

ESTTA Tracking number: **ESTTA236739**

Filing date: **09/15/2008**

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

Proceeding	91186379
Party	Plaintiff Wells' Dairy, Inc.
Correspondence Address	Bruce W. McKee McKee, Voorhees & Sease, PLC 801 Grand Avenue Suite 3200 Des Moines, IA 50309-2721 UNITED STATES mvslit@ipmvs.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Bruce W. McKee
Filer's e-mail	mvslit@ipmvs.com
Signature	/Bruce W. McKee/
Date	09/15/2008
Attachments	Amended Notice of Opposition_09-15-08.pdf ( 17 pages )(454850 bytes )

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

WELLS' DAIRY, INC.,	)	
	)	
Opposer,	)	Opposition No. 91186379
	)	
vs.	)	In the matter of Trademark Serial No. 78/300,685
	)	For the mark: BOMBABUM
COLOMBINA S.A.	)	
	)	Published in the Official Gazette
Applicant.	)	on March 18, 2008

**AMENDED NOTICE OF OPPOSITION**

Wells' Dairy, Inc. (hereinafter referred to as "Opposer"), an Iowa corporation having its headquarters at One Blue Bunny Drive, P.O. Box 1310, Le Mars, Iowa 51031, believes that it will be damaged by the registration of the mark BOMBABUM in the application Serial No. 78/300,685 filed September 15, 2003, by Colombina S.A. (hereinafter referred to as "Applicant"), published in the Official Gazette of March 18, 2008.

The grounds for opposition are as follows:

1. Opposer has requested and received registration upon the Principal Register, under the provisions of the U.S. Trademark Act of 1946, as amended, a family of BOMB trademarks relating to frozen confections and related goods including:

MARK	REGISTRATION NO.
BOMB POP	0,948,643
FUDGE BOMB	1,799,557
WHITE LEMON BOMB	1,823,028
CRUNCH BOMB	1,849,522
BOMBSTIK	1,017,720
BOMB POP, JR.	1,026,325
BOMB POP & Design	2,987,275
BOMB POP & Design	2,987,276

True and correct copies of the above Registrations are attached hereto as Exhibit A.

2. Opposer has for many years manufactured, advertised, and sold frozen confection products under its well-known BOMB family of trademarks in the United States.

3. Opposer has prominently used its trademarks in connection with the manufacturing, sale, and advertising of frozen confection products prior to the filing of the application herein opposed and has not abandoned said usage. The above-referenced trademarks represent valuable good will and are assets of Opposer.

4. Applicant has requested registration upon the Principal Register of the mark BOMBABUM for "lollipops; bubble gum with or without filling; lollipops, with filling and without; chewy lollipops; candy sticks; filled candies, candy, bonbons, toffees, caramels, mints, suckers, chocolates, cookies" in International Class 30.

5. Because of the nature of the respective products of the parties and the similarity between their respective marks, Applicant's mark BOMBABUM<sup>1</sup> is likely to cause confusion, mistake, or deception with Opposer's previously used family of BOMB marks in the retail trade.

6. Registration of the mark shown in Applicant's application will result in damage to Opposer under the provisions of Section 2(d) of the U.S. Trademark Act, 15 U.S.C. § 1052(d).

7. Applicant has based its Application Serial No. 78/300,685 on its foreign registration 126578 dated September 13, 1994 under the provisions of Section 44(e) of the U.S. Trademark Act, 15 U.S.C. § 1126(d). The goods of the Colombian registration are as follows: "coffee, tea, cocoa, sugar, rice, tapioca, sago, coffee substitutes; flour, and preparations made from cereals; bread, biscuits, cakes, pastry and confectionery, ices; honey, treacle; yeast, baking-powder; salt, mustard; pepper, vinegar, sauces, spices; ice". A true and correct copy of

---

<sup>1</sup> In Opposer's original Notice of Opposition filed in the TTAB September 12, 2008, Opposer inadvertently identified the mark in paragraph 5 as FRUIT BOMBS. Here, in its Amended Notice of Opposition, Opposer correctly identifies the mark as BOMBABUM.

