

ESTTA Tracking number: **ESTTA626882**

Filing date: **09/12/2014**

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
Granted to Date of previous extension	09/14/2014
Address	3315 West Buckeye Road, Suite B Phoenix, AZ 85009 UNITED STATES
Correspondence information	BBK Tobacco & Foods, LLP 3315 West Buckeye Road, Suite B Phoenix, AZ 85009 UNITED STATES legal@hbiin.com Phone:602-955-6688

Applicant Information

Application No	86056282	Publication date	03/18/2014
Opposition Filing Date	09/12/2014	Opposition Period Ends	09/14/2014
Applicant	Joy Flavor Technology, Inc. 901 S. Fremont Ave. #128 Alhambra, CA 91803 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: electronic cigarette batteries; chargers for batteries; power adapters for cars
Class 011. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: electronic vaporizer
Class 030. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: electronic cigarette liquid (e-liquid) comprised of flavorings in liquid form used to refill electronic cigarette cartridges; cartridges and refill cartridges sold filled with chemical flavorings in liquid form for electronic cigarettes
Class 034. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: electronic cigarettes; cigarettes containing tobacco substitutes not for medical purposes; tobacco; smokeless cigarettevaporizer pipe; hookahs; electronic hookahs; shishas in the nature of hookahs; electronic shishas in the nature of electronic hookahs; electronic cigars; cartomizers, namely, combination electronic cigarette refill cartridges sold empty; atomizers sold as a component of electronic cigarettes; tobacco substitutes; matches; lighters for smokers; smoking papers, namely, absorbent paper for tobacco pipes, and cigarette rolling papers; tobacco filters; smoker's articles, namely, filter tubes; electronic cigarette, electronic cigar, cigarette, and cigar carrying cases

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.	2992489	Application Date	07/15/2004
Registration Date	09/06/2005	Foreign Priority Date	NONE
Word Mark	JAY'S		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 034. First use: First Use: 2000/06/19 First Use In Commerce: 2000/06/19 Tobacco and tobacco accessories, namely, rolling papers [, rolling machines, cigarettes, cigars, pipes]		

U.S. Registration No.	3876971	Application Date	04/08/2010
Registration Date	11/16/2010	Foreign Priority Date	NONE
Word Mark	JUICY JAY'S		

Design Mark	<h1>JUICY JAY'S</h1>		
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2000/06/29 First Use In Commerce: 2000/06/29 Tobacco and Herbal Smoke masking incense		

U.S. Registration No.	4330757	Application Date	05/21/2012
Registration Date	05/07/2013	Foreign Priority Date	NONE

Word Mark	COOL JAY'S		
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Design Mark	<h1>COOL JAY'S</h1>		
Description of Mark	NONE		
Goods/Services	Class 034. First use: First Use: 1999/06/01 First Use In Commerce: 1999/06/01 Cigarette rolling papers [; Matches; Tobacco pipes]		

U.S. Registration No.	2678289	Application Date	03/22/2002
Registration Date	01/21/2003	Foreign Priority Date	NONE

Word Mark	JUICY JAY'S		
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Design Mark			
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Description of Mark	NONE		
Goods/Services	Class 034. First use: First Use: 1999/06/06 First Use In Commerce: 1999/06/06 Tobacco and tobacco accessories, namely, rolling papers, [rolling machines, cigarettes, cigars,] matches [, pipes]		

U.S. Registration No.	2941629	Application Date	07/23/2003
Registration Date	04/19/2005	Foreign Priority	NONE

		Date	
Word Mark	JSCALE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1999/05/01 First Use In Commerce: 1999/05/01 Scales, namely scales for weighing letters, jewelry, gunpowder and foods		

U.S. Application No.	86269256	Application Date	05/01/2014
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	JWARE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 034. First use: First Use: 2010/11/19 First Use In Commerce: 2010/11/19 Cigarette paper; Cigarette rolling papers; Cigarette tubes; Hand-held machines for injecting tobacco into cigarette tubes; Machines allowing smokers to make cigarettes by themselves		

U.S. Application No.	85963040	Application Date	06/18/2013
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Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	JCONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 034. First use: First Use: 2010/11/19 First Use In Commerce: 2010/11/19 Cigarette rolling papers; Cigarette tubes		

