

ESTTA Tracking number: **ESTTA693495**

Filing date: **09/03/2015**

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 party opposes registration of the indicated application.

Opposer Information

Name	Tinnus Enterprises, LLC		
Entity	Limited Liability Company	Citizenship	Texas
Address	3429 18th St Plano, TX 75074 UNITED STATES		

Attorney information	David Ludwig Dunlap Bennett & Ludwig PLLC 211 Church Street SE Leesburg, VA 20175 UNITED STATES ip@dbllawyers.com Phone:703-777-7319		
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Applicant Information

Application No	86568356	Publication date	08/04/2015
Opposition Filing Date	09/03/2015	Opposition Period Ends	09/03/2015
Applicant	Prometheus Brands, LLC 79 Two Bridges Road Fairfield, NJ 07004 UNITED STATES		

Goods/Services Affected by Opposition

Class 028. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Balloons; Play balloons; Toy balloons
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Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	4709630	Application Date	05/27/2014
Registration Date	03/24/2015	Foreign Priority Date	NONE
Word Mark	BUNCH O BALLOONS		

Design Mark	BUNCH O BALLOONS
Description of Mark	NONE
Goods/Services	Class 028. First use: First Use: 2014/08/30 First Use In Commerce: 2014/08/30 water balloons

Attachments	86292103#TMSN.png(bytes) Tinnus Notice of Opposition V1 _00000002_.pdf(112776 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	/David Ludwig/
Name	David Ludwig
Date	09/03/2015

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

**IN THE MATTER OF Trademark Application Serial No. 86/568,356
For the mark BALLOON BONANZA;
Published for Opposition on August 4, 2015**

TINNUS ENTERPRISES, LLC,)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	
PROMETHEUS BRANDS, LLC,)	
)	
Applicant.)	
_____)	

NOTICE OF OPPOSITION

Opposer Tinnus Enterprises, LLC, a limited liability company organized and existing under the laws of the State of Texas (hereinafter referred to as “Opposer” or “Tinnus”), believes it will be damaged by the registration of the designation BALLOON BONANZA shown in Application Serial No. 86/568,356 (“Applicant’s Designation”) filed by Prometheus Brands, LLC, a limited liability company organized and existing under the laws of the State of Delaware (hereinafter referred to as “Applicant” or “Prometheus Brands”), and therefore opposes the same pursuant to 15 U.S.C. § 1063.

As grounds for petition, it is alleged that:

Factual Background

Tinnus Develops and Markets the Revolutionary Bunch O Balloons Product

1. In early 2014, Mr. Malone, a father of eight children and an inventor living in Texas, finalized his designs for a revolutionary new toy product (a product that is now known as

“Bunch O Balloons”), which would allow someone to fill as many as 100 water balloons in approximately 60 seconds. The device is a hose attachment whose other end is fitted with either 35 or 37 balloons, and when the hose is turned on, the balloons automatically fill and tie themselves upon being shaken free of the hose attachment assembly.

2. On February 5, 2014, Mr. Malone developed the first successful Bunch O Balloons prototype. Immediately thereafter on February 7, 2014, Mr. Malone, through his company Tinnus, filed a patent application with the United States Patent and Trademark Office (“USPTO”) for his invention. That patent has since issued. *See* United States Patent No. 9,051,066.

3. On May 27, 2014, Tinnus filed a USPTO trademark application for the standard character mark incorporating the literal elements “BUNCH O BALLOONS.” On March 24, 2015, the USPTO registered the BUNCH O BALLOONS mark on the principal register. *See* US Trademark Registration No. 4,709,630.

4. In March 2014, Tinnus began taking steps to manufacture the Bunch O Balloons product. The first batch of product was manufactured in June 2014. The manufacturing of the Bunch O Balloons product has continued since that time.

