

ESTTA Tracking number: **ESTTA1097487**

Filing date: **11/24/2020**

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	NuttZo LLC
Granted to Date of previous extension	11/25/2020
Address	3525 DEL MAR HEIGHTS ROAD #728 SAN DIEGO, CA 92130 UNITED STATES
Attorney information	STEVEN E. KLEIN DAVIS WRIGHT TREMAINE LLP 1300 SW FIFTH AVENUE, SUITE 2400 PORTLAND, OR 97201 UNITED STATES Primary Email: stevenklein@dwt.com Secondary Email(s): sheilafoxmorrison@dwt.com, pdxtmenforcement@dwt.com, pdxtrademarks@dwt.com 503.241.2300
Docket Number	

Applicant Information

Application No.	88657110	Publication date	07/28/2020
Opposition Filing Date	11/24/2020	Opposition Period Ends	11/25/2020
International Registration No.	NONE	International Registration Date	NONE
Applicant	REGIOMASANO, S.A. DE C.V. LAS CALZADAS RESIDECIA CALZADA DE LOS NOGALES, NO. 201 SAN PEDRO GARZA GARCÁ-A, NuevoLeón MEXICO		

Goods/Services Affected by Opposition

Class 029. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: hazelnut butter and spreads

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3592258	Application Date	09/26/2007
Registration Date	03/17/2009	Foreign Priority Date	NONE
Word Mark	NUTTZO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2008/07/23 First Use In Commerce: 2008/07/23 [Jams; Jellies;] Nut butters; Peanut butter		

U.S. Registration No.	6088676	Application Date	06/17/2019
Registration Date	06/30/2020	Foreign Priority Date	NONE
Word Mark	NUTTZO		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 005. First use: First Use: 2018/02/09 First Use In Commerce: 2018/03/06 Nutritional supplement energy bars; dietary and nutritional supplement formed and packaged as protein based snack bars;protein bars in the nature of nutritional supplement energy bars</p> <p>Class 029. First use: First Use: 2018/02/09 First Use In Commerce: 2018/03/06 Nut and seed butters; nut-based snack bars; seed-based snack bars; nut and seed-based snack bars; fruit and nut and seed-based snack bars</p> <p>Class 030. First use: First Use: 2013/04/22 First Use In Commerce: 2013/04/25 Chocolate confections; nut confections being candy; nut and seed-based confections being candy</p>		

Attachments	Notice of Opposition - NUXTO.pdf(281893 bytes)
Signature	/s Steven E. Klein/
Name	Steven E. Klein
Date	11/24/2020

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

In the Matter of the Trademark Application No. 88/657,110
For the Mark: NUXTO stylized
Published on: July 28, 2020

NUTTZO LLC, a California limited liability
company,

Opposer,

v.

REGIOMASANO, S.A. DE C.V., a Mexican
sociedad anonima (sa de cv),

Applicant.

Opposition No.

NOTICE OF OPPOSITION

NuttZo LLC, a California limited liability company, having its principal place of business at 3525 Del Mar Heights Road #728, San Diego, California 92130 (“Opposer”), believes that it will be damaged by registration of the NUXTO stylized trademark shown in U.S. Trademark Application Serial No. 88/657,110, in connection with “*hazelnut butter and spreads,*” in International Class 29 and hereby opposes registration of same.

Having requested and obtained an extension of time to oppose Application Serial No. 88/657,110 to and including November 25, 2020, *see* ESTTA Tracking No. ESTTA1077869, Opposer now opposes registration of Applicant’s Mark.

As grounds for the opposition, Opposer alleges as follows:

1. Upon information and belief, Regiomasano, S.A. DE C.V, is a Mexican sociedad anonima (sa de cv), with an address at Las Calzadas Residencia, Calzada de los Nogales, No. 201, San Pedro Garza García, Mexico NuevoLeón (hereinafter, “Applicant”).

2. Upon information and belief, Applicant is the listed owner of the Application Serial No. 88/657,110, filed on October 16, 2019, to register the NUXTO stylized mark in connection with “*hazelnut butter and spreads,*” in International Class 29 (“Applicant’s Goods”).

3. Continuously since 2008, long prior to any date upon which Applicant can rely, Opposer has used the trademarks NUTTZO and NUTTZO stylized (collectively, the “NUTTZO” Marks) in connection with, among other goods, *nut butters and peanut butter* (“Opposer’s Goods”).

4. Opposer is the owner of U.S. Trademark Registration No. 3,592,258, for the mark NUTTZO for “*Nut butters; Peanut butter,*” in International Class 29, which has been in continuous use in U.S. commerce since at least as early as July 23, 2008. Said registration issued March 17, 2009 (based on an application filed September 26, 2007). Registration No. 3,592,258 is currently valid and subsisting, and has achieved incontestable status under 15 U.S.C. § 1065. A true and correct print-out from the USPTO’s Trademark Electronic Search System showing the current status and title of the above registration is attached hereto as Exhibit A.

5. Opposer is the owner of U.S. Trademark Registration No. 6,088,676, for the mark NUTTZO for “*Nut and seed butters; nut-based snack bars; seed-based snack bars; nut and seed-based snack bars; fruit and nut and seed-based snack bars,*” in International Class 29. Said registration issued June 30, 2020 (based on an application filed June 17, 2019). Registration No. 6,088,676 is currently valid and subsisting. A true and correct print-out from the USPTO’s Trademark Electronic Search System showing the current status and title of the above registration is attached hereto as Exhibit B.

6. Opposer has invested significant time, energy, and resources in the advertising, promotion, and distribution of Opposer’s Goods under Opposer’s NUTTZO Marks. The success

of Opposer's marketing and promotional efforts have not gone unnoticed, and Opposer benefits from the publicity garnered from unsolicited media coverage of its goods and services.

7. As Opposer used, filed to register and/or registered the NUTTZO Marks long before the filing date of Applicant's Application Serial No. 88/657,110 or, on information and belief, any earlier lawful priority date Applicant can claim in the NUXTO mark shown in Application Serial No. 88/657,110, Opposer's rights in the NUTTZO Marks are senior to Applicant's rights.

8. Applicant's NUXTO mark so resembles Opposer's registered NUTTZO Marks that when used in connection with the goods claimed by U.S. Trademark Application Serial No. 88/657,110, Applicant's NUXTO mark is likely to cause confusion, or to cause mistake, or to deceive within the meaning of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d). Among other things:

- a. Applicant's NUXTO mark is confusingly similar in appearance, sound, and commercial impression to Opposer's NUTTZO Marks;
- b. The goods recited in Application Serial No. 88/657,110 are identical and/or related to the goods recited in Opposer's registrations for the NUTTZO Marks;
- c. The goods recited in Serial No. 88/657,110 are unrestricted as to trade channels and are presumed to be marketed, advertised, promoted, and sold through all normal and ordinary channels of trade, which include the same or substantially similar channels of trade through which the goods recited in Opposer's registration for the NUTTZO Marks are marketed, advertised, promoted and sold; and

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