

ESTTA Tracking number: **ESTTA653764**

Filing date: **02/03/2015**

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	REBEL KITCHEN LLC
Granted to Date of previous extension	02/28/2015
Address	79-7399 Mamalahoa Highway Kealahou, HI 96750 UNITED STATES
Attorney information	Joshua M. Gerben, Esq. Gerben Law Firm, PLLC 1050 Connecticut Ave NW10th Floor Washington, DC 20036 UNITED STATES jgerben@gerbenlawfirm.com Phone:202-294-2287

Applicant Information

Application No	86167672	Publication date	12/30/2014
Opposition Filing Date	02/03/2015	Opposition Period Ends	02/28/2015
Applicant	Craze Foods Limited 61 Grosvenor Street London, W1K3JE UNITED KINGDOM		

Goods/Services Affected by Opposition

<p>Class 029. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Milk based drinks; drinks consisting principally of milk; coconut-based beverage used as a milk substitute; rice milk for use as a milk substitute; cashew milkdrinks for use as a milk substitute; coconut fat; flavored milk beverages; drinks made from dairy products, namely, milk, cream or yogurt-based drinks; flavored milk and milkshakes; soy milk for use as a milk substitute; fruit jams; preserved fruit and vegetables; ready-cooked meals consisting principally of meat, fish, eggs or vegetables; yogurt, yogurt-based beverages; whipping cream; prepared nuts, seasoned nuts, roasted nuts; nut milk and nut juice for use as a milk substitute; edible oils and fats; snack foods made from fruits and vegetables; non-alcoholic drinks flavoured with chocolate or cocoa, namely, chocolate milk, chocolate milkshakes</p>
<p>Class 030. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Roasted cocoa; powdered cocoa; granulated cocoa; aerated drinks with a coffee base; drinks containing cocoa; cocoa-based drinks; drinks prepared from cocoa; chocolate-based drinks; popcorn; coffee; tea; herbal tea; iced tea; artificial coffee; rice; flour and preparations made from cereals, namely, bread, brioche, gingerbread, biscuits, breakfast cereals, cereal-based snack foods and cereal based energy bars; flavorings made from meat; bread, pastry and confectionery, namely, cupcakes, cheese cakes, tarts, muffins, bread loaves, cookies, brownies, cakes, macaroons, gingerbread, frozen confectionery, confectionery baking chips;</p>

ices, namely, fruit ices, flavored ices, Italian ice, shaved ice confections, water ice, ice milk; sugar, honey, treacle; yeast, baking-powder; salt; mustard; vinegar, condiments; spices; natural sweeteners; noodles; spaghetti; pancakes; pasta; bakery products; confectionary consisting principally of nuts; salad dressings; grain- and rice-based snack food and savory snacks; non-alcoholic drinks flavoured with chocolate or cocoa, namely, hotchocolate, chocolate-flavoured coffee

Class 032. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Non-alcoholic beverages, namely, punches, cocktails, smoothies and carbonated beverages; fruit beverages and fruit juices; syrups and other preparations for making beverages; lemonades; non-alcoholic peanut milk not being a milk substitute; milk of almonds for use as a beverage; preparations for making liqueurs; smoothie drinks based on fruit or vegetable mixtures; tomato juice; vegetable juices; fruit juices; coconut drinks not being a milk substitute; coconut-water-mixed fruit juices; coconut-milk-mixed fruit drinks; energy drinks; coconut milk drinks not being milk substitutes; rice milk drinks not being milk substitutes; cashew milk drinks not being milk substitutes

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.	86198418	Application Date	02/20/2014
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	REBEL KITCHEN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 0 First Use In Commerce: 0 Cheesecake; Cookies; Hot sauce; Marinades; Salad dressings Class 043. First use: First Use: 2011/05/00 First Use In Commerce: 2011/05/00 Restaurant services		

Attachments	86198418#TMSN.png(bytes) Rebel Kitchen Opposition Feb 3 2015.pdf(206849 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	/Joshua M. Gerben/
Name	Joshua M. Gerben, Esq.
Date	02/03/2015

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

Rebel Kitchen LLC	§	
	§	
Opposer,	§	
	§	
v.	§	Opposition No. _____
	§	
Craze Foods Limited	§	Mark: REBEL KITCHEN
	§	
	§	
Applicant.	§	
	§	
	§	Serial No. 86167672
	§	

NOTICE OF OPPOSITION

Opposer, Rebel Kitchen LLC (hereinafter referred to as “Opposer”), a Hawaii limited liability company, believes that it will be damaged by the registration of the mark shown in Application Serial No. 86167672 and hereby opposes this application. This application was filed by Craze Foods Limited, a United Kingdom limited company (hereinafter referred to as “Applicant”), and was published in the Official Gazette on December 30, 2014.

