

ESTTA Tracking number: **ESTTA1060220**

Filing date: **06/05/2020**

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	SPANGLER CANDY COMPANY
Granted to Date of previous extension	06/06/2020
Address	400 NORTH PORTLAND STREET BRYAN, OH 43506 UNITED STATES

Correspondence information	Lindsie A. Everett MCDONALD HOPKINS LLC 600 SUPERIOR AVENUE, EAST, SUITE 2100 CLEVELAND, OH 44114 UNITED STATES ipmailbox@mcdonaldhopkins.com 2163485400
----------------------------	--

**Applicant Information**

Application No	79270150	Publication date	04/07/2020
Opposition Filing Date	06/05/2020	Opposition Period Ends	06/06/2020
International Registration No.	1493914	International Registration Date	06/06/2019
Applicant	Mary Avenue de Rusatira 12 B-1083 Bruxelles BELGIUM		


**Goods/Services Affected by Opposition**


<p>Class 030. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Confectionery, namely, almond confectionery, sugar confectionery, dessert mousses, fondants, fruit jellies, fruit confectionery, liquorice, pastilles, peanut confectionery; chocolate goods, namely, pralines, chocolate, candy, chocolate-based candy, chocolate-based spread, pastries, cocoa, chocolate-based beverages, chocolate-coated nuts, chocolate decorations for cakes, chocolate mousses, chocolate-based beverages; edible ices</p>
<p>Class 035. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Retail store services featuring confectionery, chocolate goods, pralines, chocolate, candy, chocolate-based candy, chocolate-based spread, pastries, cocoa, chocolate-based beverages, edible ices; import and export services for chocolate goods, pralines, chocolate, candy, confectionery, chocolate-based candy, chocolate-based spread, pastries, cocoa, chocolate-based beverages, edible ices</p>

## 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.	95225	Application Date	04/09/1913
Registration Date	02/03/1914	Foreign Priority Date	NONE
Word Mark	MARY JANE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1912/01/10 First Use In Commerce: 1912/01/10 CANDY		

U.S. Registration No.	1393466	Application Date	09/23/1985
Registration Date	05/13/1986	Foreign Priority Date	NONE
Word Mark	MARY JANE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1960/01/00 First Use In Commerce: 1960/01/00 CANDIES		

Attachments	71069682#TMSN.png( bytes ) 73559725#TMSN.png( bytes ) 8885456.pdf(12837 bytes ) 8885209.PDF(166244 bytes ) 8885217.PDF(26304 bytes )
-------------	--

Signature	/Lindsie A. Everett/
Name	Lindsie A. Everett
Date	06/05/2020

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

In the Matter of Application Serial No. 79/270,150: MARY and design  
Published in the *Official Gazette* on April 7, 2020 with time for filing Notice of Opposition  
extended through June 6, 2020 (effective until Monday, June 8, 2020), by means of an ESTTA-  
Filed Request for Extension of Time for Filing Notice of Opposition, filed on May 7, 2020

---

Spangler Candy Company,	)	
	)	
<b>Opposer,</b>	)	
	)	
v.	)	<b>Opposition No.</b> _____
	)	
Mary SA,	)	
	)	
<b>Applicant.</b>	)	
_____	)	

**NOTICE OF OPPOSITION**

Spangler Candy Company (“Spangler”), an Ohio corporation with an address of 400 North Portland Street, Bryan, Ohio 43506, believes that it will be damaged by the issuance of a registration of Application Serial No. 79/270,150 (the “Opposed Application”) for the mark MARY and design (the “Application” or the Opposed Mark”).As such, Spangler hereby opposes Application Serial No. 79/270,150 pursuant to Sections 68(a) (2) and 13 of the Trademark Act (15 U.S.C. §1141h(a)(2); 15 U.S.C. § 1063), and as grounds for its opposition, states as follows:

**BACKGROUND**

1. Mary SA, a Societe Anonyme formed under the laws of Belgium with a principal place of business at Avenue de Rusatira 12, B-1083 Bruxelles, Belgium (the “Applicant”) seeks to register the Opposed Mark in, *inter alia*, International Class 30 for “Confectionery, namely, almond confectionery, sugar confectionery, dessert mousses, fondants, fruit jellies, fruit

confectionery, liquorice, pastilles, peanut confectionery; chocolate goods, namely, pralines, chocolate, candy, chocolate-based candy, chocolate-based spread, pastries, cocoa, chocolate-based beverages, chocolate-coated nuts, chocolate decorations for cakes, chocolate mousses, chocolate-based beverages; edible ices” (the “Applied-For Goods”) and Class 35 for “Retail store services featuring confectionery, chocolate goods, pralines, chocolate, candy, chocolate-based candy, chocolate-based spread, pastries, cocoa, chocolate-based beverages, edible ices; import and export services for chocolate goods, pralines, chocolate, candy, confectionery, chocolate-based candy, chocolate-based spread, pastries, cocoa, chocolate-based beverages, edible ices” (the “Applied-For Services”)

2. The Application was filed on June 6, 2019, based on Applicant’s alleged bona fide intent to use the Opposed Mark in commerce.

