

ESTTA Tracking number: **ESTTA841425**

Filing date: **08/23/2017**

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	Frito-Lay North America, Inc.
Granted to Date of previous extension	08/23/2017
Address	7701 Legacy Drive Plano, TX 75024 UNITED STATES

Correspondence information	Jeanette S. Zimmer Senior Trademark Counsel Frito-Lay North America, Inc. 7701 Legacy Drive Plano, TX 75024 UNITED STATES Email: trademarks@pepsico.com, jeanette.zimmer@pepsico.com, donna.j.sanders@pepsico.com
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Applicant Information

Application No	87249836	Publication date	04/25/2017
Opposition Filing Date	08/23/2017	Opposition Period Ends	08/23/2017
Applicant	CHEF'S TOUCH SALES AND MARKETING, LLC 2628 N 11TH ST SHEBOYGAN, WI 53081 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: Cheese food; Fruit-based snack food; Meat-based snack foods; Nut-based snack foods; Potato-based snack foods; Ready-to-eat meals comprised primarily of meats, cheese and also including pasta, rice, bean, grains, vegetables, nuts, seeds, fruit; Refrigerated food package combinations consisting primarily of meat, cheese or processed vegetables for purposes of creating layered food for handheld consumption in the nature of a sandwich; Vegetable-based snack foods
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Grounds for Opposition

Failure to function as a mark	Trademark Act Sections 1, 2 and 45
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Attachments	Lets Tailgate Opposition.pdf(258603 bytes)
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Signature	/Jeanette S. Zimmer/
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Name	Jeanette S. Zimmer
Date	08/23/2017

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

FRITO-LAY NORTH AMERICA, INC.,	:	
	:	
Opposer,	:	Opposition No.
	:	
v.	:	Mark: LET'S TAILGATE!
	:	
CHEF'S TOUCH SALES AND	:	Serial No. 87/249,836
MARKETING, LLC,	:	
	:	
Applicant.	:	

NOTICE OF OPPOSITION

Opposer, Frito-Lay North America, Inc. ("Frito-Lay" or "Opposer"), a Delaware corporation having a place of business at 7701 Legacy Drive, Plano, Texas 75024, believes that it will be damaged by the registration of United States Trademark Application Serial No. 87/249,836, filed on November 28, 2016, in the name of Chef's Touch Sales and Marketing, LLC (hereinafter "Applicant") for the mark LET'S TAILGATE! based on an intention to use the mark on or in connection with "Cheese food; Fruit-based snack food; Meat-based snack foods; Nut-based snack foods; Potato-based snack foods; Ready-to-eat meals comprised primarily of meats, cheese and also including pasta, rice, bean, grains, vegetables, nuts, seeds, fruit; Refrigerated food package combinations consisting primarily of meat, cheese or processed vegetables for purposes of creating layered food for handheld consumption in the nature of a sandwich; Vegetable-based snack foods" in International Class 29 (the "Mark" or "Application"). The Application was published in the *Official Gazette* on April 25, 2017,

and after Opposer was properly granted extensions of time to oppose, it hereby opposes the Application on the following grounds:

1. For over 50 years, Opposer, through its related companies (collectively referred to as "Opposer") has been engaged in the manufacture and sale of a wide variety of snack foods, including many of the goods recited in the Application. Opposer is one of the largest manufacturers of snack foods in the United States and in many countries throughout the world.
2. Opposer's snack foods are marketed and sold in tremendous quantities on a nationwide basis, supported by hundreds of millions of dollars of advertising and promotion each year. Opposer's products are sold in almost every supermarket in the United States as well as in numerous convenience stores, vending machines, mass merchandise stores, sporting venues, stadiums, schools, online and other outlets.
3. Opposer is an official sponsor of the National Football League ("NFL"), college teams and many other sporting teams or events. Opposer and spends a significant amount of money advertising and promoting its snack food products in connection with sporting games and events.
4. On information and belief, a "tailgate" is common, pre-game social gathering where food and beverages are typically served from the back of a parked vehicle in the parking lot of a sports stadium or venue. Attending a "tailgate" is commonly understood by the general public in the United States.

5. On information and belief, the wording in Applicant's mark, LET'S TAILGATE! is a slogan that is merely informational in nature, or is a common laudatory phrase or call to action that would ordinarily be used by the public.
6. On information and belief, given the common use and meaning of the phrase LET'S TAILGATE, it does not have the commercial impression of a source indicator.
7. Applicant's purported mark consists of merely information matter and fails to function as a trademark; therefore, the Application is not entitled to registration on the Principal Register pursuant to Sections 1, 2 and 45 of the Lanham Act.

WHEREFORE, Opposer prays that this Opposition be sustained, that registration be denied to Applicant on its Application Serial No. 87/249,836 and that the Board grants all further relief favorable to Opposer that is necessary and just in these circumstances.

Respectfully submitted,

FRITO-LAY NORTH AMERICA, INC.

Date: August 23, 2017

By:


Jeanette S. Zimmer, Attorney for Opposer
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Plano, TX 75024
Tel: (972) 334-2587
trademarks@pepsico.com

CERTIFICATE OF FILING

I hereby certify that this Notice of Opposition was filed electronically through the TTAB's ESTTA (Electronic System for Trademark Trials and Appeals) system, on August 23, 2017.

By:


Jeanette S. Zimmer

CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2017, this Notice of Opposition is being deposited today with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to the Attorney of Record for Applicant:

Mandy T. Garrels
Ceres Patent & Technology LLC
529 Ontario Avenue, SN2
Sheboygan, Wisconsin 53081

By:


Jeanette S. Zimmer