

ESTTA Tracking number: **ESTTA693257**

Filing date: **09/02/2015**

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	BBK Tobacco & Foods, LLP d/b/a HBI International
Granted to Date of previous extension	09/23/2015
Address	3401 W Papago Street Phoenix, AZ 85009 UNITED STATES

Attorney information	Brendan N. Mahoney, Esq. BBK Tobacco & Foods, LLP d/b/a HBI International 3401 W Papago St Phoenix, AZ 85009 UNITED STATES legal@hbiin.com Phone:602-384-7482
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Applicant Information

Application No	86481763	Publication date	05/26/2015
Opposition Filing Date	09/02/2015	Opposition Period Ends	09/23/2015
Applicant	171 GROUP LLC 7486 La Jolla Blvd. La Jolla, CA 92037 UNITED STATES		

Goods/Services Affected by Opposition

Class 034. First Use: 2014/08/18 First Use In Commerce: 2014/08/18 All goods and services in the class are opposed, namely: Tobacco grinders

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	common law priority

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3980885	Application Date	09/29/2010
Registration Date	06/21/2011	Foreign Priority Date	NONE
Word Mark	CYCLONES PRE ROLLED PERFECT CONE		

Design Mark	
Description of Mark	The mark consists of the stylized word "CYCLONES" with a cyclone design element representing the letter "O". Beneath the word "CYCLONES" appears the wording "PRE ROLLED PERFECT CONE", the cyclone design element extends between the terms "PRE ROLLED" and "PERFECT CONE".
Goods/Services	Class 034. First use: First Use: 2009/03/15 First Use In Commerce: 2009/03/15 Cigarette rolling papers; Cigarettes; Cigars; Tobacco

Attachments	85140804#TMSN.png(bytes) Sabertooth Cylone Notice of Opposition.pdf(60234 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	Brendan N. Mahoney, Esq.
Date	09/02/2015

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

Mark Class and Related Goods	Application Date Dates of First Use	Registration Number and Date
Cyclones Pre-Rolled Perfect Cone IC 034 - Cigarette rolling papers; Cigarettes; Cigars; Tobacco	Application September 29, 2010 First Use March 15, 2009	3980885 June 21, 2011

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 at least 2009.

4. In addition to Opposer’s Registered Marks, Opposer uses the following marks, not registered with the PTO, to identify rolling papers (cones and tubes), all sold, or offered for sale, by Opposer in U.S. interstate commerce (collectively "Opposer's Common Law Marks"):

- Cyclones Clear Pre Rolled Transparent Cone
- Cyclones Blakk Widow Pre Rolled Cigar Cone
- Cyclones Pre Rolled Perfect Cone Double
- Cyclones Short Fat Nubbz Blueberry Triple
- Cyclones Xtraslo Pre-Rolled Perfect Cone Triple Wrapped
- Cyclones Pre Rolled Clear Cigar Tubes
- Cyclones Classic Natural

5. Opposer itself, or through its predecessor, has used, some of Opposer's Common Law Marks in U.S. interstate commerce for the sale of rolling papers and tobacco products since as early as 2009.

6. 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.

7. Applicant's Mark was published for opposition in the Official Gazette of May 26, 2015.

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

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

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

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

12. 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

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

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

19. 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.

20. WHEREFORE, Opposer requests that its Opposition be sustained, that the registration of Applicant's Mark be refused, and that Application Serial No. 86/481,763 be rejected.

Dated this 2nd day of September, 2015.

BBK TOBACCO & FOODS, LLP



Brendan N. Mahoney

General Counsel

3401 West Papago Street

Phoenix, AZ 850009

ATTORNEY FOR OPPOSER

CERTIFICATION

I certify that a copy of the foregoing Petition for Cancellation was sent this 2nd day of September, 2015, via United States mail, postage prepaid, to:

171 Group, LLC
7486 La Jolla Blvd.
La Jolla, CALIFORNIA 92037

And courtesy copy to:

John Salcido
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And via email to trademarks@legalforce.com



Brendan N. Mahoney