

ESTTA Tracking number: **ESTTA1141686**

Filing date: **06/21/2021**

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	Oatly AB
Granted to Date of previous extension	06/20/2021
Address	STORA VARVSGATAN 6 A MALMÅ#, 21119 SWEDEN
Attorney information	JONATHAN A. HYMAN KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET, 14TH FLOOR IRVINE, CA 92614 UNITED STATES Primary Email: <a href="mailto:efiling@knobbe.com">efiling@knobbe.com</a> Secondary Email(s): <a href="mailto:Jonathan.Hyman@knobbe.com">Jonathan.Hyman@knobbe.com</a> , <a href="mailto:lynda.zadrasymes@knobbe.com">lynda.zadrasymes@knobbe.com</a> , <a href="mailto:hans.mayer@knobbe.com">hans.mayer@knobbe.com</a> , <a href="mailto:david.ohair@knobbe.com">david.ohair@knobbe.com</a> 3105513450
Docket Number	AWAP040.017T

**Applicant Information**

Application No.	88886678	Publication date	12/22/2020
Opposition Filing Date	06/21/2021	Opposition Period Ends	06/20/2021
Applicant	The Not Company SpA EL PEUMO NÂ° 284 SANTIAGO CHILE		

**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: Vegetable-based meat, fish, poultry and game substitutes; preserved, frozen, dried or cooked vegetables-based fruit jams and pulses; vegetable-based marmalades; vegetable based jellies for food; vegetable-based egg substitute; vegetable-based yogurt and dairy spreads and dips; vegetable based oils and fats for food; vegetable-based soups and preparations for making soups; vegetable based low-calories french fries; vegetable-based fruitpulp in the nature of combined fruit and vegetable purees; vegetable-based foodbeverages; Vegetable-based cheese substitute, namely, vegan cheese and non-dairy cheese products substitute

## Grounds for Opposition

The mark is merely descriptive	Trademark Act Section 2(e)(1)
The mark is generic	Trademark Act Sections 1, 2 and 45
Failure to function as a mark	Trademark Act Sections 1, 2 and 45
The mark is not inherently distinctive and has not acquired distinctiveness	Trademark Act Sections 1, 2 and 45; and Section 2(f)

Related Proceedings	91267752
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Attachments	AWAP040.017TIS-NoticeOpp.pdf(96812 bytes ) Exhibit 1.pdf(93375 bytes ) Exhibit 2.pdf(1445685 bytes ) Exhibit 3.pdf(2398453 bytes ) Exhibit 4.pdf(1195338 bytes )
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Signature	/jhh/
Name	Jonathan A. Hyman
Date	06/21/2021

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

OATLY AB,

Opposer,

v.

THE NOT COMPANY SPA,

Applicant.

)  
) Opposition No.: \_\_\_\_\_

)  
) Serial No.: 88/886,678

)  
) **NOT**

) Mark:

)

)

)

**NOTICE OF OPPOSITION**

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

Oatly AB, a Swedish aktiebolag (ab) with an office at Stora Varvsgatan 6 A Malmö, Sweden 21119 believes that it would be damaged by the registration of the mark shown in Application Serial No. 88/886,678 and hereby opposes the same under the provision of Section 13 of the Trademark Act of July 5, 1946, as amended, 15 U.S.C. § 1063.

As grounds for opposition, it is alleged:

1. Opposer is a Swedish company with a principal place of business in Sweden.
2. Opposer is informed and believes and on that basis alleges that The Not Company SpA is a Chilean Corporation with its principal place of business in Chile.
3. Opposer is the owner of pending federal trademark applications for the marks



and OATLY NOT MILK (hereinafter the “NOT MILK Marks”) for “oat-based

drinks for use as a milk substitutes” in International Class 29 (hereinafter “Opposer’s Goods”). See U.S. App. Nos. 90/239,637 and 90/239,617. True and correct copies of printouts from the electronic database records of the Patent and Trademark Office showing the current status for these applications are attached hereto as Exhibit 1.

4. By the Application filed on April 24, 2020, Applicant filed Application Serial No. 88/886,678 (hereinafter “Applicant’s Application”) for registration of the mark **NOT** for “vegetable-based meat, fish, poultry and game substitutes; preserved, frozen, dried or cooked vegetables-based fruit jams and pulses; vegetable-based marmalades; vegetable based jellies for food; vegetable-based egg substitute; vegetable-based yogurt and dairy spreads and dips; vegetable based oils and fats for food; vegetable-based soups and preparations for making soups; vegetable based low-calories french fries; vegetable-based fruit pulp in the nature of combined fruit and vegetable purees; vegetable-based food beverages; Vegetable-based cheese substitute, namely, vegan cheese and non-dairy cheese products substitute” in International Class 29 (hereinafter “Applicant’s Goods”), based on Applicant’s alleged intent-to-use the mark in interstate commerce.

5. Opposer is in the business of marketing and selling oat-based food and beverage products, including oat-based drinks for use as a dairy milk substitute.

6. Opposer markets and sells its goods through various channels, including but not limited to its online website, [us.oatly.com](http://us.oatly.com).

7. “NOT” is a term used to stand for the negative of a preceding group of words.

8. Sample dictionary definitions of the term “NOT,” include:

- Merriam Webster’s online dictionary, defines “NOT” as “a logical operator that produces a statement that is the inverse of an input statement.” (internal citations omitted).

- Dictionary.com LLC's online dictionary, defines "NOT" as "used to express negation, denial, refusal, or prohibition."

9. Opposer has a real interest in the registration of the Applicant's Mark because such registration would damage Opposer by interfering with its right to the lawful descriptive or generic use of the term "not", as well as its applications for its NOT MILK Marks.

10. Numerous other entities, especially those in the non-dairy market, already employ the descriptive use of the term "not" in connection with non-dairy food and beverage products. Such descriptive use by Opposer and other non-dairy entities demonstrates that the term "not" should not be controlled by or exclusively registered to one person or entity and must remain in the public domain for use by all others to describe their products.

11. Applicant concedes that its use of the word NOT is to describe to its consumers that its products are "not milk," "not butter," "not tuna", "not meat", etc. For example, Applicant's CEO and founder, Matias Muchnick, admits that the use of the word NOT is to convey to the consumer that its products are "not" something:

*"We foresaw that coming. We know how powerful the dairy industry is. So we created this concept of creating transparency with the consumer, saying we're not milk. We have all that you want from milk and nothing that you don't want from milk".*

See <https://www.livekindly.co/vegan-milk-created-by-ai-whole-foods-nationwide/> attached as Exhibit 2 (last visted June 21, 2021) (emphaiss added).

12. Applicant owns numerous other federal applications and registrations for marks that include the word NOT that include a disclaimer of the word NOT. For example, U.S. Reg.



No. 5,034,959 for the mark NOT MAYO disclaims the words "NOT MAYO" and covers "vegetable-based spread; mayonnaise substitute," in Class 30; U.S. Trademark Application Serial

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