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Filing date: **02/19/2016**

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

Proceeding	91222765
Party	Plaintiff TBB America, LLC, Anthony Palombino
Correspondence Address	LAURA H PULLIAM STOLL KEENON OGDEN PLLC 500 W JEFFERSON ST, 2000 PNC PLAZA LOUISVILLE, KY 40202 UNITED STATES trademarks@skofirm.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Laura H. Pulliam
Filer's e-mail	trademarks@skofirm.com
Signature	/Laura H. Pulliam/
Date	02/19/2016
Attachments	Boombozz Motion.pdf(468923 bytes)

**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. 91222765

Opposers

v.

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

Applicant

OPPOSERS' MOTION FOR LEAVE TO AMEND NOTICE OF OPPOSITION

Pursuant to 37 CFR 2.107(a) and Federal Rule of Civil Procedure 15(2), Anthony Palombino and TBB America, LLC (collectively, "Opposers") hereby move the Trademark Trial and Appeal Board ("Board") for leave to amend the notice of opposition filed in this proceeding, with the Amended Notice of Opposition attached to this motion as Exhibit (1). As grounds for this motion, Opposers state as follows:

(1) Opposers' initial notice of opposition cited the likelihood of confusion between Applicant's mark BOOM BOOM PIZZA ("Applicant's Mark") and Opposers' marks TONY BOOMBOZZ and BOOMBOZZ (the "BoomBozz Marks") as grounds for the opposition. Applicant's Mark and the BoomBozz Marks were both to be used in the pizza restaurant industry.

(2) As of November 3, 2015, Opposers and Applicant agreed to the terms of a settlement, contingent upon the execution of a formal settlement agreement. Counsel for Opposers sent a draft settlement agreement to counsel for Applicant.

(3) Applicant did not respond to the draft settlement agreement.

(4) On February 5, 2016, counsel for Applicant contacted counsel for Opposers and informed counsel for Opposers that Applicant had ceased business operations and did not intend to continue using Applicant's Mark or defend the opposition proceeding.

(5) Based upon this information, Opposers seek to amend the notice of opposition in this proceeding to include abandonment of Applicant's Mark as a basis for opposition.

(6) This motion for leave to amend is filed timely following the learning of the factual basis for the amendment.

(7) Pursuant to 37 CFR 2.107(a) and Federal Rule of Civil Procedure 15(2), the Board "should freely give leave when justice so requires."

(8) Justice requires leave be given in this instance due to the closure of Applicant's business and abandonment of Applicant's Mark, all of which occurred after the initial filing of this opposition.

Dated: February 19, 2016

Respectfully submitted,

/Laura H. Pulliam/

Laura H. Pulliam
Christopher E. Schaefer
STOLL KEENON OGDEN PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202
(502) 333-6000

*Counsel for Opposers, Anthony
Palombino and TBB America LLC*

CERTIFICATE OF SERVICE

I hereby certify that, on this 19th day of February, 2016, a copy of the foregoing OPPOSERS' MOTION FOR LEAVE TO AMEND NOTICE OF OPPOSITION was served by electronic mail 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
chris@daylawfirm.com

/Laura H. Pulliam/

Laura H. Pulliam

118597.152349/1305434.1

Exhibit (1)

**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. 91222765

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v.

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

Applicant

AMENDED 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 sought 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 were 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. Upon information and belief, Applicant used Applicant's Mark exclusively at a restaurant located in Westlake, Louisiana.

10. Upon information and belief, Applicant closed its restaurant business in or around December of 2015.

11. Applicant has abandoned its use of Applicant's Mark and has no intention to use it in the future.

12. In the alternative, should Applicant attempt to continue its registration and use of Applicant's Mark, 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.

13. 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: February 19, 2016

Respectfully submitted,

/Laura H. Pulliam/

Laura H. Pulliam
Christopher E. Schaefer
STOLL KEENON OGDEN PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202
(502) 333-6000

*Counsel for Opposers, Anthony
Palombino and TBB America LLC*

CERTIFICATE OF SERVICE

I hereby certify that, on this 19th day of February, 2016, a copy of the foregoing AMENDED NOTICE OF OPPOSITION was served by electronic mail upon Applicant's counsel of record as follows:

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Law Office of Christopher Day
9977 North 90th Street, Suite 155
Scottsdale, Arizona 85258
chris@daylawfirm.com

/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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