

ESTTA Tracking number: **ESTTA350122**

Filing date: **05/28/2010**

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	Tony's Seafood, Ltd.
Granted to Date of previous extension	05/30/2010
Address	5215 Plank Road Baton Rouge, LA 70805 UNITED STATES

Attorney information	Bennett Ford Roy Kiesel, ap/c 2355 Drusilla Lane Baton Rouge, LA 70809 UNITED STATES rbf@roykiesel.com, afb@roykiesel.com Phone:225 927 9908
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### Applicant Information

Application No	78910653	Publication date	12/01/2009
Opposition Filing Date	05/28/2010	Opposition Period Ends	05/30/2010
Applicant	ANTHONY M. CAPUTO 308 WEST BROADWAY Salt Lake City, UT 84101 UNITED STATES		

### Goods/Services Affected by Opposition

Class 035. First Use: 1998/01/10 First Use In Commerce: 1998/01/10 All goods and services in the class are opposed, namely: Retail food store services; grocery store services
Class 043. First Use: 1998/01/10 First Use In Commerce: 1998/01/10 All goods and services in the class are opposed, namely: Restaurant and catering services

### Applicant Information

Application No	78910654	Publication date	12/01/2009
Opposition Filing Date	05/28/2010	Opposition Period Ends	
Applicant	CAPUTO, ANTHONY M. 308 WEST BROADWAY Salt Lake City, UT 84101 UNITED STATES		

## Goods/Services Affected by Opposition

Class 035. First Use: 1998/01/10 First Use In Commerce: 1998/01/10  
All goods and services in the class are opposed, namely: Retail food store services; grocery store services

Class 043. First Use: 1998/01/10 First Use In Commerce: 1998/01/10  
All goods and services in the class are opposed, namely: Restaurant and catering services

## Grounds for Opposition

Priority and likelihood of confusion

Trademark Act section 2(d)

## Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2927533	Application Date	02/17/2004
Registration Date	02/22/2005	Foreign Priority Date	NONE
Word Mark	TONY'S SEAFOOD LIVE CATFISH & DELI		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1977/01/00 First Use In Commerce: 1977/01/00 Retail seafood market services featuring live, fresh, and prepared seafood, fish, and shellfish		

U.S. Registration No.	2935890	Application Date	02/17/2004
Registration Date	03/29/2005	Foreign Priority Date	NONE
Word Mark	TONY'S SEAFOOD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1977/01/00 First Use In Commerce: 1977/01/00 Retail seafood market services featuring live and fresh fish and shellfish, and retail delicatessen services featuring prepared seafood Class 043. First use: First Use: 1977/01/00 First Use In Commerce: 1977/01/00		

	Restaurant delicatessen services featuring prepared seafood		
U.S. Registration No.	3043920	Application Date	10/15/2004
Registration Date	01/17/2006	Foreign Priority Date	NONE
Word Mark	TONY'S SEAFOOD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1977/01/00 First Use In Commerce: 1977/01/00 Retail seafood market services featuring live, fresh, and prepared seafood, fish, and shellfish		

Attachments	76575939#TMSN.gif ( 1 page )( bytes ) 76575938#TMSN.gif ( 1 page )( bytes ) 76616034#TMSN.gif ( 1 page )( bytes ) opposition.ntc.pdf ( 7 pages )(231673 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	/R. Bennett Ford, Jr./
Name	Bennett Ford
Date	05/28/2010

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

Tony's Seafood, Ltd.

Opposition No. \_\_\_\_\_

Opposer

Marks: Tony Caputo's Market and Deli

Tony Caputo's Market and Deli  
Distinctive Regional Italian &  
Southern European Foods  
Caputosdeli.com & logo

Versus

Anthony Caputo

Application Ser. Nos. 78/910,653  
78/910,654

Applicant

**CONSOLIDATED NOTICE OF OPPOSITION**

1.

Tony's Seafood, Ltd is a corporation organized under the laws of the state of Louisiana.

2.

Tony's Seafood, Ltd. its principle place of business at 5215 Plank Road, in Baton Rouge, Louisiana.

3.

On information and belief, Anthony Caputo ("Caputo") is a natural person residing in Salt Lake City, Utah.

4.

On information and belief, Caputo is the applicant in U.S. Trademark Application Serial Number 78/910,653 (the "'653 Application").

5.

The '653 Application was filed on June 21, 2006.

