

ESTTA Tracking number: **ESTTA577634**

Filing date: **12/19/2013**

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	Fresh Express Incorporated
Granted to Date of previous extension	12/25/2013
Address	550 S. Caldwell St. Charlotte, NC 28202 UNITED STATES

Correspondence information	E Lynn Perry Attorney for Fresh Express Incorporated Perry IP Group A Law Corporation 900 Larkspur Landing Circle Ste 226 Larkspur, CA 94939 UNITED STATES lperry@perryip.com, krea@perryip.com Phone:4155248683
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Applicant Information

Application No	85880368	Publication date	08/27/2013
Opposition Filing Date	12/19/2013	Opposition Period Ends	12/25/2013
Applicant	Happy's Pizza Company 30201 Orchard Lake Road Farmington Hills, MI 48334 MI		

Goods/Services Affected by Opposition

Class 035. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Retail grocery and prepared food stores
Class 043. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Restaurant Services

Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2346673	Application Date	10/15/1998
Registration Date	05/02/2000	Foreign Priority Date	NONE

Word Mark	FRESH EXPRESS
Design Mark	FRESH EXPRESS
Description of Mark	NONE
Goods/Services	Class 029. First use: First Use: 1984/02/10 First Use In Commerce: 1984/02/10 CUT READY-TO-SERVE FRESH VEGETABLES Class 030. First use: First Use: 1995/04/24 First Use In Commerce: 1995/04/24 SALAD DRESSING Class 031. First use: First Use: 1984/02/10 First Use In Commerce: 1984/02/10 [FRESH VEGETABLES]

U.S. Registration No.	2363302	Application Date	01/19/1999
Registration Date	06/27/2000	Foreign Priority Date	NONE

Word Mark	FRESH EXPRESS
Design Mark	
Description of Mark	NONE
Goods/Services	Class 029. First use: First Use: 1999/02/08 First Use In Commerce: 1999/02/08 CUT, READY-TO-SERVE FRESH VEGETABLES

U.S. Registration No.	2462558	Application Date	06/24/1999
Registration Date	06/19/2001	Foreign Priority Date	NONE
Word Mark	FRESH EXPRESS AMERICA'S FRESH COLE SLAW		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 029. First use: First Use: 1999/09/01 First Use In Commerce: 1999/09/01 Cole slaw

U.S. Registration No.	3028912	Application Date	12/16/2004
Registration Date	12/13/2005	Foreign Priority Date	NONE
Word Mark	FRESH EXPRESS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1999/02/08 First Use In Commerce: 1999/02/08 Precut fresh packaged fruits and vegetables, salad kits consisting of precut vegetables or fruits and salad dressings		

U.S. Registration No.	3428555	Application Date	04/12/2006
Registration Date	05/13/2008	Foreign Priority Date	NONE
Word Mark	FRESH EXPRESS PROMISE		

Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2006/07/26 First Use In Commerce: 2006/07/26 Precut packaged fresh vegetables and garden salads Class 030. First use: First Use: 2006/07/26 First Use In Commerce: 2006/07/26 salad dressings		

U.S. Registration No.	3482338	Application Date	04/05/2006
Registration Date	08/05/2008	Foreign Priority Date	NONE

Word Mark FRESH EXPRESS

Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2005/04/01 First Use In Commerce: 2005/04/01 Salad toppings, namely, shredded cheese, bacon bits and dried vegetables and fruits Class 030. First use: First Use: 2005/04/01 First Use In Commerce: 2005/04/01 Salad toppings, namely, croutons and tortilla strips		

U.S. Registration No.	3909403	Application Date	04/01/2010
Registration Date	01/18/2011	Foreign Priority Date	NONE

Word Mark FRESH EXPRESS KIT ASIAN

Design Mark			
Description of Mark	The mark consists of the words "FRESH EXPRESS" in a trapezoid surmounted by two stylized leaves above the words "KIT ASIAN" superimposed on a ribbon design.		
Goods/Services	Class 029. First use: First Use: 2010/08/04 First Use In Commerce: 2010/08/04 Salad kit consisting of packaged pre-cut fresh vegetables, salad dressing, won ton strips and dried fruit		

U.S. Registration No.	4143561	Application Date	10/15/2010
Registration Date	05/15/2012	Foreign Priority Date	NONE

Word Mark	FRESH EXPRESS KIT		
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Design Mark			
Description of Mark	The mark consists of the words "FRESH EXPRESS" in a rounded trapezoid surmounted by two stylized leaves.		
Goods/Services	Class 029. First use: First Use: 2010/08/04 First Use In Commerce: 2010/08/04 Salad kit consisting of packaged pre-cut vegetables, salad dressing, dried fruit, processed edible seeds and nuts, cheese		

U.S. Registration No.	4282482	Application Date	06/11/2012
Registration Date	01/29/2013	Foreign Priority Date	NONE

Word Mark	FRESH EXPRESS		
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Design Mark	FRESH EXPRESS
Description of Mark	NONE
Goods/Services	Class 031. First use: First Use: 2011/03/09 First Use In Commerce: 2011/03/09 Fresh produce, namely, lettuce

U.S. Registration No.	4282483	Application Date	06/11/2012
Registration Date	01/29/2013	Foreign Priority Date	NONE
Word Mark	FRESH EXPRESS		
Design Mark			
Description of Mark	The mark consists of the words "FRESH EXPRESS" in a trapezoid surmounted by two stylized leaves.		
Goods/Services	Class 031. First use: First Use: 2011/03/09 First Use In Commerce: 2011/03/09 Fresh produce, namely, lettuce		

Attachments	75571155#TMSN.gif(bytes) 75623223#TMSN.jpeg(bytes) 75736625#TMSN.gif(bytes) 78534042#TMSN.jpeg(bytes) 78859869#TMSN.jpeg(bytes) 78854241#TMSN.jpeg(bytes) 85004212#TMSN.jpeg(bytes) 85153700#TMSN.jpeg(bytes) 85648943#TMSN.jpeg(bytes) 85648947#TMSN.jpeg(bytes) Notice of Opposition.Happy's Pizza Fresh Express.2013.pdf(522696 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	/elp/
Name	E Lynn Perry
Date	12/19/2013