

ESTTA Tracking number: **ESTTA933473**

Filing date: **11/07/2018**

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	BBK Tobacco & Foods, LLP, d/b/a HBI International
Granted to Date of previous extension	11/07/2018
Address	3401 W Papago St Phoenix, AZ 85009 UNITED STATES

Attorney information	Brendan N. Mahoney 3401 W Papago St Phoenix, AZ 85009 UNITED STATES legal@hbin.com 602-374-7482
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Applicant Information

Application No	87562937	Publication date	07/10/2018
Opposition Filing Date	11/07/2018	Opposition Period Ends	11/07/2018
Applicant	Vape N Chill 6100 Jonesville Rd Jonesville, MI 49250 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Providing retail store services featuring products for smoking or oral vaporization of nicotine

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.	2825318	Application Date	08/28/2003
Registration Date	03/23/2004	Foreign Priority Date	NONE
Word Mark	CHILLS		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 034. First use: First Use: 1993/08/01 First Use In Commerce: 1993/10/29 Cigarette Rolling Papers, [Cigars, Cigarettes, Cigarette Tobacco]

Attachments	Vape -N- Chill 87562937 Notice of Opposition.pdf(87527 bytes)
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Signature	/Brendan N. Mahoney/
Name	Brendan N. Mahoney
Date	11/07/2018

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

In re Trademark Application

Serial No.: 87562937

Mark: VAPE -N- CHILL

Class 34

Applicant: Paul Taylor, d/b/a Vape N Chill

Published in the Official Gazette of:

July 10, 2018

BBK Tobacco & Foods, LLP,

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Opposer,

)

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v.

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Opposition No.: _____

)

Paul Taylor, d/b/a Vape N Chill,

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Applicant.

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NOTICE OF OPPOSITION

BBK Tobacco & Foods, LLP ("Opposer"), a limited liability partnership organized and existing under the laws of the State of Arizona, believes it will be damaged by the registration of the Vape -N- Chill mark as shown in Application Serial No. 87562937, filed August 9, 2017, in International Class 34 (the "Application") by Paul Taylor, d/b/a Vape N Chill, ("Applicant") and published in the Official Gazette of July 10, 2018, and opposes registration upon the Principal Register of the Vape -N- Chill mark ("Applicant's Mark"). On August 2, 2018, Opposer filed a 90-day Request for an Extension of Time to Oppose, which was granted, and the opposition period has been extended until November 7, 2018.

The grounds for opposition against the Application are as follows:

1. Opposer is the current owner of the following U.S. Patent and Trademark Office (“PTO”) registrations for the following trademarks (collectively "Opposer's Registered Mark"):

Mark Class and Related Goods	Application Date Dates of First Use	Registration Number and Date
CHILLS International Class 034, G&S “cigarette rolling papers, [cigars, cigarettes, cigarette tobacco]	Application filed August 28, 2003 First use October 29, 1993	2825318 March 23, 2003 Renewed April 13, 2013

2. Opposer uses, and has used, and continues to use Opposer's Registered Mark to identify the goods identified in the registration for Opposer’s Registered Mark.

3. Opposer itself, or through its predecessor, has used, Opposer's Registered Mark in U.S. interstate commerce for the sale of the goods identified in that registration since 1993.

4. Applicant is seeking to obtain, under the provisions of the Trademark Act of 1946, as amended, registration upon the Principal Register of Applicant’s Mark.

5. Applicant’s Mark was published for opposition in the Official Gazette of July 10, 2018.

6. Applicant’s Mark contains word elements that are identical or closely similar to the Opposer's Registered Mark.

7. Applicant’s Mark duplicates distinctive characteristics of the Opposer's Registered Mark.

8. Applicant’s Mark creates an overall commercial impression identical to Opposer's Registered Mark.

9. Applicant’s Mark is confusingly similar to Opposer's Registered Mark.

10. Applicant's Mark is used in connection with the sale of goods that are identical to, or related in some manner to, goods that are identified in the PTO registration for Opposer's Registered Mark and that are sold by Opposer using Opposer's Registered Mark such that the goods are likely to be encountered by the same persons under circumstances that, because of the marks used in connection therewith, would lead to the mistaken belief that they originate from the same source

11. Applicant's Mark creates the immediate and erroneous suggestion and impression that goods sold under Applicant's Mark are goods that originate with, are endorsed by, are compatible with, or are otherwise connected to Opposer.

12. Upon information and belief, the goods, identified in the application for Applicant's Mark, are and will be marketed under conditions such that they are likely to be encountered by the same purchasers of Opposer's goods, sold using Opposer's Registered Mark, and under circumstances that, because of the marks used in connection therewith, would lead to the mistaken belief that the goods originate from the same source.

13. Upon information and belief, the customers of and the channels of distribution employed by Opposer and Applicant are likely to be similar, even overlapping, adding to the likelihood that the goods sold by Applicant under Applicant's Mark will be confused with the Opposer's goods, sold using Opposer's Registered Mark.

14. Upon information and belief, the classes of purchasers to whom Opposer and Applicant will sell will be the same, adding to the likelihood that consumers intent on purchasing Opposer's goods sold using Opposer's Registered Mark will purchase Applicant's goods sold

under the Applicant's Mark under the mistaken impression that they originate with, are endorsed by, or are otherwise connected to Opposer.

15. The similar nature of the marks themselves, the related goods and the trade channels and customers for those goods are so great as to create a likelihood of confusion among consumers as to the source of Applicant's goods or Applicant's affiliation or relationship with, or sponsorship by, Opposer.

16. Such confusion resulting from Applicant's intended use and the requested registration of Applicant's Mark, will damage Opposer.

17. Applicant's Mark should be barred from registration, pursuant to 15 U.S.C. § 1052(d), because Applicant's Mark consists of a mark which so resembles Opposer's Registered Mark in use in U.S. interstate commerce, that Applicant's Mark is likely, when used on or in connection with the goods of the Applicant, to cause confusion, or to cause mistake, or to deceive.

18. WHEREFORE, Opposer requests that its Opposition be sustained, that the registration of Applicant's Mark be refused, and that Application Serial No. 87562937 be rejected.

Dated this 7th day of November, 2018.

BBK TOBACCO & FOODS, LLP



Brendan N. Mahoney
General Counsel
3401 West Papago Street
Phoenix, AZ 85009

ATTORNEY FOR OPPOSER

CERTIFICATION

I certify that a copy of the foregoing Petition for Cancellation was sent this 7th day of November 2018 via United States mail, postage prepaid, and via email to:

Abraham Lichy
The Lichy Law Firm, P.C.
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New York City, NY 10065

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Brendan N. Maloney