6.

The '653 Application was filed under § 1(a) of the Trademark Act.

7.

The '653 Application was published for opposition in the Official Gazette on December 1, 2009.

8.

Tony's Seafood, Ltd. (hereinafter "Opposer") filed requests for extensions to the deadline to oppose registration of the '653 Application, and said extensions are set to expire on May 30, 2010.

9.

Opposer believes it will be damaged by the registration of the mark in the '653 Application and hereby opposes registration of the same.

10.

On information and belief, Caputo is the applicant in U.S. Trademark Application Serial Number 78/910,654 (the "'654 Application").

11.

The '654 Application was filed on June 21, 2006.

12.

The '654 Application was filed under § 1(a) of the Trademark Act.

13.

The '654 Application was published for opposition in the Official Gazette on December 1, 2009.

14.

Opposer filed requests for extensions to the deadline to oppose registration of the '654 Application, and said extensions are set to expire on May 30, 2010.

15.

Opposer believes it will be damaged by the registration of the mark in the '654 Application and hereby oppose registration of the same.

**Likelihood of Confusion**

16.

The allegations of paragraphs 1-15 are re-averred.

17.

The '653 Application seeks to register the mark, TONY CAPUTO'S MARKET & DELI, for use with the following services in international class 035: Retail food store services; grocery store services.

18

Caputo claims to have used the TONY CAPUTO'S MARKET & DELI mark since January 10, 1998

19.

The '654 Application seeks to register the mark, TONY CAPUTO'S MARKET AND DELI DISTINCTIVE REGIONAL ITALIAN & SOUTHERN EUROPEAN FOODS CAPUTOSDELLI.COM & LOGO , for use with the following goods in international class 035: Retail food store services; grocery store services.

20.

Caputo claims to have used the mark, TONY CAPUTO'S MARKET AND DELI DISTINCTIVE REGIONAL ITALIAN & SOUTHERN EUROPEAN FOODS CAPUTOSDELLI.COM & LOGO , since January 10, 1998.

21.

Since prior to the filing date of the '653 Application, Opposer has been, and is now, using the marks "TONY'S SEAFOOD" and "TONY'S SEAFOOD LIVE CATFISH AND DELI" in interstate commerce on or in connection with retail seafood market services featuring live and fresh fish and

shellfish, and retail delicatessen services featuring prepared seafood in international class 035.

22

Since prior to the filing date of the '653 Application, Opposer has been, and is now, using the marks "TONY'S SEAFOOD" and "TONY'S SEAFOOD LIVE CATFISH AND DELI" in interstate commerce on or in connection with restaurant delicatessen services featuring prepared seafood. n international class 043.

24.

Since prior to Caputo's first use of TONY CAPUTO'S MARKET & DELI, Opposer has been, and is now, using the marks "TONY'S SEAFOOD" and "TONY'S SEAFOOD LIVE CATFISH AND DELI" in interstate commerce on or in connection with retail seafood market services featuring live and fresh fish and shellfish, and retail delicatessen services featuring prepared seafood in international class 035.

25

Since prior to Caputo's first use of TONY CAPUTO'S MARKET & DELI, Opposer has been, and is now, using the marks "TONY'S SEAFOOD" and "TONY'S SEAFOOD LIVE CATFISH AND DELI" in interstate commerce on or in connection with restaurant delicatessen services featuring prepared seafood. n international class 043.

26.

Since prior to Caputo's first use of TONY CAPUTO'S MARKET & DELI DISTINCTIVE REGIONAL ITALIAN & SOUTHERN EUROPEAN FOODS CAPUTOSDELLI.COM & LOGO, Opposer has been, and is now, using the marks "TONY'S SEAFOOD" and "TONY'S SEAFOODLIVE CATFISH AND DELI" in interstate commerce on or in connection with retail seafood market services featuring live and fresh fish and shellfish, and retail delicatessen services featuring prepared seafood in international class 035.

27

Since prior to Caputo's first use of TONY CAPUTO'S MARKET & DELI DISTINCTIVE

REGIONAL ITALIAN & SOUTHERN EUROPEAN FOODS CAPTOSDELLI.COM & LOGO, Opposer has been, and is now, using the marks “TONY’S SEAFOOD” and “TONY’S SEAFOOD LIVE CATFISH AND DELI” in interstate commerce on or in connection with restaurant delicatessen services featuring prepared seafood. n international class 043.

