

ESTTA Tracking number: **ESTTA650810**

Filing date: **01/19/2015**

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	Primal Kitchen		
Entity	LLC	Citizenship	Washington
Address	6077 K.C. SE Port Orchard, WA 98367 UNITED STATES		

Correspondence information	Erin Bray Trademark Lawyer Law Firm 455 E Eisenhower Pkwy. Suite 360 Ann Arbor, MI 48108 UNITED STATES erinb@trademarklawyerfirm.com,jj@trademarklawyerfirm.com Phone:800-529-2218
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Applicant Information

Application No	86150072	Publication date	12/23/2014
Opposition Filing Date	01/19/2015	Opposition Period Ends	01/22/2015
Applicant	Primal Nutrition, Inc. 6202 Ramirez Mesa Drive Malibu, CA 90265 UNITED STATES		

Goods/Services Affected by Opposition

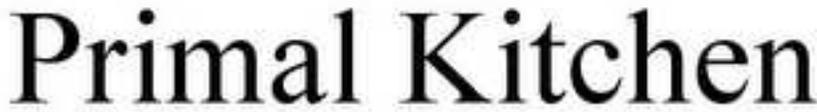
<p>Class 005. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Pre-packed food products, namely, meal replacements, namely, nutritional supplement meal replacement bars, and energy bars, namely, nutritional supplement energy bars</p>
<p>Class 029. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Pre-packed food products, namely, sauces, namely, cranberry sauces, meal replacements, namely, fruit-based meal replacement bars, and snack foods, namely, meat-based snack foods, fruit-based snack food, nut and seed based snack food, vegetable based snack food, dairy based snackfood excluding ice cream, ice milk and frozen yogurt, potato based snack food</p>
<p>Class 030. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Pre-packed food products, namely, condiments, namely, mustard, mayonnaise, ketchup, horseradish, salad dressings, sauces, namely, barbeque sauce, chicken wing sauce, chili sauce, chimichurri sauce, cocktail sauce, curry sauce, garlic-based sauce, honey mustard sauce, marinades, teriyaki sauce, meat gravies, ready-made sauces, steak sauces, sloppy joe sauce, tomato sauce, chocolate sauce, caramel sauce, toppings, namely, chocolate topping, marshmallow topping, rubs, namely, spice rubs, barbecues dry rubs, meal replacements, namely, chocolate-based meal replacement bars, energy bars, namely, high protein cereal based energy bar, and snack foods, namely, snack cakes, granola snacks; dairy based snack</p>

food namely,ice cream, ice milk and frozen yogurt

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 No.	86390627	Application Date	09/10/2014
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	PRIMAL KITCHEN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2012/11/10 First Use In Commerce: 2012/11/10 Retail store services featuring cooking and food preparation products; Pizza Cutters; Pizza Peels; Bread knives; Replacement blades for bread knives; Wooden Sauerkraut Tampers; Linen Bread Clothes; Rolling Pins; Baguette board; Baguette Peel; Fermentation lids (plastic lid for mason jar with airlock and seals); Fermentation Jars (glass swing top jar with airlock and seals); Pickling Gift Packs (contain fermentation lids with glass weight and pack of salt); Glass Pickling Weights (glass circles); Silicone seals; valves, and grommets; Mesh lids for sprouts; Grape Leaves; Sourdough, Starters (dehydrated flour with yeast culture); Brine Mixes (mixtures of many different herbs, spices, and salts); Salt		

Attachments	86390627#TMSN.png(bytes) Notice of Opposition - Primal Kitchen.pdf(173615 bytes) Exhibit 1.pdf(646374 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	/Erin C. Bray/
Name	Erin Bray
Date	01/19/2015

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

Primal Kitchen, LLC,)	
Opposer,)	Opposition No.
)	In the Matter of
v.)	Serial No. 86/150,072
)	Filed: December 20, 2013
Primal Nutrition, Inc.)	Mark: PRIMAL KITCHEN
Applicant.)	

NOTICE OF OPPOSITION

Primal Kitchen, LLC (“Opposer”), a limited liability company organized in the state of Washington, with offices in 6077 K.C. PI SE Port Orchard, Washington, believes that it will be damaged by the registration of the trademark PRIMAL KITCHEN by Primal Nutrition, Inc. (“Applicant”) as applied for in Application Serial Number 86150072 (“Applicant’s Application”), for use in connection with *Pre-packed food products, namely, meal replacements, namely, nutritional supplement meal replacement bars, and energy bars, namely, nutritional supplement energy bars* in International Class 005, *Pre-packed food products, namely, sauces, namely, cranberry sauces, meal replacements, namely, fruit-based meal replacement bars, and snack foods, namely, meat-based snack foods, fruit-based snack food, nut and seed based snack food, vegetable based snack food, dairy based snack food excluding ice cream, ice milk and*

frozen yogurt, potato based snack food in international class 029, and for use in connection with Pre-packed food products, namely, condiments, namely, mustard, mayonnaise, ketchup, horseradish, salad dressings, sauces, namely, barbeque sauce, chicken wing sauce, chili sauce, chimichurri sauce, cocktail sauce, curry sauce, garlic-based sauce, honey mustard sauce, marinades, teriyaki sauce, meat gravies, ready-made sauces, steak sauces, sloppy joe sauce, tomato sauce, chocolate sauce, caramel sauce, toppings, namely, chocolate topping, marshmallow topping, rubs, namely, spice rubs, barbecues dry rubs, meal replacements, namely, chocolate-based meal replacement bars, energy bars, namely, high protein cereal based energy bar, and snack foods, namely, snack cakes, granola snacks; dairy based snack food namely, ice cream, ice milk and frozen yogurt in International Class 030 (“Applicant’s Goods”).

