

ESTTA Tracking number: **ESTTA707054**

Filing date: **11/06/2015**

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	Frank Brunckhorst Co., L.L.C.
Granted to Date of previous extension	12/02/2015
Address	24 Rock Street Brooklyn, NY 11206 UNITED STATES

Correspondence information	Frank Brunckhorst Co., L.L.C. 24 Rock Street Brooklyn, NY 11206 UNITED STATES gthdocket@hbiplaw.com
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Applicant Information

Application No	86417171	Publication date	08/04/2015
Opposition Filing Date	11/06/2015	Opposition Period Ends	12/02/2015
Applicant	ARYZTA, LLC Suite 900 Los Angeles, CA 90045 UNITED STATES		

Goods/Services Affected by Opposition

Class 030. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Food products, namely, bakery goods; cookies; bakery desserts; wheat-based snack foods

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1601149	Application Date	10/23/1989
Registration Date	06/12/1990	Foreign Priority Date	NONE
Word Mark	SWEET SLICE		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 029. First use: First Use: 1988/11/18 First Use In Commerce: 1988/11/18 UNSLICED, BONELESS, BONE-IN HAM

U.S. Registration No.	4124974	Application Date	07/19/2011
Registration Date	04/10/2012	Foreign Priority Date	NONE

Word Mark	SWEET SLICE
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Design Mark	
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Description of Mark	NONE
Goods/Services	Class 029. First use: First Use: 1988/11/18 First Use In Commerce: 1988/11/18 Unsliced processed meat

Attachments	85374826#TMSN.png(bytes) Notice of Opposition with Exhibit 1.pdf(69717 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	/glenn t henneberger/
Name	Frank Brunckhorst Co., L.L.C.
Date	11/06/2015

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

In re Application Serial No. 86/417,171
Filed: October 7, 2014
Published for Opposition on August 4, 2015
Trademark: THE SWEET SLICE

FRANK BRUNCKHORST CO., L.L.C.

Opposer,

v.

ARYZTA, LLC,

Applicant.

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: **Opposition No.**
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Commissioner for Trademarks
P.O. Box 1451
Alexandria , VA 22313-1451

Certificate of EFS-Web Transmission

I hereby certify that this correspondence is being transmitted to the TTAB electronic filing system on November 6, 2015.

Ellen Wangelin

(Printed Name)

Signature: /ellen wanglein/

NOTICE OF OPPOSITION

FRANK BRUNCKHORST CO., L.L.C. (“Opposer”), a New York limited liability company, with offices at 24 Rock Street, Brooklyn, New York 11206, believes that it will be damaged by registration of the mark shown in Serial No. 86/417,171 to Aryzta, LLC (“Applicant”), which application was published for opposition on August 4, 2015, and hereby opposes, through its attorneys, the registration of said mark in International Class 30.

As grounds for opposition it is alleged that:

1. Opposer is a New York limited liability company, with offices at 24 Rock Street, Brooklyn, New York 11206.
2. Opposer sells a variety of food products including, but not limited to, processed meats, cheeses, and condiments.

3. Opposer utilizes the word SWEET SLICE as a trademark indicating the source of origin for its products.

4. Opposer is the owner of United States Registration Nos. 1,601,149 and 4,124,974 for the mark SWEET SLICE as used in connection with unsliced, boneless, bone-in ham and unsliced processed meat, respectively (the “SWEET SLICE Trademark”).

5. A true and correct copy of Opposer’s U.S. Trademark Registration Nos. 1,601,149 and 4,124,974 are attached hereto as Exhibit 1.

6. The above-referenced registrations are valid and in full force and effect and have become incontestable. The Principal Register registrations are *prima facie* evidence of the validity of the registrations, of Opposer’s ownership of the marks and of its exclusive right to use the marks in commerce. Moreover, the registrations are constructive notice to Applicant and all others of Opposer’s claim of ownership of the marks. Opposer uses the symbol ® in association with its marks.

7. Since prior to the filing date of the above-identified application, Opposer has been using the SWEET SLICE Trademark in interstate commerce in connection with unsliced, boneless, bone-in ham and unsliced processed meat, respectively.

