

ESTTA Tracking number: **ESTTA508935**

Filing date: **12/04/2012**

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	Reynolds Innovations Inc.		
Entity	Corporation	Citizenship	North Carolina
Address	401 North Main Street Winston-Salem, NC 27102 UNITED STATES		

Attorney information	William M. Bryner Kilpatrick Townsend & Stockton LLP 1001 West Fourth Street Winston-Salem, NC 27101 UNITED STATES wbryner@ktslaw.com, hhenderson@ktslaw.com, jburns@ktslaw.com, tadmin@ktslaw.com Phone:336-607-7300		
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### Applicant Information

Application No	85630791	Publication date	11/06/2012
Opposition Filing Date	12/04/2012	Opposition Period Ends	12/06/2012
Applicant	BBK TOBACCO & FOODS, LLP 3315 W. BUCKEYE ROAD PHOENIX, AZ 85009 UNITED STATES		

### Goods/Services Affected by Opposition


Class 034. First Use: 1999/06/01 First Use In Commerce: 1999/06/01 All goods and services in the class are opposed, namely: Cigarette rolling papers; Matches; Tobacco pipes
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### Grounds for Opposition

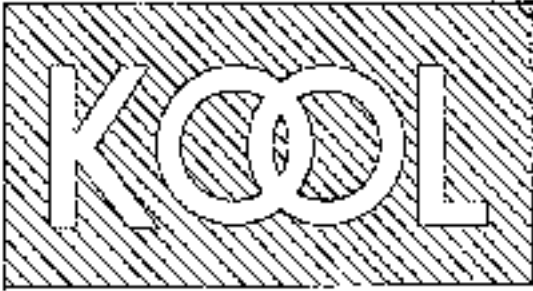
Priority and likelihood of confusion	Trademark Act section 2(d)
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### Marks Cited by Opposer as Basis for Opposition


U.S. Registration No.	508538	Application Date	11/24/1947
Registration Date	04/12/1949	Foreign Priority Date	NONE
Word Mark	KOOL		

Design Mark	
Description of Mark	NONE
Goods/Services	Class U017 (International Class 034). First use: First Use: 1931/11/20 First Use In Commerce: 1931/11/20 CIGARETTES

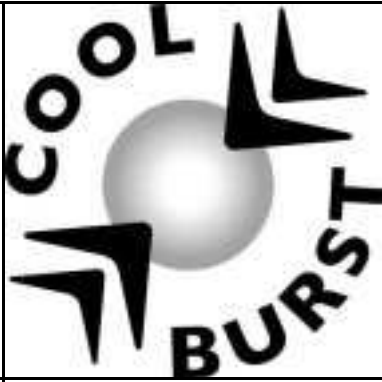
U.S. Registration No.	747482	Application Date	07/03/1962
Registration Date	04/02/1963	Foreign Priority Date	NONE
Word Mark	KOOL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U017 (International Class 034). First use: First Use: 1931/11/20 First Use In Commerce: 1931/11/20 Cigarettes		

U.S. Registration No.	747490	Application Date	07/25/1962
Registration Date	04/02/1963	Foreign Priority Date	NONE
Word Mark	KOOL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U017 (International Class 034). First use: First Use: 1932/12/00 First Use In Commerce: 1932/12/00 Cigarettes		

U.S. Registration No.	2218589	Application Date	10/10/1997
Registration Date	01/19/1999	Foreign Priority Date	NONE
Word Mark	KOOL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 034. First use: First Use: 1997/09/24 First Use In Commerce: 1997/09/24 Cigarettes		

U.S. Registration No.	3797510	Application Date	09/14/2009
Registration Date	06/01/2010	Foreign Priority Date	NONE
Word Mark	COOL BURST		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 034. First use: First Use: 2010/01/31 First Use In Commerce: 2010/01/31 Cigarettes		

U.S. Registration No.	3797511	Application Date	09/14/2009
Registration Date	06/01/2010	Foreign Priority Date	NONE
Word Mark	COOL BURST		

