

ESTTA Tracking number: **ESTTA628753**

Filing date: **09/23/2014**

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	Ariel Y. Bublick Famous Amos Chocolate Chip Cookie Co.
Granted to Date of previous extension	09/24/2014
Address	One Kellogg Square Battle Creek, MI 49016 UNITED STATES
Party who filed Extension of time to oppose	Famous Amos Chocolate Chip Cookie Company
Relationship to party who filed Extension of time to oppose	Changed name to attorney representing Opposing party.

Attorney information	Ariel Y. Bublick Famous Amos Chocolate Chip Cookie Company One Kellogg Square Battle Creek, MI 49016 UNITED STATES ariel.bublick@kellogg.com, elizabeth.kinsley@kellogg.com, jim.lewis@kellogg.com
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Applicant Information

Application No	86165326	Publication date	05/27/2014
Opposition Filing Date	09/23/2014	Opposition Period Ends	09/24/2014
Applicant	Kelsen Group A/S Bredgade 27 Norre Snede, 8776 DENMARK		

Goods/Services Affected by Opposition

Class 030. First Use: 2002/01/28 First Use In Commerce: 2002/01/28 All goods and services in the class are opposed, namely: Cookies
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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.	1468496	Application Date	05/23/1986
Registration Date	12/08/1987	Foreign Priority Date	NONE
Word Mark	FAMOUS AMOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 029. First use: First Use: 1975/04/00 First Use In Commerce: 1977/12/00 [MILK, CHOCOLATE MILK, CHOCOLATE-FLAVORED MILK-BASED FOOD BEVERAGE, YOGURT]</p> <p>Class 030. First use: First Use: 1975/04/00 First Use In Commerce: 1975/06/00 [CAKES AND CAKE MIXES, ICE CREAM, BROWNIES, CANDY AND CANDY BARS, CHOCOLATES, COCOA, HOT CHOCOLATE, COFFEE, CARAMEL, MARSHMALLOW, NOUGAT, WAFERS, PUDDING, FRUIT ICES, DONUTS,] COOKIES, [PASTRIES AND BAKERY GOODS, BISCUIT AND CRACKERS ANDICE MILK]</p> <p>Class 032. First use: First Use: 1985/06/24 First Use In Commerce: 1985/06/24 [MINERAL AND AERATED WATERS, SODAS, CHOCOLATE FLAVORED SOFT DRINKS AND SYRUPS FOR MAKING CARBONATED SOFT DRINKS]</p>		

U.S. Registration No.	2304374	Application Date	03/12/1999
Registration Date	12/28/1999	Foreign Priority Date	NONE
Word Mark	FAMOUS AMOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1975/03/10 First Use In Commerce: 1975/08/05 cookies		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	FAMOUS AMOS		
Goods/Services	Cookie manufacturing, advertising, promotion, and sales		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Design Mark			
Goods/Services	Cookie manufacturing, advertising, promotion, and sales		

Attachments	73600268#TMSN.png(bytes) 75659719#TMSN.png(bytes) FAMOUS AMOS.jpg 140923 Notice of Opposition - FAMOUS DANE word mark.pdf(247650 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	/Ariel Y. Bublick/
Name	Ariel Y. Bublick
Date	09/23/2014

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

In re Application No.: 86-165326
Filed: January 14, 2014
Mark: FAMOUS DANE
Published in the *Official Gazette* (Trademarks) on: May 27, 2014

FAMOUS AMOS)	
CHOCOLATE CHIP)	
COOKIE COMPANY,)	
L.L.C.,)	
)	
Opposer,)	Opposition No. _____
)	
v.)	
)	
KELSEN GROUP A/S,)	
)	
Applicant.)	

NOTICE OF OPPOSITION

FAMOUS AMOS CHOCOLATE CHIP COOKIE COMPANY, L.L.C., a Delaware limited liability company with a principal place of business at One Kellogg Square, Battle Creek, Michigan 49016 (“Famous Amos”) believes that it will be damaged by the registration of the mark FAMOUS DANE, as shown in Application Serial No. 86-165326, (“Opposed Mark”), applied for by KELSEN GROUP A/S, a Denmark corporation with an address of Bredgade 27, Norre Snede 8776, Denmark (“Applicant”), and Famous Amos opposes registration on the basis of likelihood of confusion under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), and dilution under Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c). In support of its Opposition, Famous Amos asserts as follows:

The FAMOUS AMOS Marks

1. Famous Amos, through its predecessors and/or related companies, is engaged in the manufacturing, advertising, promotion, and selling of cookies.
2. Famous Amos' goods are distributed through regional, national, and international supermarkets, mass merchants, and other types of retailers.
3. Famous Amos, through its predecessors and/or related companies, adopted and first used the mark, FAMOUS AMOS, in word and stylized word forms in connection with cookies in 1975. Since that date, Famous Amos, through its predecessors and/or related companies, has continuously used the FAMOUS AMOS word and stylized word marks.
4. Famous Amos owns the following U.S. registrations, both of which are legally and validly registered on the Principal Register of the United States Patent and Trademark Office ("USPTO") (collectively, the "FAMOUS AMOS Registrations"):

Mark	Reg. No.	Goods	Status
	1,468,496	Cookies	Incontestable
FAMOUS AMOS	2,304,374	Cookies	Incontestable

5. Famous Amos also owns extensive common law rights in its FAMOUS AMOS word mark and stylized word mark in connection with cookies. Famous Amos promotes and sells these goods under its FAMOUS AMOS word and stylized word marks in stores and on the website www.famous-amos.com, where the marks are prominently displayed. As a result of Famous Amos' long-standing, nationwide, and widespread use, Famous Amos owns extensive common law rights in the FAMOUS AMOS word and stylized word marks in connection with cookie goods and services. The marks reflected in the FAMOUS AMOS Registrations together

with Famous Amos' extensive common law rights in the FAMOUS AMOS word and stylized word marks are hereafter referred to as the "FAMOUS AMOS Marks."

