

ESTTA Tracking number: **ESTTA648852**

Filing date: **01/08/2015**

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	OTPM, LLC		
Entity	Limited Liability Company	Citizenship	North Carolina
Address	701 S. Battleground Avenue Grover, NC 28073 UNITED STATES		

Attorney information	William S. Fultz Parker Poe Adams & Bernstein LLP 301 Fayetteville Street, Suite 1400 Raleigh, NC 27601 UNITED STATES trademarks@parkerpoe.com Phone:919-828-0564		
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Applicant Information

Application No	86170927	Publication date	12/09/2014
Opposition Filing Date	01/08/2015	Opposition Period Ends	01/08/2015
Applicant	NxGP, LLC 1901 E. Franklin St. #107 Richmond, VA 23223 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 030. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Chemical flavorings in liquid form used to refill electronic cigarettes, electronic cigars, electronic smoking pipes, electronic hookahs, smokeless electronic cigarette vaporizer pipes, and personal smokeless electronic cigarette vaporizer pipes; Cartridges sold filled containing chemical flavorings in liquid form for use with electronic cigarettes, electronic cigars, electronic smoking pipes, electronic hookahs, smokeless electronic cigarette vaporizer pipes, and personal smokeless electronic cigarette vaporizer pipes</p>
<p>Class 034. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Electronic cigarettes, electronic cigars, electronic smoking pipes, electronic hookahs, smokeless electronic cigarette vaporizer pipes, and personal smokeless electronic cigarette vaporizer pipes; Cartomizers, namely, electronic refill cartridges sold empty for electronic cigarettes, electronic cigars, electronic smoking pipes, electronic hookahs, smokeless electronic cigarette vaporizer pipes, and personal smokeless electronic cigarette vaporizer pipes; Replacement parts for the aforesaid goods</p>

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. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	TRANCE		
Goods/Services	Cigars		

Attachments	Notice of Opposition.pdf(196130 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	/WSF/
Name	William S. Fultz
Date	01/08/2015

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

In the matter of Application Serial Number 86170927
Published: December 9, 2014

OTPM, LLC)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	
NXGP, LLC,)	
)	
Applicant.)	

NOTICE OF OPPOSITION

OTPM, LLC, a limited liability company organized and existing under the laws of North Carolina with a principal place of business at 701 S. Battleground Avenue, Grover, NC 28073 (“Opposer”), believes that it would be damaged by the registration of the mark shown in Application Serial No. 86170927, filed by NxGP, LLC (“Applicant”). Opposer hereby opposes such registration.

Background

1. Applicant seeks to register the mark TRANCE (“Applicant’s Applied-For Mark”) in connection with the following goods in International Classes 30 and 34, respectively (“Applicant’s Goods”):

Chemical flavorings in liquid form used to refill electronic cigarettes, electronic cigars, electronic smoking pipes, electronic hookahs, smokeless electronic cigarette vaporizer pipes, and personal smokeless electronic cigarette vaporizer pipes; Cartridges sold filled containing chemical flavorings in liquid form for use with electronic cigarettes, electronic cigars, electronic smoking pipes, electronic hookahs, smokeless electronic cigarette vaporizer pipes, and personal smokeless electronic cigarette vaporizer pipes

Electronic cigarettes, electronic cigars, electronic smoking pipes, electronic hookahs, smokeless electronic cigarette vaporizer pipes, and personal smokeless electronic cigarette vaporizer pipes; Cartomizers, namely, electronic refill cartridges sold empty for electronic cigarettes, electronic cigars, electronic smoking pipes, electronic hookahs, smokeless electronic cigarette vaporizer pipes, and personal smokeless electronic cigarette vaporizer pipes; Replacement parts for the aforesaid goods

2. Applicant filed its application to register Applicant's Applied-For Mark on an intent-to-use basis on January 21, 2014.
3. Applicant's Applied-For Mark was published in the *Official Gazette* on December 9, 2014.
4. Opposer owns and uses the mark TRANCE ("Opposer's Mark) in connection with the promotion and sale of cigars ("Opposer's Goods").
5. Opposer's rights in Opposer's Mark date back to at least as early as April 2008.
6. Such use has created, and continues to create, an association between Opposer's Mark and Opposer's Goods in the minds of the public.
7. Opposer has expended substantial amounts of time, money, and effort in developing, marketing, and providing products under Opposer's Mark. As a result, Opposer has built up extensive goodwill in, and owns extensive common law rights in, Opposer's Mark.

