

ESTTA Tracking number: **ESTTA657226**

Filing date: **02/20/2015**

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	FRC BALANCE LLC
Granted to Date of previous extension	02/22/2015
Address	4455 E CAMELBACK RD STE B100 Phoenix, AZ 85018 UNITED STATES

Attorney information	Glenn S. Bacal Bacal Law Group, P.C. 6991 East Camelback Road, Suite D-102 Scottsdale, AZ 85251 UNITED STATES glenn.bacal@bacalgroup.com,jamie.tuccio@bacalgroup.com Phone:4802456233
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Applicant Information

Application No	86065240	Publication date	08/26/2014
Opposition Filing Date	02/20/2015	Opposition Period Ends	02/22/2015
Applicant	TruFood Mfg., Inc. 610 Alpha Drive Pittsburgh, PA 15238 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Dietary food supplements, namely, chocolate-based meal replacement bars for weight loss and sports nutrition
Class 029. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Processed fruit and nut based food bars; organic nut and seed based snack bars
Class 030. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Cereal bars; candy bars; grain based snack food, namely, grain based snack bars
Class 040. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Manufacturing services for others for nutritional and candy bar food items, namely, meal replacement, cereal, fruit and nut, diet, organic, and candy bars

Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3620741	Application Date	06/17/2008
Registration Date	05/12/2009	Foreign Priority Date	NONE
Word Mark	TRUE FOOD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 2009/03/17 First Use In Commerce: 2009/03/17 Full service, sit-down restaurant and bar services featuring organic, healthful, non-artificial and nutritious foods		

U.S. Registration No.	4049211	Application Date	04/08/2011
Registration Date	11/01/2011	Foreign Priority Date	NONE
Word Mark	TRUE FOOD KITCHEN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 2010/08/02 First Use In Commerce: 2010/08/02 Restaurant reservation services; Preparation of food and beverages for others; Cocktail lounge services; Restaurant carry out services; Catering services; Restaurant services; Cafe services; Take-outrestaurant services; Restaurants featuring private dining rooms; Providing dining facilities for special events and private parties		


U.S. Registration No.	4052881	Application Date	04/11/2011
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Registration Date	11/08/2011	Foreign Priority Date	NONE
Word Mark	TRUE FOOD KITCHEN		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 035. First use: First Use: 2010/08/02 First Use In Commerce: 2010/08/02 Hosting of business events and meetings for others; Providing a venue for business events and meetings</p> <p>Class 041. First use: First Use: 2010/08/02 First Use In Commerce: 2010/08/02 Hosting of social entertainment events; Hosting birthday parties; Providing a venue for educational events; Entertainment services, namely, wine tastings and food tastings; Hosting of educational cooking demonstrations and lectures</p>		

U.S. Registration No.	3688743	Application Date	02/26/2009
Registration Date	09/29/2009	Foreign Priority Date	NONE
Word Mark	TRUE FOOD KITCHEN		
Design Mark			
Description of Mark	The mark consists of the words "TRUE FOOD" in green above yellow stalks of grain and the word "KITCHEN" in green.		
Goods/Services	Class 043. First use: First Use: 2008/10/27 First Use In Commerce: 2008/10/27 Full service, sit-down restaurant and bar services featuring organic, healthful, non-artificial and nutritious foods		

U.S. Registration No.	3961181	Application Date	09/01/2010
Registration Date	05/17/2011	Foreign Priority Date	NONE
Word Mark	TRUE FOOD KITCHEN GLOBALLY INSPIRED CUISINE		

Design Mark	
Description of Mark	The mark consists of the words "TRUE FOOD" in green above yellow stalks of grain and the word "KITCHEN" in green all above the words "GLOBALLY INSPIRED CUISINE" in green.
Goods/Services	Class 043. First use: First Use: 2010/08/02 First Use In Commerce: 2010/08/02 Catering services; Restaurant and bar services, including restaurant carryout services

U.S. Registration No.	4497563	Application Date	08/01/2013
Registration Date	03/18/2014	Foreign Priority Date	NONE
Word Mark	JUBY TRUE		
Design Mark			
Description of Mark	The mark consists of stylized words "JUBY TRUE".		
Goods/Services	Class 043. First use: First Use: 2013/10/29 First Use In Commerce: 2013/10/29 Juice Bar Services featuring both juices and smoothies; Bar services featuring juice and smoothies; coffee and juice bar services		

Attachments	77501250#TMSN.png(bytes) 85290527#TMSN.png(bytes) 85291955#TMSN.png(bytes) 77679039#TMSN.png(bytes) 85120928#TMSN.png(bytes) 86026284#TMSN.png(bytes) FINAL frc balance v trufood mfg notice of opposition.pdf(81508 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 USPS Express Mail Post Office to Addressee on this date.