8. Opposer has expended substantial amounts of money, time and effort in advertising, promoting and popularizing its trademark so that the public has come to associate and attribute usage of the SWEET SLICE Trademark with Opposer.

9. Applicant’s proposed use of and application for THE SWEET SLICE is without Opposer’s consent or authorization.

10. The goods identified in Applicant’s application, i.e., food products, namely, bakery goods; cookies; bakery desserts; wheat-based snack foods are related to the goods marketed by Opposer (mentioned hereinabove in paragraph 2) under the SWEET SLICE Trademark, and to the goods listed in Opposer’s registrations, all of such goods being likely to travel through similar channels of trade.

11. Applicant's mark is confusingly similar to Opposer's SWEET SLICE Trademark whereby use of Applicant's mark on the goods recited in Applicant's application will create a likelihood of confusion, mistake or deception among the trade and the purchasing public.

12. Registration and use by Applicant of the mark THE SWEET SLICE will cause dilution of the distinctive qualities of Opposer's trademark. Such dilution will likely cause irreparable harm and injury to the widespread reputation and goodwill developed as a result of Opposer's substantial efforts in promoting and using the SWEET SLICE Trademark.

13. Applicant's application to register THE SWEET SLICE mark was published for opposition on August 4, 2015, and Opposer filed and was granted a 90-Day Request for Extension of Time to Oppose for Good Cause. Thus, this opposition is being timely filed within the extended opposition period.

14. The registration of Applicant's mark in connection with the goods specified in Applicant's application would be in direct conflict with the proper function of a trademark; that is, as a designation of the sole and exclusive origin of goods or services, considering Opposer's prior use of and registration of its mark.

15. Opposer, as the owner of two (2) valid federal trademark registrations and as the prior user of such mark, will be damaged if registration of Applicant's mark is granted.

WHEREFORE, Opposer respectfully requests that this Opposition be sustained, that the above-identified application be rejected and that the registration of the mark shown in Application Serial No. 86/417,171 be refused.

Respectfully submitted,

FRANK BRUNCKHORST CO., L.L.C.

Dated: November 6, 2015

By: /glenn t henneberger/

Glenn T. Henneberger

Hoffmann & Baron, LLP

6900 Jericho Turnpike

Syosset, New York 11791

E-Mail: gthdocket@hbiplaw.com

Telephone: 516.822.3550

Facsimile: 516.822.3582

Attorney for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Notice of Opposition** has been served via first-class mail this 6th day of November, 2015 upon the following:

Carlo F. Van Den Bosch
Sheppard Mullin Richter & Hampton LLP
650 Town Center DR FL 4
Costa Mesa, CA 92626-1993

/glenn t henneberger/
Glenn T. Henneberger

EXHIBIT 1

Int. Cl.: 29

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,601,149

Registered June 12, 1990

**TRADEMARK
PRINCIPAL REGISTER**

SWEET SLICE

FRANK BRUNCKHORST CO. (PARTNERSHIP)
24 ROCK STREET
BROOKLYN, NY 11206

FOR: UNSLICED, BONELESS, BONE-IN
HAM, IN CLASS 29 (U.S. CL. 46).

FIRST USE 11-18-1988; IN COMMERCE
11-18-1988.

SER. NO. 73-833,596, FILED 10-23-1989.

JERI J. FICKES, EXAMINING ATTORNEY

United States of America
United States Patent and Trademark Office

SWEET SLICE

Reg. No. 4,124,974

FRANK BRUNCKHORST CO., L.L.C. (NEW YORK LIMITED LIABILITY COMPANY)
24 ROCK STREET

Registered Apr. 10, 2012

BROOKLYN, NY 11206

Int. Cl.: 29

FOR: UNSLICED PROCESSED MEAT, IN CLASS 29 (U.S. CL. 46).

TRADEMARK

FIRST USE 11-18-1988; IN COMMERCE 11-18-1988.

PRINCIPAL REGISTER

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

OWNER OF U.S. REG. NO. 1,601,149.

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

SER. NO. 85-374,826, FILED 7-19-2011.

MICHAEL TANNER, EXAMINING ATTORNEY



David J. Kyffers

Director of the United States Patent and Trademark Office