**SPANGLER’S USE AND REGISTRATION OF MARY JANE BRAND**

3. Since January 10, 1912, Spangler, by and through its successors, has produced and sold candy under the MARY JANE mark, including without limitation, candy that contains peanut ingredients.

4. Spangler owns U.S. Trademark Registration No. 95225 for MARY JANE (stylized) in International Class 30 for candy, which claims a date of first use in commerce of January 10, 1912 and achieved registration on February 3, 1914. See Exhibit A for the Registration Certificate for U.S. Trademark Registration No. 95225. Spangler also owns U.S. Trademark Registration No. 1393466 for MARY JANE (design) in International Class 30 for candies, which claims a date of first use in commerce of January, 1960 and achieved registration on May 13, 1986 (together with U.S. Trademark Registration No. 95225, the “MARY JANE

marks” and the “MARY JANE Goods,” respectively). See Exhibit B for the Registration Certificate for U.S. Trademark Registration No. 1393466.

### **PRIORITY AND LIKELIHOOD OF CONFUSION**

5. Spangler, itself and historically by and through its successors, has used and registered the MARY JANE marks in connection with candy or candies prior to the date that Applicant filed the Application to register the MARY mark for the Applied-For Goods and the Applied-For Services.

6. As a result of Spangler’s and its successors’ efforts, and prior to Applicant’s filing of the Application or use of the Opposed Mark in the United States, Spangler’s MARY JANE Marks are recognized by the public as an indicator of Spangler’s, MARY JANE Goods.

7. The appearance, sound, meaning, and commercial impression of Applicant’s Opposed Mark are closely similar to the appearance, sound, meaning, and commercial impression of Spangler’s MARY JANE Marks. The Applied-For Goods are either legally identical or closely related to the goods identified in Spangler’s U.S. Reg. Nos. 95225 and 1393466. The Applied-For Services are closely related to and within the natural zone of expansion of the goods identified in Spangler’s U.S. Reg. Nos. 95225 and 1393466.

8. Applicant’s MARY-branded Applied-For Goods and Applied-For Services will be offered to the same consumers that purchase Spangler’s MARY JANE Goods.

9. As such, the Opposed Mark for use in connection with the Applied-For Goods and Applied-For Services is confusingly similar in sight, sound, and commercial impression to Spangler’s distinctive and well-known MARY JANE Marks. In fact, the word portion of the Opposed Mark is fully incorporated within Spangler’s MARY JANE Marks.

10. Based on the high degree of similarity between Applicant's Opposed Marks and Spangler's MARY JANE Marks, and the overlap between Applicant's Applied-For Goods and Applied-For Services and Spangler's goods, the registration of the Opposed Mark as identified in the Application is likely to cause confusion, mistake, or deception among the consuming public by causing consumers to incorrectly believe that Applicant's Applied-For Goods and Applied-For Services emanate from Spangler, or are in some way associated with, approved by, or sponsored by Spangler. This confusion will cause irreparable damage to Spangler.

11. Any dissatisfaction with Applicant's Applied-For Goods and Applied-For Services would reflect negatively upon and irreparably damage Spangler's reputation and the goodwill embodied in its MARY JANE Marks.

### **CONCLUSION**

For all of the foregoing reasons, Spangler respectfully requests that the Trademark Trial and Appeal Board sustain this opposition and refuse registration of Applicant's Application Serial No. 79/270,150 for the MARY (& design) Mark.

Respectfully submitted,

/Lindsie A. Everett/  
Lindsie A. Everett  
McDonald Hopkins LLC  
600 Superior Ave. E.  
Cleveland, OH 44114  
Telephone: 216.348.5400  
leverett@mcdonaldhopkins.com  
*Attorney for Applicant*

# Exhibit A



New Certificate issued May 20, 1952, under Sec. 7c for unexpired term, to Charles N. Miller Co., of Boston, Massachusetts, a corporation of Massachusetts.

Republished, under the Act of 1946, Dec. 23, 1947, by Charles N. Miller Co., Boston, Mass.

