



World Intellectual Property  
Organisation (WIPO)  
International Bureau  
34, Chemin des Colombettes  
1211 Geneva 20  
Switzerland

**Your Reference:**  
**International Registration No:**  
WO0000001302999  
**Examiner:** Chris Benney  
**Direct Telephone:** +44(0)1633814598  
**Date:** 04 April 2017

**Intl Reg No:** WO0000001302999  
**Mark:** KISS Chocolaterie (Figurative)  
**Holder:** LIMITED LIABILITY COMPANY "ANYKISS"  
**Classes:** 30

**Notification Of A Provisional Total Refusal Of Protection Based On An  
Opposition By The United Kingdom Intellectual Property Office In  
Accordance With Article 5 Of The Madrid Protocol**

I am writing to inform you that following receipt of an opposition to the above trade mark, it is necessary to issue this formal provisional refusal letter. This provisional refusal covers all of the goods and services of the International Registration.

Please find attached a copy of the Form TM7 'Notice of Opposition', which includes details of any marks referred to in the statement of case, which was received by the United Kingdom Trade Mark Registry. Copies of these documents have been sent to the holder informing them of this provisional refusal.

If the holder of the International Registration wishes to file a counterstatement, they must complete the Form TM8 'Notice of defence and counterstatement', which is available at [ipo.gov.uk/tmforms](http://ipo.gov.uk/tmforms) and **return it to this office on or before 5 June 2017**. This period cannot be extended, except in the circumstances described below. The holder should note that failure to file a Form TM8 will result in the provisional refusal being upheld.

If both parties to this dispute wish to negotiate and want to enter a 'cooling off period' then the time for filing the Form TM8 can be extended for a further seven months by the filing the Form TM9c 'Request for a cooling off period, which is available at [ipo.gov.uk/tmforms](http://ipo.gov.uk/tmforms)

The Form TM8 should be received on or before the date requested above unless a cooling off period is entered into by the parties.

The holder of the International Registration must provide us with an address for correspondence in the United Kingdom, another EEA state or the Channel Islands on a Form TM33 'Appointment or change of agent or contact address', which is available at [ipo.gov.uk/tmforms](http://ipo.gov.uk/tmforms) within this two month period.

If one is not provided within this time the refusal will be made final.

Yours faithfully

*Chris Benney*  
**Trade Marks Registry**



**Intellectual  
Property  
Office**

IPO  
SW

29 MAR 2017

**RECEIVED BY FAX**

**RECEIVED**

30 MAR 2017

**NEW APPLICATIONS**

**Form TM7**

**Notice of opposition and statement of grounds**

**Fee** ☒ **£100** Opposition based on Section 5(1) and/or 5(2) ONLY

☐ **£200** Opposition based on, or including, any other grounds

*Note: If you wish to oppose under Section 5(1) and/or 5(2) and one or more other grounds, the fee will be £200*

**Use this form** to notify of an opposition to a trade mark application or international registration and to set out the grounds on which you are basing this opposition.

**Do not use this form** if you wish to file a Fast Track opposition under Section 5(1) and/or 5(2): use Form TM7F.

**1. Trade mark number**

Number of the trade mark you are opposing. If the opposition concerns an International Registration, help us identify the correct trade mark by adding "IR"

IR 1302999

**2. Full name of applicant/holder**

Whose trade mark you are opposing

LIMITED LIABILITY COMPANY "ANYKISS"

**3. Full name of opponent**

Person opposing the trade mark

The Hershey Company

**Address**

If the address is not within the United Kingdom, European Economic Area (EEA – which includes the European Union) or the Channel Islands you must have a representative in one of these regions and complete section 4 below

100 Crystal A Drive

Hershey

Pennsylvania

USA

Postcode 17033

**Email address**

Complete if you have no representative and would like us to correspond with you by email

**4. Representative name**

If you have no representative, go to section 5.

J A KEMP

**Address**

The address provided in this section must be in the UK, European Economic Area (EEA) or the Channel Islands.

