

ESTTA Tracking number: **ESTTA682979**

Filing date: **07/10/2015**

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 parties oppose registration of the indicated application.

Opposers Information

Name	TBB America, LLC
Granted to Date of previous extension	07/29/2015
Address	11001 Bluegrass Parkway Louisville, KY 40299 UNITED STATES

Name	Anthony Palombino
Granted to Date of previous extension	07/29/2015
Address	11001 Bluegrass Parkway Louisville, KY 40299 UNITED STATES

Attorney information	Laura H. Pulliam Stoll Keenon Ogden PLLC 500 W Jefferson St, 2000 PNC Plaza Louisville, KY 40202 UNITED STATES trademarks@skofirm.com Phone:502-560-4217
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Applicant Information

Application No	86321097	Publication date	03/31/2015
Opposition Filing Date	07/10/2015	Opposition Period Ends	07/29/2015
Applicant	Boom Boom Pizza 959 S Perkins Ferry Lake Charles, LA 70669 UNITED STATES		

Goods/Services Affected by Opposition

Class 043. First Use: 2014/06/01 First Use In Commerce: 2014/06/01
All goods and services in the class are opposed, namely: Pizza parlors; Restaurant services; Restaurant services featuring sandwiches; Restaurant services, including sit-down service of food and take-out restaurant services; Restaurant services, namely, providing of food and beverages for consumption on and off the premises; Self-service restaurants

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2333813	Application Date	06/25/1998
Registration Date	03/21/2000	Foreign Priority Date	NONE
Word Mark	TONY BOOMBOZZ		
Design Mark	TONY BOOMBOZZ		
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1998/10/15 First Use In Commerce: 1998/10/15 restaurant services		

U.S. Registration No.	3885830	Application Date	04/14/2010
Registration Date	12/07/2010	Foreign Priority Date	NONE
Word Mark	BOOMBOZZ		
Design Mark	BOOMBOZZ		
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 2006/05/10 First Use In Commerce: 2006/05/10 Restaurant, bar and catering services		

Attachments	75508786#TMSN.png(bytes) 85013839#TMSN.png(bytes) 86321097 Notice of Opposition.pdf(463245 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	/Laura H. Pulliam/
Name	Laura H. Pulliam

Date	07/10/2015
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**In the Matter of Trademark Application Serial No. 86/321,097
Mark: BOOM BOOM PIZZA**

ANTHONY PALOMBINO
and
TBB AMERICA, LLC

Opposition No. _____

Opposers

v.

ROBERT AND MICHAELA MORGAN DBA BOOM BOOM PIZZA
A/K/A
BOOM BOOM LLC
A/K/A
BOOM BOOM PIZZA

Applicant

NOTICE OF OPPOSITION

Anthony Palombino (“Palombino”), an individual resident of Kentucky, and TBB America, LLC, a Kentucky limited liability company (“TBB”), each with principal place of business at 11001 Bluegrass Parkway, Suite 270, Louisville, Kentucky 40299 (collectively, “Opposers”), believe they will be damaged by registration of Application Serial No. 86/321,097, filed by Robert and Michaela Morgan DBA Boom Boom Pizza a/k/a Boom Boom LLC a/k/a Boom Boom Pizza (“Applicant”). Opposers hereby oppose Application Serial No. 86/321,097.

The grounds for the opposition are as follows:

1. Palombino adopted the mark TONY BOOMBOZZ in 1998 and the variation BOOMBOZZ in 2006, and later licensed both marks to his company TBB, for use in connection with restaurant services.

2. As Palombino’s licensee, TBB owns and operates a chain of restaurants under the TONY BOOMBOZZ and BOOMBOZZ marks and variations thereof (collectively, the “BOOMBOZZ Marks”), in continuous operation since 1998. Opposers have built a strong reputation for high-quality restaurant services through extensive advertising and promotion of the BOOMBOZZ Marks, and have garnered national recognition for award-winning gourmet pizzas, sandwiches and Italian cuisine. The BOOMBOZZ Marks distinctively signify Palombino and the services offered by his licensee, TBB.

3. Palombino owns the valid and subsisting United States trademark registrations of the BOOMBOZZ Marks listed below. Pursuant to Trademark Rule 2.122(d), attached as Exhibit A is a current printout of information from the electronic database records of the USPTO showing each registration’s current status and title.