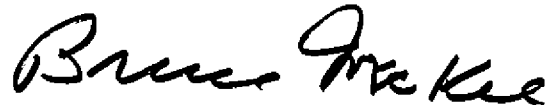
Applicant's Colombian registration 126578 along with an English translation is attached hereto as Exhibit B.

8. The goods of Applicant's U.S. application 78/300,685 exceed the scope of the goods identified in the Colombian registration 126578 on which the U.S. application is based and thus do not comply with the requirements of Section 44 of the Trademark Act and the Trademark Manual of Examining Procedure § 1402.01(b).

WHEREFORE, Opposer requests that the registration sought by Applicant be refused and that this opposition be sustained.

Attached to this Notice of Opposition is the filing fee, as required by CFR § 2.6. If the amount submitted is incorrect, the Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 26-0084.

Respectfully submitted,



Bruce W. McKee  
Christine Lebrón-Dykeman  
Kurt R. Van Thomme  
McKEE, VOORHEES & SEASE, P.L.C.  
801 Grand Avenue, Suite 3200  
Des Moines, Iowa 50309-2721  
Phone No. (515) 288-3667  
Fax No. (515) 288-1338  
E-mail: mvslit@ipmvs.com

**CERTIFICATE OF FILING**

I hereby declare that the foregoing document has been filed via the Electronic System for Trademark Trials and Appeals (ESTTA) this 15th day of September, 2008.



Bruce W. McKee

**CERTIFICATE OF SERVICE**

I hereby declare that the foregoing instrument was served upon the following this 15th day of September, 2008, via:

- |                                     |                                 |                          |                 |
|-------------------------------------|---------------------------------|--------------------------|-----------------|
| <input checked="" type="checkbox"/> | 1 <sup>st</sup> Class U.S. Mail | <input type="checkbox"/> | Federal Express |
| <input type="checkbox"/>            | Facsimile                       | <input type="checkbox"/> | Hand Delivery   |
| <input type="checkbox"/>            | Email (.pdf)                    | <input type="checkbox"/> | Other _____     |

Michael J. MacDermott  
CHRISTIE, PARKER & HALE LLP  
P.O. Box 7068  
Pasadena, CA 91109-7068  
Phone Number: 626-795-9900  
Fax Number: 626-577-8800

  
\_\_\_\_\_  
Bruce W. McKee



# Trademarks > Trademark Electronic Search System (TESS)

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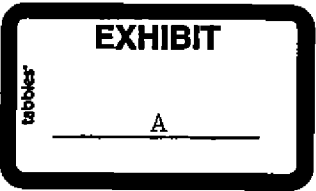
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## Record 1 out of 1

**TARR Status** **ASSIGN Status** **TUR** **TTAB Status** ( Use the "Back" button of the Internet Browser to return to TESS)

### Typed Drawing

<b>Word Mark</b>	BOMB POP
<b>Goods and Services</b>	IC 030. US 046. G & S: FROZEN CONFECTIONS. FIRST USE: 19590415. FIRST USE IN COMMERCE: 19590415
<b>Mark Drawing Code</b>	(1) TYPED DRAWING
<b>Serial Number</b>	72404222
<b>Filing Date</b>	October 4, 1971
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Registration Number</b>	0948643
<b>Registration Date</b>	December 12, 1972
<b>Owner</b>	(REGISTRANT) MERRITT FOODS COMPANY CORPORATION MISSOURI 2840 GUINOTTE KANSAS CITY MISSOURI 64120  (LAST LISTED OWNER) WELLS' DAIRY, INC. CORPORATION ASSIGNEE OF IOWA P. O. BOX 1310 ONE BLUE BUNNY DRIVE LEMARS IOWA 51031
<b>Assignment Recorded</b>	ASSIGNMENT RECORDED
<b>Attorney of Record</b>	BRUCE W. MCKEE
<b>Disclaimer</b>	THE WORD "POP" IS DISCLAIMED APART FROM THE MARK AS SHOWN.
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Affidavit Text</b>	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20030307.
<b>Renewal</b>	2ND RENEWAL 20030307
<b>Live/Dead Indicator</b>	LIVE





