

ESTTA Tracking number: **ESTTA788589**

Filing date: **12/12/2016**

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	General Mills IP Holdings II, LLC
Granted to Date of previous extension	12/11/2016
Address	Number One General Mills Blvd. Minneapolis, MN 55426 UNITED STATES

Attorney information	Joshua J. Burke General Mills, Inc. Number One General Mills Blvd. Minneapolis, MN 55426 UNITED STATES trade.marks@genmills.com Phone:763-764-5524
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Applicant Information

Application No	86660710	Publication date	06/14/2016
Opposition Filing Date	12/12/2016	Opposition Period Ends	12/11/2016
International Registration No.	NONE	International Registration Date	NONE
Applicant	FÃ#BRICA DE PRODUCTOS ALIMENTICIOS RENE Y COMPAÃ#Ã#A SOCIEDAD EN COMANDITA POR ACCIONES Calzada San Juan 34-01 Zona 7 Guatemala, GUATEMALA		

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: Corn-based snack foods

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.	603700	Application Date	05/03/1954
Registration Date	03/22/1955	Foreign Priority Date	NONE
Word Mark	TRIX		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 1910/07/29 First Use In Commerce: 1910/07/29 READY-TO-EAT BREAKFAST CEREAL


U.S. Registration No.	1552170	Application Date	12/05/1988
Registration Date	08/15/1989	Foreign Priority Date	NONE
Word Mark	TRIX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1910/07/29 First Use In Commerce: 1910/07/29 READY-TO-EAT BREAKFAST CEREAL		

U.S. Registration No.	1553126	Application Date	12/05/1988
Registration Date	08/22/1989	Foreign Priority Date	NONE
Word Mark	TRIX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1988/08/01 First Use In Commerce: 1988/08/01 READY-TO-EAT BREAKFAST CEREAL		

U.S. Registration No.	1778442	Application Date	05/28/1992
Registration Date	06/22/1993	Foreign Priority Date	NONE
Word Mark	TRIX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1992/08/02 First Use In Commerce: 1992/08/02 yogurt		

U.S. Registration No.	1923941	Application Date	10/13/1994
Registration Date	10/03/1995	Foreign Priority Date	NONE
Word Mark	TRIX ARE FOR KIDS!		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1982/03/31 First Use In Commerce: 1982/03/31 breakfast cereal		

U.S. Registration No.	2962524	Application Date	02/25/2004
Registration Date	06/14/2005	Foreign Priority Date	NONE
Word Mark	SILLY RABBIT...TRIX ARE FOR KIDS!		

Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1999/08/31 First Use In Commerce: 1999/08/31 YOGURT		

U.S. Registration No.	3153686	Application Date	10/13/2005
Registration Date	10/10/2006	Foreign Priority Date	NONE
Word Mark	TRIX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2005/01/01 First Use In Commerce: 2005/01/01 CEREAL-DERIVED, READY-TO-EAT FOOD BAR		

Attachments	71665588#TMSN.png(bytes) 73767669#TMSN.png(bytes) 74280420#TMSN.png(bytes) 78373887#TMSN.png(bytes) Notice of Opp - Tortrix - 2016.pdf(19373 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	/J.J. Burke/
Name	Joshua J. Burke

Date	12/12/2016
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application:
Serial No. 86/660,710 in International Classes 30

Filed: June 12, 2015

Published in the Official Gazette on:
June 14, 2016

Trademark: TORTRIX

GENERAL MILLS IP HOLDINGS II, LLC.,)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	
FABRICA DE PRODUCTOS ALIMENTICIOS)	
RENE Y CAMPAÑA SOCIEDAD EN)	
COMANDITA POR ACCIONES.,)	
)	
Applicant.)	

NOTICE OF OPPOSITION

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

GENERAL MILLS IP HOLDINGS II, LLC, a Delaware Limited Liability Company having a place of business at Number One General Mills Boulevard, Minneapolis, Minnesota 55426, believes it will be damaged by registration of the mark TORTRIX for “corn-based snack foods” in International Classes 30, and hereby opposes Application Serial No. 86/660,710.

