

ESTTA Tracking number: **ESTTA230931**

Filing date: **08/16/2008**

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	In-N-Out Burgers		
Entity	Corporation	Citizenship	California
Address	4199 Campus Dr. 10th Floor Irvine, CA 92612 UNITED STATES		

Attorney information	Edward O. Ansell Law Office of Edward O. Ansell 427 N. Yale Ave. Suite 204 Claremont, CA 91711 UNITED STATES anselaw@verizon.net Phone:(909) 621-1985
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Applicant Information

Application No	76687302	Publication date	07/22/2008
Opposition Filing Date	08/16/2008	Opposition Period Ends	08/21/2008
Applicant	Quaglia, Brian 151 Airport Road Warwick, RI 02886 UNITED STATES		

Goods/Services Affected by Opposition

Class 028. First Use: 2008/02/16 First Use In Commerce: 2008/02/16 All goods and services in the class are opposed, namely: Game, namely, a dice game
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2285823	Application Date	07/22/1996
Registration Date	10/12/1999	Foreign Priority Date	NONE
Word Mark	IN-N-OUT		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 042. First use: First Use: 1999/04/27 First Use In Commerce: 1999/04/27 computer services, namely, providing data bases in the field of restaurant services and in the field of retail and mail order merchandising services		
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U.S. Registration No.	1514689	Application Date	04/25/1988
Registration Date	11/29/1988	Foreign Priority Date	NONE
Word Mark	IN-N-OUT BURGER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1987/01/20 First Use In Commerce: 1987/05/15 SHIRTS		

U.S. Registration No.	1960015	Application Date	01/19/1995
Registration Date	03/05/1996	Foreign Priority Date	NONE
Word Mark	IN-N-OUT BURGER		
Design Mark			
Description of Mark	The mark comprises the words "IN-N-OUT BURGER" superimposed over a stylized arrow.		
Goods/Services	<p>Class 014. First use: First Use: 1988/08/16 First Use In Commerce: 1988/08/16 watches</p> <p>Class 016. First use: First Use: 1990/10/18 First Use In Commerce: 1990/10/18 gift certificates</p> <p>Class 021. First use: First Use: 1988/08/16 First Use In Commerce: 1988/08/16 coffee mugs and thermal mugs</p> <p>Class 025. First use: First Use: 1988/08/16 First Use In Commerce: 1988/08/16 baseball caps, letterman's jackets, and cooks aprons</p> <p>Class 042. First use: First Use: 1988/08/16 First Use In Commerce: 1988/08/16 retail and mail order services featuring watches, novelty jewelry, key rings, drinking utensils, clothing, aprons and sporting equipment</p>		

U.S. Registration No.	1085163	Application Date	07/07/1977
Registration Date	02/07/1978	Foreign Priority Date	NONE
Word Mark	IN-N-OUT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1949/00/00 First Use In Commerce: 1949/00/00 RESTAURANT SERVICES AND CARRY-OUT RESTAURANT SERVICES		

U.S. Registration No.	1522799	Application Date	07/05/1988
Registration Date	01/31/1989	Foreign Priority Date	NONE

Word Mark	IN-N-OUT
Design Mark	
Description of Mark	THE MARK COMPRISES THE WORDS "IN-N-OUT" SUPERIMPOSED OVER A STYLIZED ARROW.
Goods/Services	<p>Class 029. First use: First Use: 1988/04/00 First Use In Commerce: 1988/04/00 MILK AND FRENCH FRIED POTATOES FOR CONSUMPTION ON OR OFF THE PREMISES</p> <p>Class 030. First use: First Use: 1988/04/00 First Use In Commerce: 1988/04/00 HAMBURGER SANDWICHES AND CHEESEBURGER SANDWICHES, HOT COFFEE, AND MILKSHAKES FOR CONSUMPTION ON OR OFF THE PREMISES</p> <p>Class 032. First use: First Use: 1988/04/00 First Use In Commerce: 1988/04/00 LEMONADE AND SOFT DRINKS FOR CONSUMPTION ON OR OFF THE PREMISES</p> <p>Class 042. First use: First Use: 1987/04/00 First Use In Commerce: 1987/04/00 RESTAURANT SERVICES AND CARRY-OUT RESTAURANT SERVICES</p>

