

ESTTA Tracking number: **ESTTA1101595**

Filing date: **12/14/2020**

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	Gerawan Farming LLC
Granted to Date of previous extension	12/13/2020
Address	7108 N. FRESNO ST. STE. 450 FRESNO, CA 93720 UNITED STATES
Attorney information	MARCUS N. DIBUDUO FENNEMORE CRAIG, P. C. 8080 N. PALM AVE., THIRD FL. FRESNO, CA 93711 UNITED STATES Primary Email: ipmail@dowlingaaron.com 559-432-4500
Docket Number	103526.026

Applicant Information

Application No.	88789496	Publication date	06/16/2020
Opposition Filing Date	12/14/2020	Opposition Period Ends	12/13/2020
Applicant	Elevation Foods, LLC 1600 HARRIS ROAD KNOXVILLE, TN 37924 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 029. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: READY-TO-EAT PREPARED FOODS CONSISTING PRIMARILY OF MEAT, SEAFOOD, POULTRY, CHEESE, SALADS, EGGS, OR VEGETABLES AND ALSO INCLUDING PASTA; PREPARED, AND PACKAGED MEALS CONSISTING PRIMARILY OF MEAT, SEAFOOD, POULTRY, CHEESE, SALADS, EGGS, OR VEGETABLES AND ALSO INCLUDING PASTA; PREPARED, AND PACKAGED SIDE-DISHES CONSISTING PRIMARILY OF MEAT, SEAFOOD, POULTRY, CHEESE, SALADS, EGGS, OR VEGETABLES AND ALSO INCLUDING PASTA; PREPARED, AND PACKAGED MEALS NAMELY, QUICHE, POT PIE, PROTEIN SALADS, AND EGGS; PREPARED, AND PACKAGED DIPS</p>
<p>Class 030. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: SALAD AND FOOD DRESSINGS</p>

Applicant Information

Application No.	88793493	Publication date	06/16/2020
Opposition Filing Date	12/14/2020	Opposition Period Ends	
Applicant	Elevation Foods, LLC 1600 HARRIS ROAD KNOXVILLE, TN 37924 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 029. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: READY-TO-EAT PREPARED FOODS CONSISTING PRIMARILY OF MEAT, SEAFOOD, POULTRY, CHEESE, SALADS, EGGS, OR VEGETABLES AND ALSO INCLUDING PASTA; PREPARED, AND PACKAGED MEALS CONSISTING PRIMARILY OF MEAT, SEAFOOD, POULTRY, CHEESE, SALADS, EGGS, OR VEGETABLES AND ALSO INCLUDING PASTA; PREPARED, AND PACKAGED SIDE-DISHES CONSISTING PRIMARILY OF MEAT, SEAFOOD, POULTRY, CHEESE, SALADS, EGGS, OR VEGETABLES AND ALSO INCLUDING PASTA; PREPARED, AND PACKAGED MEALS NAMELY, QUICHE, POT PIE, PROTEIN SALADS, AND EGGS; PREPARED, AND PACKAGED DIPS</p>
<p>Class 030. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: SALAD AND FOOD DRESSINGS</p>

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1441378	Application Date	04/01/1985
Registration Date	06/02/1987	Foreign Priority Date	NONE
Word Mark	PRIMA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 031. First use: First Use: 1970/00/00 First Use In Commerce: 1970/00/00 FRESH FRUITS [AND VEGETABLES] NAMELY, TABLE GRAPES; PEACHES; PLUMS; NECTARINES; [LETTUCE; CAULIFLOWER]; [KIWIS; PERSIMMONS;] [RAPINI; BROCCOLI; BOK CHOY;] AND APRICOTS; CANTALOUPE; ESCAROLE; HONEYDEW; CRENSHAW; RED LEAF; GREEN LEAF; BOSTON; RED CABBAGE; GREEN CABBAGE; AND NAPPA]		

U.S. Registration No.	3592505	Application Date	11/28/2007
Registration Date	03/17/2009	Foreign Priority Date	NONE
Word Mark	PRIMA		
Design Mark			
Description of Mark	The mark consists of the word "PRIMA" stylized with a graphic element.		