6. Long prior to the filing date of the application of the Opposed Mark, Famous Amos, through its predecessors and/or related companies, extensively advertised, promoted, and sold products bearing the FAMOUS AMOS Marks.

7. Famous Amos, through its predecessors and/or related companies, has expended substantial sums of money in marketing, advertising, and promoting its FAMOUS AMOS Marks, and, through such activities, has generated substantial goodwill and consumer recognition in the FAMOUS AMOS Marks. The public has come to associate the FAMOUS AMOS Marks exclusively with Famous Amos.

8. Famous Amos has derived substantial revenue from the sale of its products under the FAMOUS AMOS Marks.

9. Famous Amos', and its predecessors' and/or related companies', extensive use and advertising of the FAMOUS AMOS Marks has resulted in consumer recognition that the FAMOUS AMOS Marks identify Famous Amos as the source of high-quality, delicious products. The FAMOUS AMOS Marks are distinctive of Famous Amos' goods and are well known and famous, and valuable goodwill has been generated in the FAMOUS AMOS Marks. Such goodwill was generated long before the filing date and use of the Opposed Mark.

10. The FAMOUS AMOS Marks have become, prior to Applicant's filing and use of the Opposed Mark, distinctive and famous under Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

Applicant's Application to Register the Opposed Mark

11. On January 14, 2014, Applicant filed a use-based application to register the Opposed Mark in connection with “cookies” in International Class 30. The application was assigned Serial No. 86-165326.

12. Applicant's filing of the Opposed Mark in connection with cookies is without the consent or permission of Famous Amos.

13. On April 17, 2014, the USPTO approved the Opposed Mark for publication.

14. On May 7, 2014, the USPTO issued a Notice of Publication, and the Opposed Mark was published in the *Official Gazette* of the USPTO on May 27, 2014.

15. Visually, the Opposed Mark is confusingly similar to the FAMOUS AMOS Marks because they share an identical first word (“FAMOUS”).

16. The Opposed Mark and the FAMOUS AMOS Marks are confusingly similar in phonetic sound because each share the identical first word as well as the dominant “long a” (/ā/) vowel sound in the second word when spoken in English.

17. The goods for which Applicant seeks registration of the Opposed Mark, cookies, are identical to the goods and services in which Famous Amos uses the FAMOUS AMOS Marks.

18. The Opposed Mark is confusingly similar in overall commercial impression to the FAMOUS AMOS Marks.

OPPOSITION BASED UPON A LIKELIHOOD OF CONFUSION

19. Famous Amos repeats and realleges the allegations of Paragraphs 1-18 above, as though fully set forth herein.

20. Famous Amos, through its predecessors and/or related companies, has used the FAMOUS AMOS Marks prior to Applicant's adoption, use, and application to register the Opposed Mark.

21. Applicant's Opposed Mark is confusingly similar to Famous Amos' FAMOUS AMOS Marks, and registration and use thereof by Applicant is likely to cause confusion, mistake, or deception that Applicant's goods are those of Famous Amos or are otherwise endorsed, sponsored, or approved by Famous Amos, or cause confusion, mistake, or deception, as to the affiliation, connection, or association between Applicant and Famous Amos.

22. If Applicant is permitted to use and register the Opposed Mark, confusion in trade resulting in irreparable damage and injury to Famous Amos would be caused by reason of similarity between the Opposed Mark and Famous Amos' FAMOUS AMOS Marks. Consumers are likely to buy Applicant's goods incorrectly believing that such products are provided by, endorsed by, or otherwise associated with Famous Amos.

23. If Applicant is granted registration for the Opposed Mark, as shown in Serial No. 86-165326, Applicant would thereby obtain *prima facie* exclusive rights to use the Opposed Mark, and such Registration would be the source of irreparable damage and injury to Famous Amos.

24. Accordingly, Applicant's application to register the Opposed Mark must be refused registration under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), as amended.

OPPOSITION BASED UPON DILUTION

25. Famous Amos repeats and realleges the allegations of Paragraphs 1-24 above, as though fully set forth herein.

26. Applicant's commercial use of the Opposed Mark in commerce dilutes, or is likely to dilute, the distinctive quality and reputation of Famous Amos' famous FAMOUS AMOS Marks under Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

27. If Applicant is permitted to use and register the Opposed Mark, dilution of the distinctive nature and quality of Famous Amos' famous FAMOUS AMOS Marks would result in irreparable damage and injury to Famous Amos.

28. Accordingly, Applicant's application to register the Opposed Mark must be refused registration under Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c), as amended.

PRAYER FOR RELIEF

WHEREFORE, Famous Amos prays that the application to register the mark FAMOUS DANE, as shown in Application Serial No. 86-165326, be refused.

Famous Amos submits herewith the requisite filing fee in the amount of \$300.

Respectfully submitted,

FAMOUS AMOS CHOCOLATE CHIP COOKIE
COMPANY, L.L.C.

Dated: September 23, 2014

By: /Ariel Y. Bublick/

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Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing NOTICE OF OPPOSITION has been served upon Kelsen Group A/S via United States first class mail, postage prepaid, addressed to:

Jennifer C. Debrow
Gray, Plant, Mooty, Mooty & Bennett, P.A.
P.O. Box 2186
Minneapolis, Minnesota 55402-0186

Dated: September 23, 2014

By: /Ariel Y. Bublick/
Ariel Y. Bublick