Attachments	78451355#TMSN.png(bytes) 85009891#TMSN.png(bytes) 85630791#TMSN.png(bytes) 78277815#TMSN.png(bytes) 86269256#TMSN.png(bytes) 85963040#TMSN.png(bytes) Joy Flavor Notice of Opposition.pdf(145492 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	/Brendan N. Mahoney/
Name	BBK Tobacco & Foods, LLP
Date	09/12/2014

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

In re Trademark Application

Serial No.: 86-056282

Mark: J

Class: 009, 011, 030, 034

Applicant: Joy Flavor Technology, Inc.

BBK TOBACCO & FOODS, LLP)	
)	
Opposer,)	
)	
v.)	Opposition No.: _____
)	
JOY FLAVOR TECHNOLOGY, INC.)	
)	
Applicant)	

NOTICE OF OPPOSITION

BBK TOBACCO & FOODS, LLP ("Opposer"), a **limited liability partnership** organized and existing under the laws of the State of **Arizona**, believes it will be damaged by the registration of the **“J”** mark as shown in Application Serial No. 86-056282, filed **September 5, 2013**, in International Classes 009, 011, 030, 034 (the “Application”) by **JOY FLAVOR TECHNOLOGY, INC.**, ("Applicant") and published in the Official Gazette of **March 18, 2014**, and opposes registration upon the Principal Register of the **“J”** mark (“Applicant’s Mark”). Opposer filed extensions of time, which were granted until September 14, 2014.

The grounds for opposition against the Application are as follows:

1. Opposer is the current owner of the following U.S. Patent and Trademark Office (“PTO”) registrations for the following trademarks (collectively "Opposer's Registered Marks"):

<p>JAY'S</p>	<p>Class 34: Tobacco and tobacco accessories, namely rolling papers</p> <p>First Use: June 19, 2000 First Use in Commerce: June 19, 2000</p>	<p>78451355 July 15, 2004</p> <p>Reg. No: 2992489 Date: Sept. 6, 2005</p> <p>8 & 15 Accepted Sep. 16, 2010</p>
<p>JUICY JAY'S</p>	<p>Class 3: Tobacco and Herbal Smoke masking incense</p> <p>First Use: June 29, 2000 First Use in Commerce: June 29, 2000</p>	<p>85009891 April 8, 2010</p> <p>Reg. No: 2992489 Date: Sept. 6, 2005</p> <p>8 & 15 Accepted Sep. 16, 2010</p>
<p>COOL JAY'S</p>	<p>Class 34: Cigarette rolling papers</p> <p>First Use: June 1, 1999 First Use in Commerce: June 1, 1999</p>	<p>85630791 May 21, 2012</p> <p>Reg. No: 4330757 Date: May 7, 2013</p>
<p>JUICY JAY'S</p>	<p>Class 34: Tobacco and tobacco accessories, namely rolling papers, matches</p> <p>First Use: June 6, 1999 First Use in Commerce: June 6, 1999</p>	<p>78116781 March 22, 2002</p> <p>Reg. No: 2678289 Date: Jan. 21, 2003</p> <p>1st 10 year renewal granted Mar. 30, 2012</p>
<p>JSCALE (Logo)</p> 	<p>Class 9: Scales, namely scales for weighing letters, jewelry, gunpowder and foods.</p> <p>First Use: May 1, 1999 First Use in Commerce: May 1, 1999</p>	<p>78277815 July 23, 2003</p> <p>Reg. No: 2941629 Date: April 19, 2005</p> <p>8 & 15 Accepted Feb. 26, 2011</p>
<p>JWARE</p>	<p>Class 34: Cigarette paper; Cigarette tubes; Hand-held machines for injecting tobacco into cigarette tubes; Machines allowing smokers to make cigarettes by themselves</p> <p>First Use: Nov. 19, 2010 First Use in Commerce: Nov. 19, 2010</p>	<p>86269256 May 1, 2014</p>

JCONE	Class 34: Cigarette rolling papers; cigarette tubes First Use: Nov. 19, 2010 First Use in Commerce: Nov. 19, 2010	85963040 June 18, 2013
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2. Opposer uses, and has used, and continues to use Opposer's Registered Marks to identify the goods identified in the registrations for Opposer's Registered Marks.