As grounds for the opposition, Opposer alleges as follows:

1. The Applicant filed a trademark application on January 16, 2014 under a §1(b)

Intent-to-Use filing basis for REBEL KITCHEN for:

“milk based drinks; drinks consisting principally of milk; coconut-based beverage used as a milk substitute; rice milk for use as a milk substitute; cashew milk drinks for use as a milk substitute; coconut fat; flavored milk beverages; drinks made from dairy products, namely, milk, cream or yogurt-based drinks; flavored milk and milkshakes; soy milk for use as a milk substitute; fruit jams; preserved fruit and vegetables; ready-cooked meals consisting principally of meat, fish, eggs or vegetables; yogurt, yogurt-based beverages; whipping cream; prepared nuts, seasoned nuts, roasted

nuts; nut milk and nut juice for use as a milk substitute; edible oils and fats; snack foods made from fruits and vegetables; non-alcoholic drinks flavoured with chocolate or cocoa, namely, chocolate milk, chocolate milkshakes” in International Class 029;

“Roasted cocoa; powdered cocoa; granulated cocoa; aerated drinks with a coffee base; drinks containing cocoa; cocoa-based drinks; drinks prepared from cocoa; chocolate-based drinks; popcorn; coffee; tea; herbal tea; iced tea; artificial coffee; rice; flour and preparations made from cereals, namely, bread, brioche, gingerbread, biscuits, breakfast cereals, cereal-based snack foods and cereal based energy bars; flavorings made from meat; bread, pastry and confectionery, namely, cupcakes, cheese cakes, tarts, muffins, bread loaves, cookies, brownies, cakes, macarons, gingerbread, frozen confectionery, confectionery baking chips; ices, namely, fruit ices, flavored ices, Italian ice, shaved ice confections, water ice, ice milk; sugar, honey, treacle; yeast, baking-powder; salt; mustard; vinegar, condiments; spices; natural sweeteners; noodles; spaghetti; pancakes; pasta; bakery products; confectionary consisting principally of nuts; salad dressings; grain- and rice-based snack food and savory snacks; non-alcoholic drinks flavoured with chocolate or cocoa, namely, hot chocolate, chocolate-flavoured coffee” in International Class 030;

“non-alcoholic beverages, namely, punches, cocktails, smoothies and carbonated beverages; fruit beverages and fruit juices; syrups and other preparations for making beverages; lemonades; non-alcoholic peanut milk not being a milk substitute; milk of almonds for use as a beverage; preparations for making liqueurs; smoothie drinks based on fruit or vegetable mixtures; tomato juice; vegetable juices; fruit juices; coconut drinks not being a milk substitute; coconut-water-mixed fruit juices; coconut-milk-mixed fruit drinks; energy drinks; coconut milk drinks not being milk substitutes; rice milk drinks not being milk substitutes; cashew milk drinks not being milk substitutes” in Class 032;

and was assigned Serial Number 86167672 (the “Applicant’s Application”).

2. Opposer filed a trademark application on February 20, 2014 for REBEL KITCHEN under a §1(a) filing basis for “restaurant services” in International Class 043 (“Opposer’s Services”) and under a §1(b) Intent-to-Use filing basis for “cheesecake; cookies; hot

sauce; marinades; salad dressings” in International Class 030. Opposer’s application was assigned serial number 86198418.

3. Applicant’s Application is for a mark identical to Opposer’s REBEL KITCHEN mark.

4. Applicant’s Application is for goods that are highly related to Opposer’s Services.

5. Opposer has offered Opposer’s Services in the United States under the REBEL KITCHEN mark since at least as early as May 2011, a date prior to the filing date of Applicant’s Application.

6. Opposer has openly and continuously used the REBEL KITCHEN mark in the United States since at least as early as May 2011.

7. Opposer has promoted Opposer’s Services under the REBEL KITCHEN mark in the United States since at least as early as May 2011 and has built up substantial goodwill in the mark.

8. Opposer’s use has been valid and continuous since its date of first use and has not been abandoned. Opposer’s mark is symbolic of extensive goodwill and consumer recognition built up by Opposer through substantial amounts of time and effort in promotion of Opposer’s Services.

9. Therefore, the Opposer has priority on the REBEL KITCHEN mark based upon its open and continuous use of the REBEL KITCHEN mark in the United States prior to the filing date of Applicant’s Application.

10. In view of the fact that the parties’ respective marks are identical, and that the goods and services are highly related, it is alleged that Applicant’s mark so resembles Opposer’s mark previously used in the United States, and not abandoned, as to be likely to cause confusion,

or to cause mistake, or to deceive, and therefore, should be refused under Section 2(d) of the Lanham Act.

11. If Applicant is granted the registration herein opposed, it would thereby obtain at least a *prima facie* exclusive right to the use of its mark. Such registration would be a source of damage and injury to Opposer, and would likely stand in the way of Opposer's good faith attempt to register its mark REBEL KITCHEN.

12. In fact, on November 28, 2014, the Opposer's Application was suspended by the examiner for the United States Patent and Trademark Office because the examiner was concerned the Opposer's and Applicant's mark, if co-existing, could cause confusion in the marketplace.

13. In view of the above, Applicant is not entitled to federal registration of its alleged mark REBEL KITCHEN as Opposer has priority based on use of the identical REBEL KITCHEN mark in commerce in connection with highly related goods and services.

14. By reason of all the foregoing, Opposer will be gravely damaged by the registration of Applicant's mark.

WHEREFORE, by its undersigned attorney, Rebel Kitchen LLC respectfully requests that this Notice of Opposition be sustained and that registration of the mark REBEL KITCHEN, Serial No. 86167672, be refused.

Respectfully submitted,



Dated: February 3, 2015

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Washington, DC 20036
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CERTIFICATE OF SERVICE

I hereby certify that on February 3, 2015, a true and correct copy of the foregoing Notice of Opposition is being served by certified mail, return receipt requested on Applicant as shown in the correspondence record in the Office, as follows:

Christopher McElwain
Lariviere, Grubman & Payne, LLP
19 Upper Ragsdale Drive STE 200
Monterey, California 93940-7808
United States

Dated: February 3, 2015



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