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### Typed Drawing

Word Mark	FUDGE BOMB
Goods and Services	IC 030. US 046. G & S: frozen confections. FIRST USE: 19930212. FIRST USE IN COMMERCE: 19930212
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	74359042
Filing Date	February 16, 1993
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	July 27, 1993
Registration Number	1799557
Registration Date	October 19, 1993
Owner	(REGISTRANT) WELLS' DAIRY, INC. CORPORATION IOWA One Blue Bunny Drive LeMars IOWA 51031
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Bruce W. McKee
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FUDGE" APART FROM THE MARK AS SHOWN
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20040609.
Renewal	1ST RENEWAL ?0040609
Live/Dead Indicator	LIVE

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### Typed Drawing

<b>Word Mark</b>	WHITE LEMON BOMB
<b>Goods and Services</b>	IC 030. US 046. G & S: frozen confection. FIRST USE: 19930208. FIRST USE IN COMMERCE: 19930208
<b>Mark Drawing Code</b>	(1) TYPED DRAWING
<b>Serial Number</b>	74370199
<b>Filing Date</b>	March 22, 1993
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	November 30, 1993
<b>Registration Number</b>	1823028
<b>Registration Date</b>	February 22, 1994
<b>Owner</b>	(REGISTRANT) WELLS' DAIRY, INC. CORPORATION IOWA One Blue Bunny Drive LeMars IOWA 51031
<b>Assignment Recorded</b>	ASSIGNMENT RECORDED
<b>Attorney of Record</b>	Bruce W. McKee
<b>Disclaimer</b>	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "WHITE LEMON" APART FROM THE MARK AS SHOWN
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Affidavit Text</b>	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20040327.
<b>Renewal</b>	1ST RENEWAL 20040327
<b>Live/Dead Indicator</b>	LIVE

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### Typed Drawing

<b>Word Mark</b>	CRUNCH BOMB
<b>Goods and Services</b>	IC 030. US 046. G & S: frozen confections. FIRST USE: 19940221. FIRST USE IN COMMERCE: 19940221
<b>Mark Drawing Code</b>	(1) TYPED DRAWING
<b>Serial Number</b>	74359576
<b>Filing Date</b>	February 16, 1993
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1B
<b>Published for Opposition</b>	July 27, 1993
<b>Registration Number</b>	<b>1849522</b>
<b>Registration Date</b>	August 9, 1994
<b>Owner</b>	(REGISTRANT) WELLS' DAIRY, INC. CORPORATION IOWA One Blue Bunny Drive LeMars IOWA 51031
<b>Assignment Recorded</b>	ASSIGNMENT RECORDED
<b>Attorney of Record</b>	Bruce W. McKee
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Affidavit Text</b>	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20050314.
<b>Renewal</b>	1ST RENEWAL 20050314
<b>Live/Dead Indicator</b>	LIVE

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### Typed Drawing

<b>Word Mark</b>	BOMBSTIK
<b>Goods and Services</b>	IC 030. US 046. G & S: FROZEN CONFECTIONS [ AND CONCENTRATES FOR MAKING THE SAME ]. FIRST USE: 19730117. FIRST USE IN COMMERCE: 19730117
<b>Mark Drawing Code</b>	(1) TYPED DRAWING
<b>Serial Number</b>	72450134
<b>Filing Date</b>	March 1, 1973
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Registration Number</b>	1017720
<b>Registration Date</b>	August 5, 1975
<b>Owner</b>	(REGISTRANT) MERRITT FOODS COMPANY CORPORATION MISSOURI 2840 GUINOTTE KANSAS CITY MISSOURI 64120  (LAST LISTED OWNER) WELLS' DAIRY, INC. CORPORATION ASSIGNEE OF IOWA ONE BLUE BUNNY DRIVE P. O. BOX 1310 LE MARS IOWA 51031
<b>Assignment Recorded</b>	ASSIGNMENT RECORDED
<b>Attorney of Record</b>	BRUCE W. MCKEE
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Affidavit Text</b>	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20060727.
<b>Renewal</b>	2ND RENEWAL 20060727
<b>Live/Dead Indicator</b>	LIVE

