

ESTTA Tracking number: **ESTTA963528**

Filing date: **03/29/2019**

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 | Latinfood U.S. Corp. d/b/a Zenu Products Co. |
| Granted to Date of previous extension | 04/03/2019 |
| Address | 80B Keyland Court Bohemia, NY 11716 UNITED STATES |
| Party who filed Extension of time to oppose | Zenu Products, Inc. |
| Relationship to party who filed Extension of time to oppose | Change is due to a previous clerical error. |

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| Attorney information | Mark J. Ingber The Ingber Law Firm 51 JFK Parkway First Floor West, Suite 159 Short Hills, NJ 07078 UNITED STATES Ingber.lawfirm@gmail.com 973-921-0080 |
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Applicant Information

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|--------------------------------|--|---------------------------------|------------|
| Application No | 87235819 | Publication date | 12/04/2018 |
| Opposition Filing Date | 03/29/2019 | Opposition Period Ends | 04/03/2019 |
| International Registration No. | NONE | International Registration Date | NONE |
| Applicant | INDUSTRIA DE ALIMENTOS ZENÃ# S.A.S. Calle 2, No 50 - 561 Medellin, O COLOMBIA | | |

Goods/Services Affected by Opposition

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| Class 029. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Meat; Fish, poultry, and game, not live; ham, namely, turkey ham, pork ham, beef ham; sausages and hot dogs made of beef or chicken; ribs, namely, beef ribs, pork ribs; uncooked hamburger patties of beef, chicken, and turkey |
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Grounds for Opposition

| | |
|--------------------------------------|----------------------------|
| Priority and likelihood of confusion | Trademark Act Section 2(d) |
|--------------------------------------|----------------------------|

Mark Cited by Opposer as Basis for Opposition

| | | | |
|------------------------------------|---|------------------|------|
| U.S. Application/ Registration No. | NONE | Application Date | NONE |
| Registration Date | NONE | | |
| Word Mark | RANCHERA | | |
| Goods/Services | Bologna; Canned cooked meat; Canned fish; Chorizo; Hot dogs; Preserved meats and sausages; Processed meat; Sausages; Tuna fish. | | |

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| Related Proceedings | The parties are involved in the following proceeding: INDUSTRIA DE ALIMENTOS ZENU S.A.S. V. LATINFOOD U.S. CORP. D/B/A ZENU PRODUCTS CO. AND WILSON ZULUAGA; CIVIL ACTION NO.: 2:16-CV-06576-KM- MAH |
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|-------------|--|
| Attachments | RANCHERA Opposition.pdf(114126 bytes) Exhibit A-Ranchera-TESS.pdf(222582 bytes) |
|-------------|--|

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|-----------|------------------------|
| Signature | /Mark J. Ingber, Esq./ |
| Name | Mark J. Ingber |
| Date | 03/29/2019 |

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| BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD IN THE UNITED STATES PATENT AND TRADEMARK OFFICE | |
| IN RE APPLICATION OF: Industria De Alimentos SERIAL NO: 87/235819 FILED: November 14, 2016 MARK: RANCHERA | CLASS: 29 PUBLISHED: December 4, 2018 |
| Latinfood U.S. Corp. d/b/a Zenu Products Co. Opposer, vs. Industria De Alimentos Zenu S.A.S Applicant. | OPP. NO: |
| TO: TRADEMARK TRIAL AND APPEAL BOARD U.S. Patent and Trademark Office P.O. Box 1451 Alexandria, VA 22313-1451 | |

NOTICE OF OPPOSITION

A. Identification of Opposer:

1. Opposer is Latinfood U.S. Corp. d/b/a Zenu Products Co., a New York Corporation with a principal place of business at 165 Keyland Court, Bohemia, NY 11716 (herein after “Latinfoods”).

2. Applicant, Industria De Alimentos Zenu S.A.S, a Columbia corporation, is the owner of U.S. Trademark Application Serial No. 87/235819 for the mark RANCHERA as intended for use in connection with meat; Fish, poultry, and game, not live; ham, namely, turkey

ham, pork ham, beef ham; sausages and hot dogs made of beef or chicken; ribs, namely, beef ribs, pork ribs; uncooked hamburger patties of beef, chicken, and turkey in Class 29. Said application is a '1B' or 'intent to use' application.

3. Opposer believes that it will be damaged by the grant of and registration of said RANCHERA mark in Class 29 shown in the above referenced Application Ser. No. 87/235819, filed November 14, 2016, and hereby opposes the registration of such mark.
4. Opposer is submitting herewith as part hereof and mark Exhibit A, a TESS status report regarding Application Serial No. 87/235819, for the mark RANCHERA filed November 14, 2016.
5. There is no issue as to priority in the United States. Applicant's foregoing application is based upon an intent to use RANCHERA mark in the United States, as well as based on foreign registration 44(e), while Opposer has used its RANCHERA mark in commerce since at least as early as 2014.

B. Grounds for Opposition:

As grounds for opposition, it is alleged that:

6. Latinfood ("Opposer") is presently engaged in and has been continuously engaged in distributing Bologna, canned cooked meat; canned fish; chorizo; hot dogs; preserved meats

and sausages; processed meat; sausages; and tuna fish in the United States since at least as early as the beginning of 2011. Opposer has used its RANCHERA mark in commerce since at least as early as 2014, which date is long prior to the filing by Applicant of its Application Ser. No. 87/235819 for the mark RANCHERA.

