

ESTTA Tracking number: **ESTTA1103297**

Filing date: **12/21/2020**

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	Amplify Snack Brands, Inc.
Granted to Date of previous extension	12/20/2020
Address	100 CRYSTAL A DRIVE HERSHEY, PA 17033 UNITED STATES
Attorney information	TYWANDA HARRIS LORD KILPATRICK TOWNSEND & STOCKTON LLP 1100 PEACHTREE STREET NE, SUITE 2800 ATLANTA, GA 30309 UNITED STATES Primary Email: tlord@ktslaw.com Secondary Email(s): rdthomas@ktslaw.com, bjones@ktslaw.com, kteilhaber@ktslaw.com, tmadmin@ktslaw.com 4048156500
Docket Number	

Applicant Information

Application No.	79261271	Publication date	06/23/2020
Opposition Filing Date	12/21/2020	Opposition Period Ends	12/20/2020
International Registration No.	1472984	International Registration Date	04/17/2019
Applicant	THE PIRATE'S CANDIES COMPANY 138 AVENUE VEGA BP 42 GRIMAUD, F-83310 FRANCE		

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: Coffee, tea, cocoa, sugar, rice, tapioca, sago, coffee substitutes; flour and preparations made from cereals, namely, breakfast cereals; bread, pastry and confectionery made of sugar; edible ices; honey, treacle; yeast, baking powder; salt, mustard; vinegar; savory sauces used as condiments; spices; ice for refreshment; sandwiches, pizzas; pancakes; cookies; cakes; rusks; sugar confectionery; sugar confectionary namely candy; chocolate; beverages based on cocoa, coffee, chocolate or tea

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.	2018855	Application Date	06/23/1995
Registration Date	11/26/1996	Foreign Priority Date	NONE
Word Mark	PIRATE'S BOOTY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1995/04/01 First Use In Commerce: 1995/04/01 [pretzels and] corn chips, rice-basedsnack foods, puffed corn snacks [and candy]		

U.S. Registration No.	3792893	Application Date	10/07/2009
Registration Date	05/25/2010	Foreign Priority Date	NONE
Word Mark	PIRATE'S BOOTY: GET HOOKED!!		
Design Mark			
Description of Mark	The mark consists of an image of a pirate from the waist up in the inner of two-concentric circles. The pirate is shownwith a bandana, earring, eye patch, parrot, sword, and belt with buckle. The words "PIRATE'S BOOTY" appear around the top portion of the outer concentric circle, with one dot appearing before the letter "P" and two dots appearing after theletter "Y", and the literal elements "Get Hooked!!" appear around the lower portion of the outer concentric circle.		
Goods/Services	Class 030. First use: First Use: 2008/11/10 First Use In Commerce: 2008/11/10 Corn-based snack foods; rice-based snack foods		

U.S. Registration No.	4667441	Application Date	06/03/2014
Registration Date	01/06/2015	Foreign Priority Date	NONE
Word Mark	PIRATE'S BOOTY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2014/03/31 First Use In Commerce: 2014/03/31 Macaroni and cheese		

U.S. Registration No.	4758160	Application Date	07/17/2012
Registration Date	06/23/2015	Foreign Priority Date	NONE
Word Mark	PIRATE'S BOOTY THAR BE GOOD SHIVER ME TIMBERS!		
Design Mark			
Description of	The mark consists of an image of a pirate from the waist up in the inner of two-		

Mark	concentric circles. The pirate is shown wearing a bandana on his head, a hoop earring, eye patch, sword, jacket and belt with buckle. There is a parrot sitting on the pirate's shoulder. Two small bubbles and a large bubble appear to the left of the pirate which contains the words "THAR BE GOOD" in stylized text and two small bubbles and a large bubble appear to the right of the pirate that contain the words "SHIVER ME TIMBERS!" in stylized text. The words "PIRATE'S BOOTY" in stylized text appear around the top portion of the outer concentric circle, with one dot appearing before the letter "P" and one dot appearing after the letter "Y". In both the top left hand and top right hand corners appear two bones which form an "x". Underneath the two concentric circles appears the sea with waves, the horizon, the shore and a pirate ship with unfurled sails in the water in the lower right hand corner. A treasure map appears on the shore in the lower left hand corner. A ribbon banner above three ellipses in decreasing sizes appear on the left hand side immediately below the two concentric circles. All of the foregoing is framed by a rectangular border which is overlapped by the outer concentric circle, the top ellipse and the treasure map. The broken lines shown in the drawing are for outlining purposes only and are not claimed as a feature of the mark.
Goods/Services	Class 030. First use: First Use: 1995/10/31 First Use In Commerce: 1995/10/31 Snack foods, consisting, namely, of rice-based snack foods, and puffed corn-based snack foods

