

ESTTA Tracking number: **ESTTA903855**

Filing date: **06/18/2018**

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	Chocoladefabriken Lindt & Sprungli AG
Granted to Date of previous extension	06/17/2018
Address	Seestrasse 204 Kilchberg, CH-8802 SWITZERLAND
Attorney information	JAMES L VANA PERKINS COIE LLP 1201 THIRD AVENUE, SUITE 4900 SEATTLE, WA 98101 UNITED STATES Email: pctrademarks@perkinscoie.com, aedwards@perkinscoie.com

Applicant Information

Application No	79213876	Publication date	12/19/2017
Opposition Filing Date	06/18/2018	Opposition Period Ends	06/17/2018
International Registration No.	1359239	International Registration Date	06/12/2017
Applicant	CHOCOLATERIE GUYLIAN N.V., naamloze vennootschap Europark Oost 1 B-9100 Sint-Niklaas, B-9100 BELGIUM		

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: Confectionery, namely, candy; chocolate; chocolate goods, namely chocolates and pralines; cocoa; ice-cream

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.	5108996	Application Date	05/13/2016
Registration Date	12/27/2016	Foreign Priority Date	NONE

Word Mark	MASTER CHOCOLATIER
Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 1998/01/31 First Use In Commerce: 1998/01/31 Chocolate

U.S. Registration No.	5042873	Application Date	11/12/2015
Registration Date	09/13/2016	Foreign Priority Date	NONE

Word Mark	LINDT MASTER CHOCOLATIER COLLECTION
Design Mark	
Description of Mark	The mark consists of the wording "LINDT" in script next to a dragon design with a stylized crown above it, with a horizontal line underneath and the wording "MASTER CHOCOLATIER COLLECTION".
Goods/Services	Class 030. First use: First Use: 2015/12/15 First Use In Commerce: 2015/12/15 Chocolate; pralines

U.S. Registration No.	3550993	Application Date	06/19/2007
Registration Date	12/23/2008	Foreign Priority Date	NONE
Word Mark	LINDT MASTER CHOCOLATIER		

Design Mark	 <p>The logo features the word "Lindt" in a cursive script font, followed by a dragon crest logo. Below this is a solid horizontal line, and underneath that, the words "MASTER CHOCOLATIER" are written in a bold, sans-serif, all-caps font.</p>
Description of Mark	The mark consists of The word "LINDT" vertically stacked above a solid line and the words "MASTER CHOCOLATIER". A Dragon Crest Logo appears to the right of the word "Lindt".
Goods/Services	Class 035. First use: First Use: 1998/01/01 First Use In Commerce: 1998/01/01 Retail store services featuring chocolate beverages, chocolate masses and toppings, blocks of chocolate, chocolate articles, marzipan, praline sweets, also filled with liquids, including spirits; confectionery

Attachments	87036227#TMSN.png(bytes) 86817581#TMSN.png(bytes) 77209766#TMSN.png(bytes) Master Opposition.pdf(239628 bytes)
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Signature	/kaceylkell/
Name	Kacey L. Kell
Date	06/18/2018

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

CHOCOLADEFABRIKEN LINDT & SPRÜNGLI
AG,

Opposer,

v.

CHOCOLATERIE GUYLIAN N.V.,

Applicant.

Opposition No.:

NOTICE OF OPPOSITION

Application Serial No.: 79/213,876

Filing Date: June 12, 2017

Publication Date: December 19, 2017

Chocoladefabriken Lindt & Sprüngli AG ("Lindt" or "Opposer") believes that it will be damaged by registration of the mark GUYLIAN MASTER'S SELECTION ("Applicant's Mark") in International Class 30, for use in connection with "confectionery, namely, candy; chocolate; chocolate goods, namely, chocolates and pralines; cocoa; ice-cream" ("Applicant's Goods") as listed in Application Serial No. 79/213,876 (the "Application"), and hereby opposes the Application. As grounds for its opposition, Opposer alleges as follows:

I. PARTIES

1. Opposer is a Swiss corporation, having a place of business in Kilchberg, Switzerland.
2. On information and belief, Applicant Chocolaterie Guylian N.V. ("Applicant") is a Belgian public limited company having a place of business in Sint-Niklaas, Belgium.

II. OPPOSER'S MARKS

3. Opposer is engaged in the manufacture and sale of chocolate and candies, and retail store service for chocolate and candies (collectively, "Opposer's Goods and Services"), under the marks MASTER CHOCOLATIER and LINDT MASTER CHOCOLATIER, and LINDT MASTER CHOCOLATIER COLLECTION (collectively, "Opposer's Marks").

