

ESTTA Tracking number: **ESTTA394601**

Filing date: **02/22/2011**

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	Victor Guedes-Industria e Comercio, S.A.
Granted to Date of previous extension	03/12/2011
Address	Largo Monterroio Mascarenhas, No. 1 Lisbon, 1070-184 PORTUGAL

Attorney information	Ryan McGonigle Baker and Rannells, PA 575 Route 28 Suite 102 Raritan, NJ 08869 UNITED STATES r.mcgonigle@br-tmlaw.com, officeactions@br-tmlaw.com, k.hnasko@br-tmlaw.com Phone:9087225640
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Applicant Information

Application No	85137493	Publication date	01/11/2011
Opposition Filing Date	02/22/2011	Opposition Period Ends	03/12/2011
Applicant	Thai World Import & Export Co., Ltd. 2532 Trok Nokket, Ratchadapisek Road Bangklo, Bangkolaem Bangkok 10120, THAILAND		

Goods/Services Affected by Opposition

Class 029. All goods and services in the class are opposed, namely: Preserved fruit and vegetables; dried fruit and vegetables; preserved beans for food and preserved edible seeds; pickled lettuce; frozen meals consisting primarily of meat, fish, poultry or vegetables; curry soup; milk and milk products excluding ice cream, ice milk and frozen yogurt; edible oils and fats

Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2706449	Application Date	12/07/2001
Registration Date	04/15/2003	Foreign Priority	NONE

		Date	
Word Mark	VICTOR GUEDES PORTUGAL		
Design Mark			
Description of Mark	The design portion of the mark consists of a design of a rooster framed by olive branches.		
Goods/Services	Class 029. First use: First Use: 2001/01/00 First Use In Commerce: 2001/01/00 Olive oil, edible oils and fats		

U.S. Registration No.	3898719	Application Date	11/12/2009
Registration Date	01/04/2011	Foreign Priority Date	NONE
Word Mark	VICTOR GUEDES 1919		
Design Mark			
Description of Mark	The mark consists of a rooster appearing above the words "VICTOR GUEDES" in a stylized font, all appearing above "1919" in a stylized font.		
Goods/Services	Class 029. First use: First Use: 2007/01/00 First Use In Commerce: 2007/01/00 olive oil		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	VICTOR GUEDES CLASSICO (with ROOSTER DESIGN) as portrayed in Paragraph 8 of the Notice of Opposition		
Goods/Services	edible oils		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	VICTOR GUEDES OLIVE OIL (with ROOSTER DESIGN) as portrayed in paragraph 8 of the Notice of Opposition		

Goods/Services	Edible oils
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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	/Ryan A. McGonigle/
Name	Ryan McGonigle
Date	02/22/2011

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

Victor Guedes-Indústria e Comércio, S.A.,

Opposer,

Mark: Composite



v.

Serial No. 85137493

Thai World Import & Export Co., Ltd.

Filed: Sept. 24, 2010

Applicant.

NOTICE OF OPPOSITION
PURSUANT TO 15 U.S.C. § 1063

Opposer, Victor Guedes-Indústria e Comércio, S.A. ("Opposer"), by its attorneys Baker and Rannells, PA, alleges on knowledge as to its own acts and otherwise on information and belief and as grounds for opposition as follows:

1. Opposer believes that allowing Application Serial No. 85137493 to proceed to registration will cause Opposer damage.
2. Opposer, Victor Guedes-Indústria e Comércio, S.A., is a corporation organized and existing under the laws of Portugal, doing business at Largo Monterroio, Mascarenhas No. 1, Lisbon 1070-184 Portugal.

3. Applicant, Thai World Import & Export Co., Ltd. (“Applicant”), is a corporation organized and existing under the laws of Thailand with offices at 2532 Trok Nokket, Ratchadapisek Road, Bangkok, Bangkoklaem, Bangkok 10120 Thailand.

4. On September 24, 2010, Applicant filed Application Serial No. 85137493 for ROOSTER BRAND with a stylized depiction of a rooster (“Applicant’s Mark”) as follows:



5. Applicant’s Mark is sought to be registered as a trademark for “[p]reserved fruit and vegetables; dried fruit and vegetables; preserved beans for food and preserved edible seeds; pickled lettuce; frozen meals consisting primarily of meat, fish, poultry or vegetables; curry soup; milk and milk products excluding ice cream, ice milk and frozen yogurt; edible oils and fats” in International Class 29 (“Applicant’s Goods”). Such application was published for opposition in the Official Gazette on January 11, 2011.

6. Opposer is the owner of U.S. Trademark Reg. No. 2706449 for **VICTOR GUEDES PORTUGAL with a stylized depiction of a rooster** for “[o]live oil, edible oils and fats” in International Class 029 (hereinafter, “the ‘449 Registration”). The ‘449 Registration is incontestable.

7. Opposer is also the owner of U.S. Trademark Reg. No. 3898719 for **VICTOR GUEDES 1919 with a stylized depiction of a rooster** for “olive oil” in International Class 029 (hereinafter, “the ‘719 Registration”)(collectively, the goods referred to in the ‘449 Registration and the ‘719 Registration will be referred to herein as, “Opposer’s Goods”)(copies of the ‘449 Registration and ‘719 Registration are attached hereto as Exhibit “A”).

