

ESTTA Tracking number: **ESTTA527836**

Filing date: **03/20/2013**

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	Deford Bailey LLC		
Entity	Limited Liability Company	Citizenship	Tennessee
Address	4019 Ridgemont Drive Nashville, TN 37207 UNITED STATES		

Attorney information	Maria A. Spear, Amy J. Everhart Everhart Law Firm PLC 1400 Fifth Avenue North Nashville, TN 37208 UNITED STATES maria@everhartlawfirm.com, amy@everhartlawfirm.com
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Applicant Information

Application No	85304626	Publication date	02/19/2013
Opposition Filing Date	03/20/2013	Opposition Period Ends	03/21/2013
Applicants	Bailey, Carlos Deford 515 Basewood Avenue Apt. n 131 Nashville, TN 37209 UNITED STATES Bailey III, Deford 515 Basewood Avenue Apt. n 131 Nashville, TN 37209 UNITED STATES		

Goods/Services Affected by Opposition

Class 015. First Use: 2011/04/11 First Use In Commerce: 2011/04/11 All goods and services in the class are opposed, namely: Harmonicas

Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Other	registration and continued use of the mark in connection with Applicant's good is likely to cause confusion, deception, and mistake, which will seriously damage opposer

Mark Cited by Opposer as Basis for Opposition

U.S. Application/Registration No.	NONE	Application Date	NONE
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Registration Date	NONE
Word Mark	DEFORD BAILEY
Goods/Services	harmonicas; musical instruments; sound recordings; clothing, namely, t-shirts, sweatshirts, and hats

Attachments	Opposition.Notice.pdf (4 pages)(84736 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	/Maria A. Spear/
Name	Maria A. Spear
Date	03/20/2013

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

Deford Bailey LLC,)
Opposer,) Opposition No. _____
)
v.) Application Serial No. 85304626
)
Carlos Deford Bailey) Published in the Official Gazette on
Applicant.) February 19, 2013

NOTICE OF OPPOSITION

To the Honorable Commissioner of Patents and Trademarks:

Opposer, Deford Bailey LLC, 4019 Ridgmont Drive, Nashville, TN 37207, believes that it will be damaged by registration of the mark shown in Serial No. 85304626, and hereby opposes the same.

Description of Applicant's Application:

Filing date:	April 26, 2011
Published for Opposition in the Official Gazette:	February 19, 2013
Mark:	DEFORD BAILEY
International Class:	015
Goods and services:	Harmonicas
Claimed date of first use in commerce:	April 11, 2011

As grounds for opposition, Deford Bailey LLC alleges that:

1. Deford Bailey is renowned as the first African-American performer at the Grand Ole Opry in Nashville, Tennessee. Mr. Bailey was a harmonica virtuoso and was inducted posthumously into the Country Music Hall of Fame in 2005. Mr. Bailey died in 2005.

2. Deford Bailey LLC, a Tennessee limited liability company formed on May 28, 2011 (“DB LLC”), is a successor in interest to the name and likeness rights of Deford Bailey.

3. One of the members of DB LLC is Deford Bailey, Jr., the son of Deford Bailey. Deford Bailey, Jr. contributed and assigned One Hundred Percent (100%) of his interest in and to certain intellectual property, including trademarks, service marks, the names DEFORD BAILEY and DEFORD BAILEY, SR., and all goodwill associated with all such names and marks, and rights of publicity and name and likeness to DB LLC. DB LLC, together with Deford Bailey’s other two children, Christine Lamb and Dezoral Thomas, together own the rights of publicity and name and likeness rights of Deford Bailey (together, the “Heirs”).

4. On April 26, 2011, without seeking consent from the Heirs, Carlos Bailey, a grandson of Deford Bailey, filed with the United States Patent and Trademark Office Application Serial No. 85304626 for registration of the mark DEFORD BAILEY in the category of “harmonicas.” Carlos Bailey fraudulently represented that Deford Bailey III, another grandson of Deford Bailey, joined him in filing the application.

5. In actuality, Deford Bailey III did not join Carlos Bailey in filing the trademark application at issue. Counsel of record for Applicant, Walter M. Benjamin, was notified of this issue in correspondence dated May 26, 2011, and June 27, 2011.

6. Deford Bailey III has never communicated with Applicant’s counsel, did not authorize Carlos Bailey to file the trademark application on his behalf, and did not authorize Mr. Benjamin to represent him in connection with any legal matters.

7. Upon information and belief, Carlos Bailey misrepresented to Mr. Benjamin that Deford Bailey III was joining him in the filing of the trademark application at issue, causing Mr. Benjamin to file a false and fraudulent trademark application.

8. DB LLC has a legitimate interest in the outcome of this proceeding, as it is the successor in interest to the name and likeness rights of Deford Bailey and would be deprived of the right to use its intellectual property (the name DEFORD BAILEY) in connection with goods and services in the future.

9. The registration and continued use of the mark DEFORD BAILEY by Carlos Bailey in connection with his goods is likely to cause confusion, deception, and mistake, and will seriously damage DB LLC.

10. Such registration and continued use of the mark DEFORD BAILEY consists of matter which falsely suggests a connection with the late Mr. Bailey, which is prohibited by section 2(a) of the Trademark Act.

11. For the reasons described above, DB LLC has a reasonable basis for its belief in damage.

WHEREFORE, the Opposer, Deford Bailey LLC, prays that said application Serial No. 85304626 be rejected, that no registration be issued thereon to the Applicant, Carlos Deford Bailey, and that this opposition be sustained in favor of the Opposer.

Deford Bailey LLC hereby appoints Amy J. Everhart and Maria A. Spear of Everhart Law Firm PLC, 1400 Fifth Avenue North, Nashville, Tennessee 37208, (615) 800-8919, members of the bar of the State of Tennessee, to act as attorneys for Deford Bailey LLC herein, with full power to prosecute said Opposition, to transact all relevant

business with the Patent and Trademark Office and in the United States Courts and to receive all official communications in connection with this Opposition.

The filing fee of this Opposition is submitted herewith.

Respectfully submitted,

Deford Bailey LLC, the Opposer

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Attorneys for Opposer,
Deford Bailey LLC

Date: March 14, 2013