Design Mark	
Description of Mark	The mark consists of the words "COOL BURST" and the image of a ball with two right facing arrows and two left facing arrows.
Goods/Services	Class 034. First use: First Use: 2010/01/31 First Use In Commerce: 2010/01/31 Cigarettes

Attachments	71542076#TMSN.gif ( 1 page )( bytes ) 72149705#TMSN.gif ( 1 page )( bytes ) 75371326#TMSN.gif ( 1 page )( bytes ) 77825916#TMSN.jpeg ( 1 page )( bytes ) 77825921#TMSN.jpeg ( 1 page )( bytes ) Notice of Opposition & Ex. A.PDF ( 19 pages )(899834 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	/William M. Bryner/
Name	William M. Bryner
Date	12/04/2012

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

REYNOLDS INNOVATIONS INC.,	)	
	)	In the matter of Application
Opposer,	)	Serial No. 85/630,791
	)	
v.	)	Mark: COOL JAY'S
	)	
	)	Opposition No. _____
BBK TOBACCO & FOODS, LLP	)	
D/B/A HBI INTERNATIONAL,	)	
	)	
Applicant.	)	

**NOTICE OF OPPOSITION**

Reynolds Innovations Inc. (“Opposer”), a North Carolina corporation having its principal place of business at 401 North Main Street, Winston-Salem, North Carolina 27102, believes that it will be damaged by the registration of the trademark COOL JAY’S, as shown in U.S. Trademark App. Ser. No. 85/630,791 for the goods identified therein (the “Application”), and hereby opposes the same.

As grounds for the opposition, Opposer alleges the following:

1. Opposer, together with its corporate affiliates and its predecessors-in-interest, has been and is engaged in the manufacture, distribution, and sale of cigarettes, smokeless tobacco and other tobacco products. Opposer’s predecessors, affiliates and licensees, including but not limited to R.J. Reynolds Tobacco Company, shall be referred to collectively as “Reynolds.”

2. For over eighty (80) years, and since long before Applicant’s first use (actual or constructive) of the mark shown in the Application, Reynolds has continuously used, and presently uses, the trademark KOOL both standing alone and together with other words

and/or design elements in interstate commerce throughout the United States in connection with the advertising, promotion, and sale of Reynolds's tobacco products, namely, cigarettes and smoking tobacco.

3. In addition, Reynolds has used the trademark COOL BURST , both standing alone and together with other design elements, since before Applicant's first use (actual or constructive) of the mark shown in the Application. (Reynolds's trademarks incorporating the designations KOOL and/or COOL BURST shall be referred to collectively hereinafter as the "COOL Marks.")

4. Opposer owns the following U.S. Trademark Registrations for the COOL Marks (the "COOL Registrations") on the Principal Register of the United States Patent and Trademark Office (the "USPTO"):

- a. Reg. No. 508,538 of KOOL (stylized), issued April 12, 1949, for cigarettes in International Class 34;
- b. Reg. No. 747,482 of KOOL issued April 2, 1963, for cigarettes in International Class 34;
- c. Reg. No. 747,490 of KOOL & Design, issued April 2, 1963, for cigarettes in International Class 34;
- d. Reg. No. 2,218,589 of KOOL & Design, issued January 19, 1999, for cigarettes in International Class 34;
- e. Reg. No. 3,797,510 for COOL BURST, issued June 1, 2010, for cigarettes in International Class 34; and
- f. Reg. No. 3,797,511 for COOL BURST & Design, issued June 12, 2010, for cigarettes in International Class 34.

Pursuant to 37 C.F.R. § 2.122(d)(1), current printouts of information from electronic database records of the USPTO showing the current status and title of the COOL

Registrations are attached as **Exhibit A**.

5. As a result of Reynolds's use in commerce of the COOL Marks, the COOL Marks symbolize the extensive goodwill and consumer recognition established by Reynolds. The COOL Marks identify and distinguish Reynolds's tobacco products from competing products manufactured by others.