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### Typed Drawing

<b>Word Mark</b>	BOMB POP, JR.
<b>Goods and Services</b>	IC 030. US 046. G & S: FROZEN CONFECTIONS. FIRST USE: 19740821. FIRST USE IN COMMERCE: 19740821
<b>Mark Drawing Code</b>	(1) TYPED DRAWING
<b>Serial Number</b>	73039941
<b>Filing Date</b>	December 19, 1974
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Registration Number</b>	1026325
<b>Registration Date</b>	December 2, 1975
<b>Owner</b>	(REGISTRANT) MERRITT FOODS COMPANY CORPORATION MISSOURI 2840 GUINOTTE KANSAS CITY MISSOURI 64120  (LAST LISTED OWNER) WELLS' DAIRY, INC. CORPORATION ASSIGNEE OF IOWA ONE BLUE BUNNY DRIVE P. O. BOX 1310 LEMARS IOWA 51031
<b>Assignment Recorded</b>	ASSIGNMENT RECORDED
<b>Attorney of Record</b>	BRUCE W. MCKEE
<b>Prior Registrations</b>	0935442;0941604;0948643;AND OTHERS
<b>Disclaimer</b>	APPLICANT DISCLAIMS "POP" APART FROM THE MARK AS SHOWN.
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Affidavit Text</b>	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20060624.
<b>Renewal</b>	2ND RENEWAL 20060624
<b>Live/Dead</b>	





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**Word Mark** BOMB POP

**Goods and Services** IC 030. US 046. G & S: Frozen confections. FIRST USE: 20030122. USED IN ANOTHER FORM The mark was first used anywhere in a different form other than that sought to be registered on 04/15/1959. FIRST USE IN COMMERCE: 20030122

**Mark Drawing Code** (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

**Design Search Code** 01.01.09 - Stars, two; Two stars  
01.01.13 - Stars - multiple stars with five points  
01.01.14 - Stars - multiple stars with six points

**Serial Number** 78337744

**Filing Date** December 8, 2003

**Current Filing Basis** 1A

**Original Filing Basis** 1A

**Published for Opposition** May 31, 2005

**Registration Number** 2987275

**Registration Date** August 23, 2005

**Owner** (REGISTRANT) Wells' Dairy, Inc. CORPORATION IOWA One Blue Bunny Drive, P.O. Box 1310 Le Mars IOWA 51031

**Assignment Recorded** ASSIGNMENT RECORDED

**Attorney of** Bruce W. McKee

**Record**

**Prior Registrations** 0948643;1017720;1026325;1799557;1823028;1849522;2492944;AND OTHERS

**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "POP" APART FROM THE MARK AS SHOWN

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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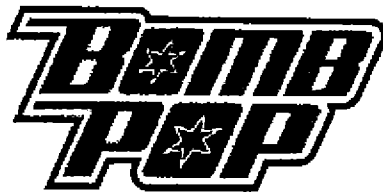
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**Word Mark** BOMB POP

**Goods and Services** IC 030. US 046. G & S: Frozen confections. FIRST USE: 20030122. USED IN ANOTHER FORM The mark was first used anywhere in a different form other than that sought to be registered on 04/15/1959. FIRST USL IN COMMERCE: 20030122

**Mark Drawing Code** (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

**Design** 01.01.09 - Stars, two; Two stars

**Search Code** 01.01.13 - Stars - multiple stars with five points

**Serial Number** 78337749

**Filing Date** December 8, 2003

**Current Filing Basis** 1A

**Original Filing Basis** 1A

**Published for Opposition** May 31, 2005

**Registration Number** 2987276

**Registration Date** August 23, 2005

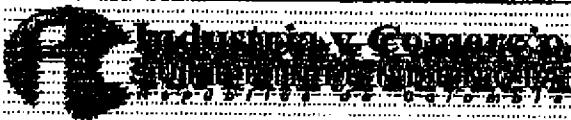
**Owner** (REGISTRANT) Wells' Dairy, Inc. CORPORATION IOWA One Blue Bunny Drive, P.O. Box 1310 Le Mars IOWA 51031