Signature	/Glenn S. Bacal/
Name	Glenn S. Bacal
Date	02/20/2015

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

<p>FRC Balance LLC</p> <p style="text-align: center;">Opposer,</p> <p>v.</p> <p>TruFood Mfg., Inc.</p> <p style="text-align: center;">Applicant.</p>	<p>Opposition No. _____</p> <p>Serial No.: 86065240</p> <p>For the mark: TRUFOOD</p> <p>Published for Opposition: August 26, 2014</p>
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NOTICE OF OPPOSITION




Opposer FRC Balance LLC (“Opposer”) will be harmed by registration of the applied for mark TRUFOOD that is the subject of Application Ser. No. 86065240 (the “Application”) filed by TruFood Mfg., Inc. (“Applicant”). Therefore, Opposer hereby opposes the Application on the basis that TRUFOOD is likely to cause confusion with Opposer’s registered marks for or incorporating TRUE FOOD (the “TRUE FOOD® Marks”) and falsely suggests a connection with Opposer.

The Parties

1. Opposer is an Arizona limited liability company with its principal place of business at 4455 E. Camelback Rd., Ste. B100, Phoenix, Arizona 85018.
2. Opposer has created restaurants and juice bars featuring a variety of healthy and wholesome foods, under the brands TRUE FOOD® and JUBY TRUE™.
3. On information and belief, Applicant is a Delaware corporation with its principal place of business at 610 Alpha Drive, Pittsburgh, Pennsylvania 15238.
4. According to its website, Applicant is a contract manufacturer of a range of snack food products.

Opposer's Registration and Use of Its Marks

5. Opposer owns federal registrations for the following marks, among others:

Mark	Reg. No.	Services
TRUE FOOD (words only)	3,620,741	Class 43—Full service, sit-down restaurant and bar services featuring organic, healthful, non-artificial and nutritious foods
TRUE FOOD KITCHEN (words only)	4,049,211	Class 35—Restaurant reservation services; Preparation of food and beverages for others; Cocktail lounge services; Restaurant carry out services; Catering services; Restaurant services; Cafe services; Take-out restaurant services; Restaurants featuring private dining rooms; Providing dining facilities for special events and private parties
TRUE FOOD KITCHEN (words only)	4,052,881	Class 35—Hosting of business events and meetings for others; Providing a venue for business events and meetings Class 41—Hosting of social entertainment events; Hosting birthday parties; Providing a venue for educational events; Entertainment services, namely, wine tastings and food tastings; Hosting of educational cooking demonstrations and lectures
	3,688,743	Class 43—Full service, sit-down restaurant and bar services featuring organic, healthful, non-artificial and nutritious foods
	3,961,181	Class 43—Catering services; Restaurant and bar services, including restaurant carryout services
	4,497,563	Class 43— Juice Bar Services featuring both juices and smoothies; Bar services featuring juice and smoothies; coffee and juice bar services.

6. Opposer has used one or more of the TRUE FOOD® Marks in connection with Opposer's restaurants since at least as early as October 2008.

7. The mission of the TRUE FOOD restaurants is to provide a wide and healthy selection of foods that follow the internationally known Dr. Andrew Weil food philosophy to help its consumers maintain a healthy lifestyle.

8. Since the first TRUE FOOD® restaurant opened in 2008, TRUE FOOD® restaurants have been focused on attracting consumers who are interested in healthier eating and better nutrition.

9. Opposer has been building its brand geographically and has been expanding from Arizona to other states ever since the first TRUE FOOD® restaurant opened.

10. As a result of Opposer's efforts, there are now ten TRUE FOOD® restaurants operating in Arizona, California, Texas, Georgia, Colorado, and Virginia.

11. Opposer has expended substantial time and resources in marketing its TRUE FOOD® restaurants and in building consumer recognition in the TRUE FOOD® Marks.

12. Opposer has extensively marketed its TRUE FOOD® restaurants in various marketing channels, including on the Internet and through various social media platforms.

13. As a result of Opposer's significant efforts to develop the reputation of the TRUE FOOD® Marks, there is widespread recognition of the TRUE FOOD® Marks among consumers.

14. Opposer has taken steps to enforce its rights against third-party users of marks that are likely to cause confusion with the TRUE FOOD® Marks.

15. Opposer's TRUE FOOD® restaurants offer a variety of healthy breakfast, lunch, and dinner menu items, which are made from fresh and wholesome ingredients such as fruits, vegetables, nuts, grains, granola, and more.

