

ESTTA Tracking number: **ESTTA1098410**

Filing date: **11/30/2020**

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	Flowers Bakeries Brands LLC
Granted to Date of previous extension	11/29/2020
Address	1919 FLOWERS CIRCLE THOMASVILLE, GA 31757 UNITED STATES
Attorney information	THEODORE H. DAVIS JR. KILPATRICK TOWNSEND & STOCKTON LLP 1100 PEACHTREE STREET NE, SUITE 2800 ATLANTA, GA 30309 UNITED STATES Primary Email: tdavis@ktslaw.com Secondary Email(s): bjones@ktslaw.com, nchollet@ktslaw.com, kteilhaber@ktslaw.com, tmadmin@ktslaw.com 4048156500
Docket Number	

Applicant Information

Application No.	88805630	Publication date	06/02/2020
Opposition Filing Date	11/30/2020	Opposition Period Ends	11/29/2020
Applicant	Galil Importing Corporation 120 EILEEN WAY SYOSSET, NY 11791 UNITED STATES		

Goods/Services Affected by Opposition

Class 030. First Use: 2015/05/00 First Use In Commerce: 2015/05/00
All goods and services in the class are opposed, namely: bakery products; bread; lavash

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.	1121956	Application Date	12/30/1976
Registration Date	07/10/1979	Foreign Priority	NONE

		Date	
Word Mark	NATURE'S OWN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1976/08/25 First Use In Commerce: 1976/08/25 BREAD		

U.S. Registration No.	1563619	Application Date	03/03/1989
Registration Date	10/31/1989	Foreign Priority Date	NONE
Word Mark	NATURE'S OWN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1979/10/00 First Use In Commerce: 1979/10/00 BREADS		

U.S. Registration No.	1707062	Application Date	10/03/1991
Registration Date	08/11/1992	Foreign Priority Date	NONE
Word Mark	NATURE'S OWN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1976/08/25 First Use In Commerce: 1976/08/25 bakery products; namely, bread		

Attachments	2020.11.30 Notice of Opposition (NATURE'S ENVY).pdf(142604 bytes)
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Signature	/Theodore H. Davis Jr./
Name	THEODORE H. DAVIS JR.
Date	11/30/2020

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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FLOWERS BAKERIES BRANDS,)
LLC,)
Opposer,)
Serial No. 88/805,630)
v.)
Mark: NATURE’S ENVY)
GALIL IMPORTING CORPORATION.,)
Applicant.)
Opposition No. _____)
)
)
)
)

NOTICE OF PARTIAL OPPOSITION

Opposer Flowers Bakeries Brands, LLC (“Opposer”) will be damaged by the registration of the NATURE’S ENVY mark (“Applicant’s Mark”) underlying application Serial No. 88/805,630 (the “Application”) filed by Applicant Galil Importing Corporation (“Applicant”), and opposes the same for certain goods in International Class 30.

1. Opposer is a Delaware limited liability company that owns and licenses a variety of trademarks for use in connection with food items.
2. Applicant is a New York corporation with a business address listed as 120 Eileen Way, Syosset, New York 11791.
3. Opposer is a subsidiary of Flowers Foods, Inc., a leading producer and marketer of packaged bakery foods in the United States. Flowers Foods, Inc. operates nearly fifty bakeries that produce breads, buns, rolls, snack cakes, and pastries, which are distributed fresh to foodservice and retail customers throughout the Eastern, Southeastern, Southwestern, Western, and mid-Atlantic states.
4. Since at least as early as 1976, Opposer and its predecessors and licensees have

used the NATURE’S OWN mark in connection with bread, bakery products, and other food products. During that time, the NATURE’S OWN mark has served as an inherently distinctive indicator of the origin of goods produced and sold under Opposer’s authority. Opposer is the owner of numerous incontestable federal registrations of the NATURE’S OWN mark, including the following:

Reg. No.	Mark	Goods
1121956		bread
1563619		breads
1707062	NATURE’S OWN	bakery products; namely, bread

These registrations and the common-law rights in the NATURE’S OWN mark are collectively referred to as the “NATURE’S OWN Mark.”

5. Opposer and its predecessors have expended considerable sums of money in developing consumer brand recognition for the NATURE’S OWN Mark prior to the filing date of the Application.

6. Because of the widespread advertising and promotion by Opposer and its licensees, Opposer’s NATURE’S OWN Mark had acquired a high degree of recognition, fame, and distinctiveness as a symbol of the quality of goods offered by Opposer and its licensees before the filing date of the Application. The public and retail buyers are familiar with and

identify Opposer's NATURE'S OWN Mark with Opposer and, by reason of this identification, goods associated with the NATURE'S OWN Mark are understood by the public and trade to be produced, marketed, and supplied under Opposer's authority or otherwise derived from Opposer.

7. Opposer's NATURE'S OWN Mark is an important factor employed by the public in identifying the source of Opposer's and Opposer's licensees' products and is distinctive of those products.

8. The goods recited in the Application cover *inter alia* "bakery products; bread; lavash" in International Class 30 (the "Disputed Goods"). The Disputed Goods are closely related or complementary to the goods Opposer and Opposer's licensees have long provided in intrastate and interstate commerce under the NATURE'S OWN Mark prior to the filing date of the Application. Both Opposer's registrations and the Application are unrestricted to customers, channels of distribution, or advertising media.

9. Applicant filed its Application on February 21, 2020. All of the NATURE'S OWN Marks were applied for and registered before February 21, 2020. Applicant claims a first use date of May 2015. All of the NATURE'S OWN Marks were in use before May 2015. Opposer's rights to the NATURE'S OWN Marks therefore predate and are senior to the Applicant's Mark. Opposer's rights are first in time, and there are no issues as to priority or seniority.

10. Opposer will be damaged by the registration of Applicant's mark because the mark so resembles the NATURE'S OWN Mark as to be likely to cause consumer confusion, mistake, and deception. Persons familiar with the NATURE'S OWN Mark and the goods sold under the NATURE'S OWN Mark are likely to believe erroneously that the Disputed Goods are goods of Opposer or Opposer's licensees or are authorized, licensed, endorsed, or sponsored by

Opposer, and registration of Applicant's mark for the Disputed Goods is therefore inconsistent with Opposer's prior rights in its own NATURE'S OWN Mark and in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

11. Because Opposer enjoys prior use in the NATURE'S OWN Marks in both intrastate and interstate commerce, and because Opposer's registrations predate the filing the Application, the Application should be refused registration for the Disputed Goods under 15 U.S.C. §§ 1052(d) and 1063.

12. The opposition fee in the amount of \$400 for a notice of opposition against the Disputed Goods in International Class 30 accompanies this notice. The Commissioner is authorized to debit Kilpatrick Townsend & Stockton LLP's deposit account no. 20-1430 if there is a deficiency in the required fee.

Opposer therefore requests the Board to refuse application Serial No. 88/805,630 in International Class 30 for the Disputed Goods and sustain this opposition in Opposer's favor.

Dated: November 30, 2020

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Respectfully submitted,

/Theodore H. Davis Jr./
Theodore H. Davis Jr.
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