

ESTTA Tracking number: **ESTTA617760**

Filing date: **07/25/2014**

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	Cafe Vittoria, Inc.
Granted to Date of previous extension	07/26/2014
Address	1625 Rue Belvedere S Sherbrooke, QC J1H4E4 CANADA

Attorney information	Rachel E. Buker Ironmark Law Group, PLLC 2311 N 45th Street Suite 365 Seattle, WA 98103 UNITED STATES rebuker@ironmarklaw.com Phone:206-547-1914
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Applicant Information

Application No	85941546	Publication date	05/27/2014
Opposition Filing Date	07/25/2014	Opposition Period Ends	07/26/2014
Applicant	Cantarella Bros. Pty Ltd. 118 Wetherill Street Silverwater, 2141NSW AUSTRALIA		

Goods/Services Affected by Opposition

Class 030. First Use: 1989/11/02 First Use In Commerce: 1989/11/02 All goods and services in the class are opposed, namely: Coffee

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l. Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

Marks Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	VITTORIA		
Goods/Services	Coffee; coffee roasting		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	CAFE VITTORIA		
Goods/Services	Coffee; Coffee roasting		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	VITTORIA CAFE		
Goods/Services	coffee; coffee roasting		

Attachments	2014-07-25 Notice of Opposition Vittoria.pdf(172874 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	/REB/
Name	Rachel E. Buker
Date	07/25/2014

**In the United States Patent and Trademark Office
Before the Trademark Trial and Appeal Board**

In the matter of Trademark Application Serial No. 85/941,546
For the Mark VITTORIA
Published in the *Official Gazette* on May 27, 2014

CAFE VITTORIA, INC., a Canadian corporation,

Opposer,

v.

CANTARELLA BROS. PTY LTD., an Australian
company,

Applicant.

NOTICE OF OPPOSITION NO. _____

Notice of Opposition

Opposer, CAFÉ VITTORIA, INC., a Canadian corporation with a principal place of business at 1625 Rue Belvedere S, Sherbrooke, QC J1H4E4, Canada (“Opposer”), believes that it will be damaged by registration of the mark, VITTORIA, shown in Application Serial No. 85/941,546 for *coffee* in International Class 030 (“the Mark”); filed on the basis of alleged actual use by CANTARELLA BROS. PTY LTD., (“Applicant”), an Australian company with a principal place of business at 118 Wetherill Street, Silverwater NSW 2141, Australia (“Applicant”).

The grounds for this Opposition are as follows:

1. Since at least 1989, Opposer has continuously used the trademark VITTORIA CAFÉ and variants of that mark in connection with coffee, coffee roasting, and related goods and services in Canada and owns six Canadian trademark registrations for the same.

2. Since at least 1992, Opposer has continuously used the trademark VITTORIA CAFÉ and variants of that mark (collectively the “VITTORIA Marks”) in commerce in connection with coffee and related goods and services in interstate commerce in the United States.

3. Opposer operates a coffee roasting facility in the United States under the VITTORIA Marks and has done so for at least the last four years.

4. Opposer distributes coffee throughout the United States under the VITTORIA Marks.

5. Opposer markets and offers distribution of its goods and services in the United States and Canada on its website www.cafevittoria.com.

6. As a result of Opposer's many years of uncontested use of the VITTORIA Marks in the United States, the VITTORIA Marks have become well known in the United States as exclusively identifying the unique and desirable products of the highest quality that originate with Opposer. Opposer's VITTORIA Marks and the associated goodwill are thus valuable assets of Opposer.

7. Moreover, as a result of the above, members of the consuming public in the United States and neighboring Canada have come to recognize the VITTORIA Marks as designating the goods and services of the highest quality originating exclusively from Opposer.

8. On information and belief, Applicant sells coffee and related goods and services under the Mark in Australia.

9. The subject application of this opposition asserts a date of first use in commerce of the Mark on November 2, 1989. On information and belief, Applicant has not continuously used the Mark in the United States as of or since that date.

