

ESTTA Tracking number: **ESTTA332560**

Filing date: **02/17/2010**

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	PB BRANDS, LLC		
Entity	limited liability company	Citizenship	NEW YORK
Address	56 - 05 55TH DRIVE MASPETH, NY 11378 UNITED STATES		

Attorney information	JAMES E. SHLESINGER SHLESINGER, ARKWRIGHT & GARVEY LLP 5845 RICHMOND HIGHWAY, SUITE 415 ALEXANDRIA, VA 22303 UNITED STATES jim@sagllp.com, danearle@sagllp.com, nitasantiago@sagllp.com Phone:703-684-5600		
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### Applicant Information

Application No	77713492	Publication date	02/09/2010
Opposition Filing Date	02/17/2010	Opposition Period Ends	03/11/2010
Applicant	Patel, Rakesh 10960 Harmony Park Drive Bonita Springs, FL 34135 UNITED STATES		

### Goods/Services Affected by Opposition

Class 034. All goods and services in the class are opposed, namely: Cigars
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### Grounds for Opposition

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

U.S. Registration No.	1647559	Application Date	10/02/1989
Registration Date	06/11/1991	Foreign Priority Date	NONE
Word Mark	PATEL BROTHERS		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 030. First use: First Use: 1974/11/00 First Use In Commerce: 1974/11/00 RICE, SPICES, PROCESSED HERBS, AND CEREAL GRAINS PREPARED FOR HUMAN CONSUMPTION		
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U.S. Registration No.	1874341	Application Date	09/17/1993
Registration Date	01/17/1995	Foreign Priority Date	NONE
Word Mark	PATEL BROTHERS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1974/11/00 First Use In Commerce: 1974/11/00 retail and wholesale grocery store services		

U.S. Registration No.	2010403	Application Date	08/19/1993
Registration Date	10/22/1996	Foreign Priority Date	NONE
Word Mark	PATEL'S CASH & CARRY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1995/03/00 First Use In Commerce: 1995/03/00 cooking oil, butter ghee, pickles, processed lentils, dried fruits, and canned vegetables Class 030. First use: First Use: 1995/03/00 First Use In Commerce: 1995/03/00 flour, spices, rice, popped rice, rice products, namely, rice pilaf and rice flour, tea, coffee, candy, processed herbs, cereal grains prepared for human consumption, bread and cakes Class 032. First use: First Use: 1995/03/00 First Use In Commerce: 1995/03/00 [fruit juice]		

U.S. Registration No.	2042141	Application Date	09/23/1992
Registration Date	03/04/1997	Foreign Priority Date	NONE
Word Mark	PATEL'S		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1994/05/00 First Use In Commerce: 1994/05/00 cooking oil, butter ghee, pickles, lentils and canned vegetables Class 030. First use: First Use: 1994/05/00 First Use In Commerce: 1994/05/00 flour, spices, popped rice, rice products, tea, coffee, candy, bread and cakes		

U.S. Registration No.	2043986	Application Date	08/19/1993
Registration Date	03/11/1997	Foreign Priority Date	NONE

Word Mark	PATEL'S CASH & CARRY
Design Mark	
Description of Mark	NONE
Goods/Services	Class 042. First use: First Use: 1996/07/00 First Use In Commerce: 1996/07/00 retail and wholesale grocery store services

U.S. Registration No.	2955255	Application Date	05/11/2001
Registration Date	05/24/2005	Foreign Priority Date	NONE
Word Mark	PATEL BROTHERS CASH & CARRY		
Design Mark	<p style="text-align: center;">PATEL BROTHERS CASH &amp; CARRY</p>		
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1989/00/00 First Use In Commerce: 1989/00/00 RETAIL AND WHOLESALE GROCERY STORE SERVICES		

Attachments	76255687#TMSN.gif ( 1 page )( bytes ) Opposition No 77713492.pdf ( 9 pages )(501878 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	/jes/
Name	JAMES E. SHLESINGER
Date	02/17/2010

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

In the matter of trademark application of Serial No. 77/713,492  
Published in the Official Gazette on February 9, 2010.