4. For more than 20 years, Opposer has used and promoted the marks MASTER CHOCOLATIER and LIND MASTER CHOCOLATIER in connection with Opposer's Goods and Services.
5. Opposer has registered Opposer's Marks with Opposer's Goods and Services, resulting in three (3) separate United States registrations ("Opposer's Registrations"), listed on Exhibit A attached hereto.
6. Copies of Opposer's Registrations, showing title to and status of the Registrations, are attached as Exhibit B to this Notice of Opposition.
7. Opposer has achieved widespread and substantial sales of Opposer's Goods and Services under the marks MASTER CHOCOLATIER and LINDT MASTER CHOCOLATIER over at least two decades.
8. Opposer has been utilizing the marks MASTER CHOCOLATIER and LINDT MASTER CHOCOLATIER in commerce with Opposer's Goods and Services since as early as January 1998. Opposer has been utilizing the mark LINDT MASTER CHOCOLATIER COLLECTION in commerce with chocolate and pralines since as early as December 15, 2015.
9. Opposer has sold Opposer's Goods and Services under the marks MASTER CHOCOLATIER and LINDT MASTER CHOCOLATIER continuously throughout the United States since January 1998. Opposer has sold chocolate and pralines under the mark LINDT MASTER CHOCOLATIER COLLECTION continuously throughout the United States since December 15, 2015.
10. Opposer has acquired further distinctiveness in Opposer's Marks because Opposer has expended considerable effort and expense in publicizing and promoting Opposer's Marks in connection with Opposer's Goods and Services.
11. At no time has Opposer granted permission, written or otherwise, to Applicant to use or register any form or derivation of Opposer's Marks, including but not limited to Applicant's Mark, with any goods or services.

III. APPLICANT'S MARK

12. The Application was filed on June 12, 2017 (the "Filing Date") based on International Registration Number 1359239. It was published in the Official Gazette on December 19, 2017.
13. On information and belief, Applicant's Goods will be sold in the form of confectionery, namely, candy; chocolate; chocolate goods, namely chocolates and pralines; cocoa; ice-cream.
14. On information and belief, Applicant's Goods will be sold at retail locations.

IV. PRIORITY

15. Opposer has continuously used Opposer's Marks, and Opposer's Marks have been distinctive, since well prior to Applicant's filing date, and upon information and belief, any other priority date upon which Applicant can rely.
16. Moreover, Opposer's Registration for the mark LINDT MASTER CHOCOLATIER issued and became incontestable prior to the filing date of the Application, and Opposer's Registrations for the other two marks issued prior to the filing date of the Application, and upon information and belief, any other priority date upon which Applicant can rely.

V. PROCEDURAL HISTORY

17. Application Serial No. 79/213,876 was published for opposition on December 19, 2017.
18. On January 17, 2018, Opposer requested, and was granted, a 90-day extension of the opposition deadline for the Application.
19. On April 16, 2018, Opposer requested, and was granted, a 60-day extension of the opposition deadline for the Application.
20. The new opposition deadline is June 17, 2018 for Application. Because that date falls on a Sunday, the deadline is extended until June 18, 2018 (the next business day following the opposition deadline). As a result, this Notice of Opposition is timely filed pursuant to TBMP § 209.02 and 37 CFR § 2.196.

VI. CLAIM- LIKELIHOOD OF CONFUSION

21. Opposer's Marks are inherently distinctive for Opposer's Goods and Services.
22. Opposer's Registrations for Opposer's Marks and Opposer's first use of Opposer's Marks in connection with Opposer's Goods and Services are prior to the Filing Date.
23. Opposer has continuously used Opposer's Marks in connection with Opposer's Goods and Services since the first use dates claimed in Opposer's Registrations and has not abandoned the Opposer's Marks in connection with any of Opposer's Goods and Services.
24. As a result of its extensive use and promotion of Opposer's Marks, these marks have developed substantial goodwill and is a strong mark.
25. Applicant's Mark and Opposer's Marks are similar.
26. Applicant plans to use Applicant's Mark in connection with goods that are identical to and directly competitive with, or otherwise closely related to, Opposer's Goods and Services.
27. Opposer's Goods and Services and Applicant's Goods are likely to travel in the same trade channels and be used by and marketed to overlapping consumers.
28. In view of the highly similar nature of the parties' marks and the related nature of the parties' respective goods , Applicant's Mark so resembles Opposer's Marks as to be likely to cause confusion, or to cause mistake, or to deceive as to the origin, sponsorship and approval of Applicant's Goods, and is likely to suggest an affiliation, connection or association of Applicant and Applicant's Goods with Opposer and Opposer's Goods and Services, with consequent injury to Opposer, the trade and to the public.
29. Any defect, objection, or fault with Applicant's Goods marketed or sold under Applicant's Mark will reflect upon and seriously injure the valuable reputation and goodwill that Opposer has established for Opposer's Marks.

30. The registration of Applicant's Mark would prevent Opposer from exercising exclusive control over the goodwill and reputation associated with Opposer's Marks. Therefore, the registration of Applicant's Mark would damage and injure Opposer.
31. Registration of Applicant's Mark would also damage Opposer because such registration would grant a statutory exclusive right to Applicant in violation of the prior and superior rights of Opposer and would unduly narrow the scope of protection afforded of Opposer's Marks, in contravention of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

VII. REQUEST FOR RELIEF

WHEREFORE, Opposer believes that it will be damaged by registration of the mark shown in Application Serial No. 79/213,876 and respectfully requests that the opposition be sustained and that registration to Applicant be refused. This Notice of Opposition is filed according to the rules governing electronic submissions to the Trademark Trial and Appeal Board, including payment of the requisite filing fee.

