

ESTTA Tracking number: **ESTTA1149274**

Filing date: **07/27/2021**

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	SACMI PACKAGING & CHOCOLATE S.P.A.
Granted to Date of previous extension	07/28/2021
Address	VIA SELICE PROVINCIALE, 17/A IMOLA (BO), I-40026 ITALY
Attorney information	WESLEY W. WHITMYER, JR. WHITMYER IP GROUP LLC 600 SUMMER STREET STAMFORD, CT 06901 UNITED STATES Primary Email: litigation@whipgroup.com Secondary Email(s): rkeeler@whipgroup.com, jalexander@whipgroup.com 203-703-0800
Docket Number	07445-N0006A

Applicant Information

Application No.	79277811	Publication date	03/30/2021
Opposition Filing Date	07/27/2021	Opposition Period Ends	07/28/2021
International Registration No.	1512296	International Registration Date	11/21/2019
Applicant	WITRON Logistik + Informatik GmbH NEUSTÄDTER STR. 21 92711 PARKSTEIN FED REP GERMANY		

Goods/Services Affected by Opposition


Class 007. First Use: 0 First Use In Commerce: 0


All goods and services in the class are opposed, namely: Automated machines for storing packages, storage machinery, namely, a vertical hoist for raising and storing packages, automated pickers, power operated lifts used to transport and place portable storage containers, cargo handling machines, belt conveyors; all of the foregoing exclusively in the field of warehousing, logistics and supply chain management

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. Application No.	79285445	Application Date	02/13/2020
Registration Date	NONE	Foreign Priority Date	10/31/2019
Word Mark	OPM		
Design Mark			
Description of Mark	The mark consists of the stylized lettering "OPM" above a rectangle with curved ends.		
Goods/Services	<p>Class 007. First use: First Use: 0 First Use In Commerce: 0 Machines, namely, packaging machines; material handling machines, namely, palletizers, case elevators, automatic pallets machines, automatic pallet dispensing machines and automatic slip sheet dispensing machines; buffering machines, namely, machines for temporarily storing items during their production process; automatic feeding machines, namely, machines aimed at automatically receiving, handling, grouping and introducing items within the flow of production; flow wrapping machines; robotic machines being industrial robots for sorting and distributing goods, robotic machines being industrial robots to be used with flow wrapping machines; robotic machines being industrial robots to be used with wrapping machines; robotic machines being industrial robots for moulding lines; robotic machines being industrial robots for secondary packaging solution; top loading cartoning machine; side loading cartoning machine; carton box making machine; carton box closing machine, namely, paper box making machine; multi-functional packaging machines; case packing machines; wrap around machines, namely, machines wrapping a carton or carton box case around products to be packed; feeding machines, namely, automated wrapper in-feed machines; distributing machines, namely, machines aimed at automatically distributing, items within the flow of production; conveyors being machines; machines and parts thereof for manufacturing and processing packaging, namely, packaging machines</p> <p>Class 009. First use: First Use: 0 First Use In Commerce: 0 Screens, namely, flat panel display screen; downloadable software to automate data warehousing for the packaging industry; control panels for automated machines, namely, computer controls for the operation of industrial machines; switchboards for automated machines</p> <p>Class 037. First use: First Use: 0 First Use In Commerce: 0 Installation of industrial machines; repair of industrial machines; maintenance of industrial machines; industrial machinery retrofit and conversion services for third parties</p>		
U.S. Registration No.	5361911	Application Date	05/25/2016
Registration Date	12/26/2017	Foreign Priority Date	05/25/2016