Registration No.	Mark	Issued	Goods/Services
2,333,813	TONY BOOMBOZZ	March 21, 2000	Restaurant services
3,885,830	BOOMBOZZ	December 7, 2010	Restaurant, bar and catering services

4. On June 26, 2014, Robert and Michaela Morgan DBA Boom Boom Pizza filed Application Serial No. 86/321,097 for registration of the mark BOOM BOOM PIZZA (“Applicant’s Mark”) in Class 43 for the following services: Pizza parlors; Restaurant services; Restaurant services featuring sandwiches; Restaurant services, including sit-down service of food and take-out restaurant services; Restaurant services, namely, providing of food and beverages for consumption on and off the premises; Self-service restaurants. Application Serial No. 86/321,097 was published for opposition on March 31, 2015. While no assignment of the application has been recorded, the application was amended on February 2, 2015 to specify that the owner of the application is Boom Boom LLC, a Louisiana limited liability company. The

USPTO's TESS database states that the owner of Applicant's Mark is Boom Boom Pizza, a Louisiana limited liability company. As the name of the current owner of Trademark Application Serial No. 86/321,097 is unclear, such owner is referenced herein as "Applicant" for simplicity.

5. Applicant's Mark is substantially similar to the BOOMBOZZ Marks.

6. The services for which Applicant seeks to register Applicant's Mark are identical, or closely related, to the services for which the BOOMBOZZ Marks are used and registered.

7. On information and belief, Applicant's services are being marketed through the same or very similar channels of trade and to the same class of consumers as the services offered under the BOOMBOZZ Marks.

8. The dates of first use, dates of first use in interstate commerce, and dates of registration of the BOOMBOZZ Marks are all long prior to June 1, 2014, the claimed date of first use and date of first use in interstate commerce of Applicant's Mark, and June 26, 2014, the filing date of Application Serial No. 86/321,097. Palombino, as owner of the BOOMBOZZ Marks, therefore has rights that are superior to those of Applicant.

9. Applicant's Mark so resembles the BOOMBOZZ Marks that, when used in conjunction with the services of Applicant, it is likely to cause confusion, mistake, or deception of the relevant trade and public in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), which would damage Opposers.

10. If Applicant is granted a registration of Applicant's Mark, it would obtain a prima facie exclusive right to use Applicant's mark, which would further damage Opposer.

WHEREFORE, Opposers believe that they will be damaged by registration of Applicant's Mark and respectfully request that the Opposition be sustained and Application Serial No. 86/321,097 be refused registration.

Dated: July 10, 2015

Respectfully submitted,

/Laura H. Pulliam/

Laura H. Pulliam
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*Counsel for Opposers, Anthony
Palombino and TBB America LLC*

CERTIFICATE OF SERVICE

I hereby certify that, on this 10th day of July, 2015, a copy of the foregoing NOTICE OF OPPOSITION was served by mailing such copy via U.S. first class mail, postage prepaid, upon Applicant's counsel of record as follows:

Christopher J. Day
Law Office of Christopher Day
9977 North 90th Street, Suite 155
Scottsdale, Arizona 85258

/Laura H. Pulliam/

Laura H. Pulliam

Exhibit A



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TONY BOOMBOZZ

Word Mark	TONY BOOMBOZZ
Translations	The term "BOOMBOZZ" is an Italian vernacular term which may be translated as "crazy".
Goods and Services	IC 042. US 100 101. G & S: restaurant services. FIRST USE: 19981015. FIRST USE IN COMMERCE: 19981015
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	75508786
Filing Date	June 25, 1998
Current Basis	UNKNOWN
Original Filing Basis	1B
Published for Opposition	May 18, 1999
Registration Number	2333813
Registration Date	March 21, 2000
Owner	(REGISTRANT) Palombino, Anthony INDIVIDUAL UNITED STATES STE. 590 11003 BLUEGRASS PARKWAY Louisville KENTUCKY 40299
Attorney of Record	JENNIFER L. KOVALCIK
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20100326.
Renewal	1ST RENEWAL 20100326
Other Data	The mark does not identify a particular living individual.

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BOOMBOZZ

Word Mark	BOOMBOZZ
Translations	The term "BOOMBOZZ" is an Italian vernacular term which may be translated as "crazy".
Goods and Services	IC 043. US 100 101. G & S: Restaurant, bar and catering services. FIRST USE: 20060510. FIRST USE IN COMMERCE: 20060510
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85013839
Filing Date	April 14, 2010
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	September 21, 2010
Registration Number	3885830
Registration Date	December 7, 2010
Owner	(REGISTRANT) Palombino, Anthony INDIVIDUAL UNITED STATES 11003 Bluegrass Parkway, Suite 590 Louisville KENTUCKY 40299
Attorney of Record	Jennifer L. Kovalcik
Prior Registrations	2333813
Type of Mark	SERVICE MARK
Register	PRINCIPAL

Live/Dead Indicator LIVE

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