

ESTTA Tracking number: **ESTTA602679**

Filing date: **05/06/2014**

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	Hershey Chocolate & Confectionery Corporation		
Entity	Corporation	Citizenship	Delaware
Address	4860 Robb Street Suite 204 Wheat Ridge, CO 80033 UNITED STATES		

Attorney information	Amy L. Wright Taft Stettinius & Hollister LLP One Indiana Square, Ste 3500 Indianapolis, IN 46204 UNITED STATES efsttaps@taftlaw.com Phone:3177133500		
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### Applicant Information

Application No	86113671	Publication date	04/08/2014
Opposition Filing Date	05/06/2014	Opposition Period Ends	05/08/2014
Applicant	Starbuzz Tobacco, Inc. 10871 Forbes Ave Garden Grove, CA 92843 UNITED STATES		

### Goods/Services Affected by Opposition

Class 030. First Use: 2013/11/08 First Use In Commerce: 2013/11/08  
All goods and services in the class are opposed, namely: Chemical flavorings in liquid form used to refill electronic cigarette cartridges; Electronic cigarette liquid (e-liquid) comprised of flavorings in liquid form used to refill electronic cigarette cartridges

### 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. Registration No.	2958281	Application Date	07/31/2003
Registration Date	05/31/2005	Foreign Priority Date	NONE
Word Mark	CITRUS MIST		

Design Mark	<b>CITRUS MIST</b>
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2004/01/13 First Use In Commerce: 2004/01/13 breath mints, candy

Attachments	78281597#TMSN.jpeg( bytes ) Hershey - Starbuzz Tobacco Inc - CITRUS MIST - Notice of Opposition.pdf(162021 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	/Amy L. Wright/
Name	Amy L. Wright
Date	05/06/2014

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

<p>HERSHEY CHOCOLATE &amp; CONFECTIONERY CORPORATION,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>STARBUZZ TOBACCO, INC.,</p> <p style="text-align: center;">Defendant.</p>	<p><b>Opposition No.:</b> _____</p> <p><b>Mark:</b> CITRUS MIST</p> <p><b>Goods:</b> <i>Chemical flavorings in liquid form used to refill electronic cigarette cartridges; Electronic cigarette liquid (e-liquid) comprised of flavorings in liquid form used to refill electronic cigarette cartridges</i></p> <p><b>Serial No.</b> 86113671</p>
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**NOTICE OF OPPOSITION**

Plaintiff, Hershey Chocolate & Confectionary Corporation (herein, “Hershey”), believes it will be damaged by registration of the above-referenced CITRUS MIST trademark, as shown in Application Serial No. 86113671 and hereby opposes same. As grounds for this opposition, Hershey respectfully alleges as follows:

1. Hershey is a corporation organized and existing under the laws of the state of Delaware, with an address of 4860 Robb Street, Suite 204 Wheat Ridge, Colorado 80033.
2. Upon information and belief, Defendant Starbuzz Tobacco, Inc. (herein, “Defendant”) is a corporation organized and existing under the laws of the state of California, with an address of 10871 Forbes Avenue, Garden Grove, California 92843.

**HERSHEY’S CITRUS MIST® TRADEMARK**

3. Hershey is the owner of U.S. Reg. Number 2958281 for the identical mark, CITRUS MIST in connection with “*breath mints and candy*” in International Class 30. *See*

attached Exhibit A. This mark has been in use in United States commerce for more than ten years, or since at least as early as January 13, 2004 and has achieved an “incontestable” status.

4. Hershey is a well-known candy manufacturer.

5. The CITRUS MIST trademark is valid and subsisting, unrevoked and uncanceled, and in full force and effect.

6. The CITRUS MIST trademark derives its protection and Hershey obtained rights to this mark from its use in the United States.

7. CITRUS MIST brand candy and mints are sold throughout the United States.

8. Over the past ten years, Hershey has exercised care, skill and diligence in consistently providing high quality candy products in connection with its CITRUS MIST trademark.

9. Consumers have come to associate Hershey’s CITRUS MIST trademark exclusively with candy and mints originating from Hershey and Hershey alone.

**DEFENDANT’S CITRUS MIST APPLICATION**

10. According to the Trademark Office records, Defendant filed a federal trademark application, assigned Application Serial No. 86113671, for the mark CITRUS MIST on November 8, 2013, in connection with “*chemical flavorings in liquid form used to refill electronic cigarette cartridges; Electronic cigarette liquid (e-liquid) comprised of flavorings in liquid form used to refill electronic cigarette cartridges*” in International Class 30. See attached Exhibit B.

11. Defendant’s CITRUS MIST application was filed nearly ten (10) years *after* Hershey began using its CITRUS MIST trademark in United States commerce.

