

ESTTA Tracking number: **ESTTA1372192**  
Filing date: **07/19/2024**

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	Reynolds Brands Inc.
Granted to date of previous extension	07/31/2024
Address	401 N. MAIN STREET WINSTON-SALEM, NC 27101 UNITED STATES

Attorney information	WILLIAM M. BRYNER KILPATRICK TOWNSEND & STOCKTON LLP 1001 WEST FOURTH STREET WINSTON-SALEM, NC 27101 UNITED STATES Primary email: bbryner@ktslaw.com Secondary email(s): totety@ktslaw.com, erevilla@ktslaw.com, kteilhaber@ktslaw.com, tmadmin@ktslaw.com 3366077300
Docket no.	

### Applicant information

Application no.	98029895	Publication date	04/02/2024
Opposition filing date	07/19/2024	Opposition period ends	07/31/2024
Applicant	Frost Vape LLC 22414 S HARPER RD PECULIAR, MO 64078 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: Electronic cigarettes and oral vaporizers for smokers
Class 039. First Use: None First Use In Commerce: None All goods and services in the class are opposed, namely: Warehousing services, namely, storage, distribution, pick-up, packing, and shipping of electronic cigarettes and oral vaporizers for smokers
Class 040. First Use: None First Use In Commerce: None All goods and services in the class are opposed, namely: Manufacturing services for others in the field of electronic cigarettes and oral vaporizers for smokers

### 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.	3293162	Application date	12/12/2006
Register	Principal		
Registration date	09/18/2007	Foreign priority date	NONE
Word mark	FROST		
Design mark			
Description of mark	NONE		
Goods/services	Class 034. First use: First Use: May 31, 2006 First Use In Commerce: May 31, 2006 Snuff, namely, snus		

Attachments	77062235#TMSN.png( bytes ) 2024.07.19 Notice of Opposition_98029895_Exhibit A.pdf(155833 bytes )
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Signature	/Tiffani D. Otey/
Name	Tiffani D. Otey
Date	07/19/2024

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

REYNOLDS BRANDS INC.,  
Opposer,

v.

FROST VAPE LLC,  
Applicant.

In the Matter of Application  
Serial No. 98029895

MARK: FROST VAPE

Opposition No. \_\_\_\_\_

**NOTICE OF OPPOSITION**

Reynolds Brands Inc. (“Opposer”), a North Carolina corporation having its principal place of business at 401 North Main Street, Winston-Salem, North Carolina 27102, believes that it will be damaged by the registration of the trademark FROST VAPE in Class 34 as shown in the above-identified application (the “Application”) filed by Frost Vape LLC (“Applicant”), and, being entitled to a statutory cause of action, hereby opposes the same.

As grounds for the opposition, Opposer alleges the following:

1. Opposer – through its affiliates, its licensees, its predecessors-in-interest, and its predecessors-in-interests’ respective affiliates and licensees – has been and is engaged in the manufacture, distribution, and sale of cigarettes, tobacco products, electronic cigarettes, and accessories and related products in connection with each of the foregoing. Opposer and its predecessors, affiliates and licensees, including, but not limited to R.J. Reynolds Tobacco Company, RAI Strategic Holdings, Inc. and R.J. Reynolds Vapor Company, shall be referred to collectively as “Reynolds.”

2. Reynolds has continuously used, and presently uses, the trademark FROST (the “FROST Mark”) in interstate commerce throughout the United States in connection with the advertising, promotion, and sale of snus.

3. Opposer owns Reg. No. 3293162 on the Principal Register of the United States Patent and Trademark Office (the “USPTO”) for the FROST Mark for “Snuff, namely, snus” in International Class 34 (the “FROST Registration”). Opposer’s predecessor-in-interest filed the application which became the FROST Registration on December 12, 2006, and the FROST Registration was issued on September 18, 2007. Pursuant to 37 C.F.R. § 2.122(d)(1), current printouts of information from electronic database records of the USPTO showing the current status and title of the FROST Registration are attached as **Exhibit A**.

