

ESTTA Tracking number: **ESTTA486180**

Filing date: **07/30/2012**

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	Starbuzz Tobacco, Inc.
Granted to Date of previous extension	08/01/2012
Address	2116 W. Lincoln Ave. Anaheim, CA 92801 UNITED STATES
Attorney information	Natu J. Patel The Patel Law Firm, P.C. 2532 Dupont Drive Irvine, CA 92612 UNITED STATES NPatel@thePatelLawFirm.com Phone:949-955-1077

Applicant Information

Application No	85303577	Publication date	04/03/2012
Opposition Filing Date	07/30/2012	Opposition Period Ends	08/01/2012
Applicant	Haze Tobacco, LLC 10350 Fountaingate Dr. Stafford, TX 77477 UNITED STATES		

Goods/Services Affected by Opposition

Class 034. All goods and services in the class are opposed, namely: Hookah tobacco

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3736577	Application Date	06/08/2009
Registration Date	01/12/2010	Foreign Priority Date	NONE
Word Mark	BLUEBERRY HAZE		

Design Mark	Blueberry Haze
Description of Mark	NONE
Goods/Services	Class 034. First use: First Use: 2008/01/09 First Use In Commerce: 2008/01/09 PIPE TOBACCO, TOBACCO, SMOKING TOBACCO, FLAVORED TOBACCO, MOLASSES TOBACCO

U.S. Application No.	85515157	Application Date	01/12/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	HAZE		
Design Mark	HAZE		
Description of Mark	NONE		
Goods/Services	Class 034. First use: First Use: 2011/01/13 First Use In Commerce: 2011/01/13 Pipe Tobacco; Molasses Tobacco; Tobacco; Smoking Tobacco; Flavored Tobacco		

Attachments	77754475#TMSN.jpeg (1 page)(bytes) 85515157#TMSN.jpeg (1 page)(bytes) (FINAL) Starbuzz - Notice of Opposition to Haze Tobacco - 073012.pdf (13 pages)(416400 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 USPS Express Mail Post Office to Addressee on this date.

Signature	/natupatel/
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Name	Natu J. Patel
Date	07/30/2012

as early as January 9, 2008. The registration was granted on January 12, 2010. *See*

Exhibit A.

3. Opposer also owns U.S. Application No. 85/515,157 for the mark “HAZE” used in connection with “Pipe Tobacco; Molasses Tobacco; Tobacco; Smoking Tobacco; Flavored Tobacco” in International Class 034. Opposer has sold and/or distributed products bearing the “HAZE” mark since at least as early as January 13, 2011.

4. Opposer’s “BLUEBERRY HAZE” and “HAZE” marks are collectively referred to as the Starbuzz Marks.

Applicant’s Background

5. Opposer is informed and believes, and on that basis alleges that, applicant Haze Tobacco, LLC (“Applicant”) is a Texas limited liability company, whose address is 10350 Fountaingate Dr., Stafford TX 77477.

6. Opposer is informed and believes, and on that basis alleges that, Applicant has designated Mr. James R. Cady, located at 2475 Hanover Street, Palo Alto, CA 94304, as the representative upon whom notice of process for proceedings affecting the Application may be served.

7. Opposer is informed and believes, and on that basis alleges that, on April 25, 2011, Applicant filed U.S. Application Serial No. 85/303,577 for the mark “HAZE TOBACCO” (“Applicant’s Mark”) for “Hookah tobacco” in International Class 34 (“Applicant’s Goods”).

8. The Application was filed based upon Applicant’s intent to use Applicant’s Mark in commerce, pursuant to Section 1(b) of the Lanham Act.

9. After initially issuing an Office Action based on a likelihood of confusion with Opposer's "BLUEBERRY HAZE" registered mark, the USPTO published Applicant's Mark for opposition in the Official Gazette on April 3, 2012.

10. On April 3, 2012, Opposer obtained an extension of time to oppose the Application, and it is timely filing this Notice of Opposition within such extended period.

Applicant's Knowledge of the Starbuzz Marks

11. Ahmad Nouredine, a.k.a. Mike Nouredine, was a former employee of Opposer.

12. As Opposer's former employee, Nouredine had knowledge of the trademarks that Opposer used to sell its tobacco products. Nouredine further knew that Opposer was the owner of the registered mark "BLUEBERRY HAZE" used in connection with tobacco products. Nouredine also knew that Opposer had sold tobacco products bearing the "BLUEBERRY HAZE" trademark and various other trademarks.

13. Starbuzz is informed and believes, and on that basis alleges, that after Opposer terminated Nouredine, he became involved with Applicant's business.

14. Starbuzz is informed and believes, and on that basis alleges, that Nouredine assisted in Applicant's adoption and use of Applicant's Mark in connection with tobacco products.

15. Starbuzz is informed and believes, and on that basis alleges, that by virtue of the fact that Applicant is in a similar business as Opposer, Applicant had knowledge of Opposer's trademarks, including the Starbuzz Marks.