As grounds for opposition it is alleged that:

1. Opposer is the applicant of United States Trademark Serial No. 86390627 for the mark PRIMAL KITCHEN. As indicated in this application, since at least as early as October 11, 2012, Opposer has been, and is now, using in interstate commerce, the mark PRIMAL KITCHEN in connection with the sale of *Retail store services featuring cooking and food preparation products; Pizza Cutters; Pizza Peels; Bread knives; Replacement blades for bread knives; Wooden Sauerkraut Tampers; Linen Bread Clothes; Rolling Pins; Baguette board; Baguette Peel; Fermentation lids (plastic lid for mason jar with airlock and seals); Fermentation Jars (glass swing top jar with airlock and seals); Pickling Gift Packs (contain fermentation lids with glass weight and pack of*

salt); Glass Pickling Weights (glass circles); Silicone seals; valves, and grommets; Mesh lids for sprouts; Grape Leaves; Sourdough, Starters (dehydrated flour with yeast culture); Brine Mixes (mixtures of many different herbs, spices, and salts); Salt.

2. Upon information and belief and according to the Patent and Trademark Office's ("PTO") records, Applicant is a corporation organized in California, with an address of 6202 Ramirez Mesa Drive Malibu, California.
3. Upon information and belief, Applicant is the owner of Applicant's Application.
4. Upon information and belief, Applicant filed its application under Section 1(b), and is not currently using the mark PRIMAL KITCHEN in commerce. Applicant has not filed a Statement of Use according to PTO records, and applicant's online store contains a single item which is listed merely as "COMING SOON" (Exhibit 1).
5. Opposer's PRIMAL KITCHEN mark is symbolic of extensive goodwill and consumer recognition built up by Opposer through substantial amounts of time and effort in selling cooking and food preparation products.
6. Opposer's mark has become famous in connection with its use of the mark, and is therefore entitled to a high degree and wide zone of protection.
7. The mark proposed for registration by Applicant, PRIMAL KITCHEN, is confusingly similar and equivalent to Opposer's PRIMAL KITCHEN.
8. Registration of the mark PRIMAL KITCHEN by the Applicant for *Pre-packed food products, namely, meal replacements, namely, nutritional supplement meal replacement bars, and energy bars, namely, nutritional supplement energy bars* in International Class 005, *Pre-packed food products, namely, sauces, namely, cranberry sauces, meal replacements, namely, fruit-based meal replacement bars, and snack foods, namely,*

meat-based snack foods, fruit-based snack food, nut and seed based snack food, vegetable based snack food, dairy based snack food excluding ice cream, ice milk and frozen yogurt, potato based snack food in international class 029, and for use in connection with *Pre-packed food products, namely, condiments, namely, mustard, mayonnaise, ketchup, horseradish, salad dressings, sauces, namely, barbeque sauce, chicken wing sauce, chili sauce, chimichurri sauce, cocktail sauce, curry sauce, garlic-based sauce, honey mustard sauce, marinades, teriyaki sauce, meat gravies, ready-made sauces, steak sauces, sloppy joe sauce, tomato sauce, chocolate sauce, caramel sauce, toppings, namely, chocolate topping, marshmallow topping, rubs, namely, spice rubs, barbecues dry rubs, meal replacements, namely, chocolate-based meal replacement bars, energy bars, namely, high protein cereal based energy bar, and snack foods, namely, snack cakes, granola snacks; dairy based snack food namely, ice cream, ice milk and frozen yogurt* in International Class 030, is likely to cause confusion with Opposer's PRIMAL KITCHEN mark for *Retail store services featuring cooking and food preparation products; Pizza Cutters; Pizza Peels; Bread knives; Replacement blades for bread knives; Wooden Sauerkraut Tampers; Linen Bread Clothes; Rolling Pins; Baguette board; Baguette Peel; Fermentation lids (plastic lid for mason jar with airlock and seals); Fermentation Jars (glass swing top jar with airlock and seals); Pickling Gift Packs (contain fermentation lids with glass weight and pack of salt); Glass Pickling Weights (glass circles); Silicone seals; valves, and grommets; Mesh lids for sprouts; Grape Leaves; Sourdough, Starters (dehydrated flour with yeast culture); Brine Mixes (mixtures of many different herbs, spices, and salts); Salt.*

9. The mark PRIMAL KITCHEN, as applied to the goods of both Opposer and Applicant, are advertised, marketed, and sold through the same source of trade to similar consumers. Thus, the Opposer's mark PRIMAL KITCHEN is used in the same channels of trade for the same goods as the Applicant's mark.
10. If Applicant is granted the registration herein opposed, it would therefore obtain at least a *prima facie* exclusive right to use of the alleged mark. Such registration would be a source of further damage and injury to Opposer.
11. For the reasons set forth in the foregoing paragraphs, Applicant is not entitled to register its alleged mark and the application should be denied in accordance with Section 2(d) of the Lanham Act, 15 U.S.C. 1052(d).

