

ESTTA Tracking number: **ESTTA1135072**

Filing date: **05/19/2021**

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	Fuse, LLC
Granted to Date of previous extension	05/19/2021
Address	700 NORTH CENTRAL AVENUE, SUITE 600 GLENDALE, CA 91203 UNITED STATES

Correspondence information	DON THORNBURGH DON THORNBURGH LAW CORPORATION 466 FOOTHILL BLVD. #220 LA CANADA FLINTRIDGE, CA 91011 UNITED STATES Primary Email: uspto@donthornburgh.com 8187906547
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Applicant Information

Application No.	88748174	Publication date	01/19/2021
Opposition Filing Date	05/19/2021	Opposition Period Ends	05/19/2021
Applicant	Tastemade, Inc. 3019 OLYMPIC BOULEVARD, STAGE C SANTA MONICA, CA 90404 UNITED STATES		

Goods/Services Affected by Opposition

Class 041. First Use: 2017/05/22 First Use In Commerce: 2017/05/22 All goods and services in the class are opposed, namely: Educational services, namely, providing on-line 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

Grounds for Opposition

The mark is generic	Trademark Act Sections 1, 2 and 45
Failure to function as a mark	Trademark Act Sections 1, 2 and 45

Related Proceedings	91266849
Attachments	STRUGGLE MEALS_Notice of Opposition_05_19_2021.pdf(120101 bytes)
Signature	/Don Thornburgh/
Name	DON THORNBURGH
Date	05/19/2021

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

FUSE, LLC,)	
)	
Opposer,)	
v.)	
)	
Tastemade, Inc.,)	Opposition No. _____
)	
Applicant.)	
)	
Mark: STRUGGLE MEALS)	
)	
Serial No.: 88/748,174)	
)	
Filed: January 6, 2020)	
)	
Published: January 19, 2021)	
)	

NOTICE OF OPPOSITION

In the matter of Application Serial No. 88/748,174 filed on January 6, 2020, in the name of Tastemade, Inc., a Delaware corporation (hereinafter, `Applicant_), published for opposition in the *Official Gazette of the U.S. Patent & Trademark Office* on January 19, 2021 for the mark STRUGGLE MEALS (hereinafter, the `Opposed Application_), FUSE, LLC (hereinafter `Opposer_) believes that it and its business would be damaged by registration of the mark shown in said application and hereby opposes the same.

As grounds for opposition, it is alleged as follows:

1. Opposer, FUSE, LLC, is a Delaware limited liability company, having a place of business at 700 N. Central Avenue, Suite 600, Glendale, California 91203.
2. Applicant TasteMade, Inc., is, on information and belief, a Delaware corporation, having a place of business at 3019 Olympic Boulevard, Stage C, Santa Monica, California 90404.
3. Applicant seeks to register the mark STRUGGLE MEALS (the `Opposed Mark_), and has filed application serial number 88/748,174 for registration of that mark for use in connection with `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 International Class 041 (hereinafter the `Opposed Application_).
4. The Opposed Application was filed on January 6, 2020, on the basis of Section 1A (`use in commerce_) of the Trademark Act (the `Act_).
5. On March 27, 2020, the United States Patent & Trademark Office (`USPTO_) issued an Office Action for the Opposed Application, citing two procedural issues and also a potential grounds for refusal under Section 2(d) of the Act due to the earlier-filed, prior pending, third

party application serial number 88/376,669 for the identical mark `STRUGGLE MEALS_ for use with `Multimedia entertainment services in the nature of development, production and post-production services in the fields of video and films_ in International Class 041.

6. On May 1, 2020, the USPTO issued a Suspension Letter for the Opposed Application, again citing application serial number 88/376,669 for the identical mark `STRUGGLE MEALS_ as potential grounds for refusal under Section 2(d).

7. The Opposed Application was published in the Official Gazette of the U.S. Patent & Trademark Office on January 19, 2021.

8. On December 23, 2019, Opposer filed U.S. trademark application serial no. 88/738,043 for the mark `STRUGGLE GOURMET_ (`Opposer's Mark_) for use with `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_ (hereinafter `Opposer's Application_).

9. On September 15, 2020, Opposer's Mark was published in the Official Gazette of the U.S. Patent & Trademark Office.

10. On December 31, 2020, Applicant filed Notice of Opposition with the Trademark Trial & Appeal Board (`TTAB_), in opposition to Opposer's Application.

11. On January 27, 2021, Opposer filed with the TTAB a request for a 30-day extension of time to oppose the Opposed Application, which was granted.

12. On March 19, 2021, Opposer filed with the TTAB a request for an additional 60-day extension of time to oppose the Opposed Application, which was granted.

COUNT I

13. Opposer, is and has been engaged in the business of providing entertainment services, and has built a successful business in that field, making use of a variety of trademarks, including the Opposer's Mark.

14. Opposer's use of the Opposer's Mark, in connection with its goods and services has been continuous, commercially significant, and substantially exclusive.

15. Opposer is the owner of a valid and subsisting common law rights in the Opposer's Mark by virtue of its use of such mark and its further planned future use of such mark.

16. Opposer's inherently distinctive mark has been in use in commerce which Congress may regulate in connection with its products prior to the acquisition of any rights Applicant may have in the Opposed Mark in the United States, whether based in the filing date or an actual use thereof.

17. Applicant's Mark is a generic term for meals which can be prepared on a limited budget.

18. Opposer and numerous third parties have used the generic term `struggle meals_ to describe meals which can be prepared on a limited budget.