5. To help raise the necessary funds for the manufacture and marketing of the Bunch O Balloons product, Tinnus launched a Kickstarter campaign on July 22, 2014. Kickstarter is the world’s largest internet crowdsource funding platform for creative projects. In less than 12 hours, the project was fully funded to its initial \$10,000 goal, and within five days, the project had received over a half of a million dollars in startup funding. To date, that funding has reached nearly \$1 million, and Tinnus’s Kickstarter video featuring the Bunch O Balloons product has had approximately 2.9 million views.

6. The same day that Tinnus launched the Kickstarter campaign, the Bunch O Balloons product was featured in *Sports Illustrated's* on-line magazine. Two days later, *TIME* magazine ran a story about this novel product on its website. That same day, the invention was featured on a nationally-televised broadcast of *Good Morning America*. Shortly thereafter, on July 27, 2014, *People* magazine covered the Bunch O Balloons product on its website. Then, on July 29, 2014, just a week after Mr. Malone began his Kickstarter campaign, Mr. Malone appeared on the *Today Show* with his unique invention during a nationally-televised broadcast. Moreover, the Bunch O Balloons product went viral on the web, including one YouTube review of Mr. Malone's invention that currently has approximately 9.6 million views.

7. On July 22, 2014, the same day Tinnus launched its Kickstarter campaign, Tinnus received the first orders from the public for the Bunch O Balloons product—598 orders to be exact. In fact, Tinnus sold out of its first initial production batch on the first day of the Kickstarter campaign.

8. As the publicity surrounding Tinnus's invention increased, so too did the interest in this product. On August 21, 2014, Tinnus launched its website, <http://bunchoballoons.com>, to accept increasing numbers of product orders. That website, which prominently displays the BUNCH O BALLOONS mark, has continually received orders since that time.

9. On August 29, 2014, Tinnus shipped its first batch of the Bunch O Balloons product bearing the BUNCH O BALLOONS mark to customers located in the U.S. and around the world. Shipping has continued since that time.

Telebrands and Prometheus Brands Knock Off the Bunch O Balloons Product and Trade on Tinnus's Goodwill

10. After learning about Tinnus's Bunch O Balloons product once it was featured on Kickstarter, Telebrands, which is the parent or an affiliate of Prometheus Brands, decided to

create and sell a virtually identical replica of Tinnus’s product that was specifically intended to mimic the patented Bunch O Balloons product. Telebrands and its subsidiary or affiliate, Prometheus Brands, decided to call the competing product Balloon Bonanza, a name that is confusingly similar to Tinnus’s BUNCH O BALLOONS mark. Of note, Telebrands’s CEO has often been referred to as the “Knock-Off King” in the television infomercial industry.

11. Telebrands first decided to sell its infringing Balloon Bonanza product in the late summer or fall of 2014—a period of almost six months after Tinnus began manufacturing its Bunch O Balloons product. Moreover, Telebrands first began marketing the Balloon Bonanza product in mid-December 2014—which is almost five months after Tinnus introduced Bunch O Balloons to the public in its Kickstarter campaign.

Grounds for Opposition

12. A further description of the Applicant’s Designation is as follows:

Mark:	BALLOON BONANZA
Filed:	March 18, 2015
Goods/Services:	<i>Balloons; Play balloons; Toy balloons,</i> in International Class 028
First Use in Commerce Claimed:	none

Attached hereto as Exhibit A, and incorporated herein by this reference, is a copy of the Trademark Status and Document Retrieval (“TSDR”) printout for Application Serial No. 86/568,356, including associated documents.

13. As discussed above, Opposer is the owner of the following US Trademark Registration (Registration No. 4,709,630):

Mark:	BUNCH O BALLOONS
Filed:	May 27, 2014

Goods/Services: *water balloons*
in International Class 028

First Use in Commerce: At least as early as August 30, 2014

Attached hereto as Exhibit B, and incorporated herein by this reference, is a copy of the TSDR printout for Opposer's above-referenced Registration for the mark BUNCH O BALLOONS.

