

ESTTA Tracking number: **ESTTA650245**

Filing date: **01/15/2015**

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	Societe des Produits Nestle S.A.
Granted to Date of previous extension	01/18/2015
Address	Case Postale 353 1800 Vevey, SWITZERLAND

Attorney information	Janet Shih Hajek Holland & Hart LLP P.O. Box 8749 Denver, CO 80201 UNITED STATES docket@hollandhart.com, aanderson@hollandhart.com, jshajek@hollandhart.com, lmroot@hollandhart.com, IPDocket@us.nestle.com Phone:(303) 295-8119
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**Applicant Information**

Application No	86214226	Publication date	07/22/2014
Opposition Filing Date	01/15/2015	Opposition Period Ends	01/18/2015
Applicant	Toufayan Bakery, Inc. 175 Railroad Avenue Ridgefield, NJ 07657 UNITED STATES		

**Goods/Services Affected by Opposition**


Class 029. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Ready-to-eat meals comprised primarily of meats, cheese and also including sauce and pita
Class 030. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Bread; Bread mixes; Pita; Pita bread; Sauces

**Grounds for Opposition**


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

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

U.S. Registration	1377467	Application Date	08/02/1984
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No.			
Registration Date	01/07/1986	Foreign Priority Date	NONE
Word Mark	LEAN POCKETS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1984/07/13 First Use In Commerce: 1984/07/13 PRE-COOKED, READY-TO-EAT, FROZEN BREAD HAVING A FRUIT, MEAT, CHEESE AND/OR VEGETABLE FILLING		

U.S. Registration No.	2151684	Application Date	03/11/1996
Registration Date	04/21/1998	Foreign Priority Date	NONE
Word Mark	HOT-POCKETS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1993/07/00 First Use In Commerce: 1993/07/00 pre-cooked, ready-to eat, frozen bread having a fruit, meat, cheese and/or vegetable filling		

U.S. Registration No.	3805800	Application Date	06/30/2009
Registration Date	06/22/2010	Foreign Priority Date	NONE
Word Mark	LEAN POCKETS		
Design Mark			
Description of	The mark consists of an elongated greenpillow with "LEAN POCKETS" in white.		

Mark	
Goods/Services	Class 030. First use: First Use: 2007/01/31 First Use In Commerce: 2007/01/31 Pre-cooked, ready-to-eat frozen bread having a meat, pizza, cheese, and/or vegetable filling

U.S. Registration No.	3867701	Application Date	04/15/2010
Registration Date	10/26/2010	Foreign Priority Date	NONE

Word Mark	LEAN POCKETS
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Design Mark	
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Description of Mark	NONE
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Goods/Services	Class 030. First use: First Use: 1984/07/13 First Use In Commerce: 1984/07/13 Pre-cooked, ready-to-eat, frozen bread having a fruit, meat, cheese and/or vegetable filling
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Attachments	73493104#TMSN.png( bytes ) 77771480#TMSN.png( bytes ) 85015163#TMSN.png( bytes ) POCKETFULS - Notice of Opposition.pdf(53640 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	/Janet Shih Hajek/
Name	Janet Shih Hajek
Date	01/15/2015



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

Société Des Produits Nestlé S.A.,  Opposer,  v.  Toufayan Bakery, Inc.,  Applicant.	Opposition No.:  Trademark: POCKETFULS  Serial No.: 86/214,226
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**NOTICE OF OPPOSITION**

Société Des Produits Nestlé S.A. (“Opposer”), a Swiss corporation with a business address of Case Postale 353, Vevey, 1800 Switzerland, believes that it will be damaged by the registration of the trademark POCKETFULS shown in Application Serial No. 86/214,226 (the “Application”) filed by Toufayan Bakery, Inc. (“Applicant”) and hereby opposes the Application. As grounds for its opposition, Opposer alleges that, upon actual knowledge with respect to itself and its own actions, and upon information and belief as to other matters:

1. Opposer is the largest food and beverage company in the world.
2. Opposer, through its Nestlé group of related companies, manufactures and produces a wide variety of food and beverage products, including pre-cooked, ready-to-eat frozen bread with various fillings under the well-known HOT POCKETS and LEAN POCKETS trademarks.
3. Opposer’s HOT POCKETS and LEAN POCKETS marks are the subject of the following federal trademark registrations:

<b><u>TRADEMARK</u></b>	<b><u>REG. NO.</u></b>	<b><u>REG. DATE</u></b>	<b><u>GOODS</u></b>
	1,377,467	January 7, 1986	Pre-cooked, ready-to-eat, frozen bread having a fruit, meat, cheese and/or vegetable filling (Class 30)
<b>HOT-POCKETS</b>	2,151,684	April 21, 1998	Pre-cooked, ready-to-eat, frozen bread having a fruit, meat, cheese and/or vegetable filling (Class 30)
	3,805,800	June 22, 2010	Pre-cooked, ready-to-eat frozen bread having a meat, pizza, cheese, and/or vegetable filling (Class 30)
<b>LEAN POCKETS</b>	3,867,701	October 26, 2010	Pre-cooked, ready-to-eat, frozen bread having a fruit, meat, cheese and/or vegetable filling (Class 30)

4. The registrations for each of the marks set forth above (collectively, the “POCKETS Marks”) are valid and subsisting and therefore constitute *prima facie* evidence of the validity of the marks and registrations, and of Opposer’s exclusive rights to use the marks in connection with the goods set forth in these registrations.

