

ESTTA Tracking number: **ESTTA1013165**

Filing date: **11/04/2019**

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	BBK Tobacco & Foods, LLP, d/b/a HBI International
Granted to Date of previous extension	11/20/2019
Address	3401 W PAPAGO ST PHOENIX, AZ 85009 UNITED STATES

Attorney information	BRENDAN MAHONEY 3401 W PAPAGO ST PHOENIX, AZ 85009 UNITED STATES legal@hbiin.com 602-374-7482
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**Applicant Information**

Application No	88373790	Publication date	07/23/2019
Opposition Filing Date	11/04/2019	Opposition Period Ends	11/20/2019
Applicant	Espinosa Cigars, LLC 10781 NW 89th Avenue Hialeah Gardens, FL 33018 UNITED STATES		

**Goods/Services Affected by Opposition**


Class 034. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Cigars
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act Section 2(d)
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**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	4538562	Application Date	08/02/2012
Registration Date	05/27/2014	Foreign Priority Date	NONE
Word Mark	WAR		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 034. First use: First Use: 2013/10/24 First Use In Commerce: 2013/10/24 Cigars

U.S. Application No.	86935962	Application Date	03/10/2016
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	WAR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 034. First use: First Use: 0 First Use In Commerce: 0 Cigarette tubes; Cigarette rolling papers		

Attachments	85694283#TMSN.png( bytes ) 86935962#TMSN.png( bytes ) WAR ZONE Notice of Opposition.pdf(79946 bytes )
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Signature	/Brendan N. Mahoney/
Name	BRENDAN MAHONEY
Date	11/04/2019

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

*In re* Trademark Application

Serial No.: 88373790

Mark: WAR ZONE

Class 34

Applicant: Espinosa Cigars, LLC

Published in the Official Gazette of:

July 23, 2019

BBK Tobacco & Foods, LLP,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No.: _____
	)	
Espinosa Cigars, LLC	)	
	)	
Applicant.	)	

**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 WAR ZONE mark as shown in Application Serial No. 88373790, filed April 5, 2019, in International Class 034 (the "Application") by Espinosa Cigars, LLC, ("Applicant") and published in the Official Gazette of July 23 2019, and opposes registration upon the Principal Register of the WAR ZONE mark ("Applicant's Mark"). On July 24, 2019, 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 20, 2019.

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 Marks"):

<b>Mark Class and Related Goods</b>	<b>Application Date Dates of First Use</b>	<b>Registration Number and Date</b>
WAR – 034 Cigars	Filed Aug. 2, 2012 First Use Oct. 24, 2013	4538562 May 27, 2014
WAR – 034 cigarette tubes; cigarette rolling papers	Filed March 20, 2016	Ser. No. 86935962 pending

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

3. Opposer itself, or through its predecessor, has used, Opposer's Registered Marks in U.S. interstate commerce for the sale of the goods identified in those registrations since 2013.

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 23, 2019.

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

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

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

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

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 registrations for Opposer's Registered Marks and that are sold by Opposer using Opposer's Registered Marks 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 Marks, 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 Marks.

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 Marks 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 Marks 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. 88373790 be rejected.

Dated this 4th day of November, 2019.

BBK TOBACCO & FOODS, LLP



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

ATTORNEY FOR OPPOSER

## CERTIFICATION

I certify that a copy of the foregoing Notice of Opposition was sent this 4<sup>th</sup> day day of November 2019 via United States mail, postage prepaid, and email to:

Frank Herrera  
H New Media Law  
1110 Brickell Ave., Suite 506  
Miami, Florida 33131

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Brendan N. Mahoney