**Assignment Recorded** ASSIGNMENT RECORDED

**Attorney of** Bruce W. McKee

**Record****Prior Registrations** 0948643;1017720;1026325;1799557;1823028;1849522;2492944;AND OTHERS**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "POP" APART FROM THE MARK AS SHOWN**Description of Mark** The colors red and blue are claimed as a feature of the mark. The lettering in red, the frame around the mark in blue, the stars in blue, and the space between the blue frame and the red letters in white. The color red appears in the letters "BOMB POP". The color blue appears in the frame around the letters "BOMB POP". The color blue appears in the star "O" in the word "BOMB" and in the star in the "o" in the word "POP". The color white appears in the space between the blue frame and the red letters and around each of the blue star.**Type of Mark** TRADEMARK**Register** PRINCIPAL**Live/Dead Indicator** LIVE[TESS HOME](#)[NEW USER](#)[STRUCTURED](#)[FREE FORM](#)[BROWSER Dict](#)[SEARCH OG](#)[TOP](#)[HELP](#)[\[.HOME | SITE INDEX | SEARCH | eBUSINESS | HELP | PRIVACY POLICY](#)





Radicación No: 04 117285

### LA SECRETARIA GENERAL AD HOC

CERTIFICA LA INSCRIPCIÓN DE LOS SIGUIENTES ACTOS EN EL REGISTRO PÚBLICO DE LA PROPIEDAD INDUSTRIAL

#### INFORMACIÓN ACTUAL DEL REGISTRO

Expediente Nro: 92 176023  
 Fecha Solicitud: 01-Enero-1900  
 Marca: BOMBABUM (NOMINATIVA)  
 Certificado: 126578 Vigencia Hasta: 13-Septiembre-2014  
 Clasificación: 30 Versión 7  
 Cobertura: RESTRINGIDA  
 Productos: CAFE, TE, CACAO, AZUCAR, ARROZ, SAGU, SUCEDANEOS DEL CAFE; HARINAS Y PREPARACIONES HECHAS CON CEREALES, PAN, BIZCOCHOS, TORTAS, PASTELERIA Y CONFITERIA, HELADOS COMESTIBLES, MIEL, JARABE DE MELAZA, LEVADURA, POLVOS PARA HACER SUBIR LA MASA; SAL, MOSTAZA; PIMIENTA, VINAGRE, SALSAS; ESPECIAS; HIELO.  
 Titulares Actuales: COLOMBINA S.A.  
 Domicilio: ZARZAL VALLE COLOMBIA  
 Dirección: CORREGIMIENTO DE LA PAILA  
 Apoderado: DARIO CARDENAS NAVAS  
 Estado Trámite: SIN COMPLEMENTAR

#### RENOVACIÓN

Expediente Nro: 92 176023 Fecha Solicitud: 02-Septiembre-2004  
 Marca: BOMBABUM (NOMINATIVA)  
 Certificado: 126578  
 Clasificación: 30 Versión 7  
 Vigencia Hasta: 13-Septiembre-2014  
 Titulares Actuales: COLOMBINA S.A.  
 Domicilio: ZARZAL VALLE COLOMBIA  
 Dirección: CORREGIMIENTO DE LA PAILA  
 Apoderado: DARIO CARDENAS NAVAS  
 Fecha Anotación: 16-Octubre-2004  
 Estado Trámite: INSCRIPCIÓN

ESTE CONTENIDO ES TOMADO SEGÚN REPORTE DE LA BASE DE DATOS

La presente certificación se expide en Bogotá D. C., a los 20 días del mes de diciembre de 2004

MARIA CONSUELO CASIJ REY

**EXHIBIT**  
 B

REPUBLIC OF COLOMBIA  
Superintendency of Industry and Commerce

The General Ad Hoc Secretary

Certifies the registration of the following acts in the Industrial Property Public Registry

Current sign information

File No.	92-176.023	
Trademark:	<b>BOMBABUM</b> (word)	
Certificate No.	126.578	Expiration date: September 13, 2014
Class:	30 Version 7	
Cover:	Restricted	
Products:	Coffee, tea, cocoa, sugar, rice, tapioca, sago, coffee substitutes; flour, and preparations made from cereals; bread, biscuits, cakes, pastry and confectionery, ices; honey, treacle; yeast, baking- powder; salt, mustard; pepper, vinegar, sauces, spices; ice.	
Holder:	Colombina S.A.	
Domicile:	Zarzal, Valle, Colombia	

This certification is issued in Bogotá, on December 20, 2004

María Consuelo Casij Rey (signed)

  
Translation by Ana María Ruiz