

ESTTA Tracking number: **ESTTA675224**

Filing date: **06/01/2015**

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	Vamix, naamloze vennootschap
Granted to Date of previous extension	06/03/2015
Address	Moutstraat 64 Gent, 9000 BELGIUM

Attorney information	Martin W. Schiffmiller Kirschstein Israel Schiffmiller & Pieroni, P.C. 425 Fifth Avenue, 5th Floor New York, NY 10016-2223 UNITED STATES mws@kirschsteinlaw.com Phone:212-697-3750
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Applicant Information

Application No	86389980	Publication date	02/03/2015
Opposition Filing Date	06/01/2015	Opposition Period Ends	06/03/2015
Applicant	Aryzta LLC Suite 900 Los Angeles, CA 90045 UNITED STATES		

Goods/Services Affected by Opposition

Class 030. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Bakery goods; Brownies

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.	86531895	Application Date	02/11/2015
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BAKE UP		

Design Mark	
Description of Mark	The mark consists of the words "BAKE UP" with a fanciful design of a timer.
Goods/Services	Class 030. First use: First Use: 2001/04/13 First Use In Commerce: 2011/10/28 Flour; preparations made from cereals, namely, breakfast cereals; bakery goods; bread, pastries; viennese bread and buns; cookies; cakes; bread mixes; and mixes for making pastries, cookies, buns and pancakes

Attachments	86531895#TMSN.png(bytes) OPP_20150601120041.pdf(125487 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	/Martin W. Schiffmiller/
Name	Martin W. Schiffmiller
Date	06/01/2015

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

In the Matter of Application Serial No. 86-389980
filed September 9, 2014 for the mark **BAKE-UP BROWNIES**
Published in the Official Gazette of February 3, 2015

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Vamix, naamloze vennootschap, :
Opposer, :
v. : Opposition No.
Aryzta, LLC, :
Applicant. :
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NOTICE OF OPPOSITION

Vamix, naamloze vennootschap, a joint stock company organized and existing under the laws of Belgium, located and doing business at Moutstraat 64, Gent 9000, Belgium, believes that it will be damaged by registration of the mark shown in the above-mentioned Application Serial No. 86-389980 and hereby opposes the same.

As grounds of opposition, it is alleged that:

1. Opposer has for many years been engaged in the manufacture, distribution and sale of various types of bakery goods, including, e.g., pastries, cakes, cookies and buns. Opposer's products are favorably known by the consuming public in the United States because of the high quality of said products.

2. Since long prior to filing date of Application Serial No. 86-389980, Opposer adopted, commenced to use and has continued to use the trademark **BAKE UP** in a stylized format, namely,



(hereinafter referred to as “**BAKE UP & Design**”) in U.S. commerce in connection with its bakery goods and related products. The trademark **BAKE UP & Design** identifies a single source of the goods to which it has been applied, that source being Opposer.

3. Bakery goods and related products bearing Opposer’s mark **BAKE UP & Design** have been distributed and sold throughout the United States.

4. Opposer has filed Application Ser. No. 86-531895 for registration of its mark **BAKE UP & Design** in the United States Patent and Trademark Office in connection with the following goods: “Flour; preparations made from cereals, namely, breakfast cereals; bakery goods; bread, pastries; viennese bread and buns; cookies; cakes; bread mixes; and mixes for making pastries, cookies, buns and pancakes.” Application Ser. No. 86-531895 states that the mark **BAKE UP & Design** was first used in connection with Opposer’s goods on April 13, 2001 and was first used in the United States in connection with Opposer’s goods on October 28, 2011.

5. The goods to which Applicant intends to apply the published mark **BAKE-UP BROWNIES**, namely, "bakery goods; brownies," are identical and/or closely related to the goods on which Opposer has used its mark **BAKE UP & Design** in U.S. commerce. The parties' respective goods are of such similar nature that when sold under the same or substantially similar trademarks, they would be considered by the public as originating from the same source. Upon information and belief, the parties' above-identified goods would be sold to the same class of customers.

6. Moreover, Applicant's trademark **BAKE-UP BROWNIES** for bakery goods and brownies is confusingly similar to Opposer's trademark **BAKE UP & Design** used for its competing goods. Accordingly, it is likely that when Applicant's mark **BAKE-UP BROWNIES** is applied to its goods, confusion or mistake among purchasers and potential purchasers will be caused and such persons will be deceived into believing that Applicant's goods emanate from Opposer or are in some way approved by or associated with Opposer or its goods.

7. Because of the confusion, mistake or deception which is likely to result from the concurrent use and/or registration by Opposer and Applicant of their respective trademarks **AKE UP & Design** and **BAKE-UP BROWNIES** in connection with Opposer's products and Applicant's products, Opposer's business and reputation and its rights in its trademark **BAKE UP & Design** will be impaired by registration of the mark **BAKE-UP BROWNIES**.

WHEREFORE, Opposer demands judgment sustaining this opposition and adjudging that Applicant is not entitled to the registration of the trademark for which it has made Application Serial No. 86-389980.

Respectfully submitted,

KIRSCHSTEIN, ISRAEL,
SCHIFFMILLER & PIERONI, P.C.
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New York, New York 10016-2223
(212) 697-3750

By /Martin W. Schiffmiller/
Martin W. Schiffmiller

Dated: New York, New York
June 1, 2015

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Opposition was served on Applicant via first class mail, postage prepaid, in an envelope addressed to Applicant's counsel:

Carlo F. Van den Bosch, Esq.
Sheppard Mullin Richter & Hampton LLP
650 Town Center Drive, 4th Floor
Costa Mesa, CA 92626

this 1st day of June, 2015.

/Deborah A. Egan/

Deborah A. Egan