14 South Square

Gray's Inn

London

Postcode WC1R 5JJ

**NOTE:** We will communicate with the representative if this section has been completed.

**Email address**

Complete if you would like us to correspond with you by email

mail@jakemp.com

**5. Related proceedings**

If applicable, select location of any related proceedings and enter the case number allocated to the proceedings.

IPO Registry

UK Courts

EUIPO

Number

**6. Opposition notification date**


If you have informed the applicant/holder of an intention to oppose the trade mark application, designation – enter the date you notified them.  
[\*\*See Note]

15/02/2017

**\*\*Note:** An opposition launched without giving the applicant or holder a reasonable opportunity to withdraw the application, international designation or amendment may result in the opponent being ineligible for an award of costs.

**7. Declaration**

I believe that the facts stated in this form and the attached statement of grounds are true.

**Signature****Name**

(BLOCK CAPITALS)

J A KEMP

**Date**

29 March 2017

**8. Your reference**

Complete if you would like us to quote this in communications with you, otherwise leave blank.

Y40655GB TPA/kk

**Contact details**

Name, daytime telephone number of the person to contact in case of query.

Tom Albertini  
020 30778600

Number of sheets attached to this form

7

**Checklist**

Please make sure you have remembered to:

☐ Sign and date the form☐ Complete fee sheet (Form FS2)☐ Enclose the fee and fee sheet. Make cheques payable to Intellectual Property Office**Where to send**Intellectual Property Office  
Trade Marks RegistryConcept House  
Cardiff Road

Newport

South Wales  
NP10 8QQ

Please tick on what grounds you are opposing the trade mark and continue to the relevant section(s)

Opposition is based on Sections 5(1) or 5(2): The trade mark is either identical or similar to an earlier trade mark and is to be registered for identical and/or similar goods and services.

**Note:** Opposition on these grounds must be made by the 'proprietor' (owner) of the earlier trade mark.

> **COMPLETE SECTION A**

Opposition is based on Section 5(3): The trade mark is either identical or similar to an earlier trade mark which has a reputation. Using the later mark would take unfair advantage of, or be detrimental to, the distinctive character or reputation of the earlier mark.

**Note:** Opposition on these grounds must be made by the 'proprietor' (owner) of the earlier trade mark. Ticking this box means that the total fee for this form is £200.

> **COMPLETE SECTION B**

Opposition is based on Section 5(4)(a): Where the use of the applicant's trade mark would be contrary to law, in particular, the law of passing off.

**Note:** Opposition on these grounds must be made by the 'proprietor' (owner) of the earlier right. Ticking this box means that the total fee for this form is £200.

> **COMPLETE SECTION C**

Opposition is based on Section 3: The trade mark is excluded from registration because it describes the goods/services, or is not distinctive, or consists of signs that are customary within the trade, or the application was made in bad faith.

**Note:** Ticking this box means that the total fee for this form is £200.

> **COMPLETE SECTION D**

Opposition is based on other grounds.

**Note:** Ticking this box means that the total fee for this form is £200.

> **COMPLETE SECTION E**

**SECTION A: Opposition is based on sections 5(1) or 5(2) of the Trade Marks Act on the basis of an earlier registered or pending mark.**

**Please tick the relevant section(s) that apply.**

<input type="checkbox"/>	5(1) It is <b>identical</b> with an earlier mark and for <b>identical goods or services</b> as the earlier mark
<input type="checkbox"/>	5(2)(a) It is <b>identical</b> with an earlier mark and for <b>similar goods or services</b> as the earlier mark.
<input checked="" type="checkbox"/>	5(2)(b) It is <b>similar</b> to an earlier mark and for <b>identical or similar goods or services</b> as the earlier mark.

*You must use a separate sheet for each earlier mark, so copy this sheet as many times as you need.*

**ABOUT THE EARLIER TRADE MARK**

**Trade mark number**  
Your trade mark

2603941

**Type of mark**  
Please tick

<input checked="" type="checkbox"/>	UK	<input type="checkbox"/>	EUTM	<input type="checkbox"/>	International
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**Representation of your trade mark**

Enter your trade mark in the space provided - use a continuation sheet if necessary.