Likelihood of Confusion

8. Opposer acquired rights in Opposer's Mark long before the filing date of Applicant's intent-to-use application to register Applicant's Applied-For Mark, and, upon information and belief, long before any date of use upon which Applicant could rely.
9. Consequently, Opposer's rights in Opposer's Mark precede any rights Applicant could claim in Applicant's Applied-For Mark.
10. Applicant's Applied-For Mark is identical to Opposer's Mark.

11. Applicant's Applied-For Mark creates the same commercial impression as Opposer's Mark.

12. Applicant's Goods include, among other things, (a) electronic cigars, (b) chemical flavorings for electronic cigars, (c) electronic refill cartridges sold empty for electronic cigars, and (d) cartridges sold filled containing chemical flavorings for electronic cigars.

13. Opposer's Goods consist of cigars.

14. Accordingly, Applicant's Goods are closely related to and/or overlap with Opposer's Goods.

15. Applicant's Goods, in connection with which Applicant intends to use Applicant's Applied-For Mark, will likely be advertised using the same or similar media as the media used by Opposer to advertise Opposer's Goods under Opposer's Mark.

16. Applicant's Goods, in connection with which Applicant intends to use Applicant's Applied-For Mark, will likely be distributed through the same or similar channels of trade as those used by Opposer to distribute Opposer's Goods under Opposer's Mark.

17. Applicant's Goods, in connection with which Applicant intends to use Applicant's Applied-For Mark, will likely be purchased and/or used by the same or overlapping members of the public as Opposer's Goods under Opposer's Mark.

18. Because of the close similarity between the parties' marks, products, relevant markets, advertising, channels of trade, purchasers, and/or users, there would be a strong likelihood of confusion if Applicant were permitted to register Applicant's Applied-For Mark for use in connection with Applicant's Goods.

19. Members of the public would believe that Applicant's Goods offered under Applicant's Applied-For Mark and Opposer's Goods offered under Opposer's Mark originate

from the same source and/or that Applicant's Goods sold under Applicant's Applied-For Mark were, contrary to fact, associated with, endorsed by, related to, or actually the goods of Opposer. Any fault or defect in Applicant's Goods would reflect negatively upon and injure Opposer.

20. If registration of Applicant's Applied-For Mark were granted, Applicant would obtain *prima facie* exclusive rights to the use of Applicant's Applied-For Mark, and all confusingly similar marks, in connection with Applicant's Goods. Applicant would thereby be placed in a position to harass and interfere with Opposer's use of Opposer's Mark, causing further damage and injury to Opposer.

21. Applicant's Applied-For Mark so closely resembles the senior mark of Opposer that Applicant's use of Applicant's Applied-For Mark is likely, when used in connection with Applicant's Goods, to cause confusion, mistake, or deception in the minds of consumers as to the origin or source of Applicant's Goods in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), with consequent injury to Opposer and the public.

Conclusion

22. For the foregoing reasons, Opposer prays that Application Serial No. 86170927 be rejected in total and the registration of the mark therein shown for the goods therein specified be refused and denied. In addition, Opposer prays for such further or alternative relief as the Board may find appropriate.

Opposer respectfully submits this Notice of Opposition, along with the \$600 filing fee, on
January 8, 2015.

Respectfully submitted,

PARKER POE ADAMS & BERNSTEIN LLP

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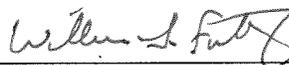
Attorneys for Opposer

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing Notice of Opposition with respect to Application Serial Number 86170927 has been served this day upon the correspondence address for Application Serial Number 86170927 as shown in the United States Patent and Trademark Office's Trademark Applications and Registrations Retrieval (TARR) system, by United States Postal Service in a postage-paid envelope properly addressed as follows:

Ian D. Titley
Schroder Fidlow PLC
1901 E Franklin St Suite 107
Richmond, VA 23223-6966

This the 8th day of January, 2015



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