217 (C.C.P.A. 1978) (descriptive marks should not be registered in order to maintain freedom of the public to use the language involved, thus avoiding the possibility of harassing infringement suits by the registrant against others who use the mark when advertising or describing their own products).

15. Registration of the Application should be refused in order to maintain freedom of the public and Opposers to use the descriptive language included in the Application that is necessary to advertise and properly describe Opposers' own products. See Estate of P.D. Beckwith, Inc. v. Comm'r of Patents, 252 U.S. 538, 543-44 (1920).

WHEREFORE, for the reasons set forth above, Opposers pray that the Application be rejected, and that registration of the Application be denied and refused.

This Notice of Opposition is being filed electronically pursuant to the ESTTA system.

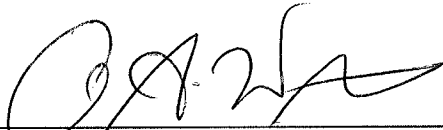
Respectfully submitted,

FRITO-LAY NORTH AMERICA, INC.

SMARTFOODS, INC.

Date: February 28, 2014

By:



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CERTIFICATE OF SERVICE

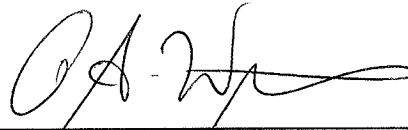
I hereby certify that a true copy of the foregoing NOTICE OF OPPOSITION was served on Applicant and Applicant's Attorney of Record on February 28, 2014, by sending same via First Class mail, postage prepaid, to the following parties:

Applicant

Angie's Artisan Treats, LLC
1918 Lookout Drive
North Mankato, MN 56003

Applicant's Attorney of Record

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