

ESTTA Tracking number: **ESTTA1316219**
Filing date: **10/16/2023**

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	Square Pie Guys LLC
Granted to date of previous extension	10/15/2023
Address	1081 MISSION STREET SAN FRANCISCO, CA 94103 UNITED STATES
Attorney information	RYAN S. HILBERT HOLLEY & MENKER PA PO BOX 331937 ATLANTIC BEACH, FL 32081 UNITED STATES Primary email: rhilbert@holleymenker.com Secondary email(s): eastdocket@holleymenker.com No phone number provided
Docket no.	5527.1001

Applicant information

Application no.	97234354	Publication date	04/18/2023
Opposition filing date	10/16/2023	Opposition period ends	10/15/2023
Applicant	IP SPC LLC 6915 TULIPAN COURT CORAL GABLES, FL 33143 UNITED STATES		

Goods/services affected by opposition

Class 030. First Use: None First Use In Commerce: None
All goods and services in the class are opposed, namely: Ready to eat and frozen square-shaped, Detroit-style pizza

Grounds for opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
No use of mark in commerce before application, amendment to allege use, or statement of use was due	Trademark Act Section 1(a) and (c)
No bona fide intent to use mark in commerce for identified goods or services	Trademark Act Section 1(b), 44(e) or 66(a)
Fraud on the USPTO	In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)

Mark cited by opposer as basis for opposition

U.S. application no.	97453387	Application date	06/10/2022
Registration date	NONE	Foreign priority date	NONE
Word mark	SQUARE PIE GUYS		
Design mark			
Description of mark	NONE		
Goods/services	Class 043. First use: First Use: Apr 18, 2018 First Use In Commerce: Apr 18, 2018 Restaurant services; Restaurant services, including sit-down service of food and take-out restaurant services; Restaurant services, namely, providing of food and beverages for consumption on and off the premises		

Attachments	2023-10-16- Notice of Opposition- Square Pie Guys LLC.pdf(153494 bytes)
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Signature	/Ryan S. Hilbert/
Name	Ryan S. Hilbert
Date	10/16/2023

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

SQUARE PIE GUYS LLC,)	
)	
Opposer,)	
)	Opposition No. _____
v.)	
)	Mark: SQUARE PIE CITY
IP SPC LLC)	App. Serial No. 97234354
)	
Applicant.)	
)	

NOTICE OF OPPOSITION

SQUARE PIE GUYS LLC, a California Limited Liability Company having an address at 1463 34th Street, Oakland, CA 94608 (“Opposer”) believes that it is or will be damaged by the registration of the SQUARE PIE CITY mark, which is set forth in U.S. Trademark Application Serial No. 97234354 filed by IP SPC LLC (“Applicant”), and hereby opposes its registration on the following grounds:

As grounds for the Opposition, Opposer, by its attorneys, avers as follows:

1. Applicant was incorporated in the State of Florida on January 14, 2022.
2. On January 24, 2022, Applicant filed U.S. Trademark Application Serial No. 97234354 with the U.S. Patent & Trademark Office (“USPTO”) seeking to register the mark SQUARE PIE CITY for “Ready to eat and frozen square-shaped, Detroit-style pizza” in Class 30 (the “‘354 Application”).
3. As of the filing date of the ‘354 Application, there was only one person associated with, or identified as an officer, director, or employee of, Applicant with the Florida Secretary of State. That person was Daniel F. Benavides.

4. According to Applicant's Articles of Organization, Mr. Benavides's title with Applicant as of the filing date of the '354 Application was "MGR."
5. On information and belief, Mr. Benavides's title with Applicant is still "MGR" as of today.
6. According to Applicant's Articles of Organization, Mr. Benavides was the only person authorized to manage Applicant as of the filing date of the '354 Application. As such, Mr. Benavides was the only person with the authority to control the quality of the goods with which the mark in the '354 Application is/was used as of the filing date of the '354 Application.
7. On information and belief Mr. Benavides is still the only person who is or has ever been authorized to manage Applicant as of today. As such, Mr. Benavides remains the only person with the authority to control the quality of the goods with which the mark in the '354 Application is, was, or will be used as of today.
8. On April 18, 2023, Applicant's mark was published for opposition.
9. The original deadline to oppose Applicant's mark was May 18, 2023.
10. On April 28, 2023, Opposer timely filed a 90-day request for an extension of time to oppose the mark in the '354 Application.
11. The new deadline to oppose the mark in the '354 Application was August 16, 2023.
12. On August 8, 2023, Applicant timely filed an additional 60-day extension of time with applicant's consent to oppose the mark in the '354 Application.
13. Opposer timely filed this Notice of Opposition.