DATED: June 18, 2018.

<p>CERTIFICATE OF SERVICE</p> <p>I hereby certify that a true copy of this NOTICE OF OPPOSITION is being sent via electronic mail on June 18, 2018 to <i>chyra@symbus.com</i>, the e-mail address of record for the listed Attorney for the Application:</p> <p>Clifford D. Hyra Symbus Law Group LLC 11710 Plaza America Drive, Suite 2000 Reston, VA 20190</p> <p>Signature: <i>/Aimee J. Edwards/</i></p> <p>Printed Name: Aimee J. Edwards</p>	<p>Respectfully submitted,</p> <p>PERKINS COIE LLP <i>/Kacey L. Kell/</i></p> <p>James L. Vana Kacey L. Kell Attorneys for Opposer 1201 Third Avenue, Suite 4900 Seattle, Washington, 98101-3099 (206) 359-8000</p>
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Exhibit A

Opposer's Registrations

<u>Reg. No.</u>	<u>Reg. Date</u>	<u>Goods and Services</u>
3,550,993	6/19/2007	Retail store services featuring chocolate beverages, chocolate masses and toppings, blocks of chocolate, chocolate articles, marzipan, praline sweets, also filled with liquids, including spirits; confectionery
5,042,873	9/13/2016	Chocolate; pralines
5,108,996	12/27/2016	Chocolate

Exhibit B

Int. Cl.: 35

Prior U.S. Cls.: 100, 101, and 102

United States Patent and Trademark Office

Reg. No. 3,550,993

Registered Dec. 23, 2008

SERVICE MARK
PRINCIPAL REGISTER



CHOCOLAFABRIKEN LINDT & SPRÜNGLI
AG (SWITZERLAND CORPORATION)
SEESTRAßE 204 CH-8802
KILCHBERG, SWITZERLAND

FOR: RETAIL STORE SERVICES FEATURING
CHOCOLATE BEVERAGES, CHOCOLATE MASSES
AND TOPPINGS, BLOCKS OF CHOCOLATE, CHO-
COLATE ARTICLES, MARZIPAN, PRALINE
SWEETS, ALSO FILLED WITH LIQUIDS, INCLUD-
ING SPIRITS; CONFECTIONERY, IN CLASS 35 (U.S.
CLS. 100, 101 AND 102).

FIRST USE 1-1-1998; IN COMMERCE 1-1-1998.

OWNER OF U.S. REG. NOS. 87,306, 855,013, AND
OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "MASTER CHOCOLATIER", APART
FROM THE MARK AS SHOWN.

THE MARK CONSISTS OF THE WORD "LINDT"
VERTICALLY STACKED ABOVE A SOLID LINE
AND THE WORDS "MASTER CHOCOLATIER". A
DRAGON CREST LOGO APPEARS TO THE RIGHT
OF THE WORD "LINDT".

SN 77-209,766, FILED 6-19-2007.

DAWN FELDMAN, EXAMINING ATTORNEY

United States of America

United States Patent and Trademark Office

Lindt 

MASTER CHOCOLATIER
COLLECTION

Reg. No. 5,042,873

Registered Sep. 13, 2016

Int. Cl.: 30

Trademark

Principal Register

Chocoladefabriken Lindt & Sprüngli AG (SWITZERLAND CORPORATION)
Seestrasse 204
Kilchberg SWITZERLAND 8802

CLASS 30: Chocolate; pralines

FIRST USE 12-15-2015; IN COMMERCE 12-15-2015

The mark consists of the wording "LINDT" in script next to a dragon design with a stylized crown above it, with a horizontal line underneath and the wording "MASTER CHOCOLATIER COLLECTION".

No claim is made to the exclusive right to use the following apart from the mark as shown:
"MASTER CHOCOLATIER COLLECTION"

SER. NO. 86-817,581, FILED 11-12-2015
GINA M FINK, EXAMINING ATTORNEY



Michelle K. Lee

Director of the United States
Patent and Trademark Office

United States of America

United States Patent and Trademark Office

MASTER CHOCOLATIER

Reg. No. 5,108,996

Registered Dec. 27, 2016

Int. Cl.: 30

Trademark

Principal Register

Chocoladefabriken Lindt & Sprüngli AG | (SWITZERLAND aktiengesellschaft)
Seestrasse 204
Kilchberg SWITZERLAND 8802

CLASS 30: Chocolate

FIRST USE 1-31-1998; IN COMMERCE 1-31-1998

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR

SEC.2(F)

SER. NO. 87-036,227, FILED 05-13-2016
SOPHIA SUJIN KIM, EXAMINING ATTORNEY



Michelle K. Lee

Director of the United States
Patent and Trademark Office