PB BRANDS,	:	
	:	
Opposer,	:	
	:	
v.	:	Opposition No.
	:	
RAKESH PATEL,	:	
	:	
Applicant.	:	

**NOTICE OF OPPOSITION**

Opposer, PB BRANDS, LLC, a New York limited liability company, located and doing business at 56 - 05 55<sup>th</sup> Drive, Maspeth, New York 11378, believes that it will be damaged by the registration of the mark shown in application Serial No. 77/713,492, and hereby opposes the same.

The grounds for the opposition are as follows:

1. PB Brands, LLC (hereinafter "Opposer" or "PB"), and its predecessors, have produced, marketed, and distributed products and services related to foods and Indian food products, Indian groceries, and other products associated with retail and

wholesale grocery store services, in the United States for more than 35 years, and since at least as early as 1974, under the trademark, PATEL BROTHERS.

2. PB has offered for sale, marketed, sold, sells, and continues to sell, Indian grocery items under the trademark, PATEL BROTHERS, and long prior to the filing date of the application for registration of the published mark, or any use date that Applicant can claim for its mark.

3. Opposer is a family owned business having a chain of grocery stores nationwide and serves the Asian community by providing a range of authentic Indian foods and household products.

4. Opposer is an industry leader in the Indian foods business. Opposer offers a wide range of Indian foods, including, spices, pickles, chutneys, pulses, lentils, basmati rice, to name just a few of the wide range of products offered and sold by Opposer in the United States and elsewhere.

5. For many years, and since at least as early as 1974, Opposer, through its predecessors and licensees, has used the trademark, PATEL BROTHERS, to identify rices, spices, processed herbs, and cereal grains prepared for human consumption, and continues to use the trademark, PATEL BROTHERS,

to identify rice, spices, processed herbs, and cereal grains prepared for human consumption, and to distinguish these products from those made and sold by others.

6. By virtue of significant sales in commerce through the trademark, PATEL BROTHERS, the relevant trade and public have come to associate goods and services provided under this mark with Opposer, thereby creating a valuable reputation for such goods and services, resulting in valuable goodwill attached to the mark.

7. By virtue of continuous and extensive advertising by Opposer under the trademark, PATEL BROTHERS, the trademark has developed considerable consumer recognition, thereby creating a valuable reputation for such goods and services resulting in valuable goodwill attached to the mark.

8. For many years, and beginning with the use of the mark, PATEL BROTHERS, at least as early as 1974, Opposer, through its predecessors and licensees, has used the service marks, PATEL BROTHERS, PATEL'S CASH & CARRY, and PATEL BROTHERS CASH & CARRY, to identify retail and wholesale grocery store services, and continues to use the services marks, PATEL BROTHERS, PATEL'S CASH & CARRY, and PATEL BROTHERS CASH & CARRY, to identify retail and wholesale grocery store services, and to distinguish these services from those rendered by others.

9. By virtue of significant sales in commerce under the service marks, PATEL BROTHERS, PATEL'S CASH & CARRY, and PATEL BROTHERS CASH & CARRY, the relevant trade and public have come to associate goods and services provided under these marks with Opposer, thereby creating a valuable reputation for such goods and services, resulting in valuable goodwill attached to the marks.

10. By virtue of continuous and extensive advertising by Opposer under the service marks, PATEL BROTHERS, PATEL'S CASH & CARRY, and PATEL BROTHERS CASH & CARRY, the service marks have developed considerable consumer recognition, thereby creating a valuable reputation for such goods and services resulting in valuable goodwill attached to the marks.

11. Since 1974, Opposer has continued to expand its product line and its services under the trademarks, PATEL BROTHERS, PATEL'S CASH & CARRY, and PATEL BROTHERS CASH & CARRY, to identify a wide range of products and services associated with its line of business, including food items such as bread and cakes, coffee, tea, candy, cereal grains prepared for human consumption, and many more items, and to distinguish these products from those made and sold by others.

