

ESTTA Tracking number: **ESTTA491847**

Filing date: **08/30/2012**

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	BBK TOBACCO & FOODS, LLP		
Entity	LIMITED LIABILITY PARTNERSHIP	Citizenship	ARIZONA
Address	3315 W. BUCKEYE ROAD PHOENIX, AZ 85009 UNITED STATES		

Correspondence information	Rosalind M. Young Corporate Counsel BBK TOBACCO & FOODS, LLP 3315 W. BUCKEYE ROAD PHOENIX, AZ 85009 UNITED STATES roz@hbiin.com
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Applicant Information

Application No	85588301	Publication date	08/21/2012
Opposition Filing Date	08/30/2012	Opposition Period Ends	09/20/2012
Applicant	Don Juan Gross 1951 S. Beverly Glen Blvd, Apt 1 Los Angeles, CA 90025 UNITED STATES		

Goods/Services Affected by Opposition

Class 034. All goods and services in the class are opposed, namely: Cigar and cigarette boxes; Cigar and cigarette boxes not of precious metal; Cigar and cigarette boxes of precious metal; Cigar boxes; Cigar boxes not of precious metal; Cigar boxes of precious metal; Cigar cases; Cigar cases of precious metal; Cigar cutters; Cigar holders; Cigar holders of precious metal; Cigar humidifiers; Cigar lighters; Cigar tubes; Cigar wraps; Cigars; Filtered cigars and cigarettes; Holders for cigar and cigarette of precious metal; Holders for cigars and cigarettes; Tobacco, cigars and cigarettes

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. Registration No.	3267629	Application Date	11/28/2006
Registration Date	07/24/2007	Foreign Priority Date	NONE

Word Mark	THE ART OF SMOKING
Design Mark	
Description of Mark	NONE
Goods/Services	Class 034. First use: First Use: 2000/07/20 First Use In Commerce: 2000/07/25 Cigarette papers; Cigarette rolling machines; Cigarette rolling papers; Cigarette tubes; Hand-rolling tobacco; Machines allowing smokers to make cigarettes by themselves; Roll your own tobacco; Rolling tobacco; Tobacco filters; Tobacco pipe cleaners; Tobacco pouches

Attachments	77052115#TMSN.jpeg (1 page)(bytes) Oppositin.Smoke of Art.pdf (4 pages)(347425 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	/Rosalind M. Young/
Name	Rosalind M. Young
Date	08/30/2012

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

BBK Tobacco & Foods, Inc. d/b/a
HBI International

Opposer,

v.

Don Juan Gross

Applicant.

Trademark Application

Mark: SMOKE OF ART

Serial No. 85/588, 301

Filed: MAY 22, 2012

Published: AUGUST 21, 2012

Opposition No.

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

BBK Tobacco & Foods, LLP. d/b/a HBI International, a corporation located and doing business at 3315 W. Buckeye Rd., Ste. B, Phoenix, AZ 85009 (“Opposer”) believes that it will be damaged by the registration of the mark SMOKE OF ART shown in Application Serial No. 85/588301 (“Applicant’s Mark”) by Don Juan Gross, 1951 S. Beverly Glen Blvd., Apt 1 Los Angeles California 90025 (Applicant”) and hereby opposes the registration of said application.

As grounds for opposition, Opposer alleges:

1. Applicant filed a trademark application assigned Application Serial No. 85/588301 in the United States Patent and Trademark Office (“USPTO”) on May 22, 2012 (“the Application”) to register Applicant’s Mark in International Class 034 for use in connection with, among other items, cigars, cigar wraps, tobacco, cigarettes, cigarette boxes, holders and cigar tubes. (the “Applicant’s Goods”).

2. The Opposer is a well-known wholesaler/distributor of cigarette tobacco, cigars, herbal smoking blends, cigarette rolling papers and other smoking related products. Opposer invents, sells and distributes many different types of tobacco and herbal-related smoking products including but not limited to, cigarette tobacco, cigarette rolling papers, cigar wraps, cigars and smoker's articles ("the Opposer's Goods"). Opposer's Goods are offered for sale in a wide range of shapes, sizes and designs. .

OPPOSER'S ART OF SMOKING MARK

3. The Opposer is the owner of Trademark Registration Number 3, 267, 629 ART OF SMOKING ("the Opposer's Mark"). Opposer's Mark is currently valid and subsisting.

4. The Opposer has used Opposer's Mark THE ART OF SMOKING in association with the Opposer's Goods in interstate commerce in connection with Opposer's Goods since at least as early as November 2006 and the Opposer's Mark is currently in use in commerce with Opposer's Goods.

5. Priority is not an issue here since both all of Opposer's First Use Dates and the Opposer's First Use in Commerce Dates are prior to the Applicant's by virtue of the simple fact that as of this writing Applicant is not using the referenced mark in commerce. Applicant has filed a 1b "intent to use" Application.

6. Opposer has at great expense, continuously engaged in the sale and promotion of Opposer's Goods under and in connection with the Opposer's Mark.

7. If Applicant is permitted to use and register the mark herein opposed for its goods as specified in the Application herein opposed, such registration and use by Applicant is likely to cause confusion, deception and mistake, and will seriously damage

Opposer. Registration would allow Applicant to profit from the efforts put forth solely by Opposer.

WHEREFORE, Opposer prays that Applicant's application, Serial No. 85/588301, be rejected, and that the mark therein sought for the goods specified therein be denied and refused.

The Opposer hereby consents and appoints Rosalind M. Young, member of the bar of the State of Arizona, whose address is HBI International Legal Department, 3315 W. Buckeye Rd, Suite B, Phoenix, AZ 85009, as its duly authorized agent and attorney in the matter of the opposition above-identified to prosecute said opposition, to transact all business in the Patent and Trademark Office and in the United States courts in connection with this opposition, to sign its name to all papers which may hereafter be filed in connection herewith, and to receive all communications related to the same.

Dated: August 27, 2012

Respectfully Submitted,
BBK Tobacco & Foods, LLP

/s/ Rosalind M. Young
By: _____

Rosalind M. Young, Esq.
Corporate Counsel
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Phoenix, Arizona 85009
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Facsimile: (602) 955-3330
Email: roz@hbiin.com

Certificate of Service

The undersigned hereby certifies that a copy of the foregoing Notice of Opposition has been served upon the Applicant's Correspondence address on August 27, 2012 by depositing same in the United States Mail, first-class mail, postage prepaid, in an envelope addressed as follows:

Don Juan Gross
1951 S. Beverley Glen Blvd. Apt 1
Los Angeles CA 90025

/s/ Rosalind M. Young

Rosalind M. Young, Esq.