

ESTTA Tracking number: **ESTTA987788**

Filing date: **07/16/2019**

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	Aguilla Management, LLC
Granted to Date of previous extension	07/24/2019
Address	7332 EAST BUTHERUS DRIVE SCOTTSDALE, AZ 85255 UNITED STATES

Correspondence information	TIMOTHY M MCCARTHY CLARK HILL PLC 130 E RANDOLPH ST 39TH FL CHICAGO, IL 60601 UNITED STATES ipdocket@clarkhill.com, tmccarthy@clarkhill.com, tward@clarkhill.com, dmarr@clarkhill.com, scarroll@clarkhill.com 312-985-5900
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**Applicant Information**

Application No	88163132	Publication date	03/26/2019
Opposition Filing Date	07/16/2019	Opposition Period Ends	07/24/2019
Applicant	International Fruit Genetics LLC 8224 Espresso Drive, Suite 200 Bakersfield, CA 93312 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 031. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Fruits, namely, fresh table grapes
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**Grounds for Opposition**


Priority and likelihood of confusion	Trademark Act Section 2(d)
Other	Section 13(a) of the Trademark Act, 15 U.S.C. 1063

**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	1140949	Application Date	09/28/1978
Registration Date	10/28/1980	Foreign Priority	NONE

		Date	
Word Mark	CANDY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 031. First use: First Use: 1969/07/31 First Use In Commerce: 1969/07/31 Fresh Fruit-Namely, Apples, Peaches, Pears, Fresh Prunes and Plums		

U.S. Registration No.	2752705	Application Date	11/01/2002
Registration Date	08/19/2003	Foreign Priority Date	NONE

Word Mark	CANDY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 031. First use: First Use: 1969/07/31 First Use In Commerce: 1969/07/31 FRESH FRUIT		

U.S. Registration No.	1468568	Application Date	11/23/1984
Registration Date	12/08/1987	Foreign Priority Date	NONE

Word Mark	KANDY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 031. First use: First Use: 1965/00/00 First Use In Commerce: 1965/00/00 FRESH FRUITS AND FRESH VEGETABLES		

Attachments	Opposition as filed with Exhibits 349960.pdf(320156 bytes ) 76465026#TMSN.png( bytes )
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Signature	/TIMOTHY M MCCARTHY/
Name	TIMOTHY M MCCARTHY
Date	07/16/2019

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

In re Trademark Application Number 88/163,132  
Mark: CANDY DROPS  
Published: March 26, 2019

Aguila Management, LLC,

Opposer,

v.

International Fruit Genetics LLC,

Applicant.

**NOTICE OF OPPOSITION**

Opposer, Aguila Management, LLC (“Opposer”) believes it will be damaged by registration of the mark CANDY DROPS, the subject of United States Trademark Application No. 88/163,132, filed by International Fruit Genetics LLC, and therefore opposes this application. Opposer brings this opposition pursuant to Section 13(a) of the Trademark Act, 15 U.S.C. 1063, based on likelihood of confusion, and states:

1. Opposer is a limited liability company organized under the laws of the State of Arizona, with a principal place of business at 7332 East Butherus Drive, Scottsdale, Arizona.
2. Applicant is a limited liability company organized under the laws of the State of California, with a principal place of business at 8224 Espresso Drive, Suite 200, Bakersfield, California.
3. On October 21, 2018, Applicant filed the opposed application on an intent-to-use basis, to register the mark CANDY DROPS for “Fruits, namely, fresh table grapes.”
4. The application was published on March 26, 2019. This Board granted Opposer an extension of time to file this Opposition, to July 24, 2019.

5. Opposer is the managing entity of Eagle Produce, L.L.C. (“Eagle”). Eagle does business under the Arizona tradename Martori Farms. Martori Farms is the exclusive licensee of Opposer’s Marks, as more fully described in this Opposition.

6. Martori Farms has been a staple in the agriculture business and as a leader in all aspects of growing, shipping, and selling at wholesale and retail since the early 1900s.

7. Opposer and Martori Farms have long-established and valuable business relationships nationwide in the retail and wholesale marketplaces for fresh fruits and vegetables. The majority of Opposer’s and Eagle’s customers are large retailers, including, by way of examples and without limitation, Wal-Mart, Costco, Sam’s Club, Sprouts, Aldi, Hyvee, Target, Publix, Fry’s, to name a few.

8. Opposer’s and Martori Farms’ goods are prolific throughout locations where the general public purchases agricultural products, including fresh fruits and other produce.

