

ESTTA Tracking number: **ESTTA1303265**

Filing date: **08/11/2023**

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	NATURAL RECOVERY GREENS, LLC
Granted to date of previous extension	08/12/2023
Address	125 W JEFFERSON AVE WHEATON, IL 60187 UNITED STATES
Attorney information	MICHAEL CHESAL PERETZ CHESAL & HERRMANN, P.L. 1 SE 3RD AVE #1820 MIAMI, FL 33131 UNITED STATES Primary email: trademarks@pch-iplaw.com Secondary email(s): mchesal@pch-iplaw.com, kfuchs@pch-iplaw.com No phone number provided
Docket no.	

**Applicant information**

Application no.	90754417	Publication date	06/13/2023
Opposition filing date	08/11/2023	Opposition period ends	08/12/2023
Applicant	HAPPI CO. 2139 COLE STREET BIRMINGHAM, MI 48009 UNITED STATES		

**Goods/services affected by opposition**

Class 032. First Use: None First Use In Commerce: None  
All goods and services in the class are opposed, namely: Non-alcoholic carbonated and non-carbonated soft drinks

**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. application no.	97080874	Application date	10/19/2021
Registration date	NONE	Foreign priority date	NONE

Word mark	HAPPIE
Design mark	
Description of mark	NONE
Goods/services	Class 032. First use: First Use: Feb 1, 2021 First Use In Commerce: Feb 1, 2021 Mineral water

Attachments	HAPPIE.pdf(138714 bytes )
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Signature	/Yekaterina Fuchs/
Name	Yekaterina Fuchs
Date	08/11/2023

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

NATURAL RECOVERY GREENS, LLC,

Opposer,

v.

HAPPI CO,

Applicant.

Application Serial No.: 90754417

Mark: HAPPI

**NOTICE OF OPPOSITION**

Opposer, NATURAL RECOVERY GREENS, LLC (“**Opposer**”), an Illinois Limited Liability Company located at 125 W Jefferson Ave, Wheaton, Illinois 60187, believes it will be damaged by registration of the mark in Application Serial No. 90754417 (the “**Contested Application**”) and accordingly hereby opposes the Contested Application pursuant to Trademark Act Section 13, 15 U.S.C. § 1063, and alleges:

**Introduction**

1. Because of Opposer’s prior rights in the mark HAPPIE, the Contested Application should be refused.

**The Contested Application**

2. Upon information and belief, Applicant, HAPPI CO. (“**Applicant**”) is a Michigan corporation with offices located at 2139 Cole Street, Birmingham, Michigan 48009.

3. Through the Contested Application, Applicant is seeking registration of the mark HAPPI (the “**Contested Mark**”) on an intent-to-use basis for “Non-alcoholic carbonated and non-carbonated soft drinks” in International Class 32.

4. The Contested Application was filed on June 4, 2021, under Section 1(b) and was published for opposition on June 13, 2023.

5. Opposer timely filed a Request to Extend Time to Oppose on June 22, 2023, which was granted by the Board the same day.

### **Opposer's Prior Rights**

6. In or about February 2021, Opposer began using the mark HAPPIE (the “**HAPPIE Mark**”) for non-alcoholic carbonated drinks, namely, mineral water.

7. As a result of the foregoing use of the HAPPIE Mark, Opposer established significant goodwill in its mark over the thirty months it has used it (and months prior to the filing of the Contested Application), and the HAPPIE Mark has come to be exclusively associated with Opposer.

8. Applicant's rights are inferior to those of Opposer due to Opposer's actual prior use of the HAPPIE Mark for non-alcoholic carbonated drinks, namely, mineral water, which was prior to the filing of the Contested Application.

### **Opposition Based on Opposer's Prior Rights**

9. The Contested Mark is virtually identical to Opposer's HAPPIE Mark and is likely to cause confusion, mistake, or to deceive as to the source, sponsorship, or affiliation between Opposer and Applicant and their respective goods.

10. The words HAPPIE and HAPPI are nearly identical in appearance. The addition of the letter “E” in the Contested Mark does not change the commercial impression of the mark. Although applicant's mark contains “IE” at the end of the term and registrant's mark contains “I” at the end of the term, the marks are essentially phonetic equivalents and thus sound similar.

11. The Contested Application also covers essentially identical goods to Opposer's Application, namely, nonalcoholic drinks. When used on or in connection with the goods of the Applicant, the Contested Mark is thus likely to cause confusion, or to cause mistake, or to deceive.

12. Applicant has filed the Contested Application on a 1(b) basis and, upon information and belief, has not begun use of the Contested Mark in U.S. commerce.

13. Opposer has priority over Applicant based upon Opposer's prior use of its HAPPIE Mark in commerce dating back to February 2021 – prior to Applicant's constructive date of first use of the Contested Mark on June 4, 2021.

14. Opposer thus has prior and superior rights in the HAPPIE Mark.

15. Since Opposer's rights are superior to those of Applicant, the Contested Application should be refused.

16. If Applicant is granted registration for the Contested Mark, Applicant would thereby obtain a prima facie exclusive right to use the Contested Mark, which would be a source of damage to Opposer's trademark rights because of the potential likelihood of confusion between the respective marks.

**WHEREFORE**, Opposer, NATURAL RECOVERY GREENS, LLC, respectfully requests that registration of the mark in the Contested Application (Serial No. 90754417) be refused and that this Opposition be sustained in favor of Opposer.

Dated: August 11, 2023

Respectfully submitted,

PERETZ CHESAL & HERRMANN, P.L.

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By: /s/ Michael B. Chesal

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Yekaterina B. Fuchs