

ESTTA Tracking number: **ESTTA568658**

Filing date: **11/01/2013**

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	Starbuzz Tobacco, Inc.
Granted to Date of previous extension	11/06/2013
Address	10630 Fern Avenue Stanton, CA 90680 UNITED STATES

Correspondence information	Natu J. Patel THE PATEL LAW FIRM, P.C. 22952 Mill Creek Drive Laguna Hills, CA 92653 UNITED STATES NPatel@thePatelLawFirm.com Phone:(949) 955-1077
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**Applicant Information**

Application No	85846992	Publication date	07/09/2013
Opposition Filing Date	11/01/2013	Opposition Period Ends	11/06/2013
Applicant	SIS Resources Ltd. P.O. Box 674 Bet Shemesh, ILX 99000 ILX		

**Goods/Services Affected by Opposition**

Class 034. First Use: 2010/09/19 First Use In Commerce: 2010/09/19 All goods and services in the class are opposed, namely: Electronic cigarettes components, accessories, parts, and structural parts therefor, namely, refill cartridges, cartomisers, and atomisers
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
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**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	3619407	Application Date	11/20/2008
Registration Date	05/12/2009	Foreign Priority Date	NONE
Word Mark	BLUE MIST		

Design Mark	<h1>Blue Mist</h1>		
Description of Mark	NONE		
Goods/Services	Class 034. First use: First Use: 2006/12/01 First Use In Commerce: 2006/12/01 Pipe Tobacco, Tobacco, Smoking Tobacco, Flavored Tobacco, Molasses Tobacco		

U.S. Registration No.	3695500	Application Date	03/25/2009
Registration Date	10/13/2009	Foreign Priority Date	NONE
Word Mark	CITRUS MIST		
Design Mark	<h1>Citrus Mist</h1>		
Description of Mark	NONE		
Goods/Services	Class 034. First use: First Use: 2008/03/04 First Use In Commerce: 2008/03/04 Pipe tobacco; molasses tobacco; tobacco; smoking tobacco; flavored tobacco; herbal molasses herbs for smoking, tobacco and tobacco substitutes		

Attachments	77619104#TMSN.jpeg( bytes ) 77699076#TMSN.jpeg( bytes ) MOCHA MIST - Notice of Opposition 110113.pdf(755332 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 Overnight Courier on this date.

Signature	/natupatel/
Name	Natu J. Patel

Date	11/01/2013
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IN THE UNITED STATES PATENT AND TRADE MARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

*In the Matter of Application Serial No. 85/846,992*

*Mark: MOCHA MIST*

*Filed: February 12, 2013*

*Published: July 9, 2013*

STARBUZZ TOBACCO, INC.,

Opposer,

v.

SIS RESOURCES LTD.,

Applicant.

OPPOSITION NO: \_\_\_\_\_

**NOTICE OF OPPOSITION**

Starbuzz Tobacco, Inc. ("Starbuzz"), a corporation organized and existing under the laws of the State of California, believes that it will be damaged by registration of the mark shown in U.S. Application Serial No. 85/846,992 in International Class 34 (the "Application") and hereby opposes the same.

**As grounds for opposition it is alleged that:**

**Starbuzz's Background**

1. Starbuzz is a manufacturer and distributor of tobacco, electronic cigarettes, hookahs, and various other products. Starbuzz's address has been changed from 2116 W. Lincoln Avenue, Anaheim, California 92801 to 10871 Forbes Avenue, Garden Grove, California 92843.

2. Starbuzz is the owner of U.S. Registration No. 3,619,407 for the mark “BLUE MIST” used in connection with “Pipe Tobacco, Tobacco, Smoking Tobacco, Flavored Tobacco, Molasses Tobacco” in International Class 034. Starbuzz has sold and/or distributed products bearing the “BLUE MIST” mark since at least as early as December 1, 2006. A true and correct copy of the “BLUE MIST” registration certificate is attached hereto as **Exhibit A**.

3. Starbuzz also owns U.S. Registration No. 3,695,500 for the mark “CITRUS MIST” used in connection with “Pipe tobacco; molasses tobacco; tobacco; smoking tobacco; flavored tobacco; herbal molasses herbs for smoking, tobacco and tobacco substitutes” in International Class 034. Starbuzz has sold and/or distributed products bearing the “CITRUS MIST” mark since at least as early as March 4, 2008. A true and correct copy of the “CITRUS MIST” registration certificate is attached hereto as **Exhibit B**.

4. Starbuzz’s “BLUE MIST” and “CITRUS MIST” marks are collectively referred to as the Starbuzz Marks.

#### **SIS’s Background**

5. Starbuzz is informed and believes, and on that basis alleges that, Applicant, SIS Resources Ltd. (“SIS”) is an Israeli corporation, whose address is P.O. Box 674, 99000 Bet Shemesh, Israel.

6. Starbuzz is informed and believes, and on that basis alleges that, SIS has designated Ms. Rachel D. Brandeis-Danielov, Esq., whose address is 20533 Biscayne Blvd., Suite 784, Miami, FL 33180-1529, as the representative upon whom the Opposition may be served.

7. Starbuzz is informed and believes, and on that basis alleges that, on February 12, 2013, SIS filed U.S. Application Serial No. 85/846,992 for the mark “MOCHA MIST” (“SIS's Mark”) for “Electronic cigarettes components, accessories, parts, and structural parts therefor, namely, refill cartridges, cartomisers, and atomisers” in International Class 34 (“SIS's Goods”).

