

ESTTA Tracking number: **ESTTA1105311**

Filing date: **12/31/2020**

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	Tastemade, Inc.
Granted to Date of previous extension	01/13/2021
Address	3019 OLYMPIC BLVD., STAGE C SANTA MONICA, CA 90404 UNITED STATES
Attorney information	MARTIN R. GREENSTEIN TECHMARK A LAW CORPORATION 4820 HARWOOD ROAD, SUITE 110 SAN JOSE, CA 95124 UNITED STATES Primary Email: PTOMail@TechMark.com Secondary Email(s): MRG@TechMark.com, AMR@TechMark.com 408-266-4700
Docket Number	STRGLGMT

Applicant Information

Application No.	88738043	Publication date	09/15/2020
Opposition Filing Date	12/31/2020	Opposition Period Ends	01/13/2021
Applicant	Fuse, LLC 700 NORTH CENTRAL AVENUE, SUITE 600 GLENDALE, CA 91203 UNITED STATES		

Goods/Services Affected by Opposition

Class 041. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Entertainment services, namely, the provision of continuing television shows and series featuring chefs and cooking delivered by broadcast television, cable television, satellite television, wireless networks and online computer networks
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)
Dilution by tarnishment	Trademark Act Sections 2 and 43(c)
False suggestion of a connection with persons, living or dead, institutions, beliefs, or national	Trademark Act Section 2(a)

symbols, or brings them into contempt, or disrepute	
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Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	88748174	Application Date	01/06/2020
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	STRUGGLE MEALS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2017/05/22 First Use In Commerce: 2017/05/22 Educational services, namely, providing online instruction in the field of food, cooking, recipes, budgeting, shopping, food preparation and lifestyle choices; Entertainment services, namely, providing a web site featuring photographic, audio, video and prose presentations featuring food, cooking, recipes, budgeting tips, shopping tips, food preparation education and lifestyle choices; Entertainment services, namely, the provision of continuing television, internet TV, online video programming segments, video podcasts, and an ongoing web series featuring food, cooking, recipes, budgeting tips, shopping tips, food preparation education and lifestyle choices delivered by television and the internet		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	STRUGGLE MEALS		
Goods/Services	Various goods and services, including in connection with the creation, promotion, distribution and sharing of entertainment and educational content delivered across multiple platforms		

Attachments	Final - Tastemade v. Fuse - STRUGGLE GOURMET Oppo.pdf(245865 bytes)
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Signature	/Angelique M. Riordan/
Name	Angelique M. Riordan
Date	12/31/2020

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this opposition is being filed with the TTAB via ESTTA on the date set forth below, and the \$400 per class per opposed mark statutory filing fee paid.

Date: December 31, 2020

/Angelique M. Riordan/
Angelique M. Riordan

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

IN THE MATTER OF Application No. 88/738,043 for the trademark **STRUGGLE GOURMET** (Class 41), filed December 23, 2019, and published in the Official Gazette on September 15, 2020.

<p>TASTEMADE, INC.,</p> <p>Opposer</p> <p>v.</p> <p>FUSE, LLC,</p> <p>Applicant.</p>
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Opposition No.:

Trademark: STRUGGLE GOURMET

Appln. No.: 88/738,043

NOTICE OF OPPOSITION

TASTEMADE, INC., a corporation organized and existing under the laws of Delaware, with its principal place of business at 3019 Olympic Blvd., Stage C, Santa Monica, CA 90404 (hereafter “**Tastemade**”) believes it is or will be damaged by registration on the Principal Register of the mark **STRUGGLE GOURMET**, shown in Appln. No. 88/738,043 (hereafter the “**STRUGGLE GOURMET Mark**”), and hereby opposes the same.

As grounds for this opposition, it is alleged that:

1. Tastemade is a modern media company that creates, and has for many years created, award-winning video content and original programming across a wide variety of categories, available on a number of platforms, and has developed and maintained an impressive global community and social network related thereto.
2. Tastemade is the owner of the trademark **STRUGGLE MEALS**, having used said mark continuously in interstate commerce on and in connection with its entertainment content, and

related goods and services related or complementary thereto, since long prior to the December 23, 2019 filing date of Fuse's intent-to-use application for its STRUGGLE GOURMET Mark.