8. Opposer also owns common law rights in the United States for design marks for Opposer’s Goods that incorporate “rooster” and rooster-themed designs. Specimens of Opposer’s common law usage rights in the United States, include, but are not limited to:



(hereinafter, “Opposer’s Common Law Marks”)(collectively, Opposer’s Common Law Marks and the marks referred to in the ‘449 Registration and the ‘719 Registration will be referred to herein as, “Opposer’s Marks”).

9. Opposer is now and has been for many years trading as and known by Opposer's Marks, identifying Opposer as the source of Opposer’s Goods, the same being,

in part identical and in part substantially similar to Applicant's Goods under its alleged mark, ROOSTER BRAND (Stylized).

10. Opposer is now and has been, for many years prior to any date which may be claimed by Applicant, engaged in the use of Opposer's Marks for Opposer's Goods, the same being in part identical and in part substantially similar to Applicant's Goods.

11. Opposer's Marks and Applicant's Mark are confusingly similar when applied to the goods of the parties.

12. The use by Opposer of Opposer's Marks for Opposer's Goods is long prior to any date which may be lawfully claimed by Applicant, and Opposer has priority.

13. Since Opposer owns Opposer's Marks by virtue of prior use, mistake or deception as to the source of origin of the goods will arise and injure and damage Opposer and its goodwill.

14. The registration of Applicant's Mark to Applicant will cause the relevant purchasing public to erroneously assume and thus be confused, misled, or deceived, that Applicant's Goods are made by, licensed by, controlled by, sponsored by, or in some way connected, related or associated with Opposer in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), all to Opposer's irreparable damage.

15. Applicant's Mark falsely suggests a connection with Opposer, and/or will bring Opposer into contempt or disrepute, in violation of §2(a) of the Lanham Act, 15 U.S.C. §1052(a), all to Opposer's irreparable damage.

16. Upon information and belief, service is proper upon Applicant as follows:

Susan Okin Goldsmith, Esq.
Duane Morris LLP
744 Broad Street
Suite 1200

Newark, NJ 07102-3889

WHEREFORE, Opposer prays that the application for registration of Applicant's Mark, Serial No. 85137493, filed on September 24, 2010, be denied and that this Opposition be sustained.

Dated: February 22, 2011

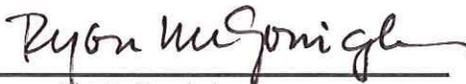
Respectfully submitted for Opposer
Victor Guedes-Indústria e Comércio,
S.A.

By: 
Stephen L. Baker
Ryan A. McGonigle
BAKER and RANNELLS, PA
575 Route 28, Suite 102
Raritan, New Jersey 08869
(908) 722-5640

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Opposer's Notice of Opposition by first class postage prepaid mail by depositing the same with the U.S. Postal Service on this 22nd day of February, 2011 to the attorney for the Applicant at the following address:

Susan Okin Goldsmith, Esq.
Duane Morris LLP
744 Broad Street, Suite 1200
Newark, New Jersey 07102-3889



Ryan A. McGonigle

EXHIBIT "A"

Int. Cl.: 29

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 2,706,449

Registered Apr. 15, 2003

TRADEMARK
PRINCIPAL REGISTER



VICTOR GUEDES-INDUSTRIA E COMERCIO,
S.A. (PORTUGAL CORPORATION)
RUA DOS REMOLARES 7-1 DTO.
1000 LISBON, PORTUGAL

FOR: OLIVE OIL, EDIBLE OILS AND FATS, IN
CLASS 29 (U.S. CL. 46).

FIRST USE 1-0-2001; IN COMMERCE 1-0-2001.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "PORTUGAL", APART FROM THE
MARK AS SHOWN.

THE STIPLING IS FOR SHADING PURPOSES
ONLY AND NOT INTENDED TO INDICATE COL-
OR.

"VICTOR GUEDES" DOES NOT IDENTIFY A
LIVING INDIVIDUAL.

THE DESIGN PORTION OF THE MARK CON-
SISTS OF A DESIGN OF A ROOSTER FRAMED BY
OLIVE BRANCHES.

SER. NO. 76-346,914, FILED 12-7-2001.

MARK T. MULLEN, EXAMINING ATTORNEY

United States of America

United States Patent and Trademark Office



VICTOR GUEDES
1919

Reg. No. 3,898,719

Registered Jan. 4, 2011

Int. Cl.: 29

TRADEMARK

PRINCIPAL REGISTER

VICTOR GUEDES-INDUSTRIA E COMÉRCIO, S.A. (PORTUGAL SOCIEDAD ANONIMA (SA))

LARGO MONTERROIO MASCARENHAS, NO. 1
LISBON, PORTUGAL 1070-184

FOR: OLIVE OIL, IN CLASS 29 (U.S. CL. 46).

FIRST USE 1-0-2007; IN COMMERCE 1-0-2007.

OWNER OF U.S. REG. NOS. 1,733,360 AND 2,706,449.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "1919", APART FROM THE MARK AS SHOWN.

THE NAME(S), PORTRAIT(S), AND/OR SIGNATURE(S) SHOWN IN THE MARK DOES NOT IDENTIFY A PARTICULAR LIVING INDIVIDUAL.

THE MARK CONSISTS OF A ROOSTER APPEARING ABOVE THE WORDS "VICTOR GUEDES" IN A STYLIZED FONT, ALL APPEARING ABOVE "1919" IN A STYLIZED FONT.

SER. NO. 77-870,972, FILED 11-12-2009.

MICHAEL KEATING, EXAMINING ATTORNEY



David J. Kyros

Director of the United States Patent and Trademark Office