

ESTTA Tracking number: **ESTTA1366174**
Filing date: **06/20/2024**

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	Japan Tobacco Inc.		
Entity	Corporation	Incorporated or registered in	Japan
Address	1-1 TORANOMON, 4-CHOME, MINATO-KU TOKYO, 0 JAPAN		

Attorney information	GREGG A. PARADISE LERNER DAVID LLP 20 COMMERCE DRIVE CRANFORD, NJ 07016 UNITED STATES Primary email: gparadise@lernerdavid.com Secondary email(s): litigation@lernerdavid.com 9085186323		
Docket no.	JTI-181		

Applicant information

Application no.	97566653	Publication date	05/21/2024
Opposition filing date	06/20/2024	Opposition period ends	06/20/2024
Applicant	EXPLORE PROLIFIC LLC 170 S LINCOLN ST, SUITE 100 SPOKANE, WA 99201 UNITED STATES		

Goods/services affected by opposition


Class 034. First Use: None First Use In Commerce: None All goods and services in the class are opposed, namely: Cigarette paper; Cigarette rolling machines; Cigarette tubes; Cigarette rolling papers; Tipping paper for cigarettes; Ashtrays for smokers; Hand-held machines for injecting tobacco into cigarette tubes; Lighters for smokers; Machines allowing smokers to make cigarettes by themselves; Smoker's articles, namely, filter tubes

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.	1068686	Application date	11/04/1976
Register	Principal		

Registration date	06/28/1977	Foreign priority date	NONE
Word mark	WAVE		
Design mark			
Description of mark	NONE		
Goods/services	Class 034. First use: First Use: Oct 26, 1976 First Use In Commerce: Oct 26, 1976 CIGARETTES		

Attachments	73105959#TMSN.png(bytes) Notice of Opposition FLAVORWAVE 97566653.pdf(16673 bytes)
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Signature	/Gregg A. Paradise/
Name	Gregg A. Paradise
Date	06/20/2024

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

JAPAN TOBACCO INC.,	:	
	:	
Opposer,	:	Serial No. 97/566,653
	:	
	:	Filed: August 26, 2022
v.	:	
	:	Published: May 21, 2024
EXPLORE PROLIFIC LLC,	:	
	:	Opposition No. _____
Applicant.	:	
_____	x	

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

Japan Tobacco Inc., a Japan corporation with an address of 1-1 Toranomom, 4-chome, Minato-ku, Tokyo, Japan, believes it will be damaged by the registration of the mark shown in application Serial No. 97/566,653 (the “Application”) and hereby opposes registration of such mark. The specific grounds for such opposition are as follows:

1. Opposer owns and uses the mark WAVE in connection with services offered in interstate commerce in the United States.
2. Opposer has been using the mark WAVE since at least as early as October 26, 1976, long before Explore Prolific LLC (“Applicant”) filed the Application for registration of the FLAVORWAVES mark on August 26, 2022.
3. Opposer is the owner of, *inter alia*, United States Trademark Registration No. 1,068,686 for the mark WAVE, for use in connection with cigarettes.

4. As a result of extensive promotion of its goods and services throughout the United States, Opposer has built up highly valuable goodwill in its WAVE mark. Such goodwill has become closely and uniquely identified and associated with Opposer prior to the filing of the Application by Applicant and prior to any use of the FLAVORWAVES mark in the United States by Applicant.

5. Given the strength and renown of Opposer's mark in the United States, Applicant's FLAVORWAVES mark so resembles Opposer's WAVE mark as to result in a likelihood of confusion.

6. Applicant's FLAVORWAVES mark will be used for related and confusingly similar goods and services in the United States such that the marks are likely to be confused.

7. Opposer will suffer harm as a result of the confusion likely to arise from the registration of the Application and from Opposer's prior and ongoing use of the WAVE mark.

8. Accordingly, Applicant's mark should be denied registration under Section 2(d) of the Trademark Act (15 U.S.C. § 1052(d)).

9. This opposition is timely given that the publication date of the Application was May 21, 2024.

10. The fee of \$600.00 for a Notice of Opposition in one class has been charged to counsel's credit card. The undersigned is authorized to make charges to said credit card.

WHEREFORE, Opposer requests that the Board refuse registration of Application Serial No. 97/566,653, and that this Opposition be sustained.

Respectfully submitted,

LERNER DAVID LLP
Attorneys for Opposer
Japan Tobacco Inc.

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Dated: June 20, 2024

By /Gregg A. Paradise/
Gregg A. Paradise