As the grounds of Opposition, it is alleged that:

1. Opposer is now and has for many years engaged in the manufacture, distribution and sale of a wide variety of consumer packaged goods.

2. Opposer adopted and began using its famous TRIX® trademark in connection with breakfast cereal over ninety-five years ago and has continuously and exclusively used its TRIX trademark in interstate commerce in connection with said breakfast cereal. Applicant filed its application to register the TORTRIX mark pursuant to Section 44(e) of the Lanham Act on June 12, 2015. Accordingly, Opposer has superior and paramount rights to the TRIX trademark as compared to Applicant.

3. By virtue of extensive advertising and sales of its goods, Opposer's TRIX trademark has become well and favorably known in the trade and to the consumer and has become and continues to be a famous and valuable symbol of Opposer's business and the goodwill. Opposer's TRIX trademark became famous and acquired its goodwill long prior to the date on which Applicant filed its application.

4. Due to the popularity of its TRIX breakfast cereal, Opposer has introduced a number of ancillary products, including yogurt, fruit snacks, flavored milk, frozen confections, clothing, stationery and toys that incorporate the TRIX mark.

5. Opposer is the owner of numerous registrations for the TRIX mark and marks that include the TRIX mark, including the following:

<u>Mark</u>	<u>Reg. No. & Date</u>	<u>Goods</u>
TRIX (Stylized)	603,700 (March 22, 1955)	Ready-to-eat breakfast cereal
TRIX	1,552,170 (August 15, 1989)	Ready-to-eat breakfast cereal
TRIX (Stylized)	1,553,126 (August 15, 1989)	Ready-to-eat breakfast cereal
TRIX	1,778,442 (June 22, 1993)	Yogurt
TRIX ARE FOR KIDS!	1,923,941 (October 3, 1995)	Breakfast Cereal
SILLY RABBIT . . . TRIX	2,962,524	Yogurt

ARE FOR KIDS!	(January 21, 2003)	
TRIX	3,153,686 (October 10, 2006)	Cereal-derived, ready-to-eat food bar.

All of Opposer's registrations are incontestable.

6. On information and belief, Applicant's TORTRIX trademark is not currently used in the United States.

7. On information and belief, the goods for which Applicant seeks a registration of its trademark TORTRIX are highly related to the goods upon which Opposer has used its trademark TORTRIX and are provided to substantially the same class of customers.

8. Use by Applicant of the trademark TORTRIX for which registration is sought in the application opposed herein is without Opposer's consent or permission.

9. Opposer's famous TRIX mark and Applicant's TORTRIX mark are highly similar, and therefore so close to one another as to be likely to cause confusion, or cause mistake, or to deceive a substantial number of people to believe, mistakenly, that Applicant's goods originate from, or are approved by, or are in some way associated with Opposer, in violation Section 2(d) of the Lanham Act. Accordingly, Opposer's goodwill and reputation will be damaged and jeopardized by Applicant's intended use and registration of its TORTRIX mark.

10. Applicant's intended use and registration of its TORTRIX mark will falsely suggest a connection with Opposer.

11. Applicant's intended use and registration of its TORTRIX mark will dilute the distinctive quality of Opposer's famous TRIX mark.

WHEREFORE, Opposer respectfully requests that the registration sought by the Applicant be refused and that this Opposition be sustained.

Respectfully submitted,

GENERAL MILLS IP HOLDINGS II, LLC

Dated: December 12, 2016

By: J.J. Burke/
Joshua J. Burke

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the NOTICE OF OPPOSITION has been served via First Class mail to Applicant's correspondent of record and to Applicant's attorney at the addresses below on this 12th day of December, 2016:

JOSHUA J. BURKE
GENERAL MILLS IP HOLDINGS II, LLC
ONE GENERAL MILLS BLVD.
MINNEAPOLIS, MN 55426

/J.J. Burke/
Attorney for Opposer