

ESTTA Tracking number: **ESTTA278696**

Filing date: **04/17/2009**

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	Oliva Cigar Co.
Granted to Date of previous extension	04/19/2009
Address	6051 NW 153 Street Miami Lakes, FL 33014 UNITED STATES

Attorney information	Leslie J. Lott Lott & Friedland, P.A. P.O. Drawer 141098 Coral Gables, FL 33114-1098 UNITED STATES ljlott@lfiplaw.com, chammond@lfiplaw.com, kriviera@lfiplaw.com, jzambrano@lfiplaw.com Phone:(305) 448-7089
----------------------	--

Applicant Information

Application No	77479800	Publication date	10/21/2008
Opposition Filing Date	04/17/2009	Opposition Period Ends	04/19/2009
Applicant	Cigarmony LLC 43449 Lucketts Bridge Circle Ashburn, VA 20148 UNITED STATES		

Goods/Services Affected by Opposition

Class 034. All goods and services in the class are opposed, namely: Holders for cigars and cigarettes
--

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------

Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	77976757	Application Date	08/10/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NUB		

Design Mark	<h1>NUB</h1>
Description of Mark	NONE
Goods/Services	Class 034. First use: First Use: 2008/03/14 First Use In Commerce: 2008/03/14 cigars, ashtrays not of precious metal, and cigar cutters

U.S. Application No.	77976743	Application Date	08/17/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NUB		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 034. First use: First Use: 2008/03/14 First Use In Commerce: 2008/03/14 cigars, ashtrays not of precious metal, and cigar cutters		

Attachments	77976757#TMSN.jpeg (1 page)(bytes) 77976743#TMSN.jpeg (1 page)(bytes) NOT of OPP - NUBBER - AS FILED - 04.17.09.pdf (4 pages)(17044 bytes)
-------------	---

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	/Leslie J. Lott/
Name	Leslie J. Lott
Date	04/17/2009

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

Opposition No. _____

OLIVA CIGAR CO.,

Opposer,

v.

CIGARMONY LLC,

Applicant.

In the Matter of Application
Serial No. 77/479,800
Published in the Official Gazette
Date: October 21, 2008
Mark: **NUBBER**

NOTICE OF OPPOSITION

Opposer, Oliva Cigar Co., a corporation organized and existing under the laws of the State of Florida, with a principal address of 6051 NW 153rd St., Miami Lakes, Florida 33014, believes that it is or will be damaged by United States Trademark Application Serial No. 77/479,800 (the "Application") maturing into a registration and hereby opposes the registration of same.

Upon information and belief, Applicant, Cigarmony LLC, a limited liability company organized and existing under the laws of the State of Virginia, with a principal address of 43449 Lucketts Bridge Circle, Ashburn, Virginia 20148, is the owner of the Application.

The Application was filed on May 21, 2008 for the mark **NUBBER**. Applicant seeks registration of this mark on the Principal Register in respect of "Holders for cigars and cigarettes" in International Class 34, and claims a *bona fide* intent to use the mark in commerce.

As grounds for opposition, it is alleged that:

1. Opposer believes that it will be damaged by registration of the mark shown in the above identified application.

2. Opposer is the owner of two (2) federal trademark applications to register the mark **NUB**. Application Serial No. 77/976,757 covers “cigars, ashtrays not of precious metal, and cigar cutters” in International Class 34, and alleges first use dates of March 14, 2008, September 30, 2008, and March 31, 2008, respectively. Application Serial No. 77/252,122 covers “humidors, cigar cases not of precious metals, lighters not of precious metals” in International Class 34, and claims a *bona fide* intent to use the mark in commerce. Both applications claim an intent-to-use priority date of August 10, 2007.

3. Opposer is also the owner of two (2) federal trademark applications to register the mark **NUB (stylized)**. Application Serial No. 77/976,743 covers “cigars, ashtrays not of precious metal, and cigar cutters” in International Class 34, and alleges first use dates of March 14, 2008, September 30, 2008, and March 31, 2008, respectively. Application Serial No. 77/258,157 covers “humidors, cigar cases not of precious metals, lighters not of precious metals” in International Class 34, and claims a *bona fide* intent to use the mark in commerce. Both applications claim an intent-to-use priority date of August 17, 2007.

4. Applicant’s proposed mark is confusingly similar to Opposer’s marks. In view of the similarity of the parties’ respective marks and the overlapping nature of the parties’ respective goods, Applicant’s mark so resembles Opposer’s mark as to be likely to cause the public to be confused, mistaken, or deceived into believing that Applicant’s

goods originate from Opposer or are in some way related to, associated with, or sponsored by Opposer.

5. Registration of the mark sought to be registered in Application Serial No. 77/479,800 is barred by provisions of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), in that it consists of or comprises a mark which so resembles a mark previously used in the United States by Opposer on related goods as to be likely to cause the public to be confused, mistaken or deceived.

6. Applicant's Application injures Opposer by impairing Opposer's ability to register other marks related to cigars and cigar accessories.

PRAYER FOR RELIEF

WHEREFORE, Opposer respectfully requests that the opposition be granted and the Applicant's mark, Serial No. 77/479,800, be denied registration.

Date: April 17, 2009

Respectfully submitted,

LOTT & FRIEDLAND, P.A.

/s/ Carly A. Hammond
Leslie J. Lott
E-mail: ljlott@lfiplaw.com
Carly A. Hammond
E-mail: chammond@lfiplaw.com
P.O. Drawer 141098
Coral Gables, FL 33114-1098
Tel: (305) 448-7089

Attorneys for Opposer
Oliva Cigar Co.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing **NOTICE OF OPPOSITION** was served upon the Applicant by delivering a true and correct copy of same to Applicant and to counsel for Applicant as follows:

Mark D. Neff
Cigarmony LLC
43449 Lucketts Bridge Circle
Ashburn, VA 20148

Peter J. Riebling, Esq.
Katten Muchin Rosenman LLP
2900 K Street, NW, Suite 200
Washington, DC 20007-5118

*Served via overnight delivery on
April 17, 2009*

/s/ Carly A. Hammond
Carly A. Hammond