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

Proceeding	91239671
Party	Plaintiff Frito-Lay North America, Inc.
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Date	09/20/2021
Attachments	Notice of Status of Related Proceedings and Motion for Judgment Oppn 91239671.pdf(157400 bytes ) Exhibit A.pdf(24355 bytes ) Exhibit B.pdf(294026 bytes )

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

FRITO-LAY NORTH AMERICA, INC.

Opposer,

v.

SNYDER’S-LANCE, INC.,

Applicant.

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Opposition No.: 91239671

Serial No.: 87/189,983

Mark: PRETZEL CRISPS

**NOTICE OF STATUS OF RELATED PROCEEDINGS  
AND MOTION FOR JUDGMENT**

Frito-Lay North America, Inc. (“Opposer”) hereby notifies the Board that the related proceedings that occasioned suspension of these proceedings—Opposition No. 91195552 and Cancellation No. 92053001<sup>1</sup> (the “Related Proceedings”)—are now final, and the result of the Related Proceedings compels a decision in Opposer’s favor in this proceeding under the doctrine of issue preclusion. In its final order in the Related Proceedings dated September 6, 2017 (the “TTAB Order”), the Board held (among other things) that the term PRETZEL CRISPS is generic for “pretzel crackers.” *Frito-Lay N. Am., Inc. v. Princeton Vanguard, LLC*, 124 USPQ2d 1184, 1206 (TTAB 2017). On Applicant’s appeal from the TTAB Order pursuant to 15 U.S.C. § 1071(b), the United States District Court for the Western District of North Carolina came to the same conclusion, issuing a Final Order and Judgment (the “DC Order”) on June 7, 2021, finding the term “pretzel crisps” generic for pretzel crackers and affirming the TTAB Order. *Snyder’s Lance, Inc. v. Frito-Lay N. Am., Inc.*, --- F. Supp. 3d ---, 2021 WL 2322931, at \*26 (W.D.N.C. Jun. 7, 2021). Applicant appealed the DC Order to the United States Court of Appeals for the Fourth Circuit, but then voluntarily dismissed the appeal with prejudice. Because the application

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<sup>1</sup> These proceedings are consolidated, with 91195552 as the parent.

at issue in the instant Opposition seek to register the identical term for essentially the same goods—“Yogurt-covered pretzel snacks,”—the TTAB and District Court decisions in the Related Proceedings are preclusive on the issue of genericness, which is dispositive of this proceeding. Accordingly, this opposition against Application Serial No. 87/189,983 (the “Application”) should be sustained and judgment entered in Opposer’s favor pursuant to FED. R. CIV. P. 56, TBMP §§ 510.02(b) and 528, and 37 C.F.R. § 2.127.

## **BACKGROUND**

### **I. The Related Proceedings**

Princeton Vanguard, LLC (“Princeton”)<sup>2</sup> owns Application Serial No. 76/700,802 (the “Related Application”), filed December 11, 2009, which seeks to register PRETZEL CRISPS (disclaiming “PRETZEL”) in standard characters in Class 30 for “Pretzel Crackers.” Princeton also owns Registration No. 2,980,303 on the Supplemental Register (the “Related Registration”) for PRETZEL CRISPS (disclaiming “PRETZEL”) in standard characters in Class 30 for “Pretzel crackers,” which issued on July 26, 2005.

On July 2, 2010, Opposer filed Opposition No. 91195552 against the Related Application, asserting, among other things, that PRETZEL CRISPS is generic for pretzel crackers. On September 10, 2010, Opposer filed Cancellation No. 92053001 seeking cancellation of the Related Registration on the same basis. Eventually, the proceedings were consolidated with Opposition No. 91195552 as parent, and the consolidated proceeding advanced through trial.

On September 6, 2017, the Board issued the TTAB Order granting Opposer’s petition for cancellation of the Related Registration and sustaining Opposer’s opposition to the Related Application on the ground that PRETZEL CRISPS is generic for “pretzel crackers.”<sup>3</sup> *Frito-Lay*,

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<sup>2</sup> Applicant Snyder’s-Lance, Inc., is the parent company of Princeton Vanguard, LLC.