3. Tastemade is the owner of the valid and subsisting U.S. Trademark Appln. No. 88/748,174 for the mark STRUGGLE MEALS, which claims a May 22, 2017 first use date and covers:

Educational services, namely, providing online instruction in the field of food, cooking, recipes, budgeting, shopping, food preparation and lifestyle choices; Entertainment services, namely, providing a web site featuring photographic, audio, video and prose presentations featuring food, cooking, recipes, budgeting tips, shopping tips, food preparation education and lifestyle choices; Entertainment services, namely, the provision of continuing television, internet TV, online video programming segments, video podcasts, and an ongoing web series featuring food, cooking, recipes, budgeting tips, shopping tips, food preparation education and lifestyle choices delivered by television and the internet, in Int'l Class 41.

A copy of the TSDR record for this application, showing current status and title, is attached hereto as Exhibit A.

4. Tastemade is also the owner of various common law rights in the trademark STRUGGLE MEALS for various goods and services, including in connection with the creation, promotion, distribution and sharing of entertainment and educational content delivered across multiple platforms. These common law rights, together with Appln. No. 88/748,174 set forth above, are collectively referred to herein as Tastemade's "**STRUGGLE MEALS Mark.**"
5. Tastemade's STRUGGLE MEALS Mark is and has become a valuable asset of Tastemade, directly contributing to Opposer's identity and persona and identifying its entertainment content and growing global community and social network, as well as its various other products and services related or complementary thereto, and distinguish Tastemade's products and services from the products and services of others.
6. Tastemade's STRUGGLE MEALS Mark, as described herein, has been extensively advertised, offered and/or promoted in the United States and throughout the world.
7. Tastemade has studios across the world with over 300 million active viewers and over 2.5 billion monthly views in over 200 countries. As a result of the success and public recognition of Tastemade's constantly growing popularity, following and viewership, and as a result of the

extensive promotion and presence of the STRUGGLE MEALS Mark and related products and services in the United States and throughout the world, the STRUGGLE MEALS Mark has become famous, and is recognized as such in the United States and elsewhere. This extensive promotion and online presence of the STRUGGLE MEALS Mark on entertainment content and related goods and services in the United States and through the world has also directly contributed to Tastemade's brand and persona.

8. Tastemade's over 300 million active viewers across the world rely on Tastemade's name and STRUGGLE MEALS Mark to identify and seek out Tastemade's specific award-winning entertainment content. Consumers view Tastemade's STRUGGLE MEALS Mark as an identifier for Tastemade's trusted content – Tastemade has gained this trust by providing consistently outstanding entertainment content that meets its high standards.
9. Tastemade's award winning content is available through major streaming and cable platforms 24 hours a day, seven days per week. Tastemade also offers its content through its own Tastemade TV video-on-demand subscription service.
10. Tastemade enjoys an extensive and impressive social media following with 31 million followers on Facebook, 10.2 million followers on Snapchat, 7.5 million followers on Instagram, 6 million followers on Pinterest, 1.56 million subscribers on YouTube, 1.2 million followers on TikTok and 315,000 followers on Twitter.
11. Tastemade's STRUGGLE MEALS Mark and entertainment content has become so popular and has become such a trusted source and quality indicator for consumers that a Facebook group dedicated to Tastemade's STRUGGLE MEALS entertainment content was created on July 18, 2018 and currently has over 66,500 highly-engaged members, growing by more than 600 members week over week and averaging well over 2,000 posts each month. There is also a STRUGGLE MEALS-dedicated YouTube page with nearly 50,000 subscribers.
12. The huge popularity of Tastemade's STRUGGLE MEALS Mark and entertainment content has prompted large, well-known brands to partner with Tastemade to further build on Tastemade's

entertainment and related content and even further expand recognition of the already widely recognized STRUGGLE MEALS mark.

