

ESTTA Tracking number: **ESTTA1127104**

Filing date: **04/14/2021**

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	Aboca S.P.A. Societa' Agricola
Granted to Date of previous extension	04/14/2021
Address	FRAZIONE ABOCA 20 SANSEPOLCRO (AR), I-52037 ITALY
Party who filed Extension of time to oppose	Aboca S.P.A.
Relationship to party who filed Extension of time to oppose	An initial request for extension of time was filed in the instant matter by an entity listed as Aboca S.P.A. As the Board will note, the subject opposition has been filed in the name of Aboca S.P.A. Societa' Agricola. Opposer notes that 37 C.F.R. § 2.102(b) states that "Any opposition filed during an extension of time must be in the name of the person to whom the extension was granted, except that an opposition may be accepted if the person in whose name the extension was requested was misidentified through mistake or if the opposition is filed in the name of a person in privity with the person who requested and was granted the extension of time." In the present case, the Opposer, and owner of U.S. Trademark Reg. No. 2,299,862, which is the basis for priority in the the subject opposition, is Aboca S.P.A. Societa' Agricola. As an initial point, the wording "Societa' Agricola," which was mistakenly excluded from Opposer's request for an extension of time to oppose, is used to refer to a type of company under Italian law, namely, an "agricultural company," and is commonly used as part of an Italian entity name. The exclusion of the wording "Societa' Agricola," referring to an "agricultural company," was a mere misidentification through mistake in the form of Opposer's name. Opposer submits that the facts in this case are analogous to those in the Federal Circuit's decision in Custom Computer Services, Inc. v. Paychex Properties, Inc., 337 F.3d 1334, 67 USPQ2d 1638 (Fed. Cir. 2003). In this case, the opposer mistakenly filed a request for extension of time to oppose on behalf of "Custom Computer Services, Inc., formerly known as The Payroll People", whereas the Opposition was ultimately filed in the name of "The Payroll People, Inc." In determining that the institution of an opposition was permissible, the Federal Circuit held that the mistake made by the opposer was not an attempt to substitute one entity as an Opposer, in place of a different existing legal entity, which filed for the request for extension of time, but merely a mistake as to the form of the correct entity, as there had never been an entity named "Custom Computer Services, Inc., formerly known as The Payroll People" (the named entity that was granted a request for an extension of time to oppose.) Id. at 1337. Opposer submits that the instant case is analogous to the circumstances in Custom Computer Services, in that there was never an entity merely named Aboca S.P.A., and the filing of the request for an extension of time to oppose utilizing this wording, rather than Opposer's complete name, Aboca S.P.A. Societa' Agricola, is a clear example of a mere mistake in the form

	of Opposer's complete name, whereby the wording Societa' Agricola, referring to the type of Opposer's business, an "agricultural company" was inadvertently excluded. Therefore, Opposer respectfully submits that because the identity of the entity in whose name the extension was requested was misidentified through a mistake in form, and not in an effort to substitute one entity in place of a different existing legal entity, that the opposition should be accepted.
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Attorney information	KEITH A. WELTSCH SCULLY, SCOTT, MURPHY & PRESSER 400 GARDEN CITY PLAZA SUITE 300 GARDEN CITY, NY 11530 UNITED STATES Primary Email: intprop@ssmp.com Secondary Email(s): kweltsch@ssmp.com, hmanthey@ssmp.com, mlapitan@ssmp.com 5167424343
Docket Number	456/1978

Applicant Information

Application No.	88801481	Publication date	12/15/2020
Opposition Filing Date	04/14/2021	Opposition Period Ends	04/14/2021
Applicant	Azienda Agroalimentare Grignano S.r.l. VIA DI GRIGNANO 22 PONTASSIEVE (FI), 50065 ITALY		

Goods/Services Affected by Opposition


Class 029. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Cheese; Cheese food; Oils for food; Olive oils for food
Class 030. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Candies; Chocolate; Coffee
Class 031. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Truffles, fresh
Class 032. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Beer
Class 033. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Alcoholic beverages except beers; Wines and sparkling wines; Beverages, namely, spirits; Spirits and liqueurs; Gin; Grape wine; Alcoholic beverages, namely, digestifs; Alcoholic bitters

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.	2299862	Application Date	10/06/1998
Registration Date	12/14/1999	Foreign Priority Date	NONE

Word Mark	ABOCA
Design Mark	
Description of Mark	NONE
Goods/Services	<p>Class 003. First use: First Use: 1982/11/05 First Use In Commerce: 1998/07/09 [cosmetic preparations for skin care, namely, skin cream, skin lotion, perfume- consisting of flower extracts, perfume,soaps for the skin and shampoo]</p> <p>Class 005. First use: First Use: 1982/11/05 First Use In Commerce: 1998/07/09 Dietetic foods adapted for medicinal purposes, [drugs for medical purposes, namely, portions of medicinal herbs which contain active drug constituents,] herbal teas for medicinal use, laxatives, medicinal herbs, [medicinal oils for ex- ternal use,] medicinal roots, mineral food supplements, [sedatives,] medicinal herbal tonics and vitamin supplements</p>

Attachments	75566624#TMSN.png(bytes) NOTICE OF OPPOSITION.pdf(175367 bytes)
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Signature	/KAW/
Name	KEITH A. WELTSCH
Date	04/14/2021

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

In the matter of Application Serial No. 88/801,481
Filed on February 18, 2020

ABOCA

For the Mark

Published in the *Official Gazette* (Trademark) on December 15, 2020

Aboca S.P.A. Societa' Agricola)	
)	
Opposer,)	Opposition No.
v.)	
Azienda Agroalimentare Grignano S.r.l.)	
Applicant.)	