**KISSES**

**Q1. Which goods or services covered by the earlier trade mark are relied upon for the opposition?**

<b>1</b>	All goods and services
	Some goods and services <i>(please specify below, use a continuation sheet if necessary)</i>

**Q2. STATEMENT OF USE - Was the registration or protection process for the earlier trade mark completed 5 years or more before the publication date of the application you wish to oppose?**

☐ Yes

☒ No > **GO TO Q4**

**Q3. Has the trade mark been used?**

☐ Yes

☐ No > **GO TO Q3b**

**Q3a. For which of the goods and services listed at Q1 is trade mark use being claimed?**

	All goods and services
	Some goods and services <i>(please specify below, use a continuation sheet if necessary)</i>

> **GO TO Q4.**

**Q3b. Please state any proper reasons for non-use.**

**DETAILS OF THE TRADE MARK YOU ARE OPPOSING**

**Q4. Which goods or services in the application that you are opposing do you claim are identical or similar to those covered by the earlier mark which you have listed at Q1 or Q3a (whichever is applicable)?**

I	All goods and services
	Some goods and services (please specify below, use a continuation sheet if necessary)

**Q5. Use this space to supply any further information about why you consider there is a likelihood of confusion and e.g. why you consider the respective marks or goods and/or services to be similar.**

The mark applied for is highly similar to the opponent's prior mark in view of the close similarity, on a visual, phonetic and conceptual level, between the word KISS in the mark applied for (which is also its dominant and distinctive element) and the opponent's prior mark KISSES (stylized). The goods applied for are either identical with, and/or similar to, the goods covered by the opponent's prior UK Registration No. 2603941. As a result of this close similarity in marks, and identity and/or similarity in goods, there exists a likelihood of confusion on the part of the public, including a likelihood of association. The application is therefore liable to be refused under Section 5(2)(b) of the Trade Marks Act 1994 and the opponent asks for refusal on this basis and an award of costs in its favour.



29/03/2017

Intellectual Property Office - By number results



## Intellectual Property Office

## Case details for trade mark UK00002603941

## Trade mark

**KISSES****Status:**

Registered

## Relevant dates

**Filing date:**

08 December 2011

**Date of entry in register:**

04 May 2012

**Renewal date:**

08 December 2021

## List of goods

**Class 30:**

Candy, except bon-bons consisting of fruit gum in combination with foam sugar and/or liquorice and/or jelly; chocolate with or without inclusions such as nuts.

## Name and Address details

**Owner(s) name:**

The Hershey Company

100 Crystal A Drive, Hershey, PA  
17033, United States of America,  
United States Of America**Country of Incorporation:**

United States Of America

**Incorporation state:**

Delaware

[View owner's other trade marks](#)**IPO representative name:**

J A Kemp

14 South Square, Gray's Inn, London,  
United Kingdom, WC1R 5JJ

29/03/2017

Intellectual Property Office - By number results

Publication details

**First advert:****Journal : 6928    Date of publication :  
24 February 2012**

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Intellectual Property Office is an operating name of the Patent Office

**J A KEMP**

BY FAX

UK Intellectual Property Office  
Concept House  
Cardiff Road  
Newport NP10 8QQ



29 March 2017

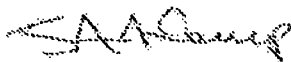
Dear Sirs

United Kingdom Designation of International Registration No. WO0000001302999  
KISS CHOCOLATERIE (stylized)  
in the name of Limited Liability Company Anykiss  
and Opposition thereto by The Hershey Company  
Our ref: Y40655GB TPA/kk

Please find attached a Form TM7 Notice of Opposition and Statement of Grounds,  
together with a fee sheet FS2.

We authorise the relevant fee deduction from our Deposit Account No. D00192.