Word Mark	CM OPM
Design Mark	
Description of Mark	The mark consists of the stylized letters "CM" merging with a shaded box to the right containing the stylized letters "OPM".
Goods/Services	Class 007. First use: First Use: 0 First Use In Commerce: 0 Machines, in particular machines for the food industry containing drying units, namely, animal feed drying machines, harvest drying machines; packaging machines; mills, namely, power operated flour mills; electric and hydraulic presses for cocoa beans and oily seeds; electric grinders for cocoa; pre-refining machines for pulp, oil, cocoa, paste; refiners machines for pulp, oil, cocoa, paste; industrial equipment in the nature of homogenisers for filling, transport, handling, and packaging for the food and the drink industry; crusher machines for industrial use; industrial mixers for mixing liquids and solids in the food and drink industry; spraying machines; sifter machines; vibrating belt conveyors; machines for processing cocoa, including conches, potassium machines, reactors and fat dissolvers; powder separators; moulding machines, namely, injection, compression, moulding machines; dropping machines, namely, machines for depositing cookies, chocolates, and biscuits on conveyors for baking purposes; dosing machines for use in manufacturing, baking purposes; filling machines; vibrating units in the nature of machines for levelling the contents of moulds; machines for removing items from moulds; machines in the nature of units for extracting foodstuffs from moulds; dispensing machines for almonds; dispensing machines for cherries; dispensing machines for biscuits and wafers; machines parts in the nature of scrapers for moulds; electric ingredient presses, namely, cocoa, almond presses; machines for shelling almonds; sprinkler machines for liquids, namely, machines for applying liquid coating to chocolate; handling machines, namely, case elevators, automatic slip sheet dispensing machines; flow wrapping machines; machines for wrapping areas; robotic systems for sorting goods, namely, chocolate; robotic systems for wrapping; wrapping machines; coating machines, namely, paper coating machines; apron conveyors; machines for rolling foodstuffs; extrusion machines for dense products, namely, chocolate; accessories, namely, moulds for use in the manufacture of chocolates, bearing inserts, roller bearings, spare structural parts for these machines; coating machines for caramel candies, pralines and chocolates; machines for moulding caramel candies and chocolates, namely, injection moulding machines, compression moulding machines; machines for the manufacture of chocolate, caramel candies, pralines and chocolates; palletizing machines

Attachments	79285445#TMSN.png(bytes) 79197297#TMSN.png(bytes) Notice of Opposition - Final.pdf(795398 bytes)
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Signature	/Wesley W. Whitmyer, Jr./
Name	WESLEY W. WHITMYER, JR.
Date	07/27/2021

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


Sacmi Packaging & Chocolate S.P.A.	:		
	:		
Opposer,	:		
v.	:	Opposition No.	
	:	[not yet assigned]	
WITRON Logistik + Informatik GmbH	:		
	:		
Applicant.	:		

Application Serial No. 79277811
Mark: OPM

NOTICE OF OPPOSITION

Sacmi Packaging & Chocolate S.P.A. (“Sacmi” or “Opposer”) believes that it is and will be damaged by registration of the mark OPM in U.S. Trademark Application Serial No. 79277811 and therefore opposes the same pursuant to Section 13 of the 1946 Trademark Act (15 U.S.C. §1063) and pursuant to 37 CFR §§ 2.101 and 2.104 on the grounds enumerated below.

1. Opposer, Sacmi, is a joint stock company organized under the laws of Italy with a business address at: Via Selice Provinciale, 17/A, Imola (BO), I-40026, Italy.
2. Opposer is the owner of the following United States trademark registrations for OPM (the “OPM Marks”).

Mark	Reg. / Serial No.	Goods and Services	Reg. / Appln. Filing Date
	79285445	IC 007: Machines, namely, packaging machines; material handling machines, namely, palletizers, case elevators, automatic pallets machines, automatic pallet dispensing machines and automatic slip sheet dispensing machines; buffering machines, namely, machines for temporarily storing items during their production process; automatic feeding machines, namely, machines aimed at automatically receiving, handling, grouping and introducing items	Feb. 13, 2020