14. Opposer has standing to bring this Opposition.

15. At the time Applicant filed the '354 Application, Applicant made the following statements under penalty of perjury:

- The signatory believes that the applicant is the owner of the trademark/service mark sought to be registered;
- The mark is in use in commerce and was in use in commerce as of the filing date of the application on or in connection with the goods/services in the application;
- The specimen(s) shows the mark as used on or in connection with the goods/services in the application and was used on or in connection with the goods/services in the application as of the application filing date; and
- To the best of the signatory's knowledge and belief, the facts recited in the application are accurate.

16. The '354 Application was signed by Daniel Benavides, whose title was listed as "Manager."

17. The '354 Application was originally filed under Section 1(A) of the Trademark Act.

18. At the time the '354 Application was filed, Applicant stated that it had been using its mark anywhere since at least as early as June 25, 2017 and in commerce since at least as early as June 25, 2017.

19. At the time the '354 Application was filed, Applicant also stated that its mark was in use in commerce as of the filing date.

20. Applicant's statements concerning its purported first use dates and its use of its mark as of the filing date of the '354 Application were material.

21. On information and belief, Applicant did not have any related companies, licensees or predecessors in interest at the time the '354 Application was filed.
22. On information and belief, Applicant does not have and never had any related companies, licensees or predecessors in interest.
23. On information and belief, Applicant did not use the SQUARE PIE CITY mark for the goods in the '354 Application in commerce on or at any time prior to the filing date of the '354 Application.
24. On information and belief, Applicant has never used the SQUARE PIE CITY mark for the goods in the '354 Application in commerce.
25. On information and belief, the foregoing statements by Applicant about its purported first use dates and use as of the filing date of the '354 Application were not true.
26. On information and belief, Applicant knew that the foregoing statements about its purported first use dates and use as of the filing date were not true at the time they were made.
27. On information and belief, Applicant knew that its foregoing statements about its purported first use dates were not true at the time they were made because Applicant did not exist until January 14, 2022.
28. On information and belief, Applicant could not have reasonably believed that its foregoing statements about its purported first use dates were true at the time they were made because Applicant did not exist until January 14, 2022.

29. On information and belief, Applicant made the foregoing statements about its purported first use dates and use as of the filing date of the '354 Application for the purpose of registering Applicant's mark.

30. On information and belief, Applicant knew or should have known that the foregoing statements about its purported first use dates and use as of the filing date of the '354 Application would be relied on by the USPTO.

31. On information and belief, Applicant made the foregoing statements about its purported first use dates and use as of the filing date of the '354 Application with the intent to procure a registration to which Applicant was not entitled.

32. At the time the '354 Application was filed, Applicant submitted a Specimen for which it identified squarepiecitymiami.com as the webpage URL at which the Specimen could be found, which webpage Applicant also claimed to have accessed on January 8, 2022.

33. Applicant's Specimen did not include a URL or a date.

34. On information and belief, Applicant did not own or operate a website at squarepiecitymiami.com as of the filing date of the '354 Application.

35. On information and belief, Applicant has never owned or operated a website at squarepiecitymiami.com.

36. On information and belief, Applicant knew that it did not own or operate a website at squarepiecitymiami.com at the time the '354 Application was filed.

37. On information and belief, Applicant knew that it did not own or operate a website at squarepiecitymiami.com at the time it submitted its Specimen.

38. On information and belief, Applicant submitted its Specimen for the purpose of registering its mark.

39. On information and belief, Applicant knew or should have known that the Specimen it submitted would be relied on by the USPTO.