Goods/Services	Class 031. First use: First Use: 1985/04/10 First Use In Commerce: 1985/04/10 Fresh fruit		
----------------	--	--	--

U.S. Registration No.	3866359	Application Date	05/12/2009
Registration Date	10/26/2010	Foreign Priority Date	NONE
Word Mark	PRIMA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 031. First use: First Use: 2009/05/12 First Use In Commerce: 2009/05/12 Fresh fruits		

U.S. Registration No.	1585993	Application Date	10/13/1988
Registration Date	03/06/1990	Foreign Priority Date	NONE
Word Mark	PRIMA SWEET PERSONALLY SELECTED		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 031. First use: First Use: 1987/09/09 First Use In Commerce: 1987/09/11 FRESH GRAPES, PEACHES, NECTARINES, PLUMS AND APRICOTS		

U.S. Registration No.	3871978	Application Date	05/12/2009
Registration Date	11/09/2010	Foreign Priority Date	NONE
Word Mark	PRIMA SWEET		
Design Mark			
Description of Mark	The mark consists of the stylized words "PRIMA" and "SWEET" within an elliptical border, with a background of horizontal lines and a stylized drawing of a piece of fruit with stem and leaves.		
Goods/Services	Class 031. First use: First Use: 1994/05/00 First Use In Commerce: 1994/05/00 Fresh fruits		

U.S. Registration No.	3833518	Application Date	05/13/2009
Registration Date	08/17/2010	Foreign Priority Date	NONE
Word Mark	PRIMAREADY READY TO EAT		
Design Mark			
Description of Mark	The mark consists of the stylized word "PrimaREADY" on a streak in front of a stylized depiction of the sun which consists of a round background with points around the circumference. Below the streak appears the wording "READY TO EAT".		
Goods/Services	Class 031. First use: First Use: 1999/05/00 First Use In Commerce: 1999/05/00 Fresh fruits		

Attachments	NOTICE OF OPPOSITION w exh.pdf(5825205 bytes)
-------------	--

Signature	/Marcus N. DiBudo/
Name	MARCUS N. DIBUDUO
Date	12/14/2020

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

In re Application Nos. 88/789,496 for the mark ALLA PRIMA and 88/793,493 for the mark ALLA PRIMA KITCHEN GERAWAN FARMING LLC Opposer, vs. ELEVATION FOODS, LLC, Applicant.	Proceeding No. NOTICE OF OPPOSITION
--	---

Trademark Trial and Appeal Board
Commissioner of Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Commissioner:




Opposer Gerawan Farming LLC, a California corporation, having a place of business at 7108 N. Fresno St., Ste. 450, Fresno, CA 93720 (“**Opposer**”), believes that it will be damaged by registration of the marks ALLA PRIMA and ALLA PRIMA KITCHEN in Int. Cl. 029 and Int. Cl. 030 (the “**Applied-for Marks**”), which are set forth in U.S. Appl. Nos. 88/789,496 and 88/793,493, respectively (the “**Applications**”), each owned by Elevation Foods, LLC (the “**Applicant**”), and hereby opposes registration of the Applications on the following grounds:

BACKGROUND AND OPPOSER’S ALLEGATIONS

1. Opposer is a California based producer and distributor of high-quality fresh fruit.

2. Opposer, and its predecessors in interest and licensees, adopted and first used the marks PRIMA and (collectively, “*Opposer’s Marks*”) on or in connection with fresh fruit since at least 1970. Opposer’s use of Opposer’s Marks has been continuous and ongoing, and at least before and since the February 2020, filing dates of the Applications.

3. Opposer is the owner of the below listed trademark registrations, copies of which are attached hereto as Exhibit A:

REG./APP. NO.	MARK	GOODS	FILING DATE	REG. DATE	RECITED FIRST USE
1,441,378	PRIMA	Fresh fruits namely, table grapes; peaches; plums; nectarines; and apricots in Intl. Class 31	4-01-1985	6-02-1987	1970
3,592,505		Fresh fruit in Intl. Class 31	11-28-2007	3-17-2009	4-10-1985
3,866,359	PRIIMA	Fresh fruits in Intl. Class 31	5-12-2009	10-26-2010	5-12-2009
1,585,993	PRIMA SWEET PERSONALLY SELECTED	Fresh grapes, peaches, nectarines, plums and apricots in Intl. Class 31	10-13-1988	3-06-1990	9-09-1987
3,871,978		Fresh fruits in Intl. Class 31	5-12-2009	11-9-2010	May 1994
3,833,518		Fresh fruits in Intl. Class 31	5-13-2009	8-17-2010	May 1999

4. Opposer intends to establish priority of its rights in the Opposer’s Marks by relying on its registrations thereof (including but not limited to those identified in Exhibit A), which are valid and subsisting. Opposer hereby gives notice in accordance with Trademark Rule of Practice 2.122(d)(2) that it will rely thereon as evidence in this proceeding, and status copies thereof showing present title will be introduced into evidence on its behalf during Opposer’s testimony period.