U.S. Registration No.	5481624	Application Date	04/19/2016
Registration Date	05/29/2018	Foreign Priority Date	NONE
Word Mark	Â· PIRATE'S BOOTY Â·		
Design Mark			
Description of Mark	The mark consists of the stylized words "PIRATE'S BOOTY" inside an oblong design, one dot appears on either side of the words "PIRATE'S BOOTY".		
Goods/Services	Class 030. First use: First Use: 2014/03/00 First Use In Commerce: 2014/03/00 Corn-based snack foods		

U.S. Registration No.	5551620	Application Date	02/09/2017
Registration Date	08/28/2018	Foreign Priority Date	NONE
Word Mark	PIRATE'S BOOTY WILD TINGS EPIC FLAVOR! SUPER CRUNCHY!		
Design Mark			
Description of Mark	The mark consists of an image of a pirate's head in the inner of two concentric circles. The pirate is shown with a bandana, earring, eye patch, and a parrot to his right. The words "PIRATE'S BOOTY" appear around the top portion of the outer concentric circle, with one dot appearing before the letter "P" and one dot appearing after the letter "Y". The wording "EPIC FLAVOR!" appears in a comment bubble to the left of the pirate and the wording "SUPER CRUNCHY!" appears in a comment bubble to the right of the parrot. The wording "WILD TINGS" appear in a jagged border at the lower portion of the concentric circles. The color blue appears in the outer concentric circle, on the bandana and around the wording "WILD TINGS". The color yellow appears in the inner concentric circle, on the earring, on the beak and feet of the parrot and on the wording "WILD TINGS". The color red appears on the parrot, and on the tongue of the pirate. The color tan appears on the pirate's face. The color white appears on the wording "PIRATE'S BOOTY", on the two dots, the pirate's eyes and teeth, and in the comment bubbles and around the outside of the wording "WILD TINGS". The color black appears on the eye patch, on the pirate's hair and mustache, on the		

	wording "EPIC FLAVOR!" and "SUPERCRUNCHY!", around the comment bubbles, around the jagged edges at the bottom of the circles, and around the blue edge around the wording "WILD TINGS".
Goods/Services	Class 030. First use: First Use: 2017/04/00 First Use In Commerce: 2017/04/00 Puffed corn-based and rice-based snack foods

Attachments	2020.12.21 Notice of Opposition (PIRATE'S CANDIES).pdf(290505 bytes)
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Signature	/Tywanda Harris Lord/
Name	TYWANDA HARRIS LORD
Date	12/21/2020

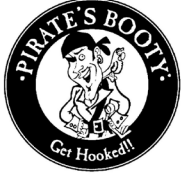
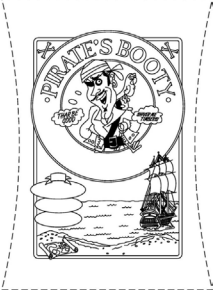


IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

AMPLIFY SNACK BRANDS, INC.,)	
)	
)	
Opposer,)	
)	Serial No.: 79261271
v.)	Mark: THE PIRATE’S CANDIES
)	
THE PIRATE'S CANDIES COMPANY,)	
)	
)	Opposition No. _____
Applicant.)	

NOTICE OF PARTIAL OPPOSITION

Opposer Amplify Snack Brands, Inc. (“Opposer” or “Amplify”) will be damaged by the registration of THE PIRATE’S CANDIES mark (“Applicant’s Mark”) underlying application Serial No. 79261271 (the “Application”) filed by Applicant The Pirate’s Candies Company (“Applicant”), and opposes the same for certain goods in International Class 30.

1. Opposer is a Delaware limited liability company that owns and licenses a variety of trademarks for use in connection with food items.
2. Applicant is a foreign entity with a business address listed as 138 avenue Vega BP 42, Grimaud, France F-83310.
3. Since at least as early as 1996, Opposer and its predecessors and licensees have used the PIRATE’S BOOTY mark in connection with puffed corn snacks and other food products. During that time, the PIRATE’S BOOTY mark has served as an inherently distinctive indicator of the origin of goods produced and sold under Opposer’s authority. Opposer is the owner of numerous federal registrations of the PIRATE’S BOOTY mark, some of which are incontestable, including the following:

Reg. No.	Mark	Goods
2,018,855	PIRATE'S BOOTY	Cl. 30 [pretzels and] corn chips, rice-based snack foods, puffed corn snack [and candy]
3,792,893		Cl. 30 corn-based snack foods; rice-based snack foods
4,667,441	PIRATE'S BOOTY	Cl. 30 macaroni and cheese
4,758,160	 <p data-bbox="630 1031 992 1136">PIRATE'S BOOTY THAR BE GOOD SHIVER ME TIMBERS!</p>	Cl. 30 snack foods, consisting, namely, of rice-based snack foods, and puffed corn-based snack foods
5,481,624		Cl. 30 corn-based snack foods
5,551,620	 <p data-bbox="630 1394 992 1499">PIRATE'S BOOTY WILD TINGS EPIC FLAVOR! SUPER CRUNCHY!</p>	Cl. 30 puffed corn-based and rice-based snack foods

These registrations and the common law rights in the PIRATE'S BOOTY mark are collectively referred to as the "PIRATE'S BOOTY Marks."