12. In addition to Opposer's common law rights in the trademark, PATEL BROTHERS, PATEL'S CASH & CARRY, and, PATEL BROTHERS CASH & CARRY, Opposer owns the following United States Trademark Registrations:

PATEL BROTHERS

Registration No. 1,647,559

Registered: June 11, 1991

For: rice, spices, processed herbs, and cereal grains prepared for human consumption

PATEL BROTHERS

Registration No. 1,874,341

Registered: January 17, 1995

For: retail and wholesale grocery store Services

PATEL'S CASH & CARRY

Registration No. 2,010,403

Registered: October 22, 1996

For: cooking oil, butter ghee, pickles, processed lentils, dried fruits, and canned vegetables; flour, spices, rice, popped rice, rice products, namely, rice pilaf and rice flour, tea, coffee, candy, processed herbs, cereal grains prepared for human consumption, bread and cakes

PATEL'S

Registration No. 2,042,141

Registered: March 4, 1997

For: cooking oil, butter ghee, pickles, lentils and canned vegetables; flour, spices, popped rice, rice products, tea, coffee, candy, bread and cakes

PATEL'S CASH & CARRY  
Registration No. 2,043,986  
Registered: March 11, 1997  
For: retail and wholesale grocery store  
services

PATEL BROTHERS CASH & CARRY  
Registration No. 2,955,255  
Registered: May 24, 2005  
For: retail and wholesale grocery store  
services

13. Each of the above-registrations are in full force and effect on the Principal Register at the United States Patent and Trademark Office, and operate as prima facie evidence of Opposer's ownership of said marks and its exclusive right to use the same in commerce throughout the United States. Registration Nos. 1,647,559; 1,874,341; 2,010,403; 2,042,141; 2,043,986; are incontestable, and thereby act as conclusive evidence of Opposer's ownership in its marks, and its exclusive right to use its marks in commerce throughout the United States.

14. By virtue of the long, continued, and widespread sale of goods and the rendering of grocery store services identified by Opposer's marks, PATEL BROTHERS, PATEL'S CASH & CARRY, and PATEL BROTHERS CASH & CARRY, and PATEL'S, as well as other marks containing the term "PATEL" as a feature thereof, all in connection with retail and wholesale grocery store services, foods, and other Indian related grocery store items,

the relative trade and public has come to associate said goods provided under said marks which contain the term "PATEL" or "PATEL BROTHERS" with Opposer, thereby creating a valuable reputation for such goods and services.

15. Opposer continues to expand its product line and its service marks under the PATEL BROTHERS and PATEL series of marks. Since long prior to the filing date of the Applicant's mark, Opposer has extensively advertised and promoted its series of PATEL BROTHERS AND PATEL marks, alone and with other elements, in connection with retail and wholesale grocery store services, and Indian food items and merchandise.

16. Applicant filed, on April 14, 2009, an application for a similar mark to Opposer's Marks, PATEL BROS., for cigars. This Application was filed on the basis of an intent to use the mark in commerce. Upon information and belief, Applicant has not used its mark in commerce prior to the filing date of its Application.

17. In view of the similarities between the respective marks, their intended uses, and the related nature of the goods of the Applicant with the goods and services of Opposer, Applicant's mark so resembles Opposer's trademarks,

previously used in the United States and not abandoned, as to be likely to cause confusion, or to cause mistake, or to deceive to the irreparable damage of Opposer.

18. If Applicant is granted a registration for the mark herein opposed, it would thereby, at least, provide a prima facie exclusive right to use the mark. Such registration would be a source of damage and injury to Opposer and Opposer's business.

WHEREFORE, Opposer prays that Application Serial No. 77/713,492 be rejected, that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of the Opposer.

Respectfully submitted,

PB BRANDS, LLC

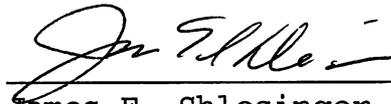
Date: February 17, 2010

By:   
James E. Shlesinger  
Daniel T. Earle  
Attorneys for Opposer

SHLESINGER, ARKWRIGHT  
& GARVEY, LLP  
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**CERTIFICATE OF SERVICE**

It is hereby certified that this NOTICE OF OPPOSITION had been served upon Applicant, by mailing a copy thereof by prepaid first class mail to Rakesh Patel, 10960 Harmony Park Drive, Bonita Springs, Florida 34135; and to Applicant's Attorney of Record, Craig A. Fieschko at Law Offices of Craig A. Fieschko, 2 East Mifflin Street, Suite 600, Madison, Wisconsin 53703-2865, this 17<sup>th</sup> day of February, 2010.

  
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James E. Shlesinger