4. As a result of Reynolds’ use in commerce of the FROST Mark, the FROST Mark symbolizes extensive goodwill and consumer recognition established by Reynolds. The FROST Mark identifies and distinguishes Reynolds’ tobacco goods from competing tobacco goods manufactured and marketed by others.

5. Applicant has filed its application to register the FROST VAPE trademark (the “Applicant’s Mark”) in Class 34, based on Applicant’s alleged intent to use the mark in interstate commerce in connection with “Electronic cigarettes and oral vaporizers for smokers,” “Warehousing services, namely, storage, distribution, pick-up, packing, and shipping of electronic cigarettes and oral vaporizers for smokers,” and “Manufacturing services for others in the field of electronic cigarettes and oral vaporizers for smokers” in Classes 34, 39, and 40, respectively.

6. Applicant’s Mark, as shown in the Application, is confusingly similar in sound and appearance to Opposer’s previously used FROST Mark.

7. The goods and services identified in the Application are closely related to the goods on which the FROST Mark is used and has previously been used.

8. Applicant’s Mark, when used in connection with Applicant’s goods as identified in the Application, so resembles Opposer’s previously used FROST Mark as to be likely to cause

confusion, to cause mistake, and/or to deceive members of the public concerning a sponsorship or endorsement of, or an affiliation, connection, or association with, the sources of goods sold under the FROST Mark in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), with consequent injury to Opposer, the public, and the trade.

9. Applicant's Mark, as shown in the Application, is confusingly similar in sound and appearance to the previously registered FROST Mark as shown in the FROST Registration.

10. The goods and services identified in the Application are closely related to the goods identified in the FROST Registration.

11. Applicant's Mark, when used in connection with Applicant's goods and services as identified in the Application, so resembles the previously registered mark shown in the FROST Registration as to be likely to cause confusion, to cause mistake, and/or to deceive members of the public concerning a sponsorship or endorsement of, or an affiliation, connection, or association with, the sources of goods sold under the FROST Mark, as shown in the FROST Registration, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), with consequent injury to Opposer, the public, and the trade.

12. Pursuant to Section 13(a) of the Lanham Act, 15 U.S.C. § 1063(a), Opposer believes it will be damaged by registration of the Applicant's Mark in that members of the purchasing public and/or the trade are likely to be confused or mistaken that Applicant's goods and services offered under the Applicant's Mark originate from Opposer, or from the same source as goods sold under Opposer's FROST Mark, or that such goods and services of Applicant are sponsored by, endorsed by, or affiliated with the source of goods sold under Opposer's FROST Mark. Such likelihood of confusion results in damage to the goodwill among purchasers and the trade that Opposer's FROST Mark symbolizes. Registration of Applicant's Mark will support and

assist Applicant in the confusing and misleading use of Applicant's Mark, and, in addition, will give color and exclusive statutory right to Applicant in violation and derogation of the prior and superior rights of Opposer. Opposer is therefore entitled to a statutory cause of action.

**WHEREFORE**, Opposer requests that registration of the Applicant's Mark, as shown in the Application, be refused.

The required fee for instituting this opposition is included herewith. Please charge any deficiency or refund in the filing fee to Deposit Account No. 20-1430.

Please recognize William M. Bryner, Tiffani D. Otey, Emily M. Revilla, Marissa C. Truskowski and the law firm of Kilpatrick Townsend & Stockton LLP as attorneys for Opposer in connection with this opposition proceeding. Please address all correspondence regarding this proceeding to William M. Bryner at Kilpatrick Townsend & Stockton LLP, 1001 West Fourth Street, Winston-Salem, NC 27101.

This the 19th day of July, 2024.

Respectfully submitted,

/Tiffani D. Otey/  
William M. Bryner  
Tiffani D. Otey  
Emily M. Revilla  
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# **EXHIBIT A**

Generated on: This page was generated by TSDR on 2024-07-19 10:43:13 EDT

Mark: FROST

# FROST

US Serial Number: 77062235

Application Filing Date: Dec. 12, 2006

US Registration Number: 3293162

Registration Date: Sep. 18, 2007

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor:



LIVE/REGISTRATION/Issued and Active

The trademark application has been registered with the Office.