6. On May 21, 2012, Applicant BBK Tobacco & Foods, LLP d/b/a HBI International ("Applicant") filed the Application under Lanham Act § 1(a), 15 U.S.C. § 1051(a), by which Applicant seeks to register the mark COOL JAY'S in standard character format (the "COOL JAY'S Mark") in connection with "cigarette rolling papers, matches, tobacco pipes" in International Class 34.

7. Applicant's COOL JAY'S Mark, as shown in the Application, is confusingly similar in sound and appearance to Opposer's previously used COOL Marks.

8. The goods identified in the opposed Application are closely related to the goods on which the COOL Marks are used and have previously been used.

9. Applicant's COOL JAY'S Mark, when used in connection with Applicant's goods as identified in the Application, so resembles the previously used COOL Marks as to be likely to cause confusion, to cause mistake, and/or to deceive members of the public concerning a sponsorship or endorsement of, or an affiliation, connection, or association with the sources of goods sold under the COOL Marks in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), with consequent injury to Opposer, the public, and the trade.

10. Applicant's COOL JAY'S Mark, as shown in the Application, is confusingly similar in sound and appearance to the previously registered COOL Marks as shown in the COOL Registrations.

11. The goods identified in the Application are highly related to the goods

identified in the COOL Registrations.

12. Applicant's COOL JAY'S Mark, when used in connection with Applicant's goods as identified in the Application, so resembles the previously registered marks shown in the COOL Registrations as to be likely to cause confusion, to cause mistake, and/or to deceive members of the public concerning a sponsorship or endorsement of, or an affiliation, connection, or association with the sources of goods sold under the COOL Marks, as shown in the COOL Registrations, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), with consequent injury to Opposer, the public, and the trade.

13. Pursuant to Section 13(a) of the Lanham Act, 15 U.S.C. § 1063(a), Opposer believes it will be damaged by registration of Applicant's COOL JAY'S Mark in that members of the purchasing public and/or the trade are likely to be confused or mistaken that Applicant's goods offered under Applicant's COOL JAY'S Mark originate from Opposer, or from the same source as goods sold under Opposer's COOL Marks, or that such goods of Applicant are sponsored by, endorsed by, or affiliated with the source of goods sold under the Opposer's COOL Marks. Such likelihood of confusion results in damage to the goodwill among purchasers and the trade that Opposer's COOL Marks symbolize. Registration of Applicant's COOL JAY'S Mark will support and assist Applicant in the confusing and misleading use of Applicant's COOL JAY'S Mark, and, in addition, will give color and exclusive statutory right to Applicant in violation and derogation of the prior and superior rights of Reynolds.

**WHEREFORE**, Opposer requests that registration of Applicant's COOL JAY'S Mark, as shown in the Application, be refused.

The required fee for instituting this opposition proceeding is being submitted





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

REYNOLDS INNOVATIONS INC.,	)	
	)	In the matter of Application
Opposer,	)	Serial No. 85/630,791
	)	
v.	)	Mark: COOL JAY'S
	)	
	)	Opposition No. _____
BBK TOBACCO & FOODS, LLP	)	
D/B/A HBI INTERNATIONAL,	)	
	)	
Applicant.	)	

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing NOTICE OF OPPOSITION was served on counsel for Applicant on December 4, 2012 via first class United States mail to:

Michael R. Sneberger, Esq.  
BBK Tobacco & Foods LLP  
3315 West Buckeye Road #4  
Phoenix, Arizona 85009-5600

/hwh/ \_\_\_\_\_  
*Counsel for Opposer*

**CERTIFICATE OF TRANSMITTAL**

I hereby certify that a true copy of the foregoing NOTICE OF OPPOSITION is being filed electronically with the TTAB via ESTTA on this day, December 4, 2012.

