

ESTTA Tracking number: **ESTTA23248**

Filing date: **01/12/2005**

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	The Kong Company		
Entity	Limited Liability Company	Citizenship	Colorado
Address	16191-D Table Mountain Parkway Golden, CO 80403 UNITED STATES		

Attorney information	Brent P. Johnson Sheridan Ross PC 1560 Broadway Suite 1200 Denver, CO 80202 UNITED STATES bjohnson@sheridanross.com Phone:303-863-9700
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Applicant Information

Application No	78373485	Publication date	12/14/2004
Opposition Filing Date	01/12/2005	Opposition Period Ends	01/13/2005
Applicant	Next Proteins, Inc. 2283 Cosmos Court Carlsbad, CA 92009 UNITED STATES		

Goods/Services Affected by Opposition

Class 029.

All goods and services in the class are opposed, namely: Whey protein bar

Attachments	groundsforopp.pdf (2 pages)
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Signature	/Brent P. Johnson/
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Name	Brent P. Johnson
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Date	01/12/2005
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GROUNDS FOR OPPOSITION

1. Opposer is the owner of the following trademark registrations for the mark "KONG";
 - A. Incontestible U.S. Registration No. 1,443,417 for "KONG" for dog toys in International Class 28;
 - B. Incontestible U.S. Registration No. 1,834,655 for "KONG" for brushes for pets in International Class 21;
2. Opposer is the owner of the U.S. trademark application Serial No. 78/493,780 for the mark "KONG" for catnip, and edible pet products, namely, liver paste, liver snaps, cheese paste, peanut butter paste, chicken flavored paste, chewable meat treats, trail mix, and meat flavored grain snacks in International Class 31; first use anywhere in the US and first use in commerce was at least as early as October 31, 2001;
3. In addition to the specific goods listed in the above-identified trademark registrations and application, Applicant is using and has long used the mark "KONG" with a wide array of pet products to include pet products for dogs, cats, birds, and ferrets.
4. In addition to Opposer's use of the "KONG" mark described above, the Opposer has used the tradename and company name "The Kong Company" throughout the United States since at least as early as December of 1987. The mark "KONG" is also a registered trademark for pet toys in a number of foreign countries.
5. Opposer's long, continuous, and exclusive use of the mark "KONG" in connection with pet related goods has caused the public to have an exclusive understanding that pet related products originate from the Opposer.
6. Opposer currently sells its pet products in a number of major retail outlets to include Petsmart®, Petco®, Cosco®, Target®, Kroger® Foods (and subsidiary grocery store chains), Sam's®, and others. There are over 350 distributors who distribute products bearing the "KONG" mark. There are thousands of retail locations where "KONG" products are sold.
7. Opposer has devoted substantial time, money and effort in establishing and maintaining a high standard of quality for all goods sold under and in connection with the "KONG" mark. As a consequence, Opposer's "KONG" mark has become widely and favorably known to the relevant public. By virtue of the public's longstanding recognition of Opposer's "KONG" mark, Opposer has developed substantial goodwill in the mark.
8. As a result of the public's association of the "KONG" mark with Opposer, Applicant's use or proposed use and registration of the mark "KONG" is likely to cause confusion, mistake or deception as to the source, origin or affiliation of Applicant's goods and tradename/company name. Applicant's mark is for whey protein bars, in International Class 29. Because of the identical nature of the marks, the highly similar nature of the products, channels

of trade, conditions under which and buyers to whom sales are made and other factors, the confusion, mistake, or deception is likely.

9. If the U.S. trademark application Serial No. 78/373,485 for "KONG" is permitted to register, despite this likelihood of confusion, Opposer's right to exclusive use of its "KONG" mark will be impaired and opposer will be damaged. Additionally, Opposer's right to use of its tradename/company name "The Kong Company" will also be impaired and Opposer will be further damaged.

10. Opposer's "KONG" mark is a famous mark under 15 U.S.C. § 1125© for dog toys. Opposer's "KONG" mark became famous in connection with dog toys before Applicant's filing of its application and before Applicant's use of the mark "KONG" in commerce.

11. Applicant's use and registration of "KONG" will cause dilution of the distinctive quality of Opposer's famous "KONG" mark under 15 U.S.C. § 1125©.

12. WHEREFORE, Opposer prays that this Opposition be sustained and that the application for registration of U.S. trademark application Serial No. 78/373,485 for "KONG" be denied and refused.

Respectfully submitted,

SHERIDAN ROSS P.C.

By: _____

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