13. Applicant Fuse, LLC (“**Fuse**”), a limited liability company organized under the laws of Delaware with an address of 700 North Central Avenue, Suite 600, Glendale, CA 91203, filed intent-to-use Appln. No. 88/738,043 on December 23, 2019 for the mark STRUGGLE GOURMET for “Entertainment services, namely, the provision of continuing television shows and series featuring chefs and cooking delivered by broadcast television, cable television, satellite television, wireless networks and online computer networks,” in Int’l Class 41. Appln. No. 88/738,043 was published for opposition on September 15, 2020.
14. Appln. No. 88/738,043 for the mark STRUGGLE GOURMET disclaims “GOURMET.”
15. During prosecution of Fuse’s STRUGGLE GOURMET Mark, it encountered a citation of prior-pending (no longer active) Appln. No. 88/376,669 for the mark STRUGGLE MEALS in Class 41, owned by Davon Marshall Hill (“**Hill’s STRUGGLE MEALS Mark**”) – when and if registered, Hill’s STRUGGLE MEALS Mark would be cited as a bar to registration of Fuse’s STRUGGLE GOURMET Mark based on a likelihood of confusion.
16. On June 17, 2020, Applicant filed Opposition No. 91-256,453 against Hill’s STRUGGLE MEALS Mark on the basis of likelihood of confusion and dilution.
17. In Opposition No. 91-256,453, Fuse asserted that Hill’s STRUGGLE MEALS Mark is likely to cause confusion with Fuse’s STRUGGLE GOURMET Mark, specifically stating that confusion is likely “because the marks share the lead word ‘struggle’ combined with a second word referring to food.” Fuse also asserted that registration of Hill’s STRUGGLE MEALS Mark will damage and injure Fuse and the reputation and goodwill Fuse claims to have in its STRUGGLE GOURMET Mark.
18. In Opposition No. 91-256,453, Fuse also asserts that the Class 41 services of Hill’s STRUGGLE MEALS Mark are closely related to the Class 41 services of Fuse’s STRUGGLE GOURMET Mark, that an association between the respective services would be assumed by consumers and

that the respective services will be provided through the same and overlapping channels of trade and to the same and overlapping classes of customers. Fuse goes further to assert that consumers would “assume an association between [the Class 41 services of Hill’s STRUGGLE MEALS Mark] and [Fuse’s] television series having themes relating to cooking, food, chefs, and to the preparation of meals.”

19. In Opposition No. 91-256,453, Fuse asserts that use and registration of Hill’s STRUGGLE MEALS Mark in Class 41 “is likely to cause or is causing dilution of the distinctive quality of [Fuse’s STRUGGLE GOURMET Mark] under Section 43(c) of the Trademark Act (15 U.S.C. §1125(c)), as such use or registration would lessen the capacity of [Fuse’s STRUGGLE GOURMET Mark] to identify and distinguish goods and services” offered by Fuse.
20. As set forth by Fuse in Opposition No. 91-256,453 – assertions that apply here as well where Tastemade’s mark is also STRUGGLE MEALS in Class 41 - there is a likelihood of confusion between Tastemade’s STRUGGLE MEALS Mark and Fuse’s STRUGGLE GOURMET Mark, both in Class 41, and simultaneous registration will result in dilution and will be damaging to the respective registrants. Where Tastemade unquestionably has priority in this matter, as established herein, the law requires that Fuse’s Appln. No. 88/738,043 be prohibited from registering.

Claim 1: Likelihood of Confusion Under §2(d) of the Trademark Act

21. Tastemade repeats and realleges each and every allegation contained in paragraphs 1-20, inclusive, as if fully recited in this paragraph.
22. Fuse’s STRUGGLE GOURMET Mark so resembles Tastemade’s STRUGGLE MEALS Mark as to be likely, when applied to the services of Fuse’s Appln. No. 88/738,043, to cause confusion, mistake or deception among purchasers, users and the public, thereby damaging Tastemade.
23. The Class 41 services in connection with which Fuse claims to have an intent-to-use in conjunction with its STRUGGLE GOURMET Mark include and are closely related to, used for the same or similar purposes, and/or are or will be advertised and promoted to and directed at the

same trade channels, the same purchasers and are or will be used in the same environment as Tastemade's services and related goods.