Renewed to  
Charles N. Miller Company, a corporation of Massachusetts.

## UNITED STATES PATENT OFFICE

CHARLES N. MILLER, OF BOSTON, MASSACHUSETTS.

TRADE-MARK FOR CANDY.

95,225.

Registered Feb. 3, 1914.

Application filed April 9, 1913. Serial No. 69,682.

### STATEMENT.

*To all whom it may concern:*

Be it known that I, CHARLES N. MILLER, a citizen of the United States of America, residing at Boston, in the county of Suffolk and State of Massachusetts, and doing business at 1-7 Haverhill street, in said city, have adopted and used the trade-mark shown in the accompanying drawing.

The trade mark has been continuously used in the business of the applicant since

The particular description of goods to which the trade mark is appropriated is candy, in Class 46, Foods and ingredients of foods.

The trade mark is usually applied to the receptacles containing the goods by means of printed labels upon which the trade mark is shown.

CHARLES N. MILLER

used in the business of the applicant since  
Jan. 10, 1912.

CHARLES N. MILLER.

## Mary Janes

### DECLARATION.

State of Massachusetts county of Suffolk ss.

CHARLES N. MILLER being duly sworn, deposes and says he is the applicant named in the foregoing statement; that he believes that the foregoing statement is true; that he believes himself to be the owner of the trade-mark sought to be registered; that no other person, firm, corporation, or association, to the best of his knowledge and belief, has the right to use said trade-mark, either in the identical form, or in any such near resemblance thereto, as might be calculated to deceive; that the said trade-mark

is used by the applicant in commerce among the several States of the United States; that the drawing presented truly represents the trade-mark sought to be registered and that the specimens (or facsimiles) show the trade-mark as actually used upon the goods.

CHARLES N. MILLER.

Subscribed and sworn to before me, a notary public, this 2nd day of April 1913.

[L. S.]

JOHN F. BRIRY,  
*Notary Public.*

Copies of this trade-mark may be obtained for five cents each, by addressing the "Commissioner of Patents, Washington, D. C."

Affidavit under Section 8 accepted.

Affidavit under Section 15 received Apr. 24, 1953.

Re-renewed February 3, 1954, to Charles N. Miller Co., of Boston, Massachusetts, a corporation of Massachusetts.

**Amendment**

Registered February 3, 1914

Registration No. 95,225

CHARLES N. MILLER

Application to amend having been made by Charles N. Miller Co., owner of the registration above identified, the drawing is hereby amended to appear as follows:

**MaryJane**

Such amendment has been entered upon the records of the Patent Office, and the said original registration should be read as so amended.  
Signed and sealed this 19th day of February, A. D. 1952.

[SEAL]

ERNEST F. KLINGE,  
*Assistant Commissioner of Patents.*



Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

10 Year Renewal

Reg. No. 95,225

Registered Feb. 3, 1914

Renewal Term Begins Feb. 3, 1994

TRADEMARK  
PRINCIPAL REGISTER

**MaryJane**

STARK CANDY COMPANY (DELA-  
WARE CORPORATION)  
254 MASSACHUSETTS AVENUE  
CAMBRIDGE, MA 02139, BY ASSIGN-  
MENT, ASSIGNMENT, MERGER, AS-  
SIGNMENT, ASSIGNMENT, MERGER,  
ASSIGNMENT AND CHANGE OF  
NAME FROM MILLER, CHARLES N.  
(UNITED STATES CITIZEN) BOSTON,  
MA

FOR: CANDY, IN CLASS 46 (INT. CL.  
30).

FIRST USE 1-10-1912; IN COMMERCE  
1-10-1912.

SER. NO. 71-069,682, FILED 4-9-1913.

*In testimony whereof I have hereunto set my hand  
and caused the seal of The Patent and Trademark  
Office to be affixed on Dec. 21, 1993.*

COMMISSIONER OF PATENTS AND TRADEMARKS

# Exhibit B

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 1,393,466

United States Patent and Trademark Office Registered May 13, 1986

TRADEMARK  
PRINCIPAL REGISTER



CHARLES N. MILLER CO. (MASSACHUSETTS  
CORPORATION)  
10-20 BRIDGE STREET  
WATERTOWN, MA 02172

OWNER OF U.S. REG. NOS. 95,225 AND  
178,993.

SER. NO. 559,725, FILED 9-23-1985.

FOR: CANDIES, IN CLASS 30 (U.S. CL. 46).  
FIRST USE 1-0-1960; IN COMMERCE  
1-0-1960.

DAVID C. REIHNER, EXAMINING ATTOR-  
NEY