

ESTTA Tracking number: **ESTTA524547**

Filing date: **03/04/2013**

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	Horizon U.A.E. FZCO
Granted to Date of previous extension	03/03/2013
Address	Lob 16 No. 314 Jebel Ali, Dubai, UNITED ARAB EMIRATES

Attorney information	Timothy P. Fraelich JONES DAY 901 Lakeside Avenue Cleveland, OH 44114 UNITED STATES tfraelich@jonesday.com, malexanderhyde@JONESDAY.COM, pcyngier@jonesday.com Phone:216-586-3939
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Applicant Information

Application No	85405953	Publication date	09/04/2012
Opposition Filing Date	03/04/2013	Opposition Period Ends	03/03/2013
Applicant	ABC Home Furnishings, Inc. 888 Broadway New York, NY 10003 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 029. All goods and services in the class are opposed, namely: cooking and salad oils; fruit spreads; jellies; jams; marmalades; olive oil</p>
<p>Class 030. All goods and services in the class are opposed, namely: sauces; condiments, namely, hot sauce, hot chili oil, chili paste, oyster sauce, seafood sauce, cocktail sauce, kimchee, nuoc cham, mustard, ketchup, vinegar, mayonnaise, salad dressing, chutney, aioli, spices, dry rubs, salts, capers, teriyaki, wasabi, tomato paste, tomato sauce, pesto, tapenade, marinade, hoisin sauce, black bean sauce, ginger dipping sauce, ponzu sauce, masala, salsa, vinaigrette, chocolate sauce, tzatziki, bbq sauce, horseradish, bean paste, curry sauce, fish sauce, umeboshi paste, plum sauce, tamari, mint sauce, mole; relishes; seasonings; baked goods, namely, brownies, bars, cakes, breads, pizza crusts, granola, granola bars</p>
<p>Class 035. All goods and services in the class are opposed, namely: retail store services featuring cooking and salad oils, fruit spreads, jellies, jams, marmalades, olive oil, sauces, condiments, namely, hot sauce, hot chili oil, chili paste, oyster sauce, seafood sauce, cocktail sauce, kimchee, nuoc cham, mustard, ketchup, vinegar, mayonnaise, salad dressing, chutney, aioli, spices, dry rubs, salts, capers, teriyaki,</p>

wasabi, tomato paste, tomato sauce, pesto, tapenade, marinade, hoisin sauce, black bean sauce, ginger dipping sauce, ponzu sauce, masala, salsa, vinaigrette, chocolate sauce, tzatziki, bbq sauce, horseradish, bean paste, curry sauce, fish sauce, umeboshi paste, plum sauce, tamari, mint sauce, mole, relishes, seasonings, baked goods, namely, brownies, bars, cakes, breads, pizza crusts, granola, granola bars, and wine

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.	2147007	Application Date	01/03/1996
Registration Date	03/31/1998	Foreign Priority Date	NONE
Word Mark	ABC		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1982/00/00 First Use In Commerce: 1982/00/00 [milk, canned mushrooms, Ramen (noodles with soup mix in cups and packets), canned sardines, soup mix] Class 030. First use: First Use: 1975/00/00 First Use In Commerce: 1978/00/00 chili sauce, [ketchup, noodles, prepared tea, seafood sauce,] soy sauce		

Attachments	931063-680003 - Ntc of Oppo.pdf (6 pages)(83695 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	/Mary Alexander Hyde/
Name	Mary Alexander Hyde
Date	03/04/2013

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

In the matter of

U.S. Trademark Application 85/405,953
For the mark **ABC KITCHEN and Design**
Published in the Official Gazette on September 4, 2012

Horizon U.A.E. FZCO Opposer, against ABC Home Furnishings, Inc. Applicant.
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Opposition No. _____

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

NOTICE OF OPPOSITION

1. Opposer Horizon U.A.E. FZCO (“Opposer”), a corporation existing under the laws of United Arab Emirates, located at LOB 16 No. 314, Jebel Ali, Dubai, United Arab Emirates, believes that it will be damaged by registration of the mark ABC KITCHEN and Design, as shown in Application Serial No. 85/405,953 (the “Application”), and hereby opposes same pursuant to 15 U.S.C. §§ 1052 and 1063.

2. To the best of Opposer’s knowledge, the name and address of the current owner of the Application is ABC Home Furnishings, Inc., located at 888 Broadway, New York, New York 10003 (“Applicant”).

As grounds for opposition, it is alleged that:

3. Applicant filed the Application on August 24, 2011 to register the mark ABC KITCHEN and Design (“Applicant’s Mark”) based on intent to use the mark in connection with,

