

ESTTA Tracking number: **ESTTA990772**

Filing date: **07/26/2019**

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	Rizo-Lopez Foods, Inc.
Granted to Date of previous extension	07/28/2019
Address	201 S. McClure Road Modesto, CA 95357 UNITED STATES

Attorney information	Rob G. Leach Charmasson, Buchaca & Leach, LLP 2635 Camino Del Rio S Suite 102 San Diego, CA 92108 UNITED STATES rob@charmasson.com 6192942922
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**Applicant Information**

Application No	88158480	Publication date	01/29/2019
Opposition Filing Date	07/26/2019	Opposition Period Ends	07/28/2019
Applicant	Cacique, Inc. Suite 200 800 Royal Oaks Drive Monrovia, CA 91016 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 029. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Food product, namely, Mexican-style sausage made with cheese; Mexican-style sausage and cheese blended together
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act Section 2(d)
The mark is merely descriptive	Trademark Act Section 2(e)(1)
Dilution by blurring	Trademark Act Sections 2 and 43(c)
Dilution by tarnishment	Trademark Act Sections 2 and 43(c)

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

U.S. Registration No.	2695304	Application Date	03/22/2002
Registration Date	03/11/2003	Foreign Priority Date	NONE
Word Mark	RIZO-LOPEZ		
Design Mark	<b>RIZO-LOPEZ</b>		
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2000/12/16 First Use In Commerce: 2000/12/16 Dairy products excluding ice cream, icemilk and frozen yogurt; meats, namely sausage		

U.S. Registration No.	5352254	Application Date	12/16/2015
Registration Date	12/05/2017	Foreign Priority Date	NONE
Word Mark	RIZO BROS		
Design Mark	<b>RIZO BROS</b>		
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2017/05/30 First Use In Commerce: 2017/05/30 Cheese; Dairy products excluding ice cream, ice milk and frozen yogurt; Meat; Sausages		

Attachments	76385810#TMSN.png( bytes ) 86850688#TMSN.png( bytes ) 190091rglcloppcp72619.pdf(254604 bytes )
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Signature	/Rob G. Leach/
Name	Rob G. Leach
Date	07/26/2019

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

Rizo-Lopez Foods, Inc.,	)	
	)	Opposition No.: Not Yet Assigned
Opposer	)	
	)	Application Serial No.: 88158480
v.	)	
	)	<b>RIZO-LOPEZ OPPOSITION TO</b>
	)	<b>REGISTRATION APPLICATION OF</b>
Cacique, Inc.,	)	<b>CACIQUE, INC. FOR THE MARK</b>
	)	<b>“QUERIZO”</b>
Applicant	)	
_____	)	

**COUNT 1**  
**LIKELIHOOD OF CONFUSION**  
**WITH REGISTERED MARK**

1. Rizo-Lopez Foods, Inc. (referred to as “Rizo-Lopez” or “Opposer”), is a California Corporation with its principal place of business at 201 S. McClure Road, Modesto, California 95357, United States.
2. Since at least as early as December 16, 2000, Rizo-Lopez has used the trademark “Rizo-Lopez” to brand for sale in interstate commerce a variety of dairy products and meats, including sausage and chorizo, including as registered in international class 029 pursuant to USPTO Registration No. 2695304. That registration is still in force today. Since its first use, Rizo-Lopez has continuously and exclusively used the mark in interstate commerce as specified in the registration.
3. Since at least as early as May 30, 2017, Rizo-Lopez has also used the trademark “Rizo

Bros” to brand for sale in interstate commerce a variety of dairy products, cheese, meats, and sausages, including chorizo, including as registered in international class 029 pursuant to USPTO Registration No. 5352254. That registration is still in force today. Since its first use, Rizo-Lopez has continuously and exclusively used the mark in interstate commerce as specified in the registration. Rizo-Lopez’s use of its “Rizo Bros” mark in interstate commerce has been so extensive and pervasive that consumers have come to recognize the “Rizo Bros” brand as indicative of Rizo-Lopez as the sole source of the branded products, therefore gaining secondary meaning in that regard.

4. These Rizo-Lopez trademarks described above will be collectively referred to as “Rizo-Lopez's Registered Trademarks”.
5. On October 17, 2018, applicant Cacique, Inc., a California corporation whose address is 800 Royal Oaks Drive, Monrovia, California 91016 (referred to as “Cacique” or “Applicant”), filed for registration of its trademark “Querizo”, in international 029 for “Food product, namely, Mexican-style sausage made with cheese; Mexican-style sausage and cheese blended together”.
6. Rizo-Lopez’s Registered Trademarks and Applicant’s mark share significant similarities in appearance and sound, including without limitation the use of the “rizo” verbiage. Additionally, Applicant’s mark is essentially a compound mark which uses portions of two words - Queso and Chorizo. “Queso” is a Spanish word which means cheese in English. Chorizo is the generic name for a Mexican-style sausage.
7. Applicant plans on using its mark for goods that are nearly identical, or at a minimum

substantially related to, the goods for which Rizo-Lopez uses its Rizo-Lopez's Registered Trademarks. Applicant plans on using its mark for a product which blends “Mexican-style sausage” (which would include Chorizo) and cheese. The Rizo-Lopez Registered Trademarks are used to brand dairy products, including cheese, and meat products, including Mexican-style sausage (including Chorizo). The same or substantially similar group of persons and consumers are exposed to both the Applicant’s and the Opposer’s marks through the same or substantially similar channels of trade.

