

ESTTA Tracking number: **ESTTA829402**

Filing date: **06/26/2017**

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	Mars, Incorporated
Granted to Date of previous extension	06/25/2017
Address	6885 Elm Street McLean, VA 22101 UNITED STATES

Correspondence information	John J. Dabney McDermott Will & Emery LLP 500 N. Capitol St NW Washington, DC 20001 UNITED STATES Email: kbukrinsky@mwe.com, jdabney@mwe.com, dciplit@mwe.com, mhallerman@mwe.com
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Applicant Information

Application No	87166384	Publication date	12/27/2016
Opposition Filing Date	06/26/2017	Opposition Period Ends	06/25/2017
Applicant	Hershey Chocolate & Confectionery Corporation Suite 204 4860 Robb Street Wheat Ridge, CO 80033 UNITED STATES		

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: Candy
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Grounds for Opposition

The mark is merely descriptive	Trademark Act Section 2(e)(1)
The mark is generic	Trademark Act Sections 1, 2 and 45

Attachments	Mars Opp to SCARY - Final.pdf(40969 bytes)
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Signature	/s/ John J. Dabney
Name	John J. Dabney
Date	06/26/2017

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

MARS, INC.,

Opposer,

v.

HERSHEY CHOCOLATE AND
CONFECTIONERY CORPORATION,

Applicant.

Opposition No.

Serial No: 87/166384

Mark: SCARY

NOTICE OF OPPOSITION

Mars, Inc., a Delaware corporation located at 6885 Elm Street, McLean, Virginia 22101 (“Opposer” or Mars”), opposes registration of the mark “SCARY” in Serial No. 87/166384 filed by Hershey Chocolate and Confectionery Corporation, a Delaware corporation located at Suite 204, 4860 Robb Street, Wheat Ridge, Colorado 80033 (“Applicant”).

1. Opposer is one of the largest confectionary companies in the United States. Opposer and its wholly-owned subsidiary, Wm. Wrigley Jr. Company. (“Wrigley”), own dozens of candy, mint and gum brands, including M&Ms®, SNICKERS®, TWIX®, and DOVE®, for Mars, among many others, and LIFE SAVERS®, STARBURST®, SKITTLES®, ORBIT® and EXTRA®, for Wrigley, among many others.

2. Halloween is a popular holiday in the United States. Tens of millions of people celebrate the macabre by dressing in scary costumes, watching scary films, attending scary haunted houses, and sharing scary stories about scary ghosts, scary witches and scary goblins. For generations, the most popular Halloween tradition has been “trick or treat” – the custom whereby

millions go from house to house receiving a treat (invariably in the form of candy, gum or mints) in exchange for a scary trick.

3. Halloween is the largest holiday for confectionary companies in the United States. Billions of dollars' worth of candy, gum and mints are sold throughout the United States during the Halloween season. Opposer and countless other confectionary companies create Halloween-themed candy, packaging, advertising and promotional materials for use during and around the Halloween season.

4. Countless confectionary companies in the United States, including Opposer, and innumerable retailers that sell confectionaries, have used the term SCARY and formatives thereof to advertise, promote and sell candy, mints and gum, including during the Halloween season. SCARY is like "HAUNTED" "SPOOKY" or "BOO," only SCARY is more frequently used.

5. Applicant is a large confectionery company that competes with Opposer. Applicant makes themed candy, packaging and advertising and promotional materials to sell its brands during the Halloween season and other seasons.

6. Undeterred by 50 years of wall-to-wall, third-party use of SCARY by anyone and everyone in the candy, gum and mint industries, on September 9, 2016, Applicant filed an intent-to-use trademark application for SCARY for "candy," claiming that no one else has the right to use it in commerce for candy.

7. On information and belief, Applicant intends to use SCARY in connection with its candy advertised, promoted and sold in connection with the Halloween season, among other seasons.

8. Applicant's applied-for mark SCARY merely describes a quality, characteristic or feature of Applicant's candy or the nature of Applicant's candy. SCARY is associated with candies, gums and mints advertised and sold by countless third parties in the United States, including Opposer, during and around the Halloween season and other seasons. SCARY is no more capable of being a trademark for candy than is TRICK OR TREAT.

9. Applicant's registration of SCARY would injure Opposer. Applicant's registration would be "prima facie" evidence of the validity of the mark. Opposer (and countless others) could be prevented from using the highly descriptive, generic term SCARY to advertise, promote and sell candy, gum and mints.

Opposer prays that registration of Applicant's applied-for mark be denied.

Respectfully submitted,

MARS, INC.

Dated: June 26, 2017

By: /John J. Dabney/
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Attorneys for Opposer

CERTIFICATE OF SERVICE

Opposers MARS, INC., by and through its attorneys, hereby certify that a copy of this NOTICE OF OPPOSITION has been served upon Applicant on this 26th day of June, 2017, by First Class Mail at the following address:

Kurt Ehresman
Hershey Chocolate & Confectionery Corporation
4860 Robb Street
Suite 204
Wheat Ridge, CO 80033
trademarks@hersheys.com

/ Katie Bukrinsky/ _____
Katie Bukrinsky
McDERMOTT WILL & EMERY LLP
Attorney for Opposer