9. Opposer is the owner by assignment of three United States Trademark Registrations, all of which relate to fresh fruit and produce, for the marks CANDY and KANDY, as more particularly described below.

10. Opposer’s and Martori Farms’ goods are sold under the CANDY marks, as more particularly described below, and have been since at least 1969.

11. Opposer’s goods are also sold under the KANDY mark, as more particularly described below, and have been since at least 1986.

12. The trademarks CANDY and KANDY have become, through widespread and favorable public acceptance and recognition and widespread advertising, assets of substantial value as a symbol of Opposer, its goods, and its goodwill.

13. Where appropriate, the First CANDY Mark, the Second CANDY Mark, and the

KANDY Mark, all defined below, are collectively referred to herein as “Opposer’s Marks.”

### **The First “CANDY” Mark**

14. Opposer is the owner by assignment of United States Trademark Registration No. 1,140,949 (“the ’949 Registration”) for the word mark CANDY (hereinafter, the “First CANDY Mark”) for “Fresh Fruit-Namely, Apples, Peaches, Pears, Fresh Prunes and Plums.” A true and correct copy of the Certificate of Registration is attached as Exhibit A.

15. Opposer, through its predecessors, assignors, and its present affiliate and exclusive licensee, Eagle, has used the term CANDY as a trademark to denote the source of fresh fruit, namely, apples, peaches, pears, fresh prunes and plums, in interstate commerce, since at least July 31, 1969.

16. The ’949 Registration has become incontestable within the meaning of Section 15 of the Trademark Act, 15 U.S.C. § 1065, and accordingly is conclusive evidence of the validity of the ’949 Registration, of Opposer’s ownership of the First CANDY Mark, and of Opposer’s exclusive right to use the First CANDY Mark in commerce. 15 U.S.C. § 1115(b).

### **The Second “CANDY” Mark**

17. Opposer is the owner by assignment of United States Trademark Registration No. 2,752,705 (“the ’705 Registration”) for the word mark CANDY (hereinafter the “Second CANDY Mark”). This registration recites, more broadly than the ’949 Registration, “Fresh Fruit.” A true and correct copy of the Certificate of Registration is attached as Exhibit B.

18. Opposer, through its predecessors, assignors, and its present affiliate and exclusive licensee, Eagle, has used the term CANDY to denote the source of fresh fruit, in interstate commerce, since at least July 31, 1969.

19. The ’705 Registration has become incontestable within the meaning of Section 15 of the Trademark Act, 15 U.S.C. § 1065, and accordingly is conclusive evidence of the validity

of the '705 Registration, of Opposer's ownership of the Second CANDY Mark, and of Opposer's exclusive right to use the Second CANDY Mark in commerce. 15 U.S.C. § 1115(b).

### **The "KANDY" Mark**

20. Opposer is the owner by assignment of United States Trademark Registration No. 1,468,568 ("the '568 Registration") for the word mark KANDY (hereinafter, the "KANDY Mark") for "Fresh Fruit and Fresh Vegetables." A true and correct copy of the Certificate of Registration is attached as Exhibit C.

21. Opposer, through its predecessors, assignors, and its present affiliate and exclusive licensee, Eagle, has used the term KANDY as a trademark to denote the source of fresh fruit and fresh vegetables, in interstate commerce, since at least 1965.

22. The '568 Registration has become incontestable within the meaning of Section 15 of the Trademark Act, 15 U.S.C. §1065, and accordingly is conclusive evidence of the validity of the '568 Registration, of Opposer's ownership of the KANDY Mark, and of Opposer's exclusive right to use the KANDY Mark in commerce. 15 U.S.C. § 1115(b).

### **The Likelihood of Confusion**

23. The CANDY DROPS mark, as used on fresh fruit, namely, grapes, in commerce, so closely resembles Opposer's Marks with respect to appearance and sound and commercial impression, as to be likely to cause confusion, or to cause mistake, or to deceive.

24. Applicant's use of the CANDY DROPS mark on fresh fruit, namely, grapes, in commerce, will cause consumers to mistakenly believe that Applicant's grapes originate with, or are sponsored, endorsed, approved, or otherwise affiliated with Opposer.

25. Applicant's CANDY DROPS mark so resembles Opposer's Marks as to be likely to create a false designation of origin and false or misleading representation of fact that is likely to cause confusion, or to cause mistake, or to deceive as to an affiliation, connection, or

association between Opposer and Applicant. Any objection or fault with the goods offered in connection with Applicant's mark may reflect upon and injure Opposer's reputation or the goodwill Opposer has established in Opposer's Marks.