U.S. Registration No.	1525982	Application Date	07/05/1988
Registration Date	02/21/1989	Foreign Priority Date	NONE

Word Mark	IN-N-OUT
Design Mark	
Description of Mark	NONE
Goods/Services	<p>Class 029. First use: First Use: 1988/04/00 First Use In Commerce: 1988/04/00 MILK AND FRENCH FRIED POTATOES FOR CONSUMPTION ON OR OFF THE PREMISES</p> <p>Class 030. First use: First Use: 1988/04/00 First Use In Commerce: 1988/04/00 HAMBURGER SANDWICHES AND CHEESEBURGER SANDWICHES, HOT COFFEE, AND MILKSHAKES FOR CONSUMPTION ON OR OFF THE PREMISES</p> <p>Class 032. First use: First Use: 1988/04/00 First Use In Commerce: 1988/04/00 LEMONADE AND SOFT DRINKS FOR CONSUMPTION ON OR OFF THE PREMISES</p> <p>Class 042. First use: First Use: 1987/04/00 First Use In Commerce: 1987/04/00 RESTAURANT SERVICES AND CARRY-OUT RESTAURANT SERVICES</p>

U.S. Registration No.	1101628	Application Date	07/07/1977
Registration Date	09/05/1978	Foreign Priority Date	NONE

Word Mark	IN-N-OUT
Design Mark	
Description of Mark	NONE
Goods/Services	<p>Class 029. First use: First Use: 1949/00/00 First Use In Commerce: 1949/00/00 MILK AND FRENCH FRIED POTATOES FOR CONSUMPTION ON OR OFF THE PREMISES</p> <p>Class 032. First use: First Use: 1949/00/00 First Use In Commerce: 1949/00/00</p>

	LEMONADE AND SOFT DRINKS FOR CONSUMPTION ON OR OFF THE PREMISES
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U.S. Registration No.	1101638	Application Date	07/07/1977
Registration Date	09/05/1978	Foreign Priority Date	NONE
Word Mark	IN-N-OUT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1949/00/00 First Use In Commerce: 1949/00/00 CHEESEBURGERS, HAMBURGERS, HOT COFFEE AND MILKSHAKES FOR CONSUMPTION ON OR OFF PREMISES		

U.S. Registration No.	2217307	Application Date	11/28/1997
Registration Date	01/12/1999	Foreign Priority Date	NONE
Word Mark	IN-N-OUT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 014. First use: First Use: 1988/08/16 First Use In Commerce: 1988/08/16 watches Class 016. First use: First Use: 1979/00/00 First Use In Commerce: 1979/00/00 decals in the nature of bumper stickers; publications in the nature of house organs; gift certificates Class 018. First use: First Use: 1994/04/00 First Use In Commerce: 1994/07/00 backpacks Class 021. First use: First Use: 1988/08/16 First Use In Commerce: 1988/08/16 coffee mugs and thermal mugs Class 025. First use: First Use: 1987/01/20 First Use In Commerce: 1987/01/20 shirts, baseball caps, letterman's jackets, and cooks aprons		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	IN-N-OUT OPOLY		
Goods/Services	A game, namely, a board game including dice		

Attachments	75137201#TMSN.gif (1 page)(bytes) 73724456#TMSN.gif (1 page)(bytes) 74622923#TMSN.gif (1 page)(bytes) 73738305#TMSN.gif (1 page)(bytes) 73738306#TMSN.gif (1 page)(bytes) Quagliagame.op.pdf (5 pages)(153207 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Edward O. Ansell/
Name	Edward O. Ansell
Date	08/16/2008

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

In-N-Out Burgers)	
Opposer)	
)	Application No. 76/687,302
v.)	
)	Filed: March 3, 2008
Brian Quaglia)	
Applicant)	
_____)	

NOTICE OF OPPOSITION

Opposer, In-N-Out Burgers, a California Corporation, with a business address of 4199 Campus Drive (10th Floor), Irvine, CA 92612, hereby opposes registration of the mark IN & OUT that is the subject of application 76/687,302, published in the Official Gazette of July 22, 2008 and requests that registration to Applicant be refused.

