

ESTTA Tracking number: **ESTTA539338**

Filing date: **05/22/2013**

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	Polliwogs, LLC d/b/a Polliwogs Children's Boutique		
Entity	limited liability company	Citizenship	North Carolina
Address	3000 Lawndale Drive Greensboro, NC 27408 UNITED STATES		

Attorney information	Frank M. Caprio Bradley Arant Boult Cummings LLP 200 Clinton Avenue West Suite 900 Huntsville, AL 35801 UNITED STATES fcaprio@babco.com, aholt@babco.com, wbabcock@babco.com Phone:256-517-5142
----------------------	---

Applicant Information

Application No	85806650	Publication date	05/14/2013
Opposition Filing Date	05/22/2013	Opposition Period Ends	06/13/2013
Applicant	Aguilar, Stephani A. 161 Jewett Avenue Jersey City, NJ 07304 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 clothing, toys, household items
--

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------

Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	85881741	Application Date	03/20/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	POLLIWOGS		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 035. First use: First Use: 2005/07/01 First Use In Commerce: 2005/07/01 Retail store services featuring a full line of baby clothes and children's clothing		
----------------	--	--	--

U.S. Application No.	85881745	Application Date	03/20/2013
----------------------	----------	------------------	------------

Registration Date	NONE	Foreign Priority Date	NONE
-------------------	------	-----------------------	------

Word Mark	POLLIWOGS		
-----------	-----------	--	--

Design Mark			
-------------	--	--	--

Description of Mark	The mark consists of the word "polliwogs" in lower case letters, with the first "o" having the top of a frog's head, including the eyes, slightly above it, and the frog's front legs holding onto the the "o." The second "o" is the same image as the first, just inverted, so the frog's head is upside down.		
---------------------	--	--	--

Goods/Services	Class 035. First use: First Use: 2013/03/01 First Use In Commerce: 2013/03/01 Retail store services featuring a full line of baby clothes and children's clothing		
----------------	--	--	--

Attachments	Notice of Opposition POLLIWOG KIDS.pdf(139895 bytes)		
-------------	---	--	--

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	/Frank M. Caprio/
Name	Frank M. Caprio
Date	05/22/2013

**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 85-806,650
Published in the Official Gazette of May 14, 2013

Polliwogs, LLC)	
d/b/a Polliwogs Children's Boutique,)	
)	
Opposer,)	
)	
v.)	Opposition No.:
)	
Stephani Aguilar)	
d/b/a Polliwog Kids,)	
Applicant.)	

NOTICE OF OPPOSITION

This Notice of Opposition is brought by Polliwogs, LLC d/b/a Polliwogs Children's Boutique ("Opposer") in the pending service mark application Serial No. 85-806,650 filed by Stephani Aguilar d/b/a Polliwog Kids ("Applicant") for the mark POLLIWOG KIDS, for services identified in the Application as, "On-line retail store services featuring clothing, toys, household items," in Class 35.

The Application was published in the Official Gazette on May 14, 2013.

Opposer believes it will be damaged by the registration or extension of protection of this trademark and hereby opposes registration of the same, alleging as follows:

1. Opposer is a North Carolina limited liability company having its principal place of business at 3000 Lawndale Drive, Greensboro, North Carolina 27408.

2. Opposer currently is and has been in the business of retail store services featuring a full line of baby clothes and children's clothing, in interstate commerce in the United States.

3. Opposer is the owner of application serial number 85-881,741 for the mark POLLIWOGS for "retail store services featuring a full line of baby clothes and children's clothing," and has used the mark POLLIWOGS in connection with its services since at least as early as July 1, 2005.

4. Opposer is the owner of application serial number 85-881,745 for the mark POLLIWOGS (& Design) for "retail store services featuring a full line of baby clothes and children's clothing," and has used this design mark POLLIWOGS (& Design) in connection with its services since at least as early as March 1, 2013. Opposer had used a different logo, which also made use of the word POLLIWOGS, for a number of years prior to recently adopting its logo in serial number 85-881,745.

5. Opposer's and Applicant's marks are likely to be confused. The sight and sound of the marks are very similar, with the words POLLIWOG and POLLIWOGS being virtually identical. Additionally, the marks are used in connection with similar services and thus have overlapping channels of trade.

6. Opposer has expended significant resources in efforts to promote and advertise its marks, and Opposer's goodwill in the marks will be harmed by Applicant's registration of the mark identified in Serial No. 85-806,650.

7. Based on the likelihood of confusion and the prior use of Opposer's marks, Applicant's mark should be refused registration.

Therefore, Opposer respectfully requests that this opposition be sustained, and the registration of application Serial No. 85-806,650 for the mark POLLIWOG KIDS sought by Applicant be refused.

The Application is in one (1) International Class, and a total fee of \$300.00 under 37 CFR § 2.6(a)(17) is enclosed. The Commissioner is authorized to charge any further fees required to Deposit Account Number 50-4293, in the name of Bradley Arant Boulton Cummings LLP.

Respectfully submitted,



Frank M. Caprio
Angela Holt
*Counsel for Opposer,
Polliwogs, LLC d/b/a Polliwogs
Children's Boutique*

BRADLEY ARANT BOULT
CUMMINGS LLP
200 Clinton Avenue, Suite 900
Huntsville, Alabama 35801
Phone: (256) 517-5100
Fax: (256) 517-5200
fcaprio@babbc.com
aholt@babbc.com

CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2013, I caused the foregoing **NOTICE OF OPPOSITION** to be served by United States mail, postage prepaid, in an envelope addressed to:

Stephani A. Aguilar
161 Jewett Ave.
Jersey City, New Jersey 07304-2003

By: 