16. In fact, Applicant applied for registration of at least three other trademarks, which are confusingly similar to Opposer's trademarks. Applicant's trademark

applications for HAZE HOOKAH LOUNGE (Serial No. 85/409,707), HAZE COLADA (Serial No. 85/483,168), and PASSION (Serial No. 85/483,142) are similar to the Starbuzz Marks and Opposer's registered marks "PASSION KISS" (Registration No. 3543557) and "STRAWBERRY PASSION" (Registration No. 3695508).

17. Applicant's attempt to register several trademarks identical or confusingly similar to Opposer's trademarks, and Nouredine's previous employment relationship with Opposer, demonstrates Applicant's knowledge of Opposer's trademarks and its intent to usurp Opposer's trademark rights.

18. Opposer is informed and believes, and on that basis alleges, that Applicant knew that Opposer was using the Starbuzz Marks before April 25, 2011. Despite having such knowledge, Applicant applied for registration of Applicant's Mark on the USPTO Principal Register.

19. Opposer subsequently discovered that Applicant was asserting rights to Applicant's Mark, and other marks similar to Opposer's trademarks, by filing trademark applications for those marks.

20. Therefore, Opposer is filing the present Opposition and intends to file other oppositions against Applicant's attempt to register trademarks, which are similar to Opposer's trademarks.

GROUNDS FOR OPPOSITION

Standing and Priority

21. Opposer re-alleges and incorporates by this reference paragraphs 1 through 20, inclusive, of this Notice of Opposition as if fully set forth herein.

22. On or about April 23, 2012, the application for Opposer's "HAZE" Mark was suspended under 15 U.S.C. §1052(d), based upon the earlier filed Application. Opposer therefore has a real interest in the outcome of any opposition proceedings against Applicant's Mark.

23. Opposer is informed and believes, and on that basis alleges that, the date of first use of Opposer's mark "HAZE" in commerce predates the date of first use of Applicant's Mark in commerce. Therefore, Opposer's rights to the "HAZE" mark have priority over any rights claimed by Applicant in Applicant's Mark.

24. Opposer is further informed and believes, and on that basis alleges, that the date of first use in commerce and date of registration of the "BLUEBERRY HAZE" mark predate both the filing date of the Application and Applicant's date of first use of Applicant's Mark. Therefore, Opposer's rights to the "BLUEBERRY HAZE" mark have priority over any rights claimed by Applicant in Applicant's Mark.

Fraud in Procurement of the Registration

25. Opposer re-alleges and incorporates by this reference paragraphs 1 through 24, inclusive, of this Notice of Opposition as if fully set forth herein.

26. On April 25, 2011, Applicant applied for registration of Applicant's Mark on the USPTO Principal Register. The Application was submitted to the USPTO together with a representation, under oath, that Applicant believed it was the owner of Applicant's Mark, and to the best of its knowledge, no other person, firm, corporation, or association had the right to use any trademarks in "identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to

deceive.” Applicant made this representation in order to induce the USPTO to issue a registration.

27. Despite Applicant’s representations to the contrary, Opposer has been using the Starbuzz Marks in commerce prior to Applicant’s filing date.

28. Applicant’s representation to the USPTO in the Application was therefore false.

29. Opposer is informed and believes, and on that basis alleges that, because Applicant is in a similar business as Opposer, Applicant knew that Opposer had superior rights to the Starbuzz Marks when Applicant filed its Application.

30. Since Opposer’s “BLUEBERRY HAZE” trademark was registered well before Applicant filed its Application, Applicant also had constructive notice of Opposer’s rights in that trademark.

31. Opposer is informed and believes, and on that basis alleges that, Applicant filed its Application despite its knowledge that Opposer had the right to use a trademark in identical form to Applicant’s Mark, or which so closely resembled Applicant’s Mark as to be likely to cause confusion, or to cause mistake, or to deceive.

32. Applicant, therefore, knowingly made material misrepresentations to the USPTO in an attempt to procure registration of Applicant’s Mark.

33. By knowingly making material misrepresentations to the USPTO, Applicant intended to deceive the USPTO into believing that there was no other person, firm, corporation, or association with rights to use any trademarks identical to or confusingly similar to Applicant’s Mark.

34. The USPTO relied upon those representations in approving the Application for publication on the USPTO Principal Register.

35. The USPTO would not have approved the Application for publication on the USPTO Principal Register but for Applicant's false representations.

36. Applicant's actions in attempting to procure registration of Applicant's Mark constitute fraud, thereby invalidating the Application. Accordingly, the Application should be denied in its entirety.

Likelihood of Confusion Pursuant to 15 U.S.C. §1052(d)

37. Opposer re-alleges and incorporates by this reference paragraphs 1 through 36, inclusive, of this Notice of Opposition as if fully set forth herein.

