

ESTTA Tracking number: **ESTTA973849**

Filing date: **05/15/2019**

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	ConAgra Foods RDM, Inc.
Granted to Date of previous extension	05/22/2019
Address	222 W. Merchandise Mart Plaza, STE 1300 Chicago, IL 60654 UNITED STATES

Attorney information	Michelle Alvey Husch Blackwell LLP 190 Carondelet Plaza, Suite 600 St. Louis, MO 63105 UNITED STATES pto-sl@huschblackwell.com, Michelle.Alvey@huschblackwell.com, Nicole.Anderson@huschblackwell.com 314-480-1500
----------------------	---

**Applicant Information**

Application No	88107468	Publication date	01/22/2019
Opposition Filing Date	05/15/2019	Opposition Period Ends	05/22/2019
Applicant	Poppy Handcrafted Popcorn LLC 139 Cherry Street Black Mountain, NC 28711 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 030. First Use: 2014/08/01 First Use In Commerce: 2014/10/09 All goods and services in the class are opposed, namely: Popcorn
--

**Applicant Information**

Application No	88107461	Publication date	01/22/2019
Opposition Filing Date	05/15/2019	Opposition Period Ends	
Applicant	Poppy Handcrafted Popcorn LLC 139 Cherry Street Black Mountain, NC 28711 UNITED STATES		

## Goods/Services Affected by Opposition

Class 030. First Use: 2015/10/00 First Use In Commerce: 2015/10/00  
All goods and services in the class are opposed, namely: Popcorn

## Applicant Information

Application No	88107467	Publication date	01/22/2019
Opposition Filing Date	05/15/2019	Opposition Period Ends	
Applicant	Poppy Handcrafted Popcorn LLC 139 Cherry Street Black Mountain, NC 28711 UNITED STATES		

## Goods/Services Affected by Opposition

Class 030. First Use: 2015/10/00 First Use In Commerce: 2015/10/00  
All goods and services in the class are opposed, namely: Popcorn

## Applicant Information

Application No	88107471	Publication date	01/22/2019
Opposition Filing Date	05/15/2019	Opposition Period Ends	
Applicant	Poppy Handcrafted Popcorn LLC 139 Cherry Street Black Mountain, NC 28711 UNITED STATES		

## Goods/Services Affected by Opposition

Class 035. First Use: 2014/08/01 First Use In Commerce: 2014/10/09  
All goods and services in the class are opposed, namely: On-line retail store services featuring popcorn; Retail store services featuring popcorn

## Applicant Information

Application No	88107465	Publication date	01/22/2019
Opposition Filing Date	05/15/2019	Opposition Period Ends	
Applicant	Poppy Handcrafted Popcorn LLC 139 Cherry Street Black Mountain, NC 28711 UNITED STATES		


## Goods/Services Affected by Opposition


Class 035. First Use: 2015/10/00 First Use In Commerce: 2015/10/00  
All goods and services in the class are opposed, namely: On-line retail store services featuring popcorn; Retail store services featuring popcorn

## Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
--------------------------------------	----------------------------

## Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3844187	Application Date	11/05/2009
Registration Date	09/07/2010	Foreign Priority Date	NONE
Word Mark	POPPYCOCK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1957/03/01 First Use In Commerce: 1957/03/01 snack mix consisting primarily of popped popcorn and also containing candied nuts		

U.S. Registration No.	687644	Application Date	04/10/1958
Registration Date	11/03/1959	Foreign Priority Date	NONE
Word Mark	POPPYCOCK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1957/03/01 First Use In Commerce: 1957/06/01 CANDY		

Attachments	77865635#TMSN.png( bytes ) 72049466#TMSN.png( bytes ) POPPYCOCK _OPPOSITION.pdf(128007 bytes )
-------------	--

Signature	/Michelle Alvey/
Name	Michelle Alvey

Date	05/15/2019
------	------------

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being filed with the United States Patent and Trademark Office via the Electronic System for Trademark Trials and Appeals on May 15, 2019.

*/Michelle Alvey/*

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

In the matter of Application  
Serial Nos. 88107468, 88107461, 88107467, 88107471 and 88107465




CONAGRA FOODS RDM, INC.,	)	
	)	
Opposer,	)	
	)	
v.	)	Proceeding No.
	)	
POPPY HANDCRAFTED	)	
POPCORN LLC	)	
	)	
	)	
Applicant.	)	

**CONSOLIDATED NOTICE OF OPPOSITION**

ConAgra Foods RDM, Inc., a Delaware corporation, with a place of business at 222 W. Merchandise Mart Plaza, Suite 1300, Chicago, IL 60654 (“Opposer”), believes it will be damaged by the registration of the marks as shown in Application Serial Nos. 88107468, 88107461, 88107467, 88107471 and 88107465 (the “Applications”), and hereby opposes the same. As grounds for its consolidated opposition, Opposer states:

1. On September 6, 2019, Applicant Poppy Handcrafted Popcorn LLC (North Carolina Limited Liability Company) 139 Cherry Street Black Mountain North Carolina 28711 (“Applicant”), filed the below Applications for “Popcorn” and “On-line retail store services featuring popcorn; Retail store services featuring popcorn” (“Applicant’s Goods and Services”):