WHEREFORE, Opposer requests that the Opposition be sustained, and that registration of Application Serial No. 86150072 to Applicant for the mark PRIMAL KITCHEN not be registered.

Opposer submits herewith the required fee for filing the Notice of Opposition in the amount of \$300.00.

Respectfully Submitted,

Primal Kitchen, LLC,

By: /Erin C. Bray/

JungJin Lee, Esq.

Erin C. Bray, Esq.

Attorneys for Applicant

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CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2014, a true and correct copy of the foregoing Notice of Opposition was served upon:

DANIEL M. CISLO
Cislo & Thomas, LLP
12100 Wilshire Blvd., Suite 1700
Los Angeles, CALIFORNIA 90025
UNITED STATES

By US Mail.

I further certify that the foregoing paper is being filed electronically via the Electronic System for Trademark Trials and Appeals (ESTTA).

Date: January 19, 2014

/Erin C. Bray/
Erin C. Bray



(<http://primalkitchen.com/>)

1-888-774-6259



PRIMAL KITCHEN™ MAYO

HOLD THE CANOLA.

(12oz)

- Made with avocado oil
- Cage-free, organic eggs
- Primal & Paleo Approved
- Ingredients: Avocado Oil, Organic Cage-Free Eggs, Organic Egg yolks, Organic Vinegar, Salt
- Sugar, Gluten, Dairy, Soy & Canola Oil Free



COMING SOON

****Note:** If you live in a cold climate, your product may arrive frozen. Fear not! Simply refrigerate upon receipt and stir before enjoying. We could have chosen fillers and artificial preservatives to avoid this issue, but we don't think it's worth the sacrifice. Real food ingredients = separation.



Our Mayo is made with pure and wholesome avocado oil, cage-free organic eggs and organic vinegar – no offensive blend of synthetic industrial seed oils or trans fats allowed! We opted for rich, healthful fats so we wouldn't have to add sugar. Primal Kitchen's Mayo is 100% Grok approved. Healthy mayo... who knew?



LEMON CAESAR DRESSING

INGREDIENTS

1 tsp lemon peel (finely grated)
 3 tbsp lemon juice
 1 tsp Dijon mustard
 1 tsp anchovy paste
 1 tsp Worcestershire sauce
 2 cloves garlic, minced
 1/2 cup olive oil
 1 tbsp Primal Kitchen™ Mayo
 Salt and pepper to taste

INSTRUCTIONS

In a bowl, whisk all ingredients except oil and mayo. Once combined, slowly add oil, whisking constantly until smooth (if you stop, the dressing could break). Once combined, whisk in mayo until smooth and creamy. Refrigerate until ready to serve.



FAQS

Q: Does it need to be refrigerated?

A: Yes, after you open your jar of mayo, it needs to be refrigerated.

Q: How long does it last?

A: At company headquarters, not too long! Depends on your appetite for awesome tasting mayo. Oh - you meant the shelf life? Primal Kitchen mayo is good for 9 months, assuming you properly refrigerate it.

Q: How long does it last in the fridge after opening?

A: We recommend you consume within 60 days of opening. (That shouldn't be a problem if your mayo habit is anything like ours.)

Q: Is your vinegar derived from corn?

A: Heck no! We use vinegar derived from Non-GMO beets.

Q: WHY DID YOU CHOOSE AVOCADO OIL?

A: Full, rich, lingering flavor aside, we chose avocado oil for its fat composition, phytosterols and polyhydroxylated fatty alcohols, all of which are anti-inflammatory in nature. It's also notably high in Vitamin E and monounsaturated omega-9 fatty acids. In a recent study, both high and low doses of avocado oil enhanced alpha-carotene, beta-carotene and lutein absorption from a salad by as much as 15 times compared to a salad without avocado oil.

Q: WHAT IS THE VITAL FAT COMPOSITION OF AVOCADO OIL?

A: Omega-6 to omega-3 ratio: 13.1:1 Omega-3 fatty acids: 1% Omega-6 fatty acids: 12.5% Omega-9 fatty acids: 67.9% Saturated fatty acids: 11.6%

Q: HOW LONG DOES PRIMAL KITCHEN MAYO LAST IN MY CABINET BEFORE I OPEN A JAR?

A: Primal Kitchen Mayo is good for 9 months, unopened. (We dare you to attempt to keep a jar that long.)

Q: HOW LONG DOES IT LAST IN THE FRIDGE AFTER OPENING?

A: Depends on your appetite for awesome tasting mayo. At company headquarters, not too long! We recommend you consume within 60 days of opening.

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