among others, the following goods and services: “cooking and salad oils; fruit spreads; jellies; jams; marmalades; olive oil” in Class 29; “sauces; condiments, namely, hot sauce, hot chili oil, chili paste, oyster sauce, seafood sauce, cocktail sauce, kimchee, nuoc cham, mustard, ketchup, vinegar, mayonnaise, salad dressing, chutney, aioli, spices, dry rubs, salts, capers, teriyaki, wasabi, tomato paste, tomato sauce, pesto, tapenade, marinade, hoisin sauce, black bean sauce, ginger dipping sauce, ponzu sauce, masala, salsa, vinaigrette, chocolate sauce, tzatziki, bbq sauce, horseradish, bean paste, curry sauce, fish sauce, umeboshi paste, plum sauce, tamari, mint sauce, mole; relishes; seasonings; baked goods, namely, brownies, bars, cakes, breads, pizza crusts, granola, granola bars” in Class 30; and “retail store services featuring cooking and salad oils, fruit spreads, jellies, jams, marmalades, olive oil, sauces, condiments, namely, hot sauce, hot chili oil, chili paste, oyster sauce, seafood sauce, cocktail sauce, kimchee, nuoc cham, mustard, ketchup, vinegar, mayonnaise, salad dressing, chutney, aioli, spices, dry rubs, salts, capers, teriyaki, wasabi, tomato paste, tomato sauce, pesto, tapenade, marinade, hoisin sauce, black bean sauce, ginger dipping sauce, ponzu sauce, masala, salsa, vinaigrette, chocolate sauce, tzatziki, bbq sauce, horseradish, bean paste, curry sauce, fish sauce, umeboshi paste, plum sauce, tamari, mint sauce, mole, relishes, seasonings, baked goods, namely, brownies, bars, cakes, breads, pizza crusts, granola, granola bars, and wine” in Class 35.

4. The Application was published in the Official Gazette on September 4, 2012.

5. Opposer is the owner of United States Trademark Registration No. 2,147,007 for the mark, ABC, to identify “chili sauce, soy sauce,” which registered on March 31, 1998, and which is valid and in full force and effect.

6. Opposer, directly and through its affiliates and/or licensees, since at least as early as 1975, has been, and is now, using the ABC mark in interstate commerce throughout the United States and the world in connection with substantial quantities of high quality goods.

7. Opposer's use of the ABC mark, as described above, has been valid and continuous since the date of first use.

8. Opposer's continuous and commercially successful use of the ABC mark is symbolic of extensive good will and consumer recognition built up by Opposer through substantial amounts of time, money, and effort in advertising and promotion. As such, the ABC mark has come to serve as a unique and strong identifier of Opposer's goods.

9. Opposer's use of the ABC mark predates the filing date of the Application.

10. Opposer's ABC mark was well established long before the filing date of the Application.

11. Applicant's Mark incorporates Opposer's ABC mark.

12. Upon information and belief, Applicant's Mark, to be used in connection with the goods and services in Classes 29, 30, and 35 as described in its Application, is confusingly similar to Opposer's ABC mark as used by Opposer.

13. Upon information and belief, the goods and services in Classes 29, 30, and 35 on which Applicant's Mark is to be used, as described in its Application, are closely related to the goods on and in connection with which Opposer has used and is using the ABC mark.

14. Upon information and belief, the goods and services in Classes 29, 30, and 35 on which Applicant's Mark is to be used, as described in its Application, and the goods on and in connection with which Opposer has used and is using the ABC mark are offered for sale and sold in the same channels of trade.

15. Upon information and belief, the goods and services in Classes 29, 30, and 35 on which Applicant's Mark is to be used, as described in its Application, and the goods on and in connection with which Opposer has used and is using the ABC mark are offered for sale and sold to the same class of purchasers.

COUNT I

Likelihood of Confusion

16. Opposer incorporates each and every allegation contained in Paragraphs 1-15 of this Notice of Opposition as though fully set forth herein.

17. In view of the similarity of the respective marks, similarity of the channels of trade, and the related nature of the goods and services disclosed, it is alleged that Applicant's Mark so resembles Opposer's ABC mark, as previously used and registered in the United States, and not abandoned, as to be likely, when applied to Applicant's goods and services in Classes 29, 30, and 35, to cause confusion, or to cause mistake, or to deceive purchasers as to source by suggesting that Applicant's goods and services in Classes 29, 30, and 35 are associated or affiliated with, or approved, endorsed, authorized, or sponsored by, Opposer.

18. Applicant's Mark, as applied to Applicant's goods and services in Classes 29, 30, and 35 for use in commerce in the manner described in the Application, lessens the capacity of Opposer's distinctive ABC mark to identify and distinguish the goods of Opposer from those of others.

COUNT II

Trademark Dilution

19. Opposer incorporates each and every allegation contained in Paragraphs 1-18 of this Notice of Opposition as though fully set forth herein.

20. Opposer's ABC mark has become famous in accordance with the standard set forth in 15 U.S.C. § 1125(c).

21. Applicant filed the Application for ABC KITCHEN after Opposer's ABC mark became famous.

22. Applicant's Mark is likely to cause dilution of the distinctiveness of Opposer's famous ABC Mark.

WHEREFORE, Opposer prays that Application Serial No. 85/405,953 for the mark ABC KITCHEN and Design be rejected for the goods and services identified in Classes 29, 30, and 35 on the basis of likelihood of confusion with and likelihood of dilution of Opposer's ABC mark, and that no registration thereon be issued to Applicant for Classes 29, 30, and 35, and that this Opposition be sustained in favor of Opposer.

Dated this 4th day of March, 2013.

By: /s/ Mary Alexander Hyde
Timothy P. Fraelich
Mary Alexander Hyde
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Cleveland, Ohio 44114-1190
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ATTORNEYS FOR OPPOSER
Horizon U.A.E. FZCO

CERTIFICATE OF SERVICE

A copy of the foregoing NOTICE OF OPPOSITION was served on this 4th day of March, 2013, via First Class U.S. Mail, upon the following counsel of record for Applicant ABC Home Furnishings, Inc.:

Thomas H. Curtin
Lathrop & Gage LLP
230 Park Ave., Room 2400
New York, New York 10169

/s/ Mary Alexander Hyde
One of the Attorneys for Opposer