19. Thus, the Opposed Mark should not be registered, under Section 2(d) of the Act.

20. If Applicant is granted a registration for the Opposed Mark for the goods and services identified in the Opposed Application, Applicant would obtain at least a prima facie exclusive right to control the use of the term `struggle meals_ as a name to describe that type of meals and for goods and services related thereto. Such registration would directly damage Opposer, consumers, and others who have a right to use the common expression `struggle meals_ to describe meals which can be prepared on a limited budget.

21. Accordingly, Opposer has a real interest in being able to continue to use the generic term `struggle meals` in the course of conducting its business and has standing to oppose Opposer's Mark.

A. The Applicant's Mark Is Incapable of Functioning as a Mark Because It Is a Generic Term for a Type of Meal.

23. The proposed mark `struggle meals` is composed entirely of a generic term for a type of meal, in violation of Section 2(e)(1) of the Lanham Act, 15 U.S.C. § 1052(e).

24. In determining whether a term is generic, the Trademark Manual of Examining Procedure (`TMEP`) instructs examining attorneys to apply a two-part test: `(1) What is the genus of goods or services at issue? (2) Does the relevant public understand the designation primarily to refer to that genus of goods or services?` TMEP § 1209.01(c)(i). The TMEP further provides that the genus of goods `may be defined by an applicant's identification of goods and/or services,` and the relevant public `refers to the purchasing or consuming public for the identified goods and/or services.` Id.

25. If the relevant public is likely to `perceive[]` the primary significance of a term as identifying a type or category of the relevant goods or services, without regard to the origin of the goods or services or the methods and conditions for producing them, then the term is generic and does not serve to certify regional origin.` TMEP § 1306.05(c); see also *Tea Bd. of India v. Republic of Tea, Inc.*, 80 USPQ2d 1881, 1887 (TTAB 2006).

26. Here, Applicant seeks registration of `struggle meals_ as a mark which it claims to use to identify the source of Applicant's goods and services. The genus of goods and services therefore are meals or recipes, and the relevant public consists of consumers of those goods and services.

27. On information and belief, numerous third parties consistently use the generic expression `struggle meals_ to refer to describe meals which can be prepared on a limited budget.

28. On information and belief, third parties already use the term `struggle meals_ in connection with entertainment services having a focus on meals which can be prepared on a limited budget.

29. On information and belief, Applicant has direct knowledge of third party Davon Marshall Hill's use of the term `struggle meals_ in connection with entertainment programming having the subject matter of meals which can be prepared on a limited budget.

30. On information and belief, the term `struggle meals_ also is used in a generic sense in various recipes, menus, dictionaries, magazines, news articles, and informational websites that are readily available to consumers in the United States.

31. On information and belief, consumers and viewers in the United States perceive the term `struggle meals_, not as referring to Applicant or its entertainment programs, but to a certain type of meals which can be prepared on a limited budget.

32. Accordingly, as consumers in the United States perceive `struggle meals_ as a generic term for meals which can be prepared on a limited budget, is incapable of functioning as a trademark.

Registration therefore should be refused under the provisions of Section 1, 2, 4, and 45 of the Lanham Act, 15 U.S.C. §§ 1051, 1052(e)(1), 1054, 1127.

B. Applicant Has Failed to Exercise Legitimate Control Over the Use of the Applicant's Mark.

33. Upon information and belief, Applicant has not controlled or limited the use of the proposed `struggle meals` mark in a manner so as reliably to indicate to U.S. consumers and viewers that goods and services bearing the term `struggle meals` meet the requirements for registration of a trademark.

34. On information and belief, many companies other than Opposer have used or are currently using the term `struggle meals` in connection with various goods and services relating to meals which can be prepared on a limited budget.

35. On information and belief, the widespread use of the term `struggle meals` in connection with goods and services relating to meals which can be prepared on a limited budget precludes Applicant's mark from having significance as an indication of source of such products.

36. Accordingly, the term as applied for in standard character form under Serial No. 86/759,759 is incapable of functioning as a source identifier or trademark, and registration should be refused under the provisions of Sections 1, 4 and 45 of the Lanham Act, 15 U.S.C. §§ 1051, 1054, 1127. See also TMEP §§ 1306.04(b)(i), 1306.05(g)(i).

WHEREFORE, Opposer respectfully requests that this opposition be sustained and Applicant's application to register the mark STRUGGLE MEALS, as set forth in Application Serial No. 88/748,174, be denied as filed and published, and Applicant adjudged not entitled to registration of the mark STRUGGLE MEALS.

Opposition No. _____
Ser. No. 88/748,174
May 19, 2021

The \$600 filing fee for this Opposition has been paid through the Trademark Trial and Appeal Board's ESTTA filing system.

Date: May 19, 2021

Respectfully Submitted,

FUSE, LLC

By Opposer's Attorney

/s/ Don Thornburgh
Don Thornburgh
for Don Thornburgh Law Corporation
466 Foothill Blvd. #220
La Cañada Flintridge, CA 91011
tel: 818.790.6547

Attorney for Opposer

Opposition No. _____
Ser. No. 88/748,174
May 19, 2021

Certificate of Transmission

I hereby certify that this correspondence is being submitted electronically via ESTTA on the date shown below to the United States Patent and Trademark Office.

Date: May 19, 2021

By: /s/ Don Thornburgh
Don Thornburgh