38. The term "HAZE" has no special meaning within the tobacco industry. The Starbuzz Marks are therefore arbitrary or fanciful as applied to tobacco and other related products and should be afforded the highest level of protection.

39. Based on the identical term "HAZE", Opposer is informed and believes, and on that basis alleges that, Applicant's Mark, when used in conjunction with Applicant's goods, so resembles the Starbuzz Marks, as to be likely to cause confusion, to cause mistake, and to deceive within the meaning of 15 U.S.C. §1052(d).

40. In fact, Applicant's Mark is similar to the Starbuzz Marks in appearance, sound and overall commercial impression.

41. Opposer is informed and believes, and on that basis alleges that, the type of goods offered in conjunction with Applicant's Mark is similar or related to the type of goods offered in conjunction with the Starbuzz Marks.

42. Opposer is informed and believes, and on that basis alleges that, Applicant's goods, and Opposer's goods, are marketed to identical or similar groups of consumers.

43. Opposer is informed and believes, and on that basis alleges that, Applicant's goods and Opposer's goods, are advertised, promoted, and/or sold through the same or similar channels of trade.

44. Opposer is informed and believes, and on that basis alleges that, Applicant's goods and Opposer's goods, target the same general class of purchasers.

45. Opposer is informed and believes, and on that basis alleges that, Applicant knew that Opposer was using the Starbuzz Marks in commerce. Opposer also obtained registration of the "BLUEBERRY HAZE" trademark well before Applicant applied for its mark. Despite having such intimate knowledge of Opposer's trademarks, Applicant began using Applicant's Mark and filed the Application in an attempt to copy the Starbuzz Marks and misappropriate or derive a benefit from the reputation of Opposer's trademarks.

46. Opposer has no control over the nature and quality of Applicant's goods that bear Applicant's Mark, and any dissatisfaction with Applicant's goods would reflect adversely on Opposer, thus damaging the goodwill and reputation Opposer has established in the Starbuzz Marks.

47. Opposer has also suffered harm because its application to register the "HAZE" mark was suspended based upon a likelihood of confusion with Applicant's Mark.

48. Registration of Applicant's Mark will further damage Opposer because the trademark sought to be registered, "HAZE TOBACCO", is so similar to the Starbuzz Marks, that use of Applicant's Mark will cause confusion or mistake, and is likely to deceive purchasers, as well as the general public, into the erroneous belief that Applicant's goods and Opposer's goods originate from the same source, or are authorized or sponsored by Opposer.

49. Opposer's customers, as well as the general public, are likely to be confused, mistaken, or deceived as to the origin or sponsorship of Applicant's goods and Opposer's goods. Based upon such likelihood of confusion, Applicant's Mark should be denied registration pursuant to 15 U.S.C. §1052(d).

WHEREFORE, Opposer prays that Application Serial No. 85/303,577 be denied registration.

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Opposer hereby consents and appoints Natu J. Patel of the law firm, The Patel Law Firm, P.C., 2532 Dupont Drive, Irvine, CA 92612, who is a member of the Bar of the State of California, as its duly authorized agent and attorney to prosecute this Opposition and to transact all business in the Patent and Trademark Office and in the United States Courts, to sign his name to all papers which may hereinafter be filed in connection therewith, and to receive all official communications in connection with this Opposition.

Respectfully submitted,
The Patel Law Firm, P.C.



Natu J. Patel
Attorney for Opposer
Starbuzz Tobacco, Inc.

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NP/CF/dn

CERTIFICATE OF SERVICE

I certify that a copy of this NOTICE OF OPPOSITION is being served via United States express mail, postage prepaid, on this the 30th day of July, 2012, to the following:

Applicant's Attorney/Representative:

James R. Cady, Esq.
Pillsbury Winthrop Shaw Pittman LLP
2475 Hanover Street
Palo Alto, CA 94304

Applicant:

Haze Tobacco, LLC
10350 Fountaingate Dr.
Stafford, TX 77477



Dana Nassiri

Exhibit A

United States of America

United States Patent and Trademark Office

Blueberry Haze

Reg. No. 3,736,577 STARBUZZ TOBACCO, INC. (CALIFORNIA CORPORATION)
Registered Jan. 12, 2010 2116 W. LINCOLN AVENUE
ANAHEIM, CA 92801

Int. Cl.: 34 FOR: PIPE TOBACCO, TOBACCO, SMOKING TOBACCO, FLAVORED TOBACCO,
MOLASSES TOBACCO, IN CLASS 34 (U.S. CLS. 2, 8, 9 AND 17).

TRADEMARK FIRST USE 1-9-2008; IN COMMERCE 1-9-2008.
PRINCIPAL REGISTER

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

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

SER. NO. 77-754,475, FILED 6-8-2009.

JUDITH HELFMAN, EXAMINING ATTORNEY



David J. Kyllas

Director of the United States Patent and Trademark Office