10. On information and belief, there is no evidence of actual, continuous use of the Mark by Applicant.

11. Likewise, in addition to the Mark, Applicant is also the owner U.S. Trademark Registration No. 2/026,213 for the word mark VITTORIA for *coffee* claiming a date of first use in the U.S. as of November 2, 1989, with a registration date of December 31, 1996. Despite Applicant's maintenance of this trademark registration and its representations to the United States Patent and Trademark Office ("USPTO") that it has continuously used the mark in commerce, on information and belief, Applicant has not continuously used the Mark in the United States since that date.

12. On information and belief, there is no evidence of actual, continuous use of Applicant's U.S. trademark registration no. 2/026,213 for the word mark VITTORIA in relation to coffee.

13. On information and belief, Opposer's rights in the VITTORIA Marks in the United States are superior to Applicant's alleged rights in the Mark.

14. Because both Opposer's and Applicant's marks consist of the word VITTORIA, including stylized versions of thereof, and both Applicant and Opposer are in the business of selling coffee and related goods and services, there is a strong likelihood of confusion between the goods and services offered by Applicant and Opposer.

Claims for Relief - Basis of Refusal

Likelihood of Confusion under 15 U.S.C. § 1052(d)

15. Opposer repeats and realleges all claims set forth in Paragraphs 1 through 14 as if fully set forth herein.

16. Applicant seeks registration of the Mark, which is highly similar in sight, sound, appearance, and commercial impression to Opposer's VITTORIA Marks, which Opposer has actively used in commerce for many years. As such, Applicant's VITTORIA mark is confusingly similar to Opposer's VITTORIA Marks.

17. The Mark is supposedly used by Applicant in connection with goods that are identical or closely related to the goods and services currently offered by Opposer under its VITTORIA Marks.

18. Applicant's application is unrestricted as to consumers or channels of trade. As such, it is presumed that the products identified in Applicant's application opposed herein will be sold to the same consumers who purchase Opposer's goods and services marketed under its VITTORIA Marks—assuming that Applicant will at some point offer such products for sale in the United States.

19. Based on the similarities of the marks, as well as the overlap in goods, consumers and trade channels, the public is likely to associate the goods to be offered by the Applicant under the Mark with Opposer's goods and services sold under the VITTORIA Marks, or to believe that Applicant's goods are sponsored, endorsed or licensed by Opposer, or that there is some relationship between Applicant and Opposer.

20. For the above reasons, any use or registration of the Mark by Applicant is likely to cause confusion, cause mistake or deceive the public, and cause the public to believe that the goods offered under the Mark emanate from, are otherwise sponsored by or endorsed by Opposer in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

21. Based on these claims, Applicant's application is inconsistent with Opposer's prior rights and longstanding actual use of the VITTORIA Marks.

Application No. 85/941,546 was Fraudulently Filed

22. Opposer repeats and realleges all claims set forth in Paragraphs 1 through 21 as if fully set forth herein.

23. On information and belief, Applicant is not using, and has never used, the Mark in interstate commerce on or in connection with *coffee*. Accordingly, when Applicant submitted its application on the basis of actual use in commerce and claimed to have used the Mark in commerce since November 2, 1989, such statements were false and material to the registrability of the application.

24. Applicant's application is accompanied by a Declaration under 37 CFR § 1(a) alleging use in commerce since November 2, 1989. This Declaration was signed by Applicant's Company Secretary.

25. On information and belief Applicant had knowledge of the falsity of the representations contained in its trademark application and accompanying Declaration.

26. On information and belief Applicant made the false statements in its trademark application with the intent to deceive the USPTO and induce agents of the USPTO to grant a trademark registration for the Mark.

27. On information and belief, the conduct of Applicant constitutes fraud on the USPTO as well as nonuse, and thus Applicant's trademark application Serial No. 85/941,546 should be denied registration.

28. Opposer is likely to be damaged if the subject application proceeds to registration due to Opposer's longstanding use of its VITTORIA Marks in commerce, which will be impaired by issuance of a trademark registration to Applicant.

Accordingly, Opposer prays that this Opposition will be sustained, and that Applicant be refused registration of the VITTORIA mark for the goods set forth in application Serial No. 85/941,546.

DATED this 25th day of July, 2014.

Respectfully Submitted,

IRONMARK LAW GROUP, PLLC



Rachel E. Buker, WSBA No. 43005
2311 N. 45th Street, Suite 365
Seattle, Washington 98103
Attorney for Opposer