Yours faithfully

**J A KEMP**

**PATENT ATTORNEYS • TRADE MARK ATTORNEYS**  
LONDON • OXFORD • CAMBRIDGE • MUNICH

14 South Square, Gray's Inn, London WC1R 5JJ  
T +44 20 3077 8600 F +44 20 7430 1000  
mail@jakemp.com [www.jakemp.com](http://www.jakemp.com)

A list of our partners is available at our principal place of business at the address above. Regulated by IPREG

**J A • K E M P****FAX**

Sent to Fax No: 01633 817 777  
11 Pages (including cover sheet)

UK Intellectual Property Office  
Concept House  
Cardiff Road  
Newport  
NP10 8QQ



29 March 2017

*Our Ref: Y40655GB TPA*

**PLEASE SEE ACCOMPANYING PAGE(S)**

Please acknowledge safe and complete receipt of this transmission

SIGNED:

DATE:



Intellectual  
Property  
Office

Concept House  
Cardiff Road, Newport  
NP10 8QQ

T +44 (0) 30 0300 2000  
F +44 (0) 16 3381 7777

LIMITED LIABILITY COMPANY  
"ANYKISS"  
vul. Rishelyevska, 5,  
Odeska obl.  
Odesa 65000  
UKRAINE

Your Reference:  
**Opposition No: OP000408912**  
Examiner: Chris Benney  
Direct Telephone: +44(0)1633814598  
Date: 29 March 2018

**Intl Reg No: WO0000001302999**

**Holder: LIMITED LIABILITY COMPANY  
"ANYKISS"**

**Opposition No: OP000408912**

**Opponent: The Hershey Company**

*Please quote your Opposition ID Number in all correspondence*

If you wish to correspond by email please reply to [tribunalsection@ipo.gov.uk](mailto:tribunalsection@ipo.gov.uk)  
and ensure your email is copied to the other party

Dear Sirs,

Please find enclosed a copy of the Form TM7, notice of opposition, filed against your international registration. Copies of these documents have been sent to the World Intellectual Property Organisation (WIPO) informing them of this opposition.

If you wish to continue with your international registration, you **must** in accordance with rule 18(1) and 18(3) of the Trade Mark Rules 2008, complete a Form TM8 and counterstatement (please see Glossary) and **return it to this office** within **two months** from the date of this letter.

If the parties wish to seek a negotiated settlement and avoid the cost of preparing and submitting evidence or submissions, a Form TM9C 'Request for a cooling off period' (no fee required), which will extend the period for the filing of the holder's defence for a further seven months, **must** be filed. Both parties **must** agree to enter into cooling off.

**The Form TM8 and counterstatement, or Form TM9C must be received on or before 29 May 2018.**

An address for correspondence in the United Kingdom, another EEA state or the Channel Islands must be provided on TM33 within this period. If one is not provided within this time, the international registration will be treated as withdrawn in whole or part.

If you choose not to file a TM8, or a TM9C your international registration shall, in accordance with rule 18(2) of the Trade Marks Rules 2008, be treated as abandoned in whole or part unless the registrar otherwise directs.

**Before you decide whether to defend your international registration you are advised to read the opposition guidance notes, including information on the costs which may be awarded by the registry, which are available from the IPO website at <https://www.gov.uk/guidance/objecting-to-other-peoples-trade-marks>.**

All the forms referred to in this letter are available at <https://www.gov.uk/government/publications/trade-mark-forms-and-fees>.

A Glossary of terms is available from the IPO website at <https://www.gov.uk/government/publications/trade-marks-tribunal-glossary-of-terms>

The Office actively encourages parties to mediate as a swifter and less costly alternative to litigation. If you feel that this option is of interest, the Office can either provide a member of its own team of accredited mediators, each with extensive experience of dealing with intellectual property disputes, or can provide a list of other mediation providers.

For more information, please visit the IPO's website at <https://www.gov.uk/guidance/intellectual-property-mediation>, or contact [mediation@ipo.gov.uk](mailto:mediation@ipo.gov.uk) .

Yours faithfully,

*Chris Benney*  
**Trade Marks Registry**