<sup>3</sup> The TTAB Order also found in the alternative, “in the event of appeal” that the term PRETZEL CRISPS is highly

124 USPQ2d at 1206.

On November 6, 2017, Princeton and Applicant, its parent company, appealed the TTAB Order to the United States District Court for the Western District of North Carolina pursuant to 15 U.S.C. § 1071(b).

Following a hearing on the merits, the District Court issued the DC Order finding that the parties' evidence "reflects that, on balance, consumers primarily perceive 'pretzel crisps' to be a common / generic name." *Snyder's-Lance*, 2021 WL 2322931, at \*26. Accordingly, the Court specifically ordered that (1) "The TTAB's cancellation of the registration of the mark PRETZEL CRISPS for pretzel crackers on the Supplemental Register is affirmed, and the United States Patent and Trademark Office is hereby directed to cancel the mark on the Supplemental Register"; and (2) "The TTAB's denial of Princeton-Vanguard, LLC's application to register PRETZEL CRISPS on the Principal Register is affirmed and Frito-Lay's opposition to that application is sustained." *Id.*

On July 7, 2021, Applicant and Princeton filed a notice of appeal of the DC Order to the United States Court of Appeals for the Fourth Circuit. *See Exhibit A*. However, on August 31, 2021, Applicant and Princeton filed a voluntary dismissal of their appeal with prejudice, which was granted by the Fourth Circuit. *See Exhibit B*. Thus, the appeal of the TTAB Order has concluded, and the DC Order affirming the TTAB Order is final.

## **II. The Current Opposition**

While the Related Proceedings were pending, Applicant filed this new Application on September 30, 2016, to register PRETZEL CRISPS in standard characters in Class 30 for "Yogurt-covered pretzel snacks." On February 23, 2018, Opposer filed the current Opposition against the

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descriptive and has not acquired distinctiveness. *Frito-Lay*, 124 USPQ2d at 1206. The DC Order did not reach those findings. *Snyder's-Lance*, 2021 WL 2322931, at \*1, n.2.

Application on the basis that the purported mark is generic for the identified goods and thus not registrable. 1 TTABVue 4. On March 27, 2018, the Board issued an Order suspending the current Opposition pending the outcome of the civil action in the Related Proceedings and instructing the parties to notify the Board upon conclusion of those proceedings. 5 TTABVue.

### **ISSUE PRECLUSION**

Issue preclusion bars re-litigation of the same decided issue in a second action. *See B&B Hardware, Inc. v. Hargis Indus., Inc.*, 136 S. Ct. 1293 (2015); *Lukens Inc. v. Vesper Corp.*, 1 USPQ2d 1233, 1301 (TTAB 1986). The application of the issue preclusion doctrine merely requires: (1) identity of an issue in the current and prior proceeding; (2) actual litigation of that issue in the prior proceeding; (3) that determination of the issue was necessary in entering judgment in the prior proceeding; and (4) that the party with the burden of proof on that issue in the second proceeding had a full and fair opportunity to litigate the issue in the prior proceeding. *See NH Beach Pizza LLC v. Cristy's Pizza Inc.*, 119 USPQ2d 1861, 1864 (TTAB 2016) (citing *Montana v. United States*, 440 U.S. 147, 153-54 (1979)).

Here, it is indisputable that all of the factors above are present, and that the decisions of the Board and the District Court in the Related Proceedings compel the conclusion that PRETZEL CRISPS is generic for the goods identified in the Application. The question of whether PRETZEL CRISPS is generic for “pretzel snacks” and “pretzel crackers” was actually litigated and decided in the affirmative in the Related Proceedings. For example, the District Court noted in its Order that the evidence of third-party generic use of the term is “a clear indication of public perception that ‘pretzel crisps’ is a name for a type of *pretzel snack* rather than a brand name.” *Snyder's Lance*, 2021 WL 2322931, at \*13 (emphasis added); *see also Frito-Lay*, 124 USPQ2d at 1194 (finding that the evidence “support[s] a conclusion that the term “PRETZEL CRISPS” is more

likely to be perceived by the relevant public as a name for a type of ***snack product*** that may derive from multiple sources, rather than as a brand that emanates from a single source.” (emphasis added)). The Application seeks registration of the identical term, PRETZEL CRISPS, for “yogurt-covered ***pretzel snacks***,” a category of goods for which the term “pretzel crisps” has been deemed generic by both this Board and the District Court. As such, the Application must be refused.