40. On information and belief, Applicant submitted its Specimen with the intent to procure a registration to which Applicant was not entitled.

41. By submitting knowingly false statements about its purported use of its mark, and by submitting a knowingly false Specimen, Applicant has committed fraud on the USPTO.

42. Applicant was successful in procuring favorable examination as evidenced by the fact that the USPTO subsequently approved Applicant's mark for publication.

43. On information and belief, Applicant did not have as of December 28, 2022 and/or as of the filing date of the '354 Application, a bona fide intent to use in commerce the mark in the '354 Application for the goods listed in the '354 Application.

44. On information and belief, Applicant, as an IP holding company without any related companies, licensees or predecessors in interest, could not have had as of December 28, 2022 and/or as of the filing date of the '354 Application, a bona fide intent to use in commerce the mark in the '354 Application for the goods listed in the '354 Application.

45. On information and belief, Applicant has never offered any goods nor rendered any services.

46. On information and belief, Applicant does not intend and never intended to offer any goods in commerce.

47. On information and belief, Applicant does not intend and never intended to render any services in commerce.

48. Registration of the mark in the '354 Application should be refused under 15 U.S.C. § 1051(b).

49. On December 28, 2022, Applicant stated to the USPTO that it had “a bona fide intention to use the mark in commerce and had a bona fide intention to use the mark in commerce as of the application filing date.”

50. This statement was material.

51. On information and belief, this statement was not true.

52. On information and belief, Applicant knew that this statement was not true at the time the statement was made.

53. On information and belief, Applicant made this statement for the purpose of registering Applicant's mark.

54. On information and belief, Applicant knew or should have known that the USPTO would rely on this statement.

55. On information and belief, Applicant made this statement with the intent to procure a registration to which Applicant was not entitled.

56. Applicant was successful in procuring favorable examination as evidenced by the fact that the USPTO subsequently approved Applicant's mark for publication.

57. Opposer has used the mark SQUARE PIE GUYS for “Restaurant services; Restaurant services, including sit-down service of food and take-out restaurant services;

Restaurant services, namely, providing of food and beverages for consumption on and off the premises” in Class 43 anywhere and in commerce since at least as early as April 18, 2018.

58. Opposer has used the mark SQUARE PIE GUYS for the foregoing services prior to the filing date of the ‘354 Application and thus has priority.

59. The SQAURE PIE CITY mark which Applicant seeks to register so resembles Opposer’s SQUARE PIE GUYS mark as to be likely to cause consumer confusion, mistake, and/or deception as to the source or origin of Applicant’s goods and services.

60. The services rendered by Opposer under or in connection with its SQUARE PIE GUYS mark are related to the goods in the ‘354 Application.

61. As a result of the registration of Applicant’s SQAURE PIE CITY mark, the public is likely to be confused, to be deceived, or to assume erroneously that Applicant is in some way connected with, sponsored by or affiliated with Opposer.

62. In fact, Applicant is not affiliated or connected with Opposer and has not otherwise been endorsed or sponsored by Opposer. Nor has Opposer approved any of the goods or services offered or sold or intended to be sold by Applicant under its SQAURE PIE CITY mark.

63. The granting of a trademark registration for Applicant's SQAURE PIE CITY mark would violate and diminish the prior and superior rights of Opposer in Opposer’s SQUARE PIE GUYS mark and would be in violation of 15 U.S.C. § 1052(d).

64. Opposer would be damaged if the mark in the ‘354 Application was allowed to proceed to registration because such registration would give Applicant a *prima facie* exclusive

right to the use of the SQAURE PIE CITY mark, despite the likelihood of confusion, mistake, or deception with Opposer and Opposer's SQUARE PIE GUYS mark.

65. As a consequence of the above, Opposer is and will continue to be damaged should the mark in the '354 Application proceed to registration.

WHEREFORE, Opposer prays that the mark the '354 Application be rejected, that no registration be issued to Applicant, and that this opposition be sustained in favor of Opposer

Respectfully submitted,

SQUARE PIE GUYS LLC

By:



Ryan S. Hilbert

Opposer's Attorneys

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