

ESTTA Tracking number: **ESTTA275602**

Filing date: **04/01/2009**

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	Playtex Products, LLC
Granted to Date of previous extension	04/01/2009
Address	6 Research Dr. Shelton, CT 06484 UNITED STATES

Attorney information	Rose Auslander Esq. Carter Ledyard & Milburn LLP 2 Wall St. New York, NY, NY 10005 UNITED STATES auslander@clm.com Phone:212 238 8601
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Applicant Information

Application No	77498265	Publication date	12/02/2008
Opposition Filing Date	04/01/2009	Opposition Period Ends	04/01/2009
Applicant	Binky'S 813 Westmount Drive, #2 813 Westmount Drive West Hollywood, CA 90069 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. All goods and services in the class are opposed, namely: On-line retail store services featuring baby shower gifts, namely, diaper cakes, potpourri, baby shower games, photo frames, clothing, namely t-shirts and infant and toddler one piece clothing

Grounds for Opposition

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

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	334946	Application Date	12/19/1935
Registration Date	05/19/1936	Foreign Priority Date	NONE
Word Mark	BINKY		

Design Mark	
Description of Mark	NONE
Goods/Services	Class U044 (International Class 005, 008, 010, 012). First use: First Use: 1935/10/01 First Use In Commerce: 1935/10/01 [TEETHING RINGS,] PACIFIERS, [AND NIPPLES]

Attachments	BINKY's logo Opposition.PDF (5 pages)(116116 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	/roseauslander/
Name	Rose Auslander Esq.
Date	04/01/2009

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

In the matter of Application Serial No. 77/498,265
Published in the Official Gazette on December 2, 2008

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Playtex Products, LLC, :
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 : Opposer, :
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 : - against - :
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 Binky'S, :
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 : Applicant. :
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Opposition No.

BOX FEE \$300
Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

Playtex Products, LLC, a limited liability company organized and existing under the laws of Delaware, with its principal place of business at 6 Research Drive, Shelton, Connecticut 06484 (“Opposer”), believes that it will be damaged by issuance of registration for BINKY’S BABY BOUTIQUE in logo form (the “BINKY’S Mark”) as applied for in Application Serial No. 77/498,265, and hereby opposes the same.

1. Upon information and belief, Binky’S (“Applicant”), is a limited liability company organized and existing under the laws of California, with a place of business at 813 Westmount Drive, West Hollywood, California 90069.

2. On June 13, 2008, Applicant filed Application Serial No. 77/498,265 for the mark BINKY’S BABY BOUTIQUE in logo form (the “Application”). The Application is based on an intent to use the applied-for mark for the following services in Class 35: “On-line retail store

services featuring baby shower gifts, namely, diaper cakes, potpourri, baby shower games, photo frames, clothing, namely t-shirts and infant and toddler one piece clothing.”

3. Opposer is the owner of Registration No. 334,946 for the mark BINKY for “pacifiers” (the “BINKY Mark”).

4. Registration No. 334,946 for BINKY is valid, subsisting, and in full force and effect. The registration is incontestable under Section 15 of the Trademark Act. 15 U.S.C. §1065.

5. Opposer’s rights through its predecessors in interest in the BINKY Mark began prior to any date on which Applicant can rely.

6. Opposer’s BINKY Mark has been in use since 1935 through Opposer’s predecessors in interest, and that use of the BINKY Mark has been extensive.

7. Opposer, including through its predecessors in interest, has invested a substantial amount of time, effort and money in promoting the BINKY Mark in the United States. As a result, the BINKY Mark has become well known for Opposer’s goods and have come to represent enormous goodwill for Opposer.

**FIRST CLAIM FOR RELIEF UNDER 15 U.S.C. § 1052(d):
LIKELIHOOD OF CONFUSION**

8. Opposer incorporates by reference Paragraphs 1-7 as if fully set forth herein.

9. Due to Applicant’s incorporation of Opposer’s exact BINKY mark in the BINKY’S Mark, the related nature of the parties’ goods and services, and the fact that the parties’ goods and services are targeted to the same consumers, the public is likely to associate Applicant’s services under the BINKY’S Mark with the goods sold by Opposer under the BINKY Mark, or to believe that Applicant’s services are licensed or endorsed by Opposer, or that there is some relationship between Applicant and Opposer.

10. For these reasons, the registration and/or use of the BINKY'S BABY BOUTIQUE logo mark as applied for, is likely to cause confusion, cause mistake or deceive the public, and cause the public to believe that Applicant's services emanate from or are otherwise sponsored or endorsed by Opposer, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

11. The Application and the presumption of exclusivity that would flow from registration to Applicant of the mark sought to be registered are inconsistent with the rights of Opposer, which has made prior and continuous use (through its predecessors in interest) in commerce of the BINKY Mark.

12. By reason of the foregoing, Opposer would be damaged by the registration of the applied-for mark to Applicant.

**SECOND CLAIM FOR RELIEF UNDER 15 U.S.C. § 1125(c):
FEDERAL TRADEMARK DILUTION**

13. Opposer fully incorporates by reference Paragraphs 1-12 as if fully set forth herein.

14. The registration and/or use of the applied-for mark, in connection with services that are not subject to Opposer's quality control, will blur and dilute the distinctive quality of Opposer's famous BINKY Mark, and therefore constitutes federal trademark dilution pursuant to Section 43(c) of the Lanham Act, 15 U.S.C. §1125(c).

15. By reason of the foregoing, Opposer would be damaged by the registration of BINKY'S BABY BOUTIQUE in logo form to Applicant.

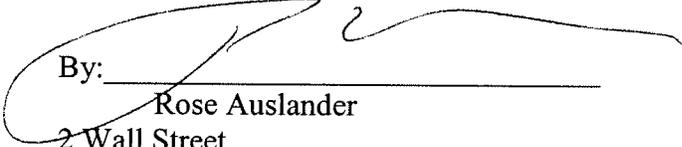
WHEREFORE, it is respectfully requested that this Opposition be sustained and that the registration sought by Application Serial No. 77/498,265 be denied.

The opposition fee in the sum of \$300.00 is submitted through Opposer's Attorney's
Deposit Account # 502-499.

Dated: New York, New York
April 1, 2009

Respectfully submitted,

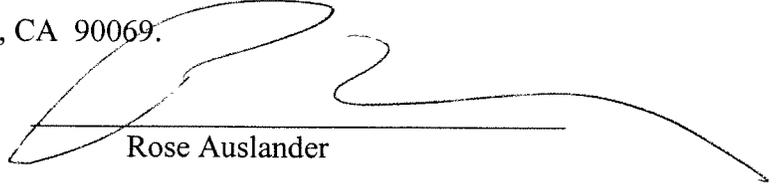
CARTER LEDYARD & MILBURN LLP

By: 
Rose Auslander
2 Wall Street
New York, NY 10005
(212) 238-8601

*Attorneys for Opposer
Playtex Products, LLC*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Opposition re Application Serial No. 77/498,265 has been served on the Applicant by mailing the same on April 1, 2009 via First Class Mail, postage prepaid, to Craig Robb, Binky's, LLC, 813 Westmount Drive, Apt. 2, West Hollywood, CA 90069.



Rose Auslander