3. Opposer itself, or through its predecessor, has used, Opposer's Registered Marks in U.S. interstate commerce for the sale of the goods identified in those registrations since 1999.

4. Applicant is seeking to obtain, under the provisions of the Trademark Act of 1946, as amended, registration upon the Principal Register of Applicant's Mark.

5. Applicant's Mark was published for opposition in the Official Gazette of March 18, 2014.

6. Applicant's Mark contains word elements that are identical or closely similar to the Opposer's Registered Marks and Opposer's Common Law Marks.

7. Applicant's Mark duplicates distinctive characteristics of the Opposer's Registered Marks and Opposer's Common Law Marks.

8. Applicant's Mark creates an overall commercial impression identical to Opposer's Registered Marks and Opposer's Common Law Marks.

9. Applicant's Mark is confusingly similar to Opposer's Registered Marks and Opposer's Common Law Marks.

10. Applicant's Mark is used in connection with the sale of goods that are identical to, or related in some manner to, goods that are identified in the PTO registrations for Opposer's Registered Marks and that are sold by Opposer using Opposer's Registered Marks and Opposer's Common Law Marks such that the goods are likely to be encountered by the same persons under

circumstances that, because of the marks used in connection therewith, would lead to the mistaken belief that they originate from the same source

11. Applicant's Mark creates the immediate and erroneous suggestion and impression that goods sold under Applicant's Mark are goods that originate with, are endorsed by, are compatible with, or are otherwise connected to Opposer.

12. Upon information and belief, the goods, identified in the application for Applicant's Mark, are and will be marketed under conditions such that they are likely to be encountered by the same purchasers of Opposer's goods, sold using Opposer's Registered Marks and Opposer's Common Law Marks, and under circumstances that, because of the marks used in connection therewith, would lead to the mistaken belief that the goods originate from the same source.

13. Upon information and belief, the customers of and the channels of distribution employed by Opposer and Applicant are likely to be similar, even overlapping, adding to the likelihood that the goods sold by Applicant under Applicant's Mark will be confused with the Opposer's goods, sold using Opposer's Registered Marks and Opposer's Common Law Marks.

14. Upon information and belief, the classes of purchasers to whom Opposer and Applicant will sell will be the same, adding to the likelihood that consumers intent on purchasing Opposer's goods sold using Opposer's Registered Marks and Opposer's Common Law Marks will purchase Applicant's goods sold under the Applicant's Mark under the mistaken impression that they originate with, are endorsed by, or are otherwise connected to Opposer.

15. The similar nature of the marks themselves, the related goods and the trade channels and customers for those goods are so great as to create a likelihood of confusion among

consumers as to the source of Applicant's goods or Applicant's affiliation or relationship with, or sponsorship by, Opposer.

16. Such confusion resulting from Applicant's intended use and the requested registration of Applicant's Mark, will damage Opposer.

17. Applicant's Mark should be barred from registration, pursuant to 15 U.S.C. § 1052(d), because Applicant's Mark consists of a mark which so resembles Opposer's Registered Marks and Opposer's Common Law Marks in use in U.S. interstate commerce, that Applicant's Mark is likely, when used on or in connection with the goods of the Applicant, to cause confusion, or to cause mistake, or to deceive.

18. WHEREFORE, Opposer requests that its Opposition be sustained, that the registration of Applicant's Mark be refused, and that Application Serial No. 86-056282 be rejected.

Dated this 12th day of September 2014.

BBK TOBACCO & FOODS, LLP



Brendan N. Mahoney, Esq.
3315 W. Buckeye Rd #4
Phoenix, AZ 85009

ATTORNEY FOR OPPOSER

I certify that a copy of the foregoing was sent this same day via United States mail and a courtesy copy via email to:

Alex Patel
Patel & Almeida, P.C.
16830 Ventura Blvd., Suite 360
Encino, CA 91436
alex@paplaw.com

And courtesy copy sent this same day to

Joy Flavor Technology, Inc.
901 S Fremont Ave #128
Alhambra, CA 91803

A handwritten signature in black ink, appearing to be 'L. S. M.', is written over a horizontal line.