

ESTTA Tracking number: **ESTTA280870**

Filing date: **04/29/2009**

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	Family Food Distributors, Inc.		
Entity	Corporation	Citizenship	New Jersey
Address	307 Bergen Avenue Kearny, NJ 07032 UNITED STATES		

Attorney information	Perla M. Kuhn Hughes Hubbard & Reed LLP One Battery Park Plaza New York, NY 10004 UNITED STATES kuhn@hugheshubbard.com, sampsonr@hugheshubbard.com Phone:212-837-6000		
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### Applicant Information

Application No	77613330	Publication date	03/31/2009
Opposition Filing Date	04/29/2009	Opposition Period Ends	04/30/2009
Applicant	Van Ecuador Sea Foods, Inc. 445 PARK AVE, 9TH FL NEW YORK, NY 10022 UNITED STATES		

### Goods/Services Affected by Opposition

Class 030. First Use: 2008/10/00 First Use In Commerce: 2008/10/00  
All goods and services in the class are opposed, namely: Dried pasta; Pasta; Pasta shells

### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	77644620	Application Date	01/07/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	PACA		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2004/01/31 First Use In Commerce: 2004/01/31 Pasta and noodles

Attachments	77644620#TMSN.jpeg ( 1 page )( bytes ) PACA-Notice of Opposition.PDF ( 4 pages )(140482 bytes )
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### Certificate of Service

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

Signature	/Perla M. Kuhn/
Name	Perla M. Kuhn
Date	04/29/2009

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

In the Matter of Application Serial No. 77/613,330  
Filed on November 17, 2008  
For the Mark PACA  
Published in the Official Gazette on March 31, 2009

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Family Food Distributors, Inc.,	:
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Opposer,	:
	:
-v-	:
	:
Van Ecuador Sea Foods, Inc.	:
	:
Applicant.	:
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Opposition No. \_\_\_\_\_

Serial No. 77/613,330

Published: March 31, 2009

Trademark: PACA

**NOTICE OF OPPOSITION**

Family Food Distributors, Inc. (“Family Foods” or “Opposer”), a corporation organized and existing under the laws of the State of New Jersey, having an address at 307 Bergen Avenue, Kearny, New Jersey, believes it will be damaged by the registration of the mark PACA, Application Ser. No. 77/613,330, currently pending registration in the name of Van Ecuador Sea Foods, Inc. (“Applicant”), published in the Official Gazette on March 31, 2009.

As grounds for this Opposition, Opposer relies upon the rights developed by it and alleges on knowledge as to itself and otherwise upon information and belief, as follows:

**Family Foods’ PACA Mark**

1. Family foods has continuously used the designation PACA as a trademark in offering, selling, advertising and promoting pasta and noodles in commerce since at least as early as January 31, 2004 and has acquired valuable common law rights in the mark.

2. Family Foods' PACA Mark is arbitrary and distinctive and has acquired valuable goodwill as identifying Opposer and its pasta and noodle products.

3. Opposer is the owner of Application Serial No. 77/644,620, filed January 12, 2009, for registration of its PACA Mark for use in connection with pasta and noodles.

**Applicant's PACA Mark**

4. On November 17, 2008, Applicant filed trademark Application Ser. No. 77/613,330 for the mark PACA under Section 1(a) of the Lanham Act ("Applicant's Mark"). The application covers "Dried pasta; Pasta; Pasta shells" in International Class 030.

5. Application Ser. No. 77/613,330 for the mark PACA claims a date of first use in commerce of October 1, 2008.

**Count I: Likelihood of Confusion**

6. Opposer hereby incorporates by reference the allegations in Paragraphs 1 through 5 hereof as if fully set forth herein.

7. Family Foods' rights in the PACA Mark are prior and superior to any rights that Applicant may claim in Applicant's Mark, in any form or style.

8. Applicant's Mark, as set forth in the Application opposed herein, is identical in sight, sound, meaning and commercial impression to Family Foods' PACA Mark and there is a direct overlap between Family Foods' goods and Applicant's goods, such that they are closely related.

9. Accordingly, the Applicant's Mark is likely to cause confusion, mistake or to deceive under § 2(d) of the Lanham Act.

10. If Applicant were permitted to register or use the mark herein opposed, there would be likely confusion as to the sponsorship of the goods, resulting in damage and injury to

Family Foods by reason of the similarity between Applicant's Mark and Family Foods' PACA Mark. Persons familiar with Family Foods' PACA Mark will be likely to purchase Applicant's goods, believing them to be affiliated or associated with, connected to or sponsored by Family Foods. Likewise, people exposed to Applicant's Mark who subsequently become acquainted with Family Foods' PACA Mark are likely to conclude that the goods offered by Family Foods under its PACA Mark are in some manner affiliated or associated with, connected to or sponsored by Applicant. Any such confusion as to sponsorship inevitably would result in damage and injury to Family Foods.

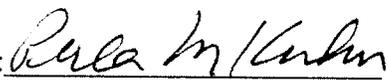
11. Family Foods will be damaged by registration of Applicant's Mark because such registration will support and assist Applicant in the confusing and misleading use of Applicant's Mark, and will give color of rights to Applicant in violation of Family Foods' prior and superior rights in the PACA Mark.

WHEREFORE, Family Foods prays that this Opposition be sustained and that the application for registration of Applicant's Mark be in all respects denied.

Dated: New York, New York  
April 28, 2009

Respectfully submitted,

HUGHES HUBBARD & REED LLP

By: 

Perla M. Kuhn

Robert Sampson

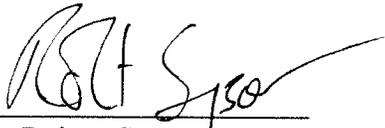
One Battery Park Plaza  
New York, New York 10004  
(212) 837-6000

Attorneys for Opposer

CERTIFICATE OF TRANSMISSION

I hereby certify that an original copy of the foregoing Notice Of Opposition was transmitted online on this 29<sup>th</sup> day of April, 2009 through the ESTTA page on the website of the Trademark Trial and Appeal Board of the United States Patent and Trademark Office.

Dated: New York, New York  
April 29, 2009

By:   
Robert Sampson

CERTIFICATE OF SERVICE

I hereby certify that I am over the age of 18 years, not a party to this action, and that on this 29<sup>th</sup> day of April, 2009, I caused to be served a true and correct copy of the foregoing Notice of Opposition by first-class mail to the Attorney of Record for Applicant and to the Owner of Record:

Xavier Morales, Esq.  
Law Office Of Xavier Morales  
PO Box 2987  
New York, NY 10008-2987

Jesus Delgado  
Van Ecuador Sea Foods, Inc.  
445 Park Avenue, 9<sup>th</sup> Floor  
New York, NY 10022

Dated: New York, New York  
April 29, 2009

By:   
Robert Sampson