

ESTTA Tracking number: **ESTTA241557**

Filing date: **10/08/2008**

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	American Dairy Queen Corporation
Granted to Date of previous extension	10/12/2008
Address	7505 Metro Boulevard Edina, MN 55439-0286 UNITED STATES

Attorney information	Laura J. Hein Gray, Plant, Mooty, Mooty & Bennett, P.A. P.O. Box 2906 Minneapolis, MN 55402-0906 UNITED STATES trademark@gpmlaw.com, laura.hein@gpmlaw.com, cheryl.johnson@gpmlaw.com Phone:612-632-3097
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Applicant Information

Application No	77324208	Publication date	04/15/2008
Opposition Filing Date	10/08/2008	Opposition Period Ends	10/12/2008
Applicant	WTM Establishment F2 1 Mitteldorf Vaduz, SL-29490 LIECHTENSTEIN		

Goods/Services Affected by Opposition

Class 033. All goods and services in the class are opposed, namely: WINES AND SPIRITS, NAMELY, COGNAC, LIQUEURS, RUM, VODKA AND WHISKEY
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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.	559844	Application Date	09/12/1950
Registration Date	06/10/1952	Foreign Priority Date	NONE
Word Mark	BLIZZARD		

Design Mark	
Description of Mark	NONE
Goods/Services	Class U046 (International Class 030). First use: First Use: 1946/07/21 First Use In Commerce: 1946/07/21 HEAVY BODIED MILKSHAKES

U.S. Registration No.	895139	Application Date	10/16/1967
Registration Date	07/21/1970	Foreign Priority Date	NONE
Word Mark	BLIZZARD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U046 (International Class 030). First use: First Use: 1952/01/00 First Use In Commerce: 1952/01/00 MILK SHAKES AND SEMI-FROZEN ICE MILK AND ICE CREAM CONFECTIONS WITH CARBONATED BEVERAGES		

U.S. Registration No.	1458987	Application Date	02/20/1987
Registration Date	09/29/1987	Foreign Priority Date	NONE
Word Mark	BLIZZARD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 007. First use: First Use: 1984/10/29 First Use In Commerce: 1984/10/29 FLAVOR BLENDER MACHINE FOR FROZEN TREATS		

U.S. Registration No.	1503396	Application Date	11/06/1987
Registration Date	09/06/1988	Foreign Priority Date	NONE
Word Mark	BLIZZARD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1987/09/09 First Use In Commerce: 1987/09/09 RESTAURANT SERVICES		

U.S. Registration No.	2693918	Application Date	12/11/2000
Registration Date	03/04/2003	Foreign Priority Date	NONE
Word Mark	THE ORIGINAL BLIZZARD ONLY AT DQ		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 030. First use: First Use: 2001/02/00 First Use In Commerce: 2001/02/00 Frozen reduced-fat ice cream soft serve for consumption on and off the premises consisting primarily of frozen reduced-fat ice cream with one or more of the following toppings, namely, candy, cookies, syrup, nut or fruit toppings
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Attachments	71603440#TMSN.gif (1 page)(bytes) 76179783#TMSN.gif (1 page)(bytes) Notice of Opposition.pdf (5 pages)(143738 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	/Laura J. Hein/
Name	Laura J. Hein
Date	10/08/2008

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

American Dairy Queen, Corporation,)	Opposition No. _____
)	
)	Application S/N: 77/324,208
Opposer,)	
)	
vs.)	Mark: BLIZZARD
)	
WTM Establishment,)	Published: April 15, 2008
)	
Applicant.)	

NOTICE OF OPPOSITION

In the matter of pending application Serial No. 77/324,208, filed on November 7, 2007, by WTM Establishment, for BLIZZARD in International Class 33, published in the *Official Gazette* of April 15, 2008, Opposer American Dairy Queen Corporation (“ADQ”) believes that it will be damaged, within the meaning of Section 13 of the Lanham Trademark Act, 15 U.S.C. §1063, by the registration of the mark and hereby gives notice of its intention to oppose the above application.

The grounds for opposition are as follows:

1. Opposer ADQ is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business at 7505 Metro Boulevard, Edina, Minnesota.
2. Since at least as early as 1946, long prior to Applicant’s use of the mark sought to be registered, Opposer, its predecessors, and its franchisees and licensees have used the mark BLIZZARD in connection with the sale of milkshakes and semi-frozen blended ice milk beverages and other products and services throughout the United States.