		<p>within the flow of production; flow wrapping machines; robotic machines being industrial robots for sorting and distributing goods, robotic machines being industrial robots to be used with flow wrapping machines; robotic machines being industrial robots to be used with wrapping machines; robotic machines being industrial robots for moulding lines; robotic machines being industrial robots for secondary packaging solution; top loading cartoning machine; side loading cartoning machine; carton box making machine; carton box closing machine, namely, paper box making machine; multifunctional packaging machines; case packing machines; wrap around machines, namely, machines wrapping a carton or carton box case around products to be packed; feeding machines, namely, automated wrapper in-feed machines; distributing machines, namely, machines aimed at automatically distributing, items within the flow of production; conveyors being machines; machines and parts thereof for manufacturing and processing packaging, namely, packaging machines</p> <p>IC 009: Screens, namely, flat panel display screen; downloadable software to automate data warehousing for the packaging industry; control panels for automated machines, namely, computer controls for the operation of industrial machines; switchboards for automated machines</p> <p>IC 037: Installation of industrial machines; repair of industrial machines; maintenance of industrial machines; industrial machinery retrofit and conversion services for third parties</p>	
CMOPM	79197297 5361911	<p>IC 007: Machines, in particular machines for the food industry containing drying units, namely, animal feed drying machines, harvest drying machines; packaging machines; mills, namely, power operated flour mills; electric and hydraulic presses for cocoa beans and oily seeds; electric grinders for cocoa; pre-refining machines for pulp, oil, cocoa, paste; refiners machines for pulp, oil, cocoa, paste; industrial equipment in the nature of homogenisers for filling, transport, handling, and packaging for the food and the drink industry; crusher machines for industrial use; industrial</p>	May 25, 2016 Dec. 26, 2017

		<p>mixers for mixing liquids and solids in the food and drink industry; spraying machines; sifter machines; vibrating belt conveyors; machines for processing cocoa, including conches, potassium machines, reactors and fat dissolvers; powder separators; moulding machines, namely, injection, compression, moulding machines; dropping machines, namely, machines for depositing cookies, chocolates, and biscuits on conveyors for baking purposes; dosing machines for use in manufacturing, baking purposes; filling machines; vibrating units in the nature of machines for levelling the contents of moulds; machines for removing items from moulds; machines in the nature of units for extracting foodstuffs from moulds; dispensing machines for almonds; dispensing machines for cherries; dispensing machines for biscuits and wafers; machines parts in the nature of scrapers for moulds; electric ingredient presses, namely, cocoa, almond presses; machines for shelling almonds; sprinkler machines for liquids, namely, machines for applying liquid coating to chocolate; handling machines, namely, case elevators, automatic slip sheet dispensing machines; flow wrapping machines; machines for wrapping areas; robotic systems for sorting goods, namely, chocolate; robotic systems for wrapping; wrapping machines; coating machines, namely, paper coating machines; apron conveyors; machines for rolling foodstuffs; extrusion machines for dense products, namely, chocolate; accessories, namely, moulds for use in the manufacture of chocolates, bearing inserts, roller bearings, spare structural parts for these machines; coating machines for caramel candies, pralines and chocolates; machines for moulding caramel candies and chocolates, namely, injection moulding machines, compression moulding machines; machines for the manufacture of chocolate, caramel candies, pralines and chocolates; palletizing machines</p>	
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3. These registrations are valid and subsisting. A copy of the registrations from the

USPTO online TESS database are attached as **Exhibit A** and made of record in this proceeding pursuant to Trademark Rule 2.122(d).

4. Opposer's goods, as described in paragraph 2 above, include, but are not limited to, machines for producing and packaging, including for the food industry, automated material handling, packaging, wrapping, dispensing machines, robotic and industrial robot machines, carton box making and closing machines, conveyers, machines aimed at production flow, drying, milling, grinding sifting and dispensing machines, moulding and injection moulding machines, associated parts, and computer screens, switchboards and controls, and computer software ("Opposer's Goods").

5. Opposer's services, as described in paragraph 2 above, include, but are not limited to, installation, maintenance, repair and retrofit conversion of industrial machines ("Opposer's Services," collectively with Opposer's Goods, "Opposer's Goods and Services").

6. The OPM Marks registered as early as Dec. 26, 2017, and Opposer has used the OPM Marks extensively and continuously in U.S. commerce long before Applicant filed its trademark application as set forth in paragraph 8 below. As a result of such use, the public has come to know the OPM Marks, in connection with Opposer's Goods, as originating with Opposer and the OPM Marks have developed substantial goodwill.

7. The records of the USPTO indicate that Applicant WITRON Logistik + Informatik GmbH ("Applicant") is a limited liability company under the laws of Germany with an address at Neustädter Str. 21, Parkstein, 92711 Germany.