**REGISTRATION OF THE CITRUS MIST**  
**APPLICATION WILL CAUSE HARM TO HERSHEY**

12. Hershey's rights in the CITRUS MIST trademark predate Defendant's filing date by nearly a decade.

13. Defendant's mark is identical to Hershey's CITRUS MIST trademark.

14. Defendant's CITRUS MIST Application covers "*chemical flavorings in liquid form used to refill electronic cigarette cartridges and electronic cigarette liquid (e-liquid) comprised of flavorings in liquid form used to refill electronic cigarette cartridges*" which are in the same class as Hershey's CITRUS MIST brand candy and mints.

15. Consumers are highly likely to associate Defendant's chemical flavorings with the flavors of Hershey's CITRUS MIST brand candy and mints, and make purchasing decisions based on that association.

16. Defendant's CITRUS MIST application appears to be an attempt to extort the goodwill established by Hershey and/or an attempt to trick the consuming public into believing that its goods are related to Hershey's CITRUS MIST brand candy and mints, or the flavors associated with those products.

17. As such, the registration of Defendant's CITRUS MIST Application is likely to cause confusion, mistake and/or deception among consumers as to the source of each party's goods in violation of 15 U.S.C. §1052(d).

18. Additionally, registration of Defendant's CITRUS MIST Application will cause consumers to infer the existence of an affiliation, connection or association between the parties when none exists.

Accordingly, Hershey respectfully requests that this Opposition be sustained and that Defendant's CITRUS MIST Application Serial No. 86113671 be denied registration.

Respectfully submitted,

/Amy L. Wright/  
Amy L. Wright  
Taft, Stettinius & Hollister LLP  
One Indiana Square, Suite 3500  
Indianapolis, IN 46204  
Telephone: (317) 713-3500  
Fax: (317) 713-3699

Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that on May 6, 2014, a true and correct copy of the foregoing was filed with the USPTO by electronic means and a copy was sent to the following parties by First Class U.S. Mail in a sealed, postage prepaid, envelope which was deposited with the United States Postal Service:

Starbuzz Tobacco, Inc.  
10871 Forbes Avenue  
Garden Grove, CA 92843

/Amy L. Wright/  
Amy L. Wright  
Taft, Stettinius & Hollister LLP  
One Indiana Square, Suite 3500  
Indianapolis, IN 46204  
Telephone: (317) 713-3500  
Fax: (317) 713-3699

**EXHIBIT A**

**Int. Cl.: 30**

**Prior U.S. Cl.: 46**

**Reg. No. 2,958,281**

**United States Patent and Trademark Office**

**Registered May 31, 2005**

**TRADEMARK  
PRINCIPAL REGISTER**

✦ ✦ ✦ ✦ ✦ ✦ ✦  
✦ ✦ ✦ ✦ ✦ ✦ ✦  
**CITRUS MIST**  
✦ ✦ ✦ ✦ ✦ ✦ ✦  
✦ ✦ ✦ ✦ ✦ ✦ ✦

HERSHEY CHOCOLATE & CONFECTIONERY  
CORPORATION (DELAWARE CORPORATION)  
4800 ROBB STREET, SUITE 204  
WHEAT RIDGE, CO 80033

OWNER OF U.S. REG. NO. 2,958,281.

FOR: BREATH MINTS, CANDY, IN CLASS 30  
(U.S. CL. 46).

NO CLAIM IS MADE TO THE EXCLUSIVE  
RIGHT TO USE "CITRUS", APART FROM THE  
MARK AS SHOWN.


FIRST USE 7-13-2002; IN COMMERCE 1-13-2004.

SN 78-281,597, FILED 7-31-2003.

THE MARK CONSISTS OF STANDARD CHAR-  
ACTERS WITHOUT CLAIM TO ANY PARTICULAR  
FONT, STYLE, SIZE, OR COLOR.

CAROLINE WOOD, EXAMINING ATTORNEY

## EXHIBIT B

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# CITRUS MIST

Word Mark CITRUS MIST  
Goods and Services IC 030: US 046: G & S: Chemical flavorings in liquid form used to refill electronic cigarette cartridges; Electronic cigarette liquid (e-liquid) comprised of flavorings in liquid form used to refill electronic cigarette cartridges. FIRST USE: 20131108. FIRST USE IN COMMERCE: 20131108

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 86113671

Filing Date November 8, 2013

Current Basis 1A

Original Filing Basis 1A

Published for Opposition April 8, 2014

Owner (APPLICANT) Starbuzz Tobacco, Inc. CORPORATION CALIFORNIA 10871 Forbes Ave Garden Grove CALIFORNIA 92843

Prior Registrations 3619407;4091743;4196953;4196957;4287968

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CITRUS" APART FROM THE MARK AS SHOWN

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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