

ESTTA Tracking number: **ESTTA346352**

Filing date: **05/07/2010**

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	Paramount Farms, Inc. DBA Everybody's Nuts
Granted to Date of previous extension	05/09/2010
Address	11444 West Olympic Blvd. Los Angeles, CA, CA 90064 UNITED STATES
Attorney information	Craig B. Cooper and Danielle M. Criona Roll Law Group P.C. 11444 West Olympic Blvd. Los Angeles, CA 90064 UNITED STATES dcriona@roll.com Phone:(310) 966-8771

Applicant Information

Application No	77773132	Publication date	11/10/2009
Opposition Filing Date	05/07/2010	Opposition Period Ends	05/09/2010
Applicant	TCAAG Corp. PO Box 420860 Miami, FL 332420860 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 029. All goods and services in the class are opposed, namely: Blanched nuts; Candied nuts; Coffee-coated nuts; Fig and date roll consisting of dried fruits, nuts, and spices; Fruit-based organic food bars, also containing nuts, seeds, grains and candies; Nut and seed-based snack bars; Nut-based snack foods; Organic nut and seed-based snack bars; Prepared nuts; Processed fruit- and nut-based food bars; Processed nuts; Roasted nuts; Seasoned nuts; Shelled nuts; Snack mix consisting of dehydrated fruit and processed nuts; Snack mix consisting of primarily of processed nuts, seeds, dried fruit and also including chocolate; Snack mix consisting of wasabi peas, processed nuts, dehydrated fruit and/or raisins; Snack mix consisting primarily of dehydrated fruits, processed nuts and also including sesame sticks; Snack mix consisting primarily of processed fruits, processed nuts and/or raisins; Snack mix consisting primarily of processed nuts and salted squash seeds and also including toasted corn; Trail mix consisting primarily of processed nuts, seeds, dried fruit and also including chocolate</p>
<p>Class 030. All goods and services in the class are opposed, namely: Chocolate covered nuts; Grain-based food bars also containing nuts, seeds, dried fruits, candies; Snack mix consisting primarily of crackers, pretzels, candied nuts and/or popped popcorn</p>

Class 031.
All goods and services in the class are opposed, namely: Fresh nuts; Raw nuts; Unprocessed nuts

Class 035.
All goods and services in the class are opposed, namely: Wholesale and retail store services and on-line retail and wholesale store services featuring food and beverages; Wholesale food distributorship services

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.	3336362	Application Date	07/29/2005
Registration Date	11/13/2007	Foreign Priority Date	NONE
Word Mark	EVERYBODY'S NUTS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2006/06/01 First Use In Commerce: 2006/06/01 Flavored nuts, shelled nuts, roasted nuts; processed nuts; snack mix consisting primarily of processed nuts Class 031. First use: First Use: 2006/06/01 First Use In Commerce: 2006/06/01 Raw natural nuts		

U.S. Registration No.	3386421	Application Date	09/14/2005
Registration Date	02/19/2008	Foreign Priority Date	NONE
Word Mark	EVERYBODY'S NUTS! CALIFORNIA PISTACHIOS		
Design Mark			
Description of Mark	The mark consists of in addition to the literal elements, a cartoon figure pistachio.		
Goods/Services	Class 029. First use: First Use: 2006/06/01 First Use In Commerce: 2006/06/01 Flavored nuts, salted nuts, shelled nuts, roasted nuts; processed nuts; snack mix consisting primarily of processed nuts		

U.S. Registration No.	3442723	Application Date	04/21/2006
Registration Date	06/03/2008	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	The mark consists of a cartoon pistachio figure.		
Goods/Services	Class 029. First use: First Use: 2006/06/01 First Use In Commerce: 2006/06/01 Flavored nuts, salted nuts, shelled nuts, roasted nuts; processed nuts; snack mix consisting primarily of processed nuts		

Attachments	78681436#TMSN.jpeg (1 page)(bytes) 78713118#TMSN.jpeg (1 page)(bytes) 78867103#TMSN.jpeg (1 page)(bytes) Notice of Opposition.pdf (5 pages)(159164 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	/s/ Danielle M Criona /s/
Name	Danielle M. Criona, Esq.
Date	05/07/2010

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

Paramount Farms, Inc. dba Everybody's Nuts Corporation)	
)	
)	Opposition No.: _____
)	
Opposer,)	
)	NOTICE OF OPPOSITION
)	
v.)	
)	
TCAAG Corp.,)	Mark: ITS NUTS & Design
)	Application Ser. No.: 77/731,132
Applicant.)	
)	
)	

Paramount Farms, Inc. dba Everybody's Nuts, a Delaware corporation located and doing business at 11444 W. Olympic Blvd., Los Angeles, CA 90064 ("Paramount Farms" or "Opposer"), believes it will be damaged by the registration of the trademark IT'S NUTS in Class 29, 30, 31 and 35 for various goods and services related to nuts in Application Serial No. 77/731,132 (the "IT'S NUTS Application" or the "IT'S NUTS Mark"), filed by TCAAG Corp., a Florida Corporation, with the address of PO Box 420860, Miami, Florida, 332420860 ("Applicant"), and hereby opposes the same.

As grounds for this opposition, Opposer alleges:

1. Opposer is the largest grower and processor of almonds and pistachios in the world. Since prior to the July 2, 2009 filing date of Applicant's Application Serial No. 77/731,132, Opposer has extensively marketed processed and natural nuts in interstate commerce in connection with its distinctive EVERYBODY'S NUTS trademarks.