8. The records of the USPTO indicate that Applicant is the owner of the following trademark application:

Mark	Serial No.	Filing Date	Goods-Services
OPM	79277811	Nov. 21, 2019	IC 007: Automated machines for storing packages, storage machinery, namely, a vertical hoist for raising and storing packages, automated pickers, power operated lifts used to transport and place portable storage containers, cargo handling machines, belt conveyors; all of the foregoing exclusively in the field of warehousing, logistics and supply chain management

("Opposed Application")

9. At least one of Opposer's OPM Marks were filed prior to the filing date of the Opposed Application.

10. Opposer's rights in the OPM Marks predate any date that Applicant may rely upon in this proceeding.

11. Opposer's OPM Marks and the Opposed Application are nearly identical, in sound, appearance, meaning, connotation, and commercial impression.

12. In the Opposed Application, the term "OPM" is nearly identical to Opposer's OPM Marks.

13. The goods identified in the Opposed Application are highly related to Opposer's Goods and Services which are being sold under the OPM Marks because Opposer's Goods can be used for, with, or complementary to the goods listed in the Opposed Application.

14. The goods identified in International Class 07 of the Opposed Application are offered for sale and sold to the same consumers and travel in the same channels of trade and as such can directly compete with each other.

15. In view of the similarities between Opposer's OPM Marks and the OPM mark in

the Opposed Application, compounded by the relatedness of the parties' respective goods and trade channels, there is a likelihood that Applicant's products will be seen as being sponsored by, affiliated with, or originating from Opposer.

COUNT ONE: LIKELIHOOD OF CONFUSION

16. The OPM mark in the Opposed Application so resembles Opposer's OPM Marks that it will likely cause confusion, mistake, or deceive consumers as to the source of the identified goods within the meaning of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

17. The use and registration of the mark in the Opposed Application will damage Opposer in the selling of its goods by causing a likelihood of confusion.

WHEREFORE, Opposer prays that the Trademark Trial and Appeal Board deny registration to U.S. Trademark Application Serial No. 79277811 and otherwise sustain this opposition.

Respectfully submitted,
Sacmi Packaging & Chocolate S.P.A.

July 27, 2021

/s/ Wesley W. Whitmyer, Jr.
Wesley W. Whitmyer, Jr.
Robert D. Keeler
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ATTORNEYS FOR OPPOSER

EXHIBIT A



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Word Mark OPM

Translations The English translation of "Officine Produzioni Meccaniche" in the mark is "Mechanical Workshops Productions".

Goods and Services IC 007. US 013 019 021 023 024 031 034 035. G & S: Machines, namely, packaging machines; material handling machines, namely, palletizers, case elevators, automatic pallets machines, automatic pallet dispensing machines and automatic slip sheet dispensing machines; buffering machines, namely, machines for temporarily storing items during their production process; automatic feeding machines, namely, machines aimed at automatically receiving, handling, grouping and introducing items within the flow of production; flow wrapping machines; robotic machines being industrial robots for sorting and distributing goods, robotic machines being industrial robots to be used with flow wrapping machines; robotic machines being industrial robots to be used with wrapping machines; robotic machines being industrial robots for moulding lines; robotic machines being industrial robots for secondary packaging solution; top loading cartoning machine; side loading cartoning machine; carton box making machine; carton box closing machine, namely, paper box making machine; multifunctional packaging machines; case packing machines; wrap around machines, namely, machines wrapping a carton or carton box case around products to be packed; feeding machines, namely, automated wrapper in-feed machines; distributing machines, namely, machines aimed at automatically distributing, items within the flow of production; conveyors being machines; machines and parts thereof for manufacturing and processing packaging, namely, packaging machines

IC 009. US 021 023 026 036 038. G & S: Screens, namely, flat panel display screen; downloadable software to automate data warehousing for the packaging industry; control panels for automated machines, namely, computer controls for the operation of industrial machines; switchboards for automated machines

IC 037. US 100 103 106. G & S: Installation of industrial machines; repair of industrial machines; maintenance of industrial machines; industrial machinery retrofit and conversion services for third parties

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 26.11.13 - Rectangles (exactly two rectangles) ; Two rectangles
 26.11.21 - Rectangles that are completely or partially shaded
 26.11.25 - Rectangles with one or more curved sides
 26.17.01 - Bands, straight ; Bars, straight ; Lines, straight ; Straight line(s), band(s) or bar(s)
 26.17.04 - Bands, vertical ; Bars, vertical ; Lines, vertical ; Vertical line(s), band(s) or bar(s)
 26.17.05 - Bands, horizontal ; Bars, horizontal ; Horizontal line(s), band(s) or bar(s) ; Lines, horizontal
 27.03.01 - Geometric figures forming letters, numerals or punctuation