/hwh/ \_\_\_\_\_  
*Counsel for Opposer*

**EXHIBIT A**



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# KOOL

**Word Mark** KOOL

**Goods and Services** IC 034. US 017. G & S: CIGARETTES. FIRST USE: 19311120. FIRST USE IN COMMERCE: 19311120

**Mark Drawing Code** (5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

**Serial Number** 71542076

**Filing Date** November 24, 1947

**Current Basis** 1A

**Original Filing Basis** 1A

**Registration Number** 0508538

**Registration Date** April 12, 1949

**Owner** (REGISTRANT) BROWN & WILLIAMSON TOBACCO CORPORATION CORPORATION DELAWARE 1600 WEST HILL STREET LOUISVILLE KENTUCKY  
  
(LAST LISTED OWNER) REYNOLDS INNOVATIONS INC. CORPORATION NORTH CAROLINA 401 North Main Street Winston-Salem NORTH CAROLINA 27102

**Assignment Recorded** ASSIGNMENT RECORDED

**Attorney of Record** William M. Bryner

**Prior Registrations** 0300817

**Type of Mark** TRADEMARK

**Register** PRINCIPAL-2(F)

**Affidavit Text** SECT 15. SECTION 8(10-YR) 20100308.

**Renewal** 3RD RENEWAL 20100308

**Live/Dead  
Indicator** LIVE

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**Typed Drawing**

**Word Mark** KOOL

**Goods and Services** IC 034. US 017. G & S: Cigarettes. FIRST USE: 19311120. FIRST USE IN COMMERCE: 19311120

**Mark Drawing Code** (1) TYPED DRAWING

**Serial Number** 72148295

**Filing Date** July 3, 1962

**Current Basis** 1A

**Original Filing Basis** 1A

**Registration Number** 0747482

**Registration Date** April 2, 1963

**Owner** (REGISTRANT) Brown & Williamson Tobacco Corporation CORPORATION DELAWARE 1600 W. HILL ST. Louisville KENTUCKY

(LAST LISTED OWNER) REYNOLDS INNOVATIONS INC. CORPORATION NORTH CAROLINA 401 North Main Street Winston-Salem NORTH CAROLINA 27102

**Assignment Recorded** ASSIGNMENT RECORDED

**Attorney of Record** William M. Bryner

**Prior Registrations** 0300817;0508538

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Affidavit Text** SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20120517.

**Renewal** 3RD RENEWAL 20120517

**Live/Dead Indicator** LIVE

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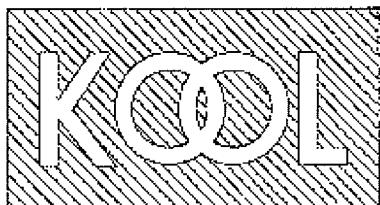
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**Word Mark** KOOL  
**Goods and Services** IC 034. US 017. G & S: Cigarettes. FIRST USE: 19321200. FIRST USE IN COMMERCE: 19321200  
**Mark Drawing Code** (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS  
**Design Search Code** 26.11.12 - Rectangles with bars, bands and lines  
 26.11.21 - Rectangles that are completely or partially shaded  
**Serial Number** 72149705  
**Filing Date** July 25, 1962  
**Current Basis** 1A  
**Original Filing Basis** 1A  
**Registration Number** 0747490  
**Registration Date** April 2, 1963  
**Owner** (REGISTRANT) Brown & Williamson Tobacco Corporation CORPORATION DELAWARE 1600 W. HILL ST. Louisville KENTUCKY  
 (LAST LISTED OWNER) REYNOLDS INNOVATIONS INC. CORPORATION NORTH CAROLINA 401 North Main Street Winston-Salem NORTH CAROLINA 27102  
**Assignment Recorded** ASSIGNMENT RECORDED  
**Attorney of Record** William M. Bryner  
**Prior Registrations** 0300817;0508538



**Description of Mark** The drawing is lined for the color green.  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Affidavit Text** SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20030423.  
**Renewal** 2ND RENEWAL 20030423  
**Live/Dead Indicator** LIVE