8. The Application was filed based upon use of SIS's Mark in commerce, pursuant to Section 1(a) of the Lanham Act. SIS claimed that it had been using SIS's Mark at least as early as 09/19/2010.

9. The USPTO published SIS's Mark for opposition in the Official Gazette on July 9, 2013.

10. On July 24, 2013, Starbuzz obtained an extension of time to oppose the Application, and has until November 6, 2013 to file the Opposition. Therefore, this Notice of Opposition is timely.

### **GROUND'S FOR OPPOSITION**

#### **Standing and Priority**

11. Starbuzz re-alleges and incorporates by this reference paragraphs 1 through 10, inclusive, of this Notice of Opposition as if fully set forth herein.

12. Starbuzz is informed and believes, and on that basis alleges that, the filing date and date of first use of the Starbuzz Marks in commerce predates the date of first use of SIS's Mark in commerce. Therefore, Starbuzz's rights to the Starbuzz Marks have priority over any rights claimed by SIS in SIS's Mark.

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

13. Starbuzz re-alleges and incorporates by this reference paragraphs 1 through 12, inclusive, of this Notice of Opposition as if fully set forth herein.

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

15. Based on the identical term “MIST”, Starbuzz is informed and believes, and on that basis alleges that, SIS’s Mark, when used in conjunction with SIS’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).

16. In fact, SIS’s Mark is similar to the Starbuzz Marks in appearance, sound and overall commercial impression.

17. Starbuzz is informed and believes, and on that basis alleges that, the type of goods offered in conjunction with SIS’s Mark is similar or related to the type of goods offered in conjunction with the Starbuzz Marks.

18. Starbuzz’s rights to the Starbuzz Marks are not limited to tobacco products, but extend to related products within the same industry and market, or within the natural zone of expansion, including electronic cigarette products.

19. Starbuzz is informed and believes, and on that basis alleges that, SIS’s Goods, and Starbuzz’s goods, are marketed to identical or similar groups of consumers.

20. Starbuzz is informed and believes, and on that basis alleges that, SIS's Goods and Starbuzz's goods, are advertised, promoted, and/or sold through the same or similar channels of trade.

21. Starbuzz is informed and believes, and on that basis alleges that, SIS's Goods and Starbuzz's goods, target the same general class of purchasers.

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

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

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

WHEREFORE, Starbuzz prays that Application Serial No. 85/846,992 be denied registration.

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Starbuzz hereby consents and appoints Natu J. Patel of The Patel Law Firm, P.C., 22952 Mill Creek Drive, Laguna Hills, CA 92653, 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.

/natupatel/

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

The Patel Law Firm, P.C.  
22952 Mill Creek Drive  
Laguna Hills, CA 92653  
Telephone: (949) 955-1077  
Facsimile: (949) 955-1877  
NPatel@thePatelLawFirm.com

JC/rp

**CERTIFICATE OF SERVICE**

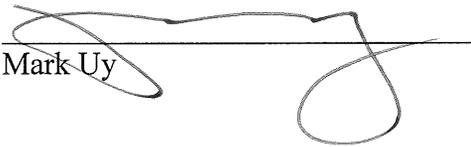
I certify that a copy of this NOTICE OF OPPOSITION is being served via overnight courier, postage prepaid, on this the 1st day of November, 2013, to the following:

**SIS Resources Ltd.'s Attorney/Representative:**

Rachel D. Brandeis-Danielov, Esq.  
Green Smoke, Inc.  
20533 Biscayne Blvd., Suite 784  
Miami, FL 33180-1529

**SIS Resources Ltd.:**

SIS Resources Ltd.  
P.O. Box 674  
99000 Bet Shemesh, Israel

  
Mark Uy

# **Exhibit A**

**Int. Cl.: 34**

**Prior U.S. Cls.: 2, 8, 9 and 17**

**United States Patent and Trademark Office**

**Reg. No. 3,619,407**

**Registered May 12, 2009**

**TRADEMARK  
PRINCIPAL REGISTER**

# Blue Mist

STARBUZZ TOBACCO, INC. (CALIFORNIA CORPORATION)  
UNIT #A  
1889 W. COMMONWEALTH STREET  
FULLERTON, CA 92833

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

FIRST USE 12-1-2006; IN COMMERCE 12-1-2006.

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

SER. NO. 77-619,104, FILED 11-20-2008.

REGINA DRUMMOND, EXAMINING ATTORNEY

## **Exhibit B**

# United States of America

United States Patent and Trademark Office

## Citrus Mist

**Reg. No. 3,695,500** STARBUZZ TOBACCO, INC. (CALIFORNIA CORPORATION)  
Registered Oct. 13, 2009 2116 W. LINCOLN AVENUE  
ANAHEIM, CA 92801

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

**TRADEMARK**  
**PRINCIPAL REGISTER** FIRST USE 3-4-2008; IN COMMERCE 3-4-2008.

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

OWNER OF U.S. REG. NO. 3,619,407.

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

SER. NO. 77-699,076, FILED 3-25-2009.

DAVID YONTEF, EXAMINING ATTORNEY



*David J. Kybas*

Director of the United States Patent and Trademark Office