1. Opposer, for many years and since long prior to any date of first use upon which Applicant can rely, has adopted and continuously uses the term **in-n-out** in connection with retail and mail order merchandise including sporting equipment for a game;
2. Opposer for many years and long prior to any date of first use upon which Applicant can rely, has adopted and continually used the term IN-N-OUT OPOLY for a game, namely, a board game including dice;
3. Opposer is the owner of registration 2,285,823 for the mark **in-n-out** for computer services, namely, providing data bases in the field of restaurant services, and in the field of retail and mail order merchandising services, and said registration is valid, subsisting, unrevoked and uncanceled. A current printout of

- information from the electronic database records of the USPTO showing the current status and title of the registration is attached.
4. Opposer, for many years and since long prior to any date of first use upon which Applicant can rely has adopted and continuously used the term IN-N-OUT in connection with its sponsorship of games, namely, golf tournaments to raise money for donation to organizations with the intent to help abused and neglected children.
 5. Opposer is the owner of registrations 1,514,689 and 1,960,015 for the mark IN-N-OUT BURGER and design for shirts, baseball caps, letterman's jackets and cook aprons; retail and mail order services featuring watches, novelty jewelry, key rings, drinking utensils, clothing, aprons and sporting equipment, each of which is valid, subsisting, unrevoked, incontestable and uncanceled. A current printout of information from electronic database records of the USPTO showing the current status and title of the registration is attached.
 6. Opposer, for many years and since long prior to any date of first use upon which Applicant can rely, has adopted and continuously used the terms IN-N-OUT and IN-N-OUT BURGER in connection with the operation of its restaurant services, including take-out services. Opposer's marks have achieved a high degree of public recognition and renown and have received extensive media attention.
 7. Opposer is the owner of the following registrations for the mark IN-N-OUT for restaurant services and carry-out restaurant services, each of said registrations being valid, subsisting, unrevoked and uncanceled: IN-N-OUT--1,085,163; 1,522,799; 1,525,982. A current printout of information from electronic database

- records of the USPTO showing the current status and title of the registration is attached.
8. Opposer is the owner of the following registrations for the mark IN-N-OUT for food items associated with its restaurant services, including take-out services, namely cheeseburgers, hamburgers, french fried potatoes, hot coffee, milk, milkshakes, lemonade and soft drinks, each of which is valid, subsisting, unrevoked and uncanceled: IN-N-OUT -- 1,101,628; 1,101,638; 1,522,799; 1,525,982. A current printout of information from electronic database records of the USPTO showing the current status and title of the registration is attached.
 9. Opposer is the owner of Registration 2,217,307 for the mark IN-N-OUT for shirts, baseball caps, letterman's jackets and cooks aprons, said registration being valid, subsisting, unrevoked, incontestable and uncanceled. A current printout of information from electronic database records of the USPTO showing the current status and title of the registration is attached.
 10. Applicant's mark so resembles Opposer's previously used and registered marks in-n-out, IN-N-OUT and IN-N-OUT BURGER as to be likely, when used in connection with the goods set forth in Applicant's application, to cause confusion, mistake, or deception within the meaning of Section 2(d) of the Lanham Act.
 11. Applicant's mark so resembles Opposer's previously used, registered, and famous marks inn-n-out, IN-N-OUT and IN-N-OUT BURGER as to be likely, when used in connection with the goods set forth in Applicant's application, to lessen the capacity of Opposer's said marks to identify and distinguish Opposer's services and goods, regardless of the presence or absence of competition between Opposer

and Applicant, or likelihood of confusion, mistake or deception within the meaning of Section 43(c) of the Lanham Act.

WHEREFORE, Opposer prays that the opposition be sustained and that registration to Applicant be refused.

Respectfully submitted,
In-N-Out Burgers

By /Edward O. Ansell/
Edward O. Ansell
Attorney for Opposer

Date: August 16, 2008

Attachments:

- A. Registration 2,285,823
- B. Registration 1,514,689
- C. Registration 1,960,015
- D. Registration 1,085,163
- E. Registration 1,522,799
- F. Registration 1,525,982
- G. Registration 1,101,628
- H. Registration 1,101,638
- I. Registration 2,217,307

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PROOF OF SERVICE: I hereby certify that on August 16, 2008, a copy of the foregoing document was deposited with the U.S. Postal Service, first class mail postage prepaid, to the Applicant, Brian Quaglia, 151 Airport Rd., Warwick, RI 02886.

/Edward O. Ansell/
Edward O. Ansell