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**Word Mark** KOOL

**Goods and Services** IC 034. US 002 008 009 017. G & S: Cigarettes. FIRST USE: 19970924. FIRST USE IN COMMERCE: 19970924

**Mark Drawing Code** (5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

**Serial Number** 75371326

**Filing Date** October 10, 1997

**Current Basis** 1A

**Original Filing Basis** 1A

**Published for Opposition** October 27, 1998

**Registration Number** 2218589

**Registration Date** January 19, 1999

**Owner** (REGISTRANT) Brown & Williamson Tobacco Corporation CORPORATION DELAWARE 200 Brown & Williamson Tower 401 South Fourth Avenue Louisville KENTUCKY 40202  
 (LAST LISTED OWNER) REYNOLDS INNOVATIONS INC. CORPORATION NORTH CAROLINA 401 North Main Street Winston-Salem NORTH CAROLINA 27102

**Assignment Recorded** ASSIGNMENT RECORDED

**Attorney of Record** William M. Bryner

**Prior Registrations** 0508538;0747482;0747490;1220351;1714026;AND OTHERS

**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Affidavit Text** SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20080411.  
**Renewal** 1ST RENEWAL 20080411  
**Live/Dead Indicator** LIVE

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# COOL BURST

**Word Mark** COOL BURST

**Goods and Services** IC 034. US 002 008 009 017. G & S: Cigarettes. FIRST USE: 20100131. FIRST USE IN COMMERCE: 20100131

**Standard Characters Claimed**

**Mark Drawing Code** (4) STANDARD CHARACTER MARK

**Serial Number** 77825916

**Filing Date** September 14, 2009

**Current Basis** 1A

**Original Filing Basis** 1B

**Published for Opposition** December 15, 2009

**Registration Number** 3797510

**Registration Date** June 1, 2010

**Owner** (REGISTRANT) Reynolds Innovations Inc. CORPORATION NORTH CAROLINA 401 North Main Street Winston-Salem NORTH CAROLINA 27102

**Attorney of Record** William M. Bryner

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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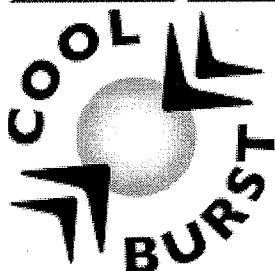
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<b>Word Mark</b>	COOL BURST
<b>Goods and Services</b>	IC 034. US 002 008 009 017. G & S: Cigarettes. FIRST USE: 20100131. FIRST USE IN COMMERCE: 20100131
<b>Mark Drawing Code</b>	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
<b>Design Search Code</b>	24.15.04 - Arrowheads 24.15.10 - Arrows, more than one; More than one arrow 26.19.01 - Spheres (geometric)
<b>Trademark Search Facility</b>	ART-21.03 Sporting articles; merry-go-rounds ART-24.15 Arrows
<b>Classification Code</b>	SHAPES-CHEVRONS Designs with a general shape of a chevron or V character SHAPES-CIRCLE Circle figures or designs including semi-circles and incomplete circles SHAPES-MISC Miscellaneous shaped designs
<b>Serial Number</b>	77825921
<b>Filing Date</b>	September 14, 2009
<b>Current Basis</b>	1A
<b>Original Filing Basis</b>	1B
<b>Published for Opposition</b>	December 15, 2009
<b>Registration Number</b>	<b>3797511</b>
<b>Registration Date</b>	June 1, 2010
<b>Owner</b>	(REGISTRANT) Reynolds Innovations Inc. CORPORATION NORTH CAROLINA 401 North Main Street Winston-Salem NORTH CAROLINA 27102
<b>Attorney of Record</b>	William M. Bryner

**Description of Mark** Color is not claimed as a feature of the mark. The mark consists of the words "COOL BURST" and the image of a ball with two right facing arrows and two left facing arrows.

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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