

ESTTA Tracking number: **ESTTA823505**

Filing date: **05/26/2017**

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 | 06/04/2017  |
| Address                               | Case Postale 353<br>Vevey, 1800<br>SWITZERLAND  |
| Attorney information                  | Madelon L. Lapidus<br>Holland & Hart LLP<br>P.O. Box 8749 __ Attn: Trademark Docketing<br>DENVER, CO 80201<br>UNITED STATES<br>docket@hollandhart.com, hihamilton@hollandhart.com, aander-<br>son@hollandhart.com, mlapidus@hollandhart.com, mamooore@hollandhart.com |

**Applicant Information**

|                                |  |                                 |            |
|--------------------------------|--|---------------------------------|------------|
| Application No                 | 86623929   | Publication date                | 12/06/2016 |
| Opposition Filing Date         | 05/26/2017   | Opposition Period Ends          | 06/04/2017 |
| International Registration No. | NONE   | International Registration Date | NONE       |
| Applicant                      | BROCKMANN'S CHOCOLATE INC.<br>7863 Progress Way<br>Delta, BC, V4G1A3<br>CANADA |                                 |            |

**Goods/Services Affected by Opposition**


|   |
|---|
| Class 030. First Use: 0 First Use In Commerce: 0<br>All goods and services in the class are opposed, namely: chocolate confectionery; almond-chocolate confectionery; confectionery, namely, chocolate clusters containing almonds, nuts, cereals, dried fruits and seeds |
|---|


**Grounds for Opposition**


|                                      |                                    |
|--------------------------------------|------------------------------------|
| Priority and likelihood of confusion | Trademark Act Section 2(d)         |
| Dilution by blurring                 | Trademark Act Sections 2 and 43(c) |

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

|                       |        |                  |            |
|-----------------------|--------|------------------|------------|
| U.S. Registration No. | 630563 | Application Date | 06/09/1955 |
|-----------------------|--------|------------------|------------|

|                     |  |                       |      |
|---------------------|--|-----------------------|------|
| Registration Date   | 07/10/1956   | Foreign Priority Date | NONE |
| Word Mark           | NESTLE'S CRUNCH  |                       |      |
| Design Mark         |            |                       |      |
| Description of Mark | NONE   |                       |      |
| Goods/Services      | Class 030. First use: First Use: 1937/11/00 First Use In Commerce: 1937/11/00 MILK CHOCOLATE |                       |      |

|                       |   |                       |            |
|-----------------------|---|-----------------------|------------|
| U.S. Registration No. | 1110632   | Application Date      | 08/31/1977 |
| Registration Date     | 01/02/1979  | Foreign Priority Date | NONE       |
| Word Mark             | NESTLE CRUNCH   |                       |            |
| Design Mark           |                            |                       |            |
| Description of Mark   | NONE  |                       |            |
| Goods/Services        | Class 030. First use: First Use: 1977/06/30 First Use In Commerce: 1977/06/30 CHOCOLATE COATED ICE CREAM BARS |                       |            |

|                       |  |                       |            |
|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 5193789  | Application Date      | 07/24/2015 |
| Registration Date     | 05/02/2017   | Foreign Priority Date | NONE       |
| Word Mark             | CRUNCH   |                       |            |
| Design Mark           |    |                       |            |
| Description of Mark   | The mark consists of the stylized wording "CRUNCH" in a rectangle. Between the letters "N" and "C" there are break designs exploding at the top and bottom |                       |            |

|                |   |
|----------------|---|
|                | of the rectangle. The black that appears around the rectangle in the drawing represents background and is not claimed as a feature of the mark.                       |
| Goods/Services | Class 030. First use: First Use: 2003/03/30 First Use In Commerce: 2003/03/30<br>Chocolate; chocolate bars; chocolate candies; candies; ice cream; frozen confections |

|                       |            |                       |            |
|-----------------------|------------|-----------------------|------------|
| U.S. Registration No. | 5193787    | Application Date      | 07/21/2015 |
| Registration Date     | 05/02/2017 | Foreign Priority Date | NONE       |

|           |        |
|-----------|--------|
| Word Mark | CRUNCH |
|-----------|--------|

|             |  |
|-------------|--|
| Design Mark |  |
|-------------|--|

|                     |  |
|---------------------|--|
| Description of Mark | The mark consists of the stylized wording "CRUNCH" in red contained in a white rectangle that is on a blue background. Between the letters "N" and "C" there are break designs exploding at the top and bottom of the white rectangle. |
|---------------------|--|

|                |   |
|----------------|---|
| Goods/Services | Class 030. First use: First Use: 2003/03/30 First Use In Commerce: 2003/03/30<br>Chocolate; chocolate bars; chocolate candies; candies; ice cream; frozen confections |
|----------------|---|

|                      |          |                       |            |
|----------------------|----------|-----------------------|------------|
| U.S. Application No. | 87278581 | Application Date      | 12/22/2016 |
| Registration Date    | NONE     | Foreign Priority Date | NONE       |

|           |        |
|-----------|--------|
| Word Mark | CRUNCH |
|-----------|--------|

|             |  |
|-------------|--|
| Design Mark |  |
|-------------|--|

|                     |      |
|---------------------|------|
| Description of Mark | NONE |
|---------------------|------|

|                |   |
|----------------|---|
| Goods/Services | Class 030. First use: First Use: 1937/11/01 First Use In Commerce: 1937/11/01<br>Chocolate, chocolate bars, chocolate candies |
|----------------|---|

|             |  |
|-------------|--|
| Attachments | 71689235#TMSN.png( bytes )<br>73139506#TMSN.png( bytes )<br>86703959#TMSN.png( bytes )<br>86699723#TMSN.png( bytes )<br>87278581#TMSN.png( bytes )<br>Notice of Opp. ___ CRUNCHETTI.pdf(108596 bytes ) |
| Signature   | /Madelon L. Lapidus/   |
| Name        | Madelon L. Lapidus   |
| Date        | 05/26/2017   |