4. The PIRATE'S BOOTY Marks were used and are used by Opposer's predecessors in interest and Opposer in connection with high quality food products ves. Opposer's products have been extensively advertised, including to families and children.

5. Opposer's PIRATE'S BOOTY Marks are used prominently on product packaging, in advertisements.

6. Opposer's PIRATE'S BOOTY Marks are inherently distinctive to the consuming public and the food industry and serve primarily as designators of origin of Opposer's products.

7. As a result of Opposer's and its predecessors' widespread use and display of the PIRATE'S BOOTY brand, the consuming public uses the PIRATE'S BOOTY Marks to identify and refer to Opposer's PIRATE'S BOOTY products; food products marked with the PIRATE'S BOOTY Marks are recognized by consumers as high-quality food products emanating from a single source; and the PIRATE'S BOOTY Marks have extensive goodwill.

8. Through long-term use and controlled marketing, the PIRATE'S BOOTY Marks have become highly distinctive and strongly associated in the United States with the food products, licensed merchandise and promotional efforts emanating from Opposer.

9. Over more than two decades, Opposer has advertised extensively and successfully and on a nationwide basis, realizing substantial sales of products under the PIRATE'S BOOTY Mark. Opposer's products sold under the PIRATE'S BOOTY Mark have also received significant unsolicited attention from the media and from individual consumer reviews. Accordingly, Opposer's PIRATE'S BOOTY Mark is famous.

10. The goods recited in the Application cover *inter alia* "Coffee, tea, cocoa, sugar, rice, tapioca, sago, coffee substitutes; flour and preparations made from cereals, namely, breakfast cereals; bread, pastry and confectionery made of sugar; edible ices; honey, treacle; yeast, baking powder; salt, mustard; vinegar; savory sauces used as condiments; spices; ice for refreshment; sandwiches, pizzas; pancakes; cookies; cakes; rusks; sugar confectionery; sugar

confectionary namely candy; chocolate; beverages based on cocoa, coffee, chocolate or tea” in International Class 30 (the “Disputed Goods”). The Disputed Goods are closely related or complementary to the goods Opposer and Opposer’s licensees have long provided in intrastate and interstate commerce under the PIRATE’S BOOTY Marks prior to the filing date of the Application. Both Opposer’s registrations and the Application are unrestricted to customers, channels of distribution, or advertising media.

11. Applicant filed its Application on April 17, 2019. All of the PIRATE’S BOOTY Marks were applied for and registered before April 17, 2019. Opposer’s rights to the PIRATE’S BOOTY Marks therefore predate and are senior to the Application date. Opposer’s rights are first in time, and there are no issues as to priority or seniority.

12. Opposer will be damaged by the registration of Applicant’s mark because the mark so resembles the PIRATE’S BOOTY Marks as to be likely to cause consumer confusion, mistake, and deception. Persons familiar with the PIRATE’S BOOTY Marks and the goods sold under the PIRATE’S BOOTY Marks are likely to believe erroneously that the Disputed Goods are goods of Opposer or Opposer’s licensees or are authorized, licensed, endorsed, or sponsored by Opposer, and registration of Applicant’s mark for the Disputed Goods is therefore inconsistent with Opposer’s prior rights in its own PIRATE’S BOOTY Marks and in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

13. Because Opposer enjoys prior use in the PIRATE’S BOOTY Marks in both intrastate and interstate commerce, and because Opposer’s registrations predate the filing the Application, the Application should be refused registration for the Disputed Goods under 15 U.S.C. §§ 1052(d) and 1063.

14. The opposition fee in the amount of \$400 for a notice of opposition against the

Disputed Goods in International Class 30 accompanies this notice. The Commissioner is authorized to debit Kilpatrick Townsend & Stockton LLP's deposit account no. 20-1430 if there is a deficiency in the required fee.

Opposer therefore requests the Board to refuse application Serial No. 79261271 in International Class 30 for the Disputed Goods and sustain this opposition in Opposer's favor.

Dated: December 21, 2020

Respectfully submitted,

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