

ESTTA Tracking number: **ESTTA495039**

Filing date: **09/18/2012**

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	Partnership	Citizenship	ARIZONA
Composed Of:	BBK TOBACCO & FOODS LLC		
Address	3315 W. BUCKEYE PHOENIX, AZ 85009 UNITED STATES		

Correspondence information	ROSALIND M. YOUNG CORPORATE COUNSEL BBK TOBACCO & FOODS, LLP 3315 W. BUCKEYE PHOENIX, AZ 85009 UNITED STATES ROZ@HBIIN.COM		
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Applicant Information

Application No	85455118	Publication date	09/11/2012
Opposition Filing Date	09/18/2012	Opposition Period Ends	10/11/2012
Applicant	Zengotita Cigar Company 4518 Cinnamon Drive Sarasota, FL 34238 UNITED STATES		

Goods/Services Affected by Opposition

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

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.	2545087	Application Date	07/21/2000
Registration Date	03/05/2002	Foreign Priority Date	NONE
Word Mark	ZEN		

Design Mark	ZEN
Description of Mark	NONE
Goods/Services	Class 007. First use: First Use: 1997/08/28 First Use In Commerce: 1997/08/28 Hand operated machines for rolling cigarettes Class 008. First use: First Use: 1997/08/28 First Use In Commerce: 1997/08/28 Power operated machines for rolling cigarettes Class 034. First use: First Use: 1997/08/28 First Use In Commerce: 1997/08/28 Cigarette rolling papers, Cigarettes

Attachments	78017923#TMSN.gif (1 page)(bytes) Zengiotita Notice of Opposition.pdf (5 pages)(385063 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	09/18/2012

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

BBK Tobacco & Foods, LLP d/b/a
HBI International

Opposer,

v.

Zengotita Cigar Company

Applicant.

Trademark Application

Mark: ZENGOTITA Z CIGARS Z

Serial No. 85/455118

Filed: October 25, 2011

Published: September 11, 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 limited liability partnership 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 ZENGOTITA Z CIGARS Z shown in Application Serial No. 85455118 (“Applicant’s Mark”) by Zengotita Cigar Company 4518 Cinnamon Drive Sarasota Florida 34238, (“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. 85/455118 in the United States Patent and Trademark Office (“USPTO”) on October 25, 2011 (“the Application”) to register Applicant’s Mark in International Class 034 for use in connection with “cigars” (the “Applicant’s Goods”).

2. The Application filed by Applicant is based on section 1(b) of the Trademark Act where the Applicant claims to have a bona fide intention to use the mark in commerce at some point in the future.

3. The Opposer is a well-known wholesaler/distributor of tobacco, cigars, herbal smoking blends 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, cigar tubes, cigar wraps, cigars and smoker's articles, namely cigar storage tubes ("the Opposer's Goods"). Opposer's Goods are offered for sale in a wide range of shapes, sizes and designs.

OPPOSER'S MARK

4. The Opposer is the owner of Trademark Serial Number 2, 545, 087 for the mark "ZEN" based on a first use anywhere date of June 15, 1995 ("Opposer's First Use Date") and a first use in commerce date of July 19, 1997 ("Opposer's First Use in Commerce Date").

5. The Opposer has used Opposer's Mark in association with the Opposer's Goods in interstate commerce in connection with Opposer's Goods since at least as early as June 15, 1995 and the Opposer's Mark is currently in use in commerce with Opposer's Goods.

6. The Opposer's First Use Date and the Opposer's First Use in Commerce Date for the Opposer's Mark are both earlier than the Applicant's Application Date. Applicant has not started using the mark in commerce yet since Applicant filed its application based on its intention to use the mark in commerce.

7. 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.

8. Opposer has at great expense, extensively and continuously offered to the public high quality goods under the Opposer's Mark. By reason of such efforts and by virtue of the excellence of the goods and services sold under the Opposer's Mark, the public and trade have come to recognize the Opposer's mark as identifying Opposer and the goods and services offered under the Opposer's mark, and Opposer enjoys exceptionally valuable goodwill in connection with the goods and services offered under and in connection with the Opposer's Mark.

9. The mark proposed for registration by Applicant, is confusingly similar in sight, sound, meaning, and commercial impression to Opposer's Mark which has been used in interstate commerce prior to any application for trademark registration by Applicant.

10. Opposer believes that it will be damaged by the registration of Applicant's Mark since a substantial portion of the purchasing public and/or trade is likely to be confused, or mistakenly believe, that Applicant's Goods offered under Applicant's Mark originate from Opposer, or from the same source as the goods and services sold under Opposer's Mark, or that such goods are sponsored by, endorsed by, or affiliated with the source of the goods and services sold under Opposer's Mark. Such likelihood of confusion would result both in lost sales to Opposer and in damage to the goodwill among purchasers and the trade that the Opposer's Mark symbolizes. Persons familiar with the Opposer's Mark would be likely to buy Applicant's Goods as and for goods made and sold by Opposer. Moreover, any defect, objection or fault found with Applicant's Goods marketed under Applicant's Mark would reflect upon and seriously injure the reputation which has been established for the goods and services sold under the Opposer's Mark.

11. 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 are 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. 85/455118, be rejected, and that the mark therein sought for the goods specified therein be denied and refused.

The Opposer hereby consents and appoints Rosalind 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: September 18, 2012

Respectfully Submitted,
BBK Tobacco & Foods, LLP

/s/ Rosalind Young
By: _____

HBI International Legal Department
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Phoenix, Arizona 85009
Telephone: (602) 955-6688
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Email:

Attorney for Opposer

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 September 18, 2012 by depositing same in the United States Mail, first-class mail, postage prepaid, in an envelope addressed as follows:

/Rosalind M. Young/
Rosalind M Young