28.

Opposer’s use of the marks “TONY’S SEAFOOD” and “TONY’S SEAFOOD LIVE CATFISH AND DELI” has been valid and continuous and has not been abandoned.

29.

TONY’S SEAFOOD” and “TONY’S SEAFOOD LIVE CATFISH AND DELI” are capable of serving as trademarks, both because they are inherently distinctive and, alternatively, because they have acquired distinctiveness.

30.

TONY’S SEAFOOD” and “TONY’S SEAFOOD LIVE CATFISH AND DELI” are symbolic of extensive good will and consumer recognition developed by Opposer through substantial time and effort in advertising and promotion.

31.

Opposer’s rights in the marks TONY’S SEAFOOD” and “TONY’S SEAFOOD LIVE CATFISH AND DELI” are evidenced by Opposer’s federal registration numbers 2,935,890; 2,927,533; and 3,043,920.

32.

The mark in the ‘653 Application is confusingly similar to Opposer’s “TONY’S SEAFOOD” and “TONY’S SEAFOOD LIVE CATFISH AND DELI” marks.

33.

The services with which registration is sought in the ‘653 Application are substantially similar to the services with which Opposer uses its “TONY’S SEAFOOD” and “TONY’S SEAFOOD LIVE CATFISH AND DELI” marks.

34.

In view of the foregoing, the mark for which registration is sought in the '653 Application so resembles the Opposer's "TONY'S SEAFOOD" and "TONY'S SEAFOOD LIVE CATFISH AND DELI" marks as to be likely to cause confusion, or to cause mistake, or to deceive.

35.

Based on the foregoing, registration of the mark shown in the '653 Application is likely to cause injury and damage to Opposer.

36.

The mark in the '654 Application is confusingly similar to Opposer's "TONY'S SEAFOOD" and "TONY'S SEAFOOD LIVE CATFISH AND DELI" marks.

37.

The services with which registration is sought in the '654 Application are substantially similar to the services with which Opposer uses its "TONY'S SEAFOOD" and "TONY'S SEAFOOD LIVE CATFISH AND DELI" marks.

38.

In view of the foregoing, the mark for which registration is sought in the '654 Application so resembles the Opposer's "TONY'S SEAFOOD" and "TONY'S SEAFOOD LIVE CATFISH AND DELI" marks as to be likely to cause confusion, or to cause mistake, or to deceive.

39.

Based on the foregoing, registration of the mark shown in the '654 Application is likely to cause injury and damage to Opposer.

WHEREFORE, Opposer respectfully requests that registration of the marks shown in U.S. Trademark Application Serial Numbers 78/910,653 and 78/910,654 be denied, that this opposition be sustained, that all costs be assessed against the applicant, and that the Board award the Opposer all other relief to which it may be entitled.

Please address all correspondence regarding this opposition to R. Bennett Ford, Jr. of Roy

Kiesel, apic at the following address:

Roy Kiesel, apic  
2355 Drusilla Lane  
Baton Rouge, Louisiana 70809

Please address all telephone calls to R. Bennett Ford, Jr. at (225) 927-9908.

Please address all facsimiles to R. Bennett Ford, Jr. at (225) 926-2685.

Please address all email to R. Bennett Ford, Jr. At [rbf@roykiesel.com](mailto:rbf@roykiesel.com)

Respectfully submitted:

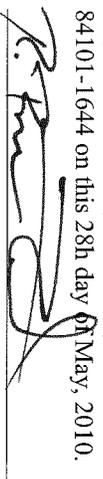


R. Bennett Ford, LA B.R. # 24,093  
William David Kiesel, LA B.R. # 7367  
**ROY KIESEL, apic**  
2355 Drusilla Lane  
Baton Rouge, LA 70809  
(225) 927-9908  
(225) 926-2685 (fax)  
[rbf@roykiesel.com](mailto:rbf@roykiesel.com)

**ATTORNEYS FOR OPPOSERS**

**Certificate of Service**

I certify that a true copy of this Notice of Opposition was served on counsel for applicant electronically and by depositing the same with the U.S. Postal Service in a sealed envelope, First Class postage thereon fully prepaid and addressed to Brent T. Winder of Jones Waldo, Holbrook & McDonough, PC; 170 S Main St., STE 1500; Salt Lake City, UT 84101-1644 on this 28th day of May, 2010.

  
Bennett Ford