24. Simultaneous use of Fuse's STRUGGLE GOURMET Mark on the Class 41 services set forth in Appln. No. 88/738,043 and Tastemade's STRUGGLE MEALS Mark on its services and related goods as set forth above is likely to cause confusion, mistake or deception among purchasers, users and the public, thereby damaging Tastemade.
25. Use by Fuse of its STRUGGLE GOURMET Mark on the Class 41 services set forth in Appln. No. 88/738,043 is likely to lead to the mistaken belief that Fuse's services are sponsored by, affiliated with, approved by or otherwise emanate from Tastemade, thereby damaging Tastemade.
26. As set forth in Paragraphs 21-25 above, Fuse's STRUGGLE GOURMET Mark is likely caused confusion with Tastemade's prior STRUGGLE MEALS Mark, in violation of §2(d) of the Trademark Act.

Claim 2: False Suggestion of a Connection Under Trademark Act §2(a)

27. Fuse repeats and realleges each and every allegation contained in Paragraphs 21- 26, inclusive, as if fully recited in this paragraph.
28. Fuse's STRUGGLE GOURMET Mark is - and is intended to be - very similar to or a close approximation of Tastemade's name, identity and persona and its STRUGGLE MEALS Mark, which contributes directly to Tastemade's name, identity and persona. Tastemade has been recognized by its name, identity and persona - a public perception that centers around its STRUGGLE MEALS Mark – since long prior to the December 23, 2019 filing date of Fuse's STRUGGLE GOURMET Mark.
29. Due to Tastemade's extensive promotion and online presence in the United States, consumers are likely to recognize that the name "STRUGGLE MEALS" and the STRUGGLE MEALS Mark point uniquely and unmistakably to Tastemade (i.e. Tastemade's name, identity and persona), given the fame and renown of Tastemade, its STRUGGLE MEALS Mark and its name, identity and persona.

30. Tastemade is not connected to or affiliated with Fuse, Fuse's activities, or Fuse's STRUGGLE GOURMET Mark.
31. As set forth above, Tastemade's STRUGGLE MEALS Mark, name, identity and persona are so famous and renowned such that consumers would presume a connection between Fuse and Tastemade when they encounter Fuse's STRUGGLE GOURMET Mark as used in connection with the Class 41 services set forth in Appln. No. 88/738,043.
32. Thus, Fuse's STRUGGLE GOURMET Mark falsely suggests a connection with Tastemade and its STRUGGLE MEALS Mark, in violation of the Lanham Act §2(a), and is not entitled to registration.

Claim 3: Dilution Under Trademark Act §43(c)

33. Tastemade repeats and realleges each and every allegation contained in Paragraphs 27-32, inclusive, as if fully recited in this paragraph.
34. As set forth above, Fuse's STRUGGLE GOURMET Mark is – and is intended to convey – an approximation of Tastemade's STRUGGLE MEALS Mark.
35. As set forth above, due to extensive promotion and online presence in the United States, Tastemade's STRUGGLE MEALS Mark has become famous throughout the entire United States.
36. Tastemade's STRUGGLE MEALS Mark became famous throughout the United States long prior to the December 23, 2019 filing date of Fuse's STRUGGLE GOURMET Mark.
37. Tastemade's STRUGGLE MEALS Mark is so distinctive in the United States that the public would associate it with Tastemade even devoid of a trademark context or apart from the exclusive services and related goods offered by Tastemade under the STRUGGLE MEALS Mark.
38. The use of Fuse's STRUGGLE GOURMET Mark is likely to cause dilution by blurring as consumers, upon seeing Fuse's use of its STRUGGLE GOURMET Mark on the Class 41 services in Appln. No. 88/738,043, would be immediately reminded of Tastemade's famous marks and associate Fuse's use with Tastemade - exactly in the way Fuse expressly intended.