5. Opposer also intends to establish priority of its rights in the Opposer's Marks by relying on its common law uses, which predates the February 2020, filing dates of the Applications. Attached hereto as Exhibit B are examples of use by Opposer of the Opposer's Marks.

6. The Applications were published for opposition on June 16, 2020. Opposer requested, and was granted, an extension of time to file this opposition until August 15, 2020. Opposer further requested, and was granted, an extension of time to file this opposition until October 14, 2020. Opposer further requested with the consent of Applicant, and was granted, a final extension of time to file this opposition until December 13, 2020. Since December 13, 2020 was a Sunday, this Notice of Opposition is timely filed by December 14, 2020. 37 C.F.R. § 2.196.

7. Opposer's Marks are inherently distinctive; they are arbitrary and coined with no meanings other than to identify the source of the goods provided by Opposer.

8. Opposer has spent substantial time, effort, and money developing, and promoting the Opposer's Marks in connection with the sale of Opposer's high quality products. Opposer has sold and continues to sell substantial quantities of goods in the United States bearing the Opposer's Marks. Opposer's goods are viewed by consumers as being superior to Opposer's competitors' products.

9. By virtue of Opposer's substantial use, sales, advertising, and promotion of the Opposer's Marks throughout the United States, the publicity and media attention accorded the marks, and the inherently distinctive nature of the marks, the Opposer's Marks are distinctive of Opposer's goods.

10. Opposer's Marks are also famous and well-known, are distinctive of Opposer's goods, and are famous within the meaning of Section 43(c) of the Lanham Act, as amended, 15 U.S.C. §1125(c), all long before the filing date of Applicant's Applications.

11. Opposer has priority of use of the Opposer's Marks over Applicant's use of the Applied-for Marks, because Opposer's first use of the Opposer's Marks predates Applicant's first use of the Applied-for Marks, and in any event, before the filing date of the Applications.

12. Long after Opposer established rights in and to Opposer's Marks, Applicant filed applications for registration of the Applied-for Marks ALLA PRIMA and ALLA PRIMA KITCHEN for "Ready-to-eat prepared foods consisting primarily of meat, seafood, poultry, cheese, salads, eggs, or vegetables and also including pasta; prepared, and packaged meals consisting primarily of meat, seafood, poultry, cheese, salads, eggs, or vegetables and also including pasta; prepared, and packaged side-dishes consisting primarily of meat, seafood, poultry, cheese, salads, eggs, or vegetables and also including pasta; prepared, and packaged meals namely, quiche, pot pie, protein salads, and eggs; prepared, and packaged dips; Salad and food dressings," as set forth in the Notices of Publication for the subject Applications.

13. The Applied-for Marks ALLA PRIMA and ALLA PRIMA KITCHEN are substantially or highly similar to Opposer's Marks in sound, appearance, and commercial impression. More particularly, the Applied-for Marks merely include the additional term "ALLA". And though the Applied-for Mark ALLA PRIMA KITCHEN also includes the additional term "KITCHEN", such word is descriptive and/or generic with respect to the goods and has been disclaimed.

14. Each of the goods set forth in the Applications, "Ready-to-eat prepared foods consisting primarily of meat, seafood, poultry, cheese, salads, eggs, or vegetables and also including pasta; prepared, and packaged meals consisting primarily of meat, seafood, poultry, cheese, salads, eggs, or vegetables and also including pasta; prepared, and packaged side-dishes consisting primarily of meat, seafood, poultry, cheese, salads, eggs, or vegetables and also including pasta; prepared, and packaged meals namely, quiche, pot pie, protein salads, and eggs; prepared, and packaged dips; Salad and food dressings", are highly related to the goods for which Opposer uses Opposer's Marks. The goods in the Application encompass goods which could reasonably be expected to originate from the same source as goods offered by Opposer under the Opposer's Marks. In light thereof, and in addition to other evidence that will be produced on Opposer's behalf during Opposer's testimony period, consumers who encounter the Applied-for

Marks ALLA PRIMA and ALLA PRIMA KITCHEN in connection with the goods in the Applications are likely to think that Applicant or Applicant's goods provided under the Applied-for Marks ALLA PRIMA and ALLA PRIMA KITCHEN are authorized by, sponsored by, licensed by, affiliated with, or related to Opposer or Opposer's goods provided under the Opposer's Marks.