3. Currently, Opposer's franchisees and licensees operate more than 4,500 restaurants throughout the United States, most if not all of which display and promote Opposer's BLIZZARD mark, on exterior and interior signage as well as on menu boards, posters and other point of sale materials, cups and the like.

4. Opposer is the owner of numerous valid and subsisting U.S. registrations of marks that consist, in whole or in part, of Opposer's mark BLIZZARD, among them the following:

Registration No./ Date of Registration	Mark	Goods and Services
0559844 06/10/1952		Heavy bodied milkshakes, in International Class 30
0895139 07/21/1970	BLIZZARD	Milk shakes and semi-frozen ice milk and ice cream confections with carbonated beverages, in International Class 30
1458987 09/29/1987	BLIZZARD	Flavor blender machine for frozen treats, in International Class 7
1503396 09/06/1988	BLIZZARD	Restaurant services, in International Class 42
2693918 03/04/2003		Frozen reduced-fat ice cream soft serve for consumption on and off the premises consisting primarily of frozen reduced-fat ice cream with one or more of the following toppings, namely, candy, cookies, syrup, nut or fruit toppings, in International Class 30

5. Opposer, its predecessors, and its franchisees, have for decades spent large sums of money advertising and promoting its mark BLIZZARD throughout the United States.

6. As a result of the efforts and expenditures of Opposer, its predecessors, and its franchisees, Opposer's mark BLIZZARD has become associated in the minds of the consuming public with food products and other goods and services emanating from Opposer.

7. The goods recited in Applicant's application are "Wines and spirits, namely, cognac, liqueurs, rum, vodka and whiskey."

8. The goods recited in Applicant's application are related to the goods promoted and sold by Opposer, its franchisees and licensees under its registered marks above.

9. Upon information and belief, Applicant sells or intends to sell its goods to the same class of consumers to whom Opposer and its franchisees sell their goods and services.

10. Registration of Applicant's mark is likely to cause confusion or mistake among members of the consuming public as to the source of Applicant's goods within the meaning of Section 2(d) of the Lanham Trademark Act, 15 U.S.C. §1052(d).

11. As a consequence of extensive sales, advertising, promotion and use of the mark BLIZZARD, Opposer has developed enormous recognition for its BLIZZARD beverage products, and its BLIZZARD mark has acquired and enjoys an immensely valuable reputation and tremendous good will among members of the consuming public. Opposer's BLIZZARD mark is renowned, and is a "famous" mark for purposes of 15 U.S.C. §1125(c)(1).

12. Applicant filed its application to register the mark BLIZZARD long after Opposer's BLIZZARD mark became famous.

13. Registration of Applicant's mark would have an adverse effect upon the value and distinctive quality of Opposer's BLIZZARD mark. Registration of Applicant's mark would blur and whittle away at the distinctiveness and identity-invoking quality of Opposer's BLIZZARD mark.

14. Registration of Applicant's mark is likely to dilute Opposer's famous BLIZZARD mark in violation of 15 U.S.C. §1125(c).

15. By reason of all of the foregoing, Opposer American Dairy Queen Corporation will be damaged by the registration of Applicant's purported mark.

WHEREFORE, Opposer American Dairy Queen Corporation, by its undersigned attorneys, respectfully requests that its Notice of Opposition be sustained and that registration of BLIZZARD, Application Serial No. 77/324,208, be refused.

Dated: October 8, 2008.

GRAY, PLANT, MOOTY,
MOOTY & BENNETT, P.A.

By 

Laura J. Hein

500 IDS Center
80 South 8th Street
Minneapolis, Minnesota 55402
Telephone: (612) 632-3097

Attorneys for Opposer American
Dairy Queen Corporation

CERTIFICATE OF SERVICE

I, Laura J. Hein, certify that I arranged for a copy of the foregoing Notice of Opposition to be served upon Applicant's counsel at the following address:

Elena Muravina
Rosenfeld, Meyer & Susman, LLP
9601 Wilshire Boulevard
Suite 710
Beverly Hills, CA 90210-5225

by first-class mail on the 8th of October, 2008.

A handwritten signature in cursive script, reading "Laura J. Hein", written over a horizontal line.

Laura J. Hein