5. The foregoing registrations provide constructive notice of Opposer’s ownership of its POCKETS Marks.

6. Registration Nos. 1,377,467 and 2,151,684 are incontestable pursuant to 15 U.S.C. §§ 1065 and 1115(b). Therefore, these registrations constitute conclusive evidence of the validity of the marks and of Opposer’s exclusive right to use these marks in connection with the goods set forth in the respective registrations.

7. Opposer has sold millions of dollars’ worth of its products under the POCKETS Marks, and has spent significant sums advertising and promoting its products under these trademarks.

8. As a result of Opposer's extensive marketing and promotion, coupled with the overwhelming commercial success of its products, Opposer's POCKETS Marks have become famous and well known.

9. On or about March 7, 2014, Applicant filed intent-to-use Application Serial No. 86/214,226 to register POCKETFULS for "ready-to-eat meals comprised primarily of meats, cheese and also including sauce and pita" in International Class 29 and "bread; bread mixes; pita; pita bread; sauces" in International Class 30.

10. Opposer has used its POCKETS Marks since well prior to the Application filing date of the POCKETFULS Application.

11. Upon information and belief, Opposer has used its POCKETS Marks since well prior to any date of first use for the POCKETFULS mark that can be claimed by Applicant.

12. Similarly, Opposer's POCKETS Marks were registered well prior to the Application filing date and prior to any date of first use for the POCKETFULS mark that can be claimed by Applicant.

13. The goods identified in the Application are highly similar to the goods offered by Opposer under Opposer's POCKETS Marks.

**COUNT I**  
**Likelihood of Confusion**  
**15 U.S.C. § 1052(d)**

14. Opposer realleges and incorporates by reference the preceding allegations of its Notice of Opposition.

15. Since well prior to the filing date of the Application, Opposer has used one or more of Opposer's POCKETS Marks in connection with stuffed pastries, bread and sandwiches.

16. Applicant's POCKETFULS trademark so resembles Opposer's prior used and registered POCKETS Marks as to be likely, when used in connection with the goods set forth in the Application, to cause confusion, or to cause mistake, or to deceive under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

**COUNT II**  
**Likelihood of Dilution**  
**15 U.S.C. § 1125(c)**

17. Opposer realleges and incorporates by reference the preceding allegations of its Notice of Opposition.

18. Opposer's POCKETS Marks are famous and well known and became famous under 15 U.S.C. § 1125(c) well prior to the filing date of the Application and any priority date upon which Applicant can rely.

19. Applicant's POCKETFULS trademark so resembles Opposer's prior used and registered POCKETS Marks as to dilute or to be likely to cause dilution of the distinctive quality of Opposer's POCKETS Marks by blurring under section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

WHEREFORE, Opposer believes that it will be damaged by registration of the trademark shown in Application Serial No. 86/214,226 and respectfully requests that the opposition be sustained, and that registration to Applicant be refused.

The filing fee in the amount of \$600 is being transmitted electronically with this submission. Any deficiency in the fee should be charged to Deposit Account No. 08-2623.

Dated this 15th day of January, 2015.

Respectfully submitted,

*/Janet Shih Hajek/*

Andrea Anderson

Janet Shih Hajek

HOLLAND & HART LLP

P.O. Box 8749

Denver, Colorado 80201

Phone: (303) 295-8119

Fax: (303) 957-5583

Emails: [aanderson@hollandhart.com](mailto:aanderson@hollandhart.com);

[jshajek@hollandhart.com](mailto:jshajek@hollandhart.com); [docket@hollandhart.com](mailto:docket@hollandhart.com)

**Attorneys for Opposer,**

**Société Des Produits Nestlé S.A.**



**CERTIFICATE OF SERVICE**

I certify that on January 15, 2015, I served a true and correct copy of the above NOTICE OF OPPOSITION to the following by U.S. Mail, postage prepaid:

Darren M. Geliebter, Esq.  
Lombard & Geliebter LLP  
1115 Broadway, Floor 12  
New York, NY 10010-3452

*/Janet Shih Hajek/*

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Janet Shih Hajek

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