

ESTTA Tracking number: **ESTTA760496**

Filing date: **07/26/2016**

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

Proceeding	91213235
Party	Plaintiff Hershey Chocolate & Confectionery Corporation, The Hershey Company
Correspondence Address	PAUL C LLEWELLYN KAYE SCHOLER LLP 250 WEST 55TH ST NEW YORK, NY 10019-9710 UNITED STATES jryniewicz@kayescholer.com, pllewellyn@kayescholer.com, tmdocketing@kayescholer.com
Submission	Other Motions/Papers
Filer's Name	Paul C Llewellyn
Filer's e-mail	paul.llewellyn@kayescholer.com, john.ryniewicz@kayescholer.com, tmdocketing@kayescholer.com, ross.panko@arentfox.com
Signature	/paul c llewellyn/
Date	07/26/2016
Attachments	Hershey v Mars SNICKERS Cross-Section Device opposition - Withdrawal.pdf(49712 bytes )

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

HERSHEY CHOCOLATE & CONFECTIONERY  
CORPORATION and THE HERSHEY COMPANY

Opposers,

v.

MARS, INCORPORATED,

Applicant.

Opposition No. 91213235

Mark: (Design Only)



Serial No. 85441471

**CONSENTED WITHDRAWAL OF OPPOSITION WITHOUT PREJUDICE  
CONTINGENT UPON AMENDMENT OF APPLICATION**

Applicant Mars, Incorporated (“Applicant”), by its undersigned attorneys, hereby requests that the Trademark Trial and Appeal Board (the “Board”) grant approval to amend its application that is the subject of Opposition No. 91213235 under 37 C.F.R. § 2.133(a). Applicant wishes to add the following mark description and disclaimer statement to its application:

“The mark depicts a distinctive two-dimensional cross-sectional view of a candy bar. No claim is made to the selection of candy bar ingredients depicted in the mark or to the configuration of a candy bar containing those ingredients, except as depicted in the applied-for mark.”

Thus, the amended mark description and disclaimer would read as follows:

“The color(s) brown and tan is/are claimed as a feature of the mark. The mark consists of a cross-section of a candy bar showing layers within the candy, namely, a middle light brown layer containing several tan-colored peanut shapes and a bottom tan layer, all surrounded by a brown layer. The mark depicts a distinctive two-dimensional cross-sectional view of a candy bar. No claim is made to the selection of candy bar ingredients depicted in the mark or to the configuration of a candy bar containing those ingredients, except as depicted in the applied-for mark.”

Opposers Hershey Chocolate & Confectionery Corporation and The Hershey Company (“Opposers”) have consented to Applicant’s amendments set forth above. This request is being

made for the purpose of resolving pending Opposition No. 91213235. Applicant respectfully requests that the Board enter the requested amendments to the subject application.

Contingent upon the Board accepting the amendments requested above, Opposers, through their undersigned counsel, hereby withdraw the Notice of Opposition filed against U.S. Trademark Application Serial No. 85441471. This withdrawal is made without prejudice and on the consent of Applicant.

Respectfully submitted,

**HERSHEY CHOCOLATE & CONFECTIONERY  
CORPORATION AND THE HERSHEY COMPANY**

By: /paul c llewellyn/  
Paul C. Llewellyn  
Kyle D. Gooch  
KAYE SCHOLER LLP  
425 Park Avenue  
New York, NY 10022  
(212) 836-8000

John P. Rynkiewicz  
KAYE SCHOLER LLP  
901 Fifteenth Street, NW  
Washington, DC 20005  
(202) 682-3671

*Attorneys for Opposers*

Dated: July 26, 2016

**MARS, INCORPORATED**

By: /Ross q panko/  
Cristina A. Carvalho  
Ross Q. Panko  
Loni J. Sherwin  
ARENT FOX LLP  
1717 K Street, NW  
Washington, DC 20006  
(202) 857-6000

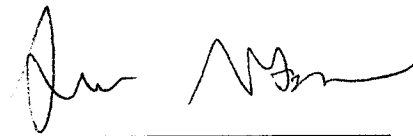
*Attorneys for Applicant*

Dated: July 26, 2016

**CERTIFICATE OF SERVICE**

I certify that the foregoing Consented Withdrawal of Opposition Without Prejudice Contingent Upon Amendment of Application is being electronically filed with the United States Patent and Trademark Office on July 26, 2016, and that a true and correct copy of the foregoing was served by electronic mail, on the attorney of record for the Applicant, namely:

Ross A. Panko  
Arent Fox LLP  
1717 K ST NW  
Washington, DC 20006-5344  
UNITED STATES

A handwritten signature in black ink, appearing to read 'Jennifer Worksman', written over a horizontal line.

Jennifer Worksman