7. Applicant's Application Serial No. 87/235819, for the mark RANCHERA is an intent to use, 1(b) and 44(e) application and Applicant has never sold any RANCHERA products in U.S. commerce.
8. As a consequence of Opposer's continuous, substantial and widespread use of the RANCHERA mark, the trade and consuming public have come to know and associate Opposer's RANCHERA mark with Opposer's Bologna, canned cooked meat; canned fish; chorizo; hot dogs; preserved meats and sausages; processed meat; sausages; and tuna fish and having their source of origin from and originating with Opposer, such identification and association with Opposer having occurred prior to the November 14, 2016 filing date of Applicant's Application Ser. No. 87/235819.
9. The Trademark proposed for registration by the Applicant, namely, RANCHERA in Class 29, is so confusingly similar in sight and sound to Opposer's RANCHERA mark that there is a substantial likelihood of confusion amongst the consuming public. Moreover, Applicant's goods, as identified in its trademark application, are similar to Opposer's goods that there is likely to be continued confusion therewith and mistaken therefore. The

Applicant's mark is deceptively similar to Opposer's longstanding mark, so as to cause confusion and lead to deception as to the origin of Applicant's goods bearing Applicant's marks.

10. Moreover, the goods of Opposer and the goods of Applicant are similar, are in similar channels of commerce, and are offered and/or will be offered to similar customers.

11. As a result of the confusing similarity between Opposer's longstanding mark and the Applicant's mark, and because the goods of Applicant and Opposer are similar, are in similar channels of commerce, and are directed to similar customers, registration of Applicant's RANCHERA mark in connection with Applicant's goods is likely to cause confusion and/or is likely to deceive the public as to the source or sponsorship of such goods and thereby to damage Opposer.

12. Opposer would be damaged by the granting to Applicant of the registration of the RANCHERA mark for which registration is sought, because such mark, when applied to the goods of Applicant, would:

- a. Be likely to continue to cause confusion and to cause mistake and to deceive;
- b. Falsely suggest a connection with Opposer;
- c. Cause consumers of Applicant's goods offered in connection with the Applicant's mark to purchase Applicant's goods assuming that they were purchasing Opposer's goods;

- d. Damage Opposer's valuable goodwill in its RANCHERA mark; and
- e. Cause confusion in the trade which would inevitably result in the loss of sales to the Opposer. Furthermore, any defect, objection or fault found with Applicant's goods marketed under its mark would necessarily reflect upon and seriously injure the reputation which the Opposer has established for its goods.
- f. If the Applicant were granted the registration herein opposed, it would thereby obtain at least a prima facie exclusive right to the use of its mark. Such registration would be a source of damage and injury to the Opposer.

13. By reason of the foregoing, Applicant is not entitled to the registration of the mark sought by its application Serial No. 87/235819 for the mark RANCHERA.

WHEREFORE, Opposer respectfully prays that:

- a. Applicant be required to answer this Notice of Opposition;
- b. Application Serial No. 87/235819 in International Class 29 be rejected, and that the mark therein sought for the services herein specified in International Class 29 be denied and refused.
- c. The \$400 filing fee required in § 2.6(a)(17) is submitted herewith.
- d. Opposer be awarded such other and further relief as may be deemed to be just and proper.

Respectfully submitted,

THE INGBER LAW FIRM

By: /Mark J. Ingber/
Mark J. Ingber, Esq.

Dated: March 29, 2019

CERTIFICATE OF SERVICE

The undersigned certifies that a true and complete copy of the foregoing Notice of Opposition has been served by Email, upon Applicant Industria De Alimentos to the following email for Clark W. Lackert, Esq., the Applicant's counsel of record this 29th day of March, 2019: clackert@reedsmith.com and nycipdocketing@reedsmith.com .

Clark W. Lackert, Esq.

/Mark J. Ingber/
Mark J. Ingber



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Word Mark RANCHERA

Translations The English translation of "RANCHERA" in the mark is "female rancher".

Goods and Services IC 029. US 046. G & S: Meat; Fish, poultry, and game, not live; ham, namely, turkey ham, pork ham, beef ham; sausages and hot dogs made of beef or chicken; ribs, namely, beef ribs, pork ribs; uncooked hamburger patties of beef, chicken, and turkey

Mark Drawing Code (5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Serial Number 87235819

Filing Date November 14, 2016

Current Basis 1B;44E

Original Filing Basis 1B;44E

Published for Opposition December 4, 2018

Owner (APPLICANT) INDUSTRIA DE ALIMENTOS ZENÚ S.A.S. sociedad por acciones simplificada (s.a.s.) COLOMBIA Calle 2, No 50 - 561 Medellin COLOMBIA 0

Attorney of Record Clark W. Lackert

Description of Mark The color(s) red, white, and black is/are claimed as a feature of the mark. The mark consists of the literal element "RANCHERA" in stylized red lettering set against a white background and surrounded by a black outline.

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

EXHIBIT A

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