16. Opposer also has developed and marketed JUBY TRUE juice bars as a spin-off of the TRUE FOOD® brand.

17. JUBY TRUE branded goods are sold at TRUE FOOD® restaurants.

18. Opposer's JUBY TRUE juice bars offer a variety of juices and other beverages, as well as healthy snacks, food bars, sandwiches, salads, and other nutritious food items.

19. The offering and sale of healthy snacks and other nutritious food items labeled with TRUE FOOD® at TRUE FOOD restaurants and at other retail locations like supermarkets and superstores is a natural choice for future expansion of the TRUE FOOD® brand.

20. A growing trend at major retailers is to sell food products marked with labels from major restaurant brands.

21. Restaurant branded food products already being sold at grocery stores and other retailers include Boston Market, PF Chang's, Marie Callendar's, TGI Friday's, Red Robin, and California Pizza Kitchen, among others.

22. P.F. Chang's China Bistro Inc., which has directed the expansion of the P.F. Chang's® brand from its restaurants and onto numerous branded P.F. Chang's® food items which are widely sold at grocery stores and other retailers, is a majority owner in the TRUE FOOD® restaurants.

Applicant's Application to Register and Use of TRUFOOD

23. On September 16, 2013, Applicant filed an application (Ser. No. 86065240) (the "Application") with the USPTO to register the mark TRUFOOD (the "Applied For Mark").

24. The Application was filed in Class 5 for Dietary food supplements, namely, chocolate-based meal replacement bars for weight loss and sports nutrition; in Class 29 for Processed fruit and nut based food bars; organic nut and seed based snack bars; in Class 30 for Cereal bars; candy bars; grain based snack food, namely, grain based snack bars; and Class 40 for Manufacturing services for others for nutritional and candy bar food items, namely, meal replacement, cereal, fruit and nut, diet, organic, and candy bars.

25. The Application was filed on an intent-to-use basis.

26. Applicant is currently a contract manufacturer of a variety of snack products including chocolate products and pieces, granola products, baked bar products, cereal based snack bars, fruit/nut snack bars, and layered protein bar products.

27. On information and belief, some of Applicant's manufactured products are made from healthy ingredients such as fruits, nuts, and granola.

28. On information and belief, Applicant intends to expand the number and variety of healthy food products that Applicant manufactures, and then to promote and sell these under the applied for mark.

29. Applicant's website is available at www.trufoodmfg.com.

30. Applicant's President and CEO recently publicly stated that Applicant intends to "capitalize" on consumer trends toward "healthy eating" and "better nutrition." See <http://www.bizjournals.com/pittsburgh/print-edition/2014/12/05/q-a-pete-tsudis-trufood-mfg.html>.

31. Although Applicant previously focused on confections and candies under a different name until 2013, in 2013 Applicant changed its name from Tsudis Chocolate Co. to TruFood Mfg., Inc.

32. Upon information and belief, the change of name to TruFood Mfg., Inc was part of a shift away from confections and candies to manufacture of healthier items.

33. Since the change of name to TruFood Mfg., Inc. in 2013, Applicant has indicated that its primary focus has shifted toward more natural products such as granola and cereal bars. See <http://www.bizjournals.com/pittsburgh/print-edition/2014/12/05/trufood-mfg-s-find-leaner-snacks-fatten-the-bottom.html?page=all>.

Standing

34. Opposer's filed its first federal application for TRUE FOOD on June 17, 2008, which is well prior to the date when Applicant first applied to register the Applied For Mark (September 16, 2013) and well before Applicant began using TRUFOOD in commerce.

35. Opposer has priority over Applicant, with Opposer's nationwide priority dating back to at least as early as June 17, 2008, by virtue of Opposer's federal registration of TRUE FOOD®.

36. The mark TRUFOOD is likely to cause confusion with Opposer's TRUE FOOD® Marks.

37. Applicant's registration of TRUFOOD would impair the value of Opposer's rights in the TRUE FOOD® Marks.

38. Applicant's registration of TRUFOOD will cause actual harm to Opposer and its business.

Likelihood of Confusion

39. Applicant's use and registration of TRUFOOD is likely to cause confusion or mistake among, or to deceive, consumers as to the source, affiliation, association, connection, sponsorship, and/or approval of Applicant and its goods and services, on the one hand, and Opposer and its goods and services, on the other hand.

40. The mark TRUFOOD is almost identical in appearance to Opposer's mark TRUE FOOD®.

41. The mark TRUFOOD is audibly identical to Opposer's mark TRUE FOOD®.

42. The mark TRUFOOD conveys the same commercial impression as Opposer's TRUE FOOD® Marks.

43. The goods and services with which Applicant uses or intends to use the mark TRUFOOD are highly related to the goods and services that Opposer offers and sells under the TRUE FOOD® marks.