39. The use of Fuse's STRUGGLE GOURMET Mark is likely to cause dilution by tarnishment as the association arising from the substantially similar nature of Fuse's STRUGGLE GOURMET Mark and Tastemade's famous STRUGGLE MEALS Mark will harm the reputation of Tastemade and its famous STRUGGLE MEALS Mark.
40. Thus, Fuse's STRUGGLE GOURMET Mark dilutes Tastemade's famous STRUGGLE MEALS Mark in violation of Lanham Act §43(c), and is not entitled to registration.

Wherefore, Tastemade requests that registration of the STRUGGLE GOURMET Mark of Appln. No. 88/738,043 be denied and that this opposition be sustained.

TASTEMADE, INC.
By: /Martin R. Greenstein/
Martin R. Greenstein
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Attorney for Opposer Tastemade, Inc.

Dated: December 31, 2020

Exhibit A

Generated on: This page was generated by TSDR on 2020-12-31 13:24:02 EST

Mark: STRUGGLE MEALS

STRUGGLE MEALS

US Serial Number: 88748174

Application Filing Date: Jan. 06, 2020

Filed as TEAS Plus: Yes

Currently TEAS Plus: Yes

Register: Principal

Mark Type: Service Mark

TM5 Common Status Descriptor:



LIVE/APPLICATION/Under Examination

The trademark application has been accepted by the Office (has met the minimum filing requirements) and that this application has been assigned to an examiner.

Status: Review prior to publication completed.

Status Date: Dec. 17, 2020

Publication Date: Jan. 19, 2021

Mark Information

Mark Literal Elements: STRUGGLE MEALS

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Disclaimer: "MEALS"

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (..) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Educational services, namely, providing online instruction in the field of food, cooking, recipes, budgeting, shopping, food preparation and lifestyle choices; Entertainment services, namely, providing a web site featuring photographic, audio, video and prose presentations featuring food, cooking, recipes, budgeting tips, shopping tips, food preparation education and lifestyle choices; Entertainment services, namely, the provision of continuing television, internet TV, online video programming segments, video podcasts, and an ongoing web series featuring food, cooking, recipes, budgeting tips, shopping tips, food preparation education and lifestyle choices delivered by television and the internet

International Class(es): 041 - Primary Class

U.S Class(es): 100, 101, 107

Class Status: ACTIVE

Basis: 1(a)

First Use: May 22, 2017

Use in Commerce: May 22, 2017

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Filed ITU: No

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: Tastemade, Inc.

Owner Address: 3019 Olympic Boulevard, Stage C
Santa Monica, CALIFORNIA UNITED STATES 90404

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Martin R. Greenstein

Docket Number: STRGLMEALS41

Attorney Primary Email Address: PTOMail@TechMark.com

Attorney Email Authorized: Yes

Correspondent

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Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Dec. 30, 2020	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Dec. 16, 2020	APPROVED FOR PUB - PRINCIPAL REGISTER	
Dec. 16, 2020	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Dec. 16, 2020	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Oct. 23, 2020	TEAS RESPONSE TO SUSPENSION INQUIRY RECEIVED	
May 01, 2020	NOTIFICATION OF LETTER OF SUSPENSION E-MAILED	6332
May 01, 2020	LETTER OF SUSPENSION E-MAILED	6332
May 01, 2020	SUSPENSION LETTER WRITTEN	74666
Apr. 30, 2020	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Apr. 29, 2020	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Apr. 29, 2020	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Mar. 27, 2020	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Mar. 27, 2020	NON-FINAL ACTION E-MAILED	6325
Mar. 27, 2020	NON-FINAL ACTION WRITTEN	74666
Mar. 25, 2020	ASSIGNED TO EXAMINER	74666
Jan. 09, 2020	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Jan. 09, 2020	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: JACKSON, WILLIAM D

Law Office Assigned: LAW OFFICE 117

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Dec. 17, 2020