Serial 79285445

Number**Filing Date** February 13, 2020**Current Basis** 66A**Original Filing Basis** 66A**International Registration Number** 1530517**Owner** (APPLICANT) SACMI PACKAGING & CHOCOLATE S.P.A. JOINT STOCK COMPANY ITALY Via Selice Provinciale, 17/A I-40026 Imola (BO) ITALY**Attorney of Record** Wesley W. Whitmyer, Jr.**Priority Date** October 31, 2019**Description of Mark** Color is not claimed as a feature of the mark. The mark consists of the stylized lettering "OPM" above a rectangle with curved ends.**Type of Mark** TRADEMARK. SERVICE MARK**Register** PRINCIPAL**Live/Dead Indicator** LIVE

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Word Mark CM OPM

Goods and Services IC 007. US 013 019 021 023 031 034 035. G & S: Machines, in particular machines for the food industry containing drying units, namely, animal feed drying machines, harvest drying machines; packaging machines; mills, namely, power operated flour mills; electric and hydraulic presses for cocoa beans and oily seeds; electric grinders for cocoa; pre-refining machines for pulp, oil, cocoa, paste; refiners machines for pulp, oil, cocoa, paste; industrial equipment in the nature of homogenisers for filling, transport, handling, and packaging for the food and the drink industry; crusher machines for industrial use; industrial mixers for mixing liquids and solids in the food and drink industry; spraying machines; sifter machines; vibrating belt conveyors; machines for processing cocoa, including conches, potassium machines, reactors and fat dissolvers; powder separators; moulding machines, namely, injection, compression, moulding machines; dropping machines, namely, machines for depositing cookies, chocolates, and biscuits on conveyors for baking purposes; dosing machines for use in manufacturing, baking purposes; filling machines; vibrating units in the nature of machines for levelling the contents of moulds; machines for removing items from moulds; machines in the nature of units for extracting foodstuffs from moulds; dispensing machines for almonds; dispensing machines for cherries; dispensing machines for biscuits and wafers; machines parts in the nature of scrapers for moulds; electric ingredient presses, namely, cocoa, almond presses; machines for shelling almonds; sprinkler machines for liquids, namely, machines for applying liquid coating to chocolate; handling machines, namely, case elevators, automatic slip sheet dispensing machines; flow wrapping machines; machines for wrapping areas; robotic systems for sorting goods, namely, chocolate; robotic systems for wrapping; wrapping machines; coating machines, namely, paper coating machines; apron conveyors; machines for rolling foodstuffs; extrusion machines for dense products, namely, chocolate; accessories, namely, moulds for use in the manufacture of chocolates, bearing inserts, roller bearings, spare structural parts for these machines; coating machines for caramel candies, pralines and chocolates; machines for moulding caramel candies and chocolates, namely, injection moulding machines, compression moulding machines; machines for the manufacture of chocolate, caramel candies, pralines and chocolates; palletizing machines

Mark Drawing Code (5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Serial Number 79197297

Filing Date May 25, 2016

Current Basis 66A

Original Filing Basis 66A

Published for Opposition October 10, 2017

Registration Number 5361911

International Registration Number 1321496

Registration Date December 26, 2017

Owner (REGISTRANT) SACMI PACKAGING & CHOCOLATE S.p.a. SOCIET  PER AZIONI (SPA) ITALY Via Selice Provinciale 17/A I-40026 IMOLA (BO) ITALY

Priority Date May 25, 2016

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "OPM" APART FROM THE MARK AS SHOWN

Description of Mark Color is not claimed as a feature of the mark. The mark consists of the stylized letters "CM" merging with a shaded box to the right containing the stylized letters "OPM".

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing **NOTICE OF OPPOSITION** was served by electronic mail on the Correspondent for the Applicant at the address identified in USPTO records:

Charles P. Bacall
Verrill Dana LLP
One Portland Square
Portland, MAINE UNITED STATES 04101-4054
trademarks@verrill-law.com; cbacall@verrill-law.com

July 27, 2021
Date

/s/ Joan M. Burnett
Joan M. Burnett