44. Applicant's intended movement into the healthy eating space is likely to increase the likelihood that consumers will be confused by Applicant's use of TRUFOOD and Opposer's use of its TRUE FOOD® marks.

45. The retail sale of healthy snacks, food bars, and related food products is a natural expansion of the goods and services already offered and sold under the TRUE FOOD® Marks.

46. Opposer has already spun-off a related TRUE-branded juice and snack bar, namely JUBY TRUE, which offers and sells healthy snacks, food bars, and related food products.

47. TRUE FOOD restaurants are promoted at JUBY TRUE stores, and JUBY TRUE products are sold at TRUE FOOD restaurants.

48. The expansion of use demonstrates that there is a natural expansion from restaurant services to the retail sale of healthy snacks and related food products.

49. The fact that various restaurant-branded food items are offered and sold in retail locations establishes that restaurant services and restaurant-branded foods items are highly related to each other.

50. Upon seeing Applicant's TRUFOOD products in retail stores (if such use is initiated), consumers familiar with Opposer's TRUE FOOD® brand will be likely to believe, mistakenly, that Applicant's products are affiliated with or authorized by Opposer.

51. There are many registrations on the Federal Register covering both restaurant services and snack related goods or services.

52. There are many registrations on the Federal Register that cover both restaurant services and reference the kind of goods that Applicant intends to use its applied for mark on.

53. There are more than 1800 active registrations with the USPTO for marks that list both "restaurant" and "snack" in their description of goods and/or services.

54. There are well over a thousand active registrations with the USPTO for marks that list both "restaurant" and either "snack bar" or "snack bars" in their description of goods and/or services.

55. There are scores of active registrations with the USPTO for marks that list "restaurant," "snack bar(s)," "fruit," and "nut" in their description of goods and/or services.

56. There are scores of active registrations with the USPTO for marks that list "restaurant," "food bar(s)" "fruit," and "nut" in their description of goods and/or services.

57. There are dozens of active registrations with the USPTO for marks that list both "restaurant" and "dietary supplement" in their description of goods and/or services.

58. On information and belief, Applicant's TRUFOOD products are intended to be sold to some of the same kinds of consumers to whom Opposer provides its goods and services under its TRUE FOOD® Marks.

59. Applicant's TRUFOOD mark so resembles Opposer's TRUE FOOD® Marks as to make it likely, when applied to Applicant's goods and services, to cause mistake and confusion among, and to deceive, the trade and the public.

60. The likelihood of confusion caused by use of Applicant's TRUFOOD mark would cause harm to Opposer.

False Suggestion of a Connection

61. Applicant's use and registration of TRUFOOD would falsely suggest a connection with Opposer.

62. Applicant's applied for TRUFOOD mark is a close approximations of Opposer's TRUE FOOD® mark.

63. Opposer is not connected with the goods or services that Applicant intends to offer under the mark TRUFOOD.

64. The fame and reputation of Opposer and its TRUE FOOD® brand is such that, if and when the mark TRUFOOD is used by Applicant for related goods or services, it is likely that the large number of consumers who are already familiar with the TRUE FOOD® brand would mistakenly assume that there is a connection with Opposer. This is because those consumers would uniquely and unmistakably associate TRUE FOOD® with Opposer in this context.

Conclusion

65. Applicant is not entitled to a registration for the mark TRUFOOD.

66. The applied for TRUFOOD mark is likely to cause confusion with Opposer's prior registered TRUE FOOD® Marks.

67. Opposer will be damaged by Applicant's use and registration of the mark TRUFOOD.

THEREFORE, Opposer respectfully requests that Application Serial No. 86065240 be refused registration.

Respectfully submitted this 20th day of February, 2015.

BACAL LAW GROUP, P.C.

By: /s/Glenn Spencer Bacal
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Certificate of Mailing or Transmission Pursuant to 37 C.F.R. § 1.8

Application No.: 86065240
Mark: TRUFOOD
Opposer: FRC Balance LLC
Type of Filing: Notice of Opposition

I hereby certify that this Notice of Opposition is being filed electronically with the United States Trademark Trial and Appeal board pursuant to 37 C.F.R. § 1.8.

I hereby further certify that this Notice of Opposition is being sent via express mail addressed to Attorney of record as required by the rules:

Neal P. Pierotti
Metz Lewis Brodman Must O'Keefe
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Pittsburgh, Pennsylvania 15222-2305
Attorney of Record for TruFood Mfg., Inc.

/s/ Jamie Tuccio
Signature

February 20, 2015
Date