15. As a result of the foregoing, Applicant's Applied-for Marks, if used in conjunction with the Applied-for Goods, are likely to cause confusion, mistake, or to deceive as to the origin, source, sponsorship, or affiliation of Applicant's goods.

16. Accordingly, Applicant's Applied-for Marks ALLA PRIMA and ALLA PRIMA KITCHEN so resemble Opposer's previously used and registered marks, as to be likely, when applied to the goods set forth in Applicant's applications, to cause confusion, mistake, or deception within the meaning of 15 U.S.C. § 1052(d).

17. Applicant's Applied-for Marks are also substantially similar in sound and appearance to the distinctive and famous Opposer's Marks. As such, Applicant's Applied-for Marks impair and are likely to impair the distinctiveness of the Opposer's Marks and cause and are likely to cause dilution by blurring of the Opposer's Marks.

18. Opposer will be damaged by registration of Applied-for Marks shown in the Applications, in that confusion in the trade is likely to result from the concurrent use of the parties' respective marks, will support Applicant's dilution of Opposer's Marks, and will give color of exclusive statutory right to Applicant in violation and derogation of the prior and superior rights of Opposer, all to the detriment of Opposer.

19. The Office is authorized to charge the required fee for this Notice of Opposition, in the total amount of \$1,600.00 for two classes in the two Applications to Deposit Account No. 60590.

WHEREFORE, based on the foregoing, Opposer hereby prays that this Notice of Opposition be sustained and the Applications be refused registration for the reasons stated above.

Dated: December 14, 2020.

Respectfully Submitted,

By: /s/ Marcus N. DiBuduo
Marcus N. DiBuduo, Esq.
FENNEMORE CRAIG, P. C.
8080 N. Palm Ave., 3rd Floor
Fresno, CA 93711
Phone: 559-432-4500
Facsimile: 559-432-4590
Email: ipmail@dowlingaaron.com
Attorneys for Opposer

CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that the foregoing Notice of Opposition is being transmitted electronically to the United States Patent and Trademark Office's Trademark Trial and Appeal Board on December 14, 2020.

Signed: _____ /s/ Marcus N. DiBuduo _____

Marcus N. DiBuduo, Esq.
FENNEMORE CRAIG, P. C.
8080 N. Palm Ave., 3rd Floor
Fresno, CA 93711
Email: ipmail@dowlingaaron.com

EXHIBIT A

Int. Cl.: 31

Prior U.S. Cls.: 1 and 46

Reg. No. 1,441,378

United States Patent and Trademark Office

Registered June 2, 1987

Amended

OG Date Mar. 23, 2010

TRADEMARK
PRINCIPAL REGISTER

PRIMA

GERAWAN FARMING INC. (CALIFORNIA CORPORATION)
15749 E. VENTURA AVE.
SANGER, CA 93657

FOR: FRESH FRUITS [AND VEGETABLES] NAMELY, TABLE GRAPES; PEACHES; PLUMS; NECTARINES; LETTUCE; CAULIFLOWER]; KIWIS; PERSIMMONS;]

[RAPINI; BROCCOLI; BOK CHOY;] AND APRICOTS; CANTALOUPE; ESCAROLE; HONEYDEW; CRENSHAW; RED LEAF; GREEN LEAF; BOSTON; RED CABBAGE; GREEN CABBAGE; AND NAPPA], IN CLASS 31 (U.S. CLS. 1 AND 46).

FIRST USE 0-0-1970; IN COMMERCE 0-0-1970.

SER. NO. 73-529,719, FILED 4-1-1985.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Mar. 23, 2010.