8. Persons and consumers familiar with Rizo-Lopez’s Registered Trademarks upon seeing Applicant’s mark would likely believe, and would be reasonably justified in believing, that Applicant, Applicant’s goods, and/or Applicant’s trademark are associated with, affiliated with, sponsored by or under the authorization of Rizo-Lopez.
9. Rizo-Lopez will be damaged if Applicant is permitted to its registration of its trademark, including because:
  - a. there will be a likelihood of confusion amongst the relevant public and consumers resulting in damage and injury to Rizo-Lopez (15 U.S.C Section 1052(d));
  - b. Any objection, fault or adverse publicity in connection with Applicant’s mark, services and/or products will necessarily reflect on and seriously injure the reputation that Rizo-Lopez has established with its marks. (15 U.S.C Section 1068, 1052(d)); and
  - c. Applicant could arguably obtain a *prima facie* exclusive right to use its mark to limit or potentially prevent Rizo-Lopez from using its marks in its current fields

of use, and/or other fields of use that are a natural extension of Rizo-Lopez's fields of use, further damaging Rizo-Lopez (15 U.S.C Section 1063 and 1064).

**COUNT 2**  
**TRADEMARK DILUTION**

10. Rizo-Lopez incorporates by reference, as if fully set forth, paragraphs 1 through 9.
11. Rizo-Lopez's use of its Rizo-Lopez Registered Trademarks has been so continuous, extensive, and exclusive such that the trademarks are famous, as defined by law, including without limitation because the mark is widely recognized by the general consuming public in the U.S. as a designation of Rizo-Lopez's goods and services.
12. Rizo-Lopez's trademark and associated rights have been and will be wrongfully diluted by Applicant's subject registration, including without limitation because:
  - a. Any objection, fault, adverse publicity, or negative connotations in connection with Applicant's mark, services and/or products will necessarily reflect on and seriously injure the reputation that Rizo-Lopez has established with its mark, including without limitation dilution by tarnishment. (15 U.S.C § 1125(c) and §1063); and
  - b. Applicant could arguably obtain at least a *prima facie* exclusive right to use its mark for the stated goods, and arguably for related services, and arguably for fields of natural expansion, further damaging Rizo-Lopez by limiting or potentially preventing Rizo-Lopez's use of its mark, including without limitation through dilution by blurring (15 U.S.C § 1052(d); § 1125©; and §1063).

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**COUNT 3**  
**MERELY DESCRIPTIVE MARK**

13. Rizo-Lopez incorporates by reference, as if fully set forth, paragraphs 1 through 9.
14. Applicant's mark consists of a mark which, when applied to the goods of Applicant, is merely descriptive in that the mark is made up of apt and common term used to describe the goods of the nature involved.
15. Rizo-Lopez is likely to be damaged by registration of Applicant's mark in that the prima facie effect of that registration tends to impair Rizo-Lopez's right to descriptive use of those terms, one of which includes a portion of Rizo-Lopez's marks.
16. Therefore, Applicant is not entitled to registration of its mark in that Applicant is not entitled to exclusive use of the terms in commerce on the goods specified, and Applicant's mark does not function to identify Applicant's goods to distinguish them from those offered by others.

**PRAYER**

17. WHEREFORE, Rizo-Lopez prays that Applicant's application No. 88158480 be denied in whole, or alternatively in part.

Dated: July 26, 2019

By: \_\_\_\_\_

Rob G. Leach  
Attorneys for Opposer, Rizo-Lopez

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**PROOF OF SERVICE**

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action; my business address is 2635 Camino Del Rio South, Suite 102, San Diego, CA 92108. On July 26, 2019, I served the following document(s) on the interested parties in this action by sending a true and correct copy thereof as follows:

**1. RIZO-LOPEZ OPPOSITION TO REGISTRATION APPLICATION OF CACIQUE, INC. FOR THE MARK "QUERIZO"**

Antonio de Cardenas  
De Cardenas Law Group, APLC  
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South Pasadena CA 94104  
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XX (BY MAIL) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at San Diego, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. I declare that I am a member of the bar of this court, or employed in the office of a member of the bar of this court at whose direction the service was made. Executed on 7/26/2019, at San Diego, California.

  
\_\_\_\_\_  
Rob G. Leach/ Randy S. Perlman