

ESTTA Tracking number: **ESTTA112070**

Filing date: **11/29/2006**

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	Playtex Products, Inc.
Granted to Date of previous extension	11/29/2006
Address	300 Nyala Farms Road Westport, CT 06880 UNITED STATES

Attorney information	Rose Auslander Carter Ledyard & Milburn LLP 2 Wall Street New York, NY 10005 UNITED STATES auslander@clm.com Phone:2127323200
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Applicant Information

Application No	78766337	Publication date	08/01/2006
Opposition Filing Date	11/29/2006	Opposition Period Ends	11/29/2006
Applicant	Michele M. Hedges 4762 Redstart Street Houston, TX 770354908 UNITED STATES		

Goods/Services Affected by Opposition

Class 024. All goods and services in the class are opposed, namely: Pet Blanket
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Attachments	BELLA BINKY signed Notice of Opposition.pdf (3 pages)(73890 bytes)
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Signature	/rose auslander/
Name	Rose Auslander
Date	11/29/2006

4. Registration No. 334,946 for BINKY is valid, subsisting, and in full force and effect. The registration is incontestable under Section 15 of the Trademark Act. 15 U.S.C. §1065.

5. Opposer's rights in the BINKY Mark began prior to any date on which Applicant can rely.

6. Opposer's BINKY Mark has been in use since 1935 through predecessors in interest, and Opposer has made extensive use of the BINKY Mark.

7. Opposer has invested a substantial amount of time, effort and money in promoting the BINKY Mark in the United States. As a result, the BINKY Mark has become well known and famous for Opposer's goods and have come to represent enormous goodwill for Opposer.

**FIRST CLAIM FOR RELIEF UNDER 15 U.S.C. § 1052(d):
LIKELIHOOD OF CONFUSION**

8. Opposer incorporates by reference Paragraphs 1-7 as if fully set forth herein.

9. Due to the close similarity of the parties' marks and goods, the public is likely to associate goods sold by Applicant under the mark BELLA BINKY with the goods sold by Opposer under the BINKY Mark, or to believe that Applicant's goods are licensed by Opposer, or that there is some relationship between Applicant and Opposer.

10. For these reasons, the registration and/or use of BELLA BINKY as applied for, is likely to cause confusion, cause mistake or deceive the public, and cause the public to believe that Applicant's goods emanate from or are otherwise sponsored or endorsed by Opposer, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

11. The Applications and the presumption of exclusivity that would flow from registration to Applicant of the marks sought to be registered are inconsistent with the rights of

Opposer, which has made prior and continuous use (through its predecessors in interest) in commerce of the BINKY Mark.

**SECOND CLAIM FOR RELIEF UNDER 15 U.S.C. §1125(c):
FEDERAL TRADEMARK DILUTION**

12. Opposer incorporates by reference Paragraphs 1-7 as if fully set forth herein.

13. On information and belief, Applicant willfully intends to trade on the reputation of Opposer's BINKY mark.

14. The registration and/or use of BELLA BINKY as applied for, in connection with the sale of products that are not subject to Opposer's quality control, will blur and dilute the distinctive quality of the famous BINKY mark, and therefore constitutes federal trademark dilution pursuant to Section 43(c) of the Lanham Act, 15 U.S.C. §1125(c).

15. By reason of the foregoing, Opposer would be damaged by the registration of BELLA BINKY to Applicant.

WHEREFORE, it is respectfully requested that this Opposition be sustained and that the registration sought by Application Serial No. 78/766,337 be denied.

The opposition fee of \$300.00 is submitted through the Opposer's Attorney's Deposit Account # 502-499.

Dated: New York, New York
November 29, 2006

Respectfully submitted,

CARTER LEDYARD & MILBURN LLP

By: 

Rose Auslander

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Attorneys for Opposer Playtex Products, Inc.