NOTICE OF OPPOSITION

Aboca S.P.A. Societa' Agricola¹ ("Opposer"), a joint stock company organized under the laws of the state of Italy, and having its principal place of business located in Arezzo, Italy, believes that it will be damaged by the registration of the mark shown in the application filed by Azienda

Agroalimentare Grignano S.r.l. ("Applicant") for the mark **ABOCA**, having Serial No. 88/801,481 in International Classes 29, 20, 31, 32 and 33.

The grounds for opposition are as follows:

¹ Opposer has included an explanatory note regarding the filing of the opposition in the name of Aboca S.P.A. Societa' Agricola.

ABOCA

1. Applicant seeks to register the mark ABOCA (“Applicant’s Mark”), which has been accorded Serial No. 88/801,481 (“Applicant’s Application”), as a trademark for use on or in connection with “cheese; cheese food; oils for food; olive oils for food” in International Class 29, “candies; chocolate; coffee” in International Class 30, “truffles, fresh” in International Class 31, “beer” in International Class 32, and “Alcoholic beverages except beers; Wines and sparkling wines; Beverages, namely, spirits; Spirits and liqueurs; Gin; Grape wine; Alcoholic beverages, namely, digestifs; Alcoholic bitters” in International Class 33 (collectively referred to as “Applicant’s Goods”).

2. Opposer is the owner of the trademark ABOCA (“Opposer’s Mark”), which mark was adopted, and/or for which use commenced by Opposer, long prior to the filing date for Applicant’s Application, or any other date upon which Applicant can rely, and has adopted and/or continuously used such mark in conjunction with goods that are very closely related to the goods Applicant intends to offer in International Classes 29, 30, 31, 32 and 33, on or in connection with Applicant’s Mark.

3. Opposer is the owner of U.S. Registration No. 2,299,862 for the mark

The image shows a stylized, cursive logo for the word "Aboca". The letters are interconnected and have a decorative, calligraphic appearance. The 'A' is particularly large and ornate, with a long tail that loops under the 'b'. The 'o' is a simple circle, and the 'c' is a simple curve. The 'a' is a simple vertical line with a small hook at the bottom. The 'o' is a simple circle, and the 'c' is a simple curve. The 'a' is a simple vertical line with a small hook at the bottom.

(Opposer’s Registered Mark”) which is registered for use in connection with “Dietetic foods adapted for medicinal purposes, herbal teas for medicinal use, laxatives, medicinal herbs, medicinal roots, mineral food supplements, medicinal herbal tonics and vitamin supplements” (“Opposer’s Goods”) in International Class 5, for which Opposer commenced use of, and registered, such mark earlier than any date upon which Applicant may rely. The registration

associated with this mark is valid, subsisting and incontestable. Opposer's Mark and Opposer's Registered Mark are collectively referred to as "Opposer's Marks."

4. Opposer's Marks are symbolic of the extensive goodwill and consumer recognition built up through significant sales, distribution and promotion of products bearing, and/or utilizing, Opposer's Marks.

5. Opposer's Marks are inherently distinctive.

6. Opposer has so used Opposer's Marks in the United States that the marks have acquired distinctiveness long prior to any date upon which Applicant can rely.

7. Applicant's Mark is confusingly similar to Opposer's Marks.

8. Applicant's Mark and Opposer's Marks are solely comprised of the single word ABOCA.

9. The word element of Applicant's Mark and Opposer's Marks is identical.

10. Applicant's Mark is so similar to Opposer's Marks, that consumers will be falsely led to believe that Applicant's Mark is affiliated with and sponsored by Opposer, when it is not.

11. Applicant's Goods are closely related to, and are intended to be sold and marketed in the same stores and channels of trade as Opposer's Goods, that are offered for sale, sold, distributed, and promoted in commerce in connection with Opposer's Marks.

12. Applicant's Mark so resembles Opposer's Marks as to cause confusion, mistake or deception within the meaning of Section 2(d) of the Lanham Act.

13. Given Opposer's long-standing and prior rights in and to Opposer's Marks, conferring exclusive nationwide rights upon Applicant for Applicant's Mark for Applicant's Goods would be improper, and would interfere with Opposer's aforesaid prior rights for goods it has used and/or registered in connection with Opposer's Marks.

Opposer hereby requests that the required \$3000 fee proscribed under 37 C.F.R. §2.6 be

withdrawn from Deposit Account No. 19-1013 to oppose Applicant's **ABOCA** mark
accorded Serial No. 88/801,481.

WHEREFORE, Opposer believes and alleges that it will be damaged by registration of the

ABOCA mark filed under Serial No. 88/801,481 as aforesaid, and prays that judgment in
the present opposition be entered in favor of Opposer and that registration of U.S. Application
Serial No. 88/801,481 be refused.

Opposer hereby appoints the following attorney, to whom all correspondence should be
addressed, to prosecute this Opposition and transact all business in the Patent and Trademark Office
connected therewith:

Please address all correspondence to:

Keith A. Weltsch
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Respectfully submitted,

Aboca S.P.A. Societa' Agricola

April 14, 2021

By: /Keith A. Weltsch/
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