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

|  |   |
|--|---|
| SOCIÉTÉ DES PRODUITS NESTLÉ S.A.,<br><br>Opposer,<br><br>v.<br><br>BROCKMANN'S CHOCOLATE INC.,<br><br>Applicant. | Opposition No.:<br><br>Mark: CRUNCHETTI<br><br>Serial No.: 86623929 |
|--|---|

**NOTICE OF OPPOSITION**

Société des Produits Nestlé S.A. (“Opposer”), a société anonyme organized and existing under the laws of Switzerland, with an address of Case Postale 353, Vevey, 1800, Switzerland, believes that it will be damaged by registration of the mark CRUNCHETTI in connection with “chocolate confectionery; almond-chocolate confectionery; confectionery, namely, chocolate clusters containing almonds, nuts, cereals, dried fruits and seed” in Class 30, shown in U.S. Trademark Application Serial No. 86623929 (the “Application”), and hereby opposes it.

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 and its affiliated companies constitute one of the world’s largest producers of food and beverages.
  
2. Since well prior to the filing date of the Application and any claimed date of first use, Opposer’s affiliated companies and licensees have used the CRUNCH and NESTLÉ (or NESTLÉ’S) CRUNCH marks (the “CRUNCH Marks”) in connection with the marketing and sale of candy bars and related products.

3. Opposer owns United States Trademark Registration No. 0630563 for NESTLÉ'S CRUNCH in connection with "milk chocolate" in Class 30 and Registration No. 1110632 for NESTLÉ CRUNCH in connection with "chocolate coated ice cream bars" in Class 30.

4. Opposer also owns United States Trademark Registration No. 5193789 for CRUNCH & Design in connection with "chocolate; chocolate bars; chocolate candies; candies; ice cream; frozen confections" in Class 30, Registration No. 5193787 for CRUNCH & Design in connection with "chocolate; chocolate bars; chocolate candies; candies; ice cream; frozen confections" in Class 30, and United States Trademark Application No. 87278581 for CRUNCH in connection with "Chocolate, chocolate bars, chocolate candies" in Class 30.

5. These registrations and application are valid and subsisting, constituting prima facie evidence of the validity of the marks, and of Opposer's ownership of and exclusive right to use the marks in connection with the goods set forth in the registrations and applications.

6. Opposer's licensee has sold millions of dollars' worth of its chocolate bars under the CRUNCH Marks and has invested significant resources in advertising and promoting its products under these marks.

7. As a result of Opposer's licensee's extensive marketing and promotion, coupled with the overwhelming commercial success of its candy bars, Opposer's CRUNCH Marks have become famous and well known.

8. Opposer has not authorized Applicant's use or application to register the mark CRUNCHETTI.

9. Applicant's CRUNCHETTI mark is confusingly similar to Opposer's Mark in that it contains the identical term CRUNCH together with the suffix -ETTI for use in connection

with goods that are identical and closely related to Opposer's goods. Moreover, the parties' goods are likely to be sold through identical channels of trade.

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

10. Opposer realleges and incorporates by reference the preceding allegations of this Notice of Opposition.

11. Since well prior to the filing date of the Application or any claimed first use, Opposer has been continuously using in commerce, and has registered, Opposer's Marks in connection with identical or closely related goods as are covered by Applicant's Application.

12. The CRUNCHETTI mark set forth in the Application so closely resembles Opposer's prior use and/or registered CRUNCH 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))**

13. Opposer incorporates by reference the preceding allegations of this Notice of Opposition.

14. Well prior to the filing date of the Application, Opposer's distinctive CRUNCH Marks became famous under 15 U.S.C. § 1125(c).

15. Applicant's proposed use and registration of the mark CRUNCHETTI, in connection with the goods set forth in the Application, is likely to cause dilution by blurring of Opposer's famous CRUNCH Marks 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 mark shown in Application Serial No. 86623929 and respectfully requests that the opposition be sustained and that registration to Applicant be refused. The filing fee, in the amount of \$400, is being transmitted electronically with this submission. Any deficiency in the fee should be charged to Deposit Account No. 082623.

May 26, 2017

Respectfully submitted,

/s/ Madelon Lapidus

Madelon Lapidus

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Hope Hamilton

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**Attorneys for Opposer**

Société des Produits Nestlé S.A.



**NOTICE REGARDING SERVICE**

Consistent with the Trademark Trial and Appeal Board Manual of Procedure Rule 309.02(c)(1) (amended January 14, 2017), service of the above NOTICE OF OPPOSITION will be effected by the Board. To facilitate the Board, the following physical address(s) and email address(es) are available for the Applicant via TSDR:

Tanya M. Reitzel  
Coastal Trademark Services  
1081 Cambie Street  
Vancouver, BC Canada V6B5L7  
[info@coastalip.com](mailto:info@coastalip.com)

*/s/ Mark Moore* \_\_\_\_\_  
Mark Moore