26. Applicant's goods, "fresh fruit," are identical to Opposer's goods, also "fresh fruit."

27. On information and belief, Applicant intends to use the CANDY DROPS on grapes sold at retail. Applicant's goods and Opposer's goods therefore travel in the same channels of trade.

28. Opposer has not consented to Applicant's use of the CANDY DROPS mark.

29. If Applicant is granted a registration for CANDY DROPS for use on fresh fruit, namely, grapes, that registration will be a source of injury and damages to Opposer.

30. Opposer cannot control the quality of Applicant's goods. The use of the CANDY DROPS mark on fresh fruit, including grapes, would therefore place in jeopardy Opposer's valuable rights in Opposer's Marks and in Opposer's valuable reputation and good will.

**Prayer for Relief**

WHEREFORE, Opposer, Aguila Management, LLC, requests that this Opposition be sustained and that the registration sought by Application No. 88/163,132 be rejected.

Respectfully submitted,

Aguila Management, LLC

Dated: July 16, 2019

By: /Timothy M. McCarthy

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### **Index of Exhibits**

- A. United States Trademark Registration No. 1,140,949.
- B. United States Trademark Registration No. 2,752,705.
- C. United States Trademark Registration No. 1,468,568.

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

In re Trademark Application Number 88/163,132

Mark: CANDY DROPS

Published: March 26, 2019

Aguila Management, LLC,

Opposer,

v.

International Fruit Genetics LLC,

Applicant.

**EXHIBIT A**

United States Trademark Registration No. 1,140,949

**Int. Cl.: 31**

**Prior U.S. Cl.: 46**

**United States Patent and Trademark Office**

**Reg. No. 1,140,949**

**Registered Oct. 28, 1980**

**TRADEMARK**  
**Principal Register**

**CANDY**

Eakin Fruit Company, Inc. (Washington corporation)  
P.O. Box 3063  
Union Gap, Wash. 98903

For: FRESH FRUIT—NAMELY, APPLES,  
PEACHES, PEARS, FRESH PRUNES AND  
PLUMS, in CLASS 31 (U.S. Cl. 46).

First use Jul. 31, 1969; in commerce Jul. 31, 1969.

Ser. No. 187,276, filed Sep. 28, 1978.

R. ROSS, Primary Examiner

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**EXHIBIT B**

United States Trademark Registration No. 2,752,705

**Int. Cl.: 31**

**Prior U.S. Cls.: 1 and 46**

**United States Patent and Trademark Office**

**Reg. No. 2,752,705**

**Registered Aug. 19, 2003**

**TRADEMARK  
PRINCIPAL REGISTER**

**CANDY**

PHOENIX AGRO-INVEST, INC. (ARIZONA CORPORATION)  
7332 EAST BUTHERUS  
SCOTTSDALE, AZ 85260

OWNER OF U.S. REG. NOS. 1,140,949 AND  
1,468,568.

FOR: FRESH FRUIT, IN CLASS 31 (U.S. CLS. 1  
AND 46).

SER. NO. 76-465,026, FILED 11-1-2002.

FIRST USE 7-31-1969; IN COMMERCE 7-31-1969.

INGRID C. EULIN, EXAMINING ATTORNEY

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

In re Trademark Application Number 88/163,132

Mark: CANDY DROPS

Published: March 26, 2019

Aguila Management, LLC,

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International Fruit Genetics LLC,

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**EXHIBIT C**

United States Trademark Registration No. 1,468,568

Int. Cl.: 31

Prior U.S. Cl.: 46

Reg. No. 1,468,568

**United States Patent and Trademark Office** Registered Dec. 8, 1987

**TRADEMARK  
PRINCIPAL REGISTER**

**KANDY**

MARTORI BROS. DISTRIBUTORS (PARTNER-  
SHIP)  
15029 NORTH 74TH STREET  
SCOTTSDALE, AZ 85260, ASSIGNEE OF PRO-  
DUCTION FARM MANAGEMENT, INC. (AR-  
IZONA CORPORATION) GLENDALE, AZ  
85301

FOR: FRESH FRUITS AND FRESH VEGETA-  
BLES, IN CLASS 31 (U.S. CL. 46).  
FIRST USE 0-0-1965; IN COMMERCE  
0-0-1965.

OWNER OF U.S. REG. NO. 1,140,949.

SER. NO. 510,357, FILED 11-23-1984.

JULIE B. SEYLER, EXAMINING ATTORNEY