

ESTTA Tracking number: **ESTTA1067108**

Filing date: **07/09/2020**

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	FOODS FOR JUNIORS, INC.
Granted to Date of previous extension	07/15/2020
Address	386 FLATBUSH AVENUE EXTENSION BROOKLYN, NY 11201 UNITED STATES
Correspondence information	NATHANIEL KRAMER KIRSCHSTEIN ISRAEL SCHIFFMILLER & PIERONI 425 FIFTH AVENUE FIFTH FLOOR NEW YORK, NY 10016 UNITED STATES Primary Email: NDKRAMER@MINDSPRING.COM 212-697-3750 X 135

Applicant Information

Application No.	87941834	Publication date	03/17/2020
Opposition Filing Date	07/09/2020	Opposition Period Ends	07/15/2020
International Registration No.	NONE	International Registration Date	NONE
Applicant	Bertorello, Marcos Cesar AVENIDA LIBERTAD 229, VILLA CARLOS PAZ PROVINCIA DE CORDOBA, 5152 ARGENTINA		

Goods/Services Affected by Opposition

Class 043. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Fast-food restaurant services; Serving food and drinks

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.	1604169	Application Date	11/16/1989
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Registration Date	06/26/1990	Foreign Priority Date	NONE
Word Mark	JUNIOR'S		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 1950/11/00 First Use In Commerce: 1950/11/00 RESTAURANT SERVICES		

Attachments	Notice of Opposition.pdf(1513158 bytes)
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Signature	/Nathaniel Kramer/
Name	NATHANIEL KRAMER
Date	07/09/2020

Junior's 34

IN THE UNITED STATES PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL & APPEAL BOARD

In the Matter of Application Serial No. 87941834

Foods for Juniors Inc, Opposer

v.

Marcos Cesar Bertorello, Applicant

Opposition No.

NOTICE OF OPPOSITION

Foods for Juniors Inc. ("Opposer"), a New York corporation, having its principal place of business at 386 Flatbush Avenue Ext., Brooklyn, NY 11201, believes that it would be damaged by the registration of the "JR. B" mark shown in application 87941834, and hereby opposes that application. This Notice of Opposition is timely filed in view of the 90 day extension granted to Opposer on April 15, 2020.

A prior proceeding between the same two parties herein (Opposition 91233620) involved the Applicant's closely related application directed to the mark "JUNIOR B", which was abandoned by Applicant following the filing of that opposition.

As grounds for the instant opposition, Opposer alleges the following:

1. Foods for Juniors opened its first JUNIOR'S restaurant in Brooklyn, New York, more than a half

century ago. Today, its JUNIOR'S restaurants, including the two in Times Square, New York City, are very well known, throughout the country, in part because of the millions of tourists who visit Times Square each year, the migration of hundreds of thousands, if not millions, of New Yorkers, familiar with JUNIOR'S restaurants, to other States, and the nationwide distribution of Opposer's famous JUNIOR'S branded cheesecakes throughout the country.

2. Opposer owns the federal trademark registration for the mark JUNIOR'S for restaurant services, specifically Registration 1,604,169 of June 26, 1990. The registration is incontestable.

3. The opposed application is also directed to restaurant services: "Fast-food restaurant services; Serving food and drinks" There is a complete overlap with the services in Opposer's registration.

4. The opposed application claims an effective filing date of March 12, 2018. It makes no claim to any prior use of the mark in the United States, and certainly no claim to use commencing three decades ago.

5. Accordingly, there is no issue of priority in this proceeding.

6. The initial and dominant portion of applicant's mark, "JR.", is of course the well known, and regularly used abbreviation of JUNIOR, the initial and dominant portion of applicant's prior, abandoned application. Opposer's registered mark, JUNIOR'S, is the possessive form of applicant's JR.

7. Applicant's mark "JR. B" for "Fast-food restaurant services; Serving food and drinks" is

likely to be confused with Opposer's registered mark "JUNIOR'S" for "restaurant services" because of the confusing similarity of the respective parties' marks and the complete overlap of the services involved.

8. If the opposed mark should mature to a registration, confusion is likely to occur, resulting in injury to Opposer.

Aside and apart from the above, likelihood of confusion is further shown by the following:

9. During prosecution of the opposed application, the Examiner refused registration based upon a third party mark, registration number 5570917, directed to the mark JR Restaurant Group and design, for "restaurant and bar" services.

10. The Examiner noted that the instant opposed mark (JR. B) "so resembles [that] mark that it is likely a consumer would be confused, mistaken, or deceived as to the source of the goods and/or services of the applicant and registrant(s)."


11. The instant Applicant never disagreed. Fortunately for him, however, the third party registration (JR Restaurant Group and design) was removed from the register, with prejudice, by virtue of a successful cancellation proceeding brought by the instant Opposer, one which was based on the same mark relied upon herein, Opposer's registered mark JUNIOR'S.

WHEREFORE, Opposer prays that this opposition be sustained and that Applicant's registration be

denied.

Respectfully submitted,

KIRSCHSTEIN, ISRAEL, SCHIFFMILLER & PIERONI, P.C.



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