Int. Cl.: 31

Prior U.S. Cls.: 1 and 46

United States Patent and Trademark Office

Reg. No. 3,592,505

Registered Mar. 17, 2009

**TRADEMARK
PRINCIPAL REGISTER**



GERAWAN FARMING INC. (CALIFORNIA CORPORATION)

15749 E. VENTURA AVE.
SANGER, CA 93657

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

FIRST USE 4-10-1985; IN COMMERCE 4-10-1985.

OWNER OF U.S. REG. NOS. 1,441,378, 3,089,808, AND OTHERS.

THE MARK CONSISTS OF THE WORD "PRIMA" STYLIZED WITH A GRAPHIC ELEMENT.

SN 77-339,412, FILED 11-28-2007.

KATHY DE JONGE, EXAMINING ATTORNEY

United States of America

United States Patent and Trademark Office

PRIMA

Reg. No. 3,866,359

GERAWAN FARMING, INC. (CALIFORNIA CORPORATION)
15749 E. VENTURA
SANGER, CA 93657

Registered Oct. 26, 2010

Int. Cl.: 31

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

TRADEMARK

FIRST USE 5-12-2009; IN COMMERCE 5-12-2009.

PRINCIPAL REGISTER

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 1,441,378 AND 3,592,505.

THE ENGLISH TRANSLATION OF "PRIMA" IN THE MARK IS "BEFORE".

SER. NO. 77-735,511, FILED 5-12-2009.

YAT SYE, LEE, EXAMINING ATTORNEY



David J. Kyfos

Director of the United States Patent and Trademark Office

Int. Cl.: 31

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,585,993

Registered Mar. 6, 1990

**TRADEMARK
PRINCIPAL REGISTER**

PRIMA SWEET PERSONALLY SELECTED

GERAWAN CO., INC. (CALIFORNIA CORPORATION)
P.O. BOX 366
SANGER, CA 93657

FOR: FRESH GRAPES, PEACHES, NECTARINES, PLUMS AND APRICOTS, IN CLASS 31 (U.S. CL. 46).

FIRST USE 9-9-1987; IN COMMERCE 9-11-1987.

OWNER OF U.S. REG. NO. 1,441,378.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SWEET PERSONALLY SELECTED", APART FROM THE MARK AS SHOWN.

SER. NO. 73-757,333, FILED 10-13-1988.

SHARON R. MARSH, EXAMINING ATTORNEY

United States of America

United States Patent and Trademark Office



Reg. No. 3,871,978

Registered Nov. 09, 2010

Corrected Jul. 24, 2018

Int. Cl.: 31

Trademark

Principal Register

Gerawan Farming, Inc. (CALIFORNIA CORPORATION)
15749 E. Ventura
Sanger, CALIFORNIA 93657

CLASS 31: Fresh fruits

FIRST USE 5-00-1994; IN COMMERCE 5-00-1994

The mark consists of the stylized words "PRIMA" and "SWEET" within an elliptical border, with a background of horizontal lines and a stylized drawing of a piece of fruit with stem and leaves.

OWNER OF U.S. REG. NO. 3592505, 1585993, 1441378

No claim is made to the exclusive right to use the following apart from the mark as shown:
"SWEET"

The English translation of "PRIMA" in the mark is "BEFORE".

SER. NO. 77-735,515, FILED 05-12-2009



Andrei Iancu

Director of the United States
Patent and Trademark Office

United States of America

United States Patent and Trademark Office



Reg. No. 3,833,518

Registered Aug. 17, 2010

Amended Sep. 04, 2018

Int. Cl.: 31

Trademark

Principal Register

Gerawan Farming, Inc. (CALIFORNIA CORPORATION)
15749 E. Ventura Ave.
Sanger, CALIFORNIA 93657

CLASS 31: Fresh fruits

FIRST USE 5-00-1999; IN COMMERCE 5-00-1999

The mark consists of the stylized word "PrimaREADY" on a streak in front of a stylized depiction of the sun which consists of a round background with points around the circumference. Below the streak appears the wording "READY TO EAT".

OWNER OF U.S. REG. NO. 3592505, 1441378

No claim is made to the exclusive right to use the following apart from the mark as shown:
"READY TO EAT"

SER. NO. 77-735,744, FILED 05-13-2009



Andrei Iancu

Director of the United States
Patent and Trademark Office

EXHIBIT B