Status: The registration has been renewed.

Status Date: Feb. 10, 2017

Publication Date: Jul. 03, 2007

## Mark Information

Mark Literal Elements: FROST

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

## Goods and Services

**Note:**

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (()) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks \*..\* identify additional (new) wording in the goods/services.

For: Snuff, namely, snus

International Class(es): 034 - Primary Class

U.S Class(es): 002, 008, 009, 017

Class Status: ACTIVE

Basis: 1(a)

First Use: May 31, 2006

Use in Commerce: May 31, 2006

## Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Filed ITU: No

Currently ITU: No

Filed 44D: No

Currently 44D: No

Filed 44E: No

Currently 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

## Current Owner(s) Information

Owner Name: REYNOLDS BRANDS INC.

Owner Address: 401 NORTH MAIN STREET



WINSTON SALEM, NORTH CAROLINA UNITED STATES 27101

Legal Entity Type: CORPORATION

State or Country NORTH CAROLINA  
Where Organized:

## Attorney/Correspondence Information

### Attorney of Record

Attorney Name: William M. Bryner

Docket Number: 0414916

Attorney Primary Email Address: [wstrademarks@kilpatricktownsend.com](mailto:wstrademarks@kilpatricktownsend.com)

Attorney Email Authorized: Yes

### Correspondent

Correspondent Name/Address: William M. Bryner

KILPATRICK TOWNSEND & STOCKTON LLP  
1001 W. FOURTH STREET  
WINSTON-SALEM, NORTH CAROLINA UNITED STATES 27101

Phone: 336-607-7300

Fax: 336-607-7500

Correspondent e-mail: [wstrademarks@kilpatricktownsend.com](mailto:wstrademarks@kilpatricktownsend.com)

Correspondent e-mail Authorized: Yes

### Domestic Representative - Not Found

## Prosecution History

Date	Description	Proceeding Number
Jan. 17, 2018	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Feb. 10, 2017	NOTICE OF ACCEPTANCE OF SEC. 8 & 9 - E-MAILED	
Feb. 10, 2017	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	
Feb. 10, 2017	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	
Feb. 10, 2017	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	
Dec. 08, 2016	TEAS SECTION 8 & 9 RECEIVED	
Sep. 18, 2016	COURTESY REMINDER - SEC. 8 (10-YR)/SEC. 9 E-MAILED	
Nov. 28, 2012	NOTICE OF ACCEPTANCE OF SEC. 8 & 15 - E-MAILED	
Nov. 28, 2012	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	
Nov. 28, 2012	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	
Nov. 01, 2012	TEAS SECTION 8 & 15 RECEIVED	
Feb. 18, 2011	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Feb. 18, 2011	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Jan. 21, 2009	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	
Jan. 21, 2009	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
Jan. 14, 2009	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Jan. 13, 2009	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	
Jan. 13, 2009	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
Jun. 18, 2008	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Mar. 19, 2008	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Sep. 18, 2007	REGISTERED-PRINCIPAL REGISTER	
Jul. 04, 2007	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Jul. 03, 2007	PUBLISHED FOR OPPOSITION	
Jun. 13, 2007	NOTICE OF PUBLICATION	
Apr. 27, 2007	LAW OFFICE PUBLICATION REVIEW COMPLETED	
Apr. 26, 2007	ASSIGNED TO LIE	
Apr. 04, 2007	APPROVED FOR PUB - PRINCIPAL REGISTER	
Apr. 04, 2007	ASSIGNED TO EXAMINER	
Jan. 17, 2007	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	
Jan. 17, 2007	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
Dec. 18, 2006	NEW APPLICATION ENTERED	

## TM Staff and Location Information

**TM Staff Information - None**

**File Location**

**Current Location:** GENERIC WEB UPDATE

**Date in Location:** Feb. 10, 2017