<a href="#">POPPY</a> SN: 88107468	Pending - Initialized September 10, 2018	(Int'l Class: 30) Popcorn	Poppy Handcrafted Popcorn LLC (North
---------------------------------------	---	------------------------------	---

	Int'l Class: 30 First Use: August 1, 2014 Filed: September 6, 2018		Carolina Limited Liability Company) 139 Cherry Street Black Mountain North Carolina 28711
<a href="#">POPPY HAND-CRAFTED POPCORN and Design</a>  SN: 88107461 Disclaimer: "HAND-CRAFTED POPCORN"	Pending - Initialized September 10, 2018 Int'l Class: 30 First Use: October, 2015 Filed: September 6, 2018	(Int'l Class: 30) Popcorn	Poppy Handcrafted Popcorn LLC (North Carolina Limited Liability Company) 139 Cherry Street Black Mountain North Carolina 28711
<a href="#">POPPY HAND-CRAFTED POPCORN and Design</a>  SN: 88107467 Disclaimer: "HAND-CRAFTED POPCORN"	Pending - Initialized September 10, 2018 Int'l Class: 30 First Use: October, 2015 Filed: September 6, 2018	(Int'l Class: 30) Popcorn	Poppy Handcrafted Popcorn LLC (North Carolina Limited Liability Company) 139 Cherry Street Black Mountain North Carolina 28711
<a href="#">POPPY</a> SN: 88107471	Pending - Initialized September 10, 2018 Int'l Class: 35 First Use: August 1, 2014 Filed: September 6, 2018	(Int'l Class: 35) On-line retail store services featuring popcorn; Retail store services featuring popcorn	Poppy Handcrafted Popcorn LLC (North Carolina Limited Liability Company) 139 Cherry Street Black Mountain North Carolina 28711
<a href="#">POPPY HAND-CRAFTED POPCORN and Design</a>  SN: 88107465 Disclaimer: "HAND-CRAFTED POPCORN"	Pending - Initialized September 10, 2018 Int'l Class: 35 First Use: October, 2015 Filed: September 6, 2018	(Int'l Class: 35) On-line retail store services featuring popcorn; Retail store services featuring popcorn	Poppy Handcrafted Popcorn LLC (North Carolina Limited Liability Company) 139 Cherry Street Black Mountain North Carolina 28711

2. Opposer owns common law rights in and to the trademark POPPYCOCK in connection with various food products (“Opposer’s Goods”) and owns the U.S. trademark registrations set forth in the chart below (all of Opposer’s rights in and to the mark referenced above and included below are collectively referred to as the “POPPYCOCK Mark”):

<a href="#">POPPYCOCK</a> RN: 3844187 SN: 77865635	Registered 8 & 15 January 19, 2016 First Use: March 1, 1957 Filed: November 5, 2009 Registered: September 7, 2010	(Int'l Class: 30) snack mix consisting primarily of popped popcorn and also containing candied nuts
<a href="#">POPPYCOCK</a> RN: 687644 SN: 72049466	Renewed November 3, 2009 First Use: March 1, 1957 Filed: April 10, 1958 Registered: November 3, 1959	(Int'l Class: 30) candy

3. Since long prior to the filing date of the Applications and any alleged use by Applicant, Opposer has used the POPPYCOCK Mark in connection with Opposer’s Goods.

4. Opposer’s Goods and Services are identical or closely related to Applicant’s Goods such that consumers would mistakenly believe that Applicant’s Goods and Services and Opposer’s Goods emanate from the same source.

5. The POPPYCOCK Mark is distinctive, and is uniquely associated with Opposer in connection with Opposer's Goods, by reason of Opposer's continuous and extensive use, advertising, promotion, and sales. Such use, advertising, promotion, and sales occurred prior to the filing date of the Applications and any alleged use by Applicant.

6. On information and belief, Applicant’s Goods and Services are or will be directed to the same or related class of customers as are Opposer’s Goods and will be offered in the same channels of trade.

7. Applicant's Mark so resembles the POPPYCOCK Mark as to be likely, when used in conjunction with Applicant's Goods and Services, to cause confusion, mistake, or deception by causing the public to believe that the goods offered in connection with Applicant's Mark originate from, or are otherwise sponsored or endorsed by Opposer in violation of Lanham Act §2(d) (15 U.S.C. 1052(d)).

8. For at least the reasons stated above, Opposer will be damaged by Applicant's registration of Application Nos. 88107468, 88107461, 88107467, 88107471 and 88107465.

9. The Applications involve the same parties and the same asserted rights such that a consolidated opposition is appropriate and will save time, effort and expense for both the parties and the Board.

WHEREFORE, Opposer prays that Application Nos. 88107468, 88107461, 88107467, 88107471 and 88107465 be refused registration.

Respectfully submitted,

By: /Michelle Alvey/  
Michelle Alvey  
Alan S. Nemes  
Michael J. Tolles  
HUSCH BLACKWELL LLP  
The Plaza in Clayton Office Tower  
190 Carondelet Plaza, Suite 600  
St. Louis, MO 63105  
Telephone: (314) 345-6000

*Attorneys for Opposer.*