2. Opposer owns a family of trademarks which includes, but is not limited to, the

EVERYBODY'S NUTS trademark (Reg. No. 3336362), the EVERYBODY'S NUTS! CALIFORNIA PISTACHIOS & Design trademark (Reg. No. 3386421), the Cartoon Pistachio Character Design trademark (Reg. No. 3442723) as well as many common law marks which include the cartoon character, some of which can be seen on the website located at www.everybodysnuts.com (collectively, the "EVERYBODY'S NUTS Marks"). Opposer's registrations are valid, subsisting, and owned by Opposer.

3. Opposer has sold millions of dollars worth of goods in connection with its EVERYBODY'S NUTS Marks.

4. Opposer has spent significant sums of money advertising and promoting its products in connection with the EVERYBODY'S NUTS Marks throughout the United States.

5. By virtue of the popularity of Opposer's goods offered in connection with the EVERYBODY'S NUTS Marks, and its advertising and promotion of the EVERYBODY'S NUTS Marks, Opposer has built and owns extremely valuable goodwill symbolized by, and associated with, its EVERYBODY'S NUTS Marks.

6. In the IT'S NUTS Application, Applicant applied for registration of the IT'S NUTS Mark in International Classes 29, 30, 31 and 35 with the descriptions of goods as follows:

- a. International Class 29 for "Blanched nuts; Candied nuts; Coffee-coated nuts; Fig and date roll consisting of dried fruits, nuts, and spices; Fruit-based organic food bars, also containing nuts, seeds, grains and candies; Nut and seed-based snack bars; Nut-based snack foods; Organic nut and seed-based snack bars; Prepared nuts; Processed fruit- and nut-based food bars; Processed nuts; Roasted nuts; Seasoned nuts; Shelled nuts; Snack mix consisting of dehydrated fruit and processed nuts; Snack mix consisting of primarily of processed nuts, seeds, dried

fruit and also including chocolate; Snack mix consisting of wasabi peas, processed nuts, dehydrated fruit and/or raisins; Snack mix consisting primarily of dehydrated fruits, processed nuts and also including sesame sticks; Snack mix consisting primarily of processed fruits, processed nuts and/or raisins; Snack mix consisting primarily of processed nuts and salted squash seeds and also including toasted corn; Trail mix consisting primarily of processed nuts, seeds, dried fruit and also including chocolate”;

- b. International Class 30 for “Chocolate covered nuts; Grain-based food bars also containing nuts, seeds, dried fruits, candies; Snack mix consisting primarily of crackers, pretzels, candied nuts and/or popped popcorn”;
- c. International Class 31 for “Fresh nuts; Raw nuts; Unprocessed nuts”; and
- d. International Class 35 for “Wholesale and retail store services and on-line retail and wholesale store services featuring food and beverages; Wholesale food distributorship services.”

7. Applicant’s use of the IT’S NUTS Mark for nuts and nut related products and services in International Classes 29, 30, 31 and 35 (“Applicant’s Goods”) is without Opposer’s consent or permission.

8. Upon information and belief, neither Applicant nor any predecessor or related company of Applicant made actual use of the IT’S NUTS Mark prior to the July 2, 2009 filing date of Application Serial No. 77/731,132.

9. Applicant’s use of the IT’S NUTS Mark for Applicant’s Goods is likely to cause confusion, mistake, or deception in that consumers are likely to believe Applicant’s Goods are Opposer’s products or the products of a person or company that is sponsored, authorized or

licensed by, or in some other way legitimately connected with or affiliated with, Opposer.

WHEREFORE, Opposer respectfully requests that this opposition be sustained and that Application Serial No. 77/731,132 be denied registration.

Please debit our Deposit Account No. 502934 for the \$300 filing fee and for any additional necessary fees.

Please address all correspondence to Danielle M. Criona, Esq., Intellectual Property Counsel at Roll Law Group P.C., 11444 West Olympic Boulevard, Los Angeles, CA 90064.

Respectfully Submitted,

Date: May 7, 2010

Paramount Farms, Inc. dba Everybody's Nuts

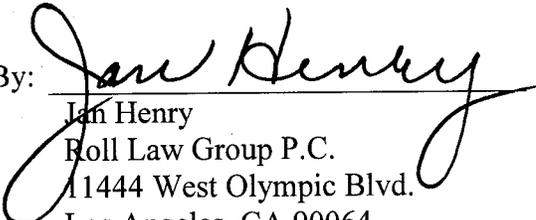
By: Danielle M. Criona
Craig B. Cooper, Esq.
Danielle M. Criona, Esq.
ROLL LAW GROUP P.C.
11444 West Olympic Blvd.
Los Angeles, California 90064
Tel. (310) 966-8400
Fax (310) 966-8100
Attorneys for Opposer

CERTIFICATE OF SERVICE

I, Jan Henry, hereby certify that a copy of this NOTICE OF OPPOSITION has been served, upon attorneys for Opposer:

Ms. Heidi Howard Tandy
1111 Lincoln Rd., Ste. 400
Miami Beach, FL 33139-2439

by first class mail, postage prepaid, on this 7th day of May, 2010.

By: 
Jan Henry
Roll Law Group P.C.
11444 West Olympic Blvd.
Los Angeles, CA 90064
Tel. (310) 966-5728
Fax (310) 966-5758