### **CONCLUSION**

In light of the decisions of the Board and the District Court in the Related Proceedings, and because the relevant factors for issue preclusion are satisfied, judgment should be entered in favor of Opposer and Application Serial No. 87/189,983 should be refused on the grounds that the purported mark is generic for the goods identified.

Respectfully submitted,

/William G. Barber/

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Attorneys for Opposer

## CERTIFICATE OF SERVICE

Under 37 C.F.R. § 2.119, I certify that on September 20, 2021, I served a copy of this document by email on counsel listed below:

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/William G. Barber/

William G. Barber

# **EXHIBIT A**



SNYDER’S-LANCE, INC. and  
PRINCETON VANGUARD, LLC,  
  
Plaintiffs,  
  
v.  
  
FRITO-LAY NORTH AMERICA, INC.  
  
Defendant.

Case No. 3:3-17-CV-00652-KDB-DSC

**NOTICE OF APPEAL**

Case 3:17-cv-00652-KDB-DSC Document 99 Filed 07/07/21 Page 1 of 2

Respectfully submitted, this 7<sup>th</sup> day of July, 2021.

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*Counsel for Plaintiffs Snyder's-Lance, Inc. and Princeton Vanguard, LLC*

# **EXHIBIT B**

**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

SNYDER'S-LANCE, INC.; PRINCETON  
VANGUARD, LLC,

*Plaintiffs-Appellants,*

V.

No. 21-1758

FRITO-LAY NORTH AMERICA, INC.,

*Defendant-Appellee.*

**UNOPPOSED MOTION TO DISMISS APPEAL PURSUANT TO  
FEDERAL RULE OF APPELLATE PROCEDURE 42(b)**

Pursuant to Federal Rule of Appellate Procedure 42(b) and Fourth Circuit Rule 42, Appellants Snyder's-Lance, Inc. and Princeton Vanguard, LLC ("Appellants") hereby move to voluntarily dismiss their appeal in the above-captioned proceeding with prejudice, with the parties to bear their own costs. Appellants have conferred with counsel for Frito-Lay North America, Inc., who have confirmed that they consent to the relief requested in this motion.

Respectfully submitted,

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*Counsel for Plaintiffs-Appellants*

August 31, 2021

**CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1(a), Princeton Vanguard, LLC and Snyder's-Lance, Inc. certify that Princeton Vanguard, LLC is a wholly-owned subsidiary of Snyder's-Lance, Inc., which is in turn a wholly-owned subsidiary of Pepperidge Farm, Inc., which is in turn a wholly-owned subsidiary of Campbell Soup Company, which is publicly held.

**CERTIFICATE OF COMPLIANCE  
WITH TYPE-VOLUME LIMITATION**

I hereby certify that:

1. This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 78 words, excluding the parts of the motion exempted by Fed. R. App. P. 32(f).

2. This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the typestyle requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point font.

August 31, 2021

s/Paul D. Clement  
Paul D. Clement

**CERTIFICATE OF SERVICE**

I hereby certify that on August 31, 2021, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/Paul D. Clement  
Paul D. Clement



FILED: August 31, 2021

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 21-1758  
(3:17-cv-00652-KDB-DSC)

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SNYDER'S-LANCE, INC.; PRINCETON VANGUARD, LLC

Plaintiffs - Appellants

v.

FRITO-LAY NORTH AMERICA, INC.

Defendant - Appellee

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O R D E R

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Upon consideration of the motion to voluntarily dismiss this case pursuant to Rule 42(b) of the Federal Rules of Appellate Procedure, and there appearing no opposition, the court grants the motion.

For the Court--By Direction

/s/ Patricia S. Connor, Clerk

FILED: August 31, 2021

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 21-1758  
(3:17-cv-00652-KDB-DSC)

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SNYDER'S-LANCE, INC.; PRINCETON VANGUARD, LLC

Plaintiffs - Appellants

v.

FRITO-LAY NORTH AMERICA, INC.

Defendant - Appellee

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RULE 42(b) MANDATE

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This court's order dismissing this appeal pursuant to Local Rule 42(b) takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

/s/Patricia S. Connor, Clerk