14. Opposer is also the owner of, and relies upon, its common law trademark rights for the mark BUNCH O BALLOONS in the United States, used in association with its patented *water balloons* product since at least as early as August 27, 2014, or possibly July 22, 2014.

15. Since at least as early as August 27, 2014, and before the March 18, 2015 filing date of Applicant's Intent to Use Application, Opposer has continuously used its BUNCH O BALLOONS mark in the United States in connection with water balloons.

16. Opposer's registration for the BUNCH O BALLOONS mark (Registration No. 4,709,630) is valid and subsisting, in full force and effect, and constitutes prima facie evidence of the Opposer's exclusive right to use the BUNCH O BALLOONS mark in commerce in connection with the goods specified in the registration.

17. Opposer's BUNCH O BALLOONS mark, by virtue of its substantial and continuous use since at least as early as August 27, 2014, has acquired great value as an identification of Opposer's goods, and acts to distinguish those goods from the goods and services of others.

18. Opposer's BUNCH O BALLOONS mark is symbolic of the goodwill and consumer recognition built up by Opposer through substantial amounts of time and effort in using, advertising, promoting and developing public awareness for its BUNCH O BALLOONS mark and the goods sold under the mark.

19. Applicant has no license, consent, or permission from Opposer to use or register Applicant's Designation.

20. On August 4, 2015, the application for Applicant's Designation was published for opposition. As such, the opposition period does not expire until September 3, 2015, and Opposer has timely filed this Notice.

21. Applicant's Designation is substantially similar to Opposer's BUNCH O BALLOONS mark in terms of appearance, sound, meaning, and overall commercial impression, which creates a likelihood of consumer confusion between the two marks.

22. Specifically, the marks are both compound words or terms, each of which features the term "BALLOON," coupled with another term that is commonly used to signify a large amount of something—BUNCH or BONANZA.

23. Moreover, the use of alliteration with the multiple and repetitive "b" sounds is identical in both marks, as is the cadence of the two marks, further increasing the likelihood of consumer confusion. *See, e.g., Beer Nuts v. Clover Club Foods Co.*, 805 F.2d 920, 926 (10th Cir. 1986) (concluding that BEER NUTS and BREW NUTS are confusingly similar because "they both begin with the same letter" and "the word 'brew' is a common synonym for 'beer.'").

24. The goods applied for by Applicant in the Application are identical to the goods Opposer and its licensees offer and have offered under Opposer's BUNCH O BALLOONS mark.

25. Applicant has made use of the BALLOON BONANZA mark to sell, offer for sell, and market goods that are nearly identical to the goods that Opposer and its licensee offer and have offered under Opposer's BUNCH O BALLOONS mark in a manner which creates a likelihood of confusion among perspective purchasers, thereby inducing purchaser and others to

believe, contrary to fact, that the goods sold by Applicant are rendered, sponsored, or otherwise approved by Opposer.

26. Indeed, actual confusion is already present in the marketplace. Specifically, Opposer's licensee had received multiple calls from consumers inquiring about problems with their orders of Applicant's Balloon Bonanza product.

27. The registration of Applicant's Designation would grant Applicant rights to which it is not entitled, and would be inconsistent with the prior and established rights of Opposer in its BUNCH O BALLOONS mark.

28. Opposer believes it will be damaged by registration of the Applicant's Designation under Section 13 of the Lanham Act, 15 U.S.C. § 1063, on the ground that the subject designation so resembles Opposer's BUNCH O BALLOONS mark as to be likely, when used on or in connection with the goods identified in the application for Applicant's Designation, to cause confusion, or to cause mistake, or to deceive consumers, with consequent injury to Opposer and to the public, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

WHEREFORE, Opposer prays that this Notice of Opposition be sustained in favor of Opposer and that Application Serial No. 86/568,356 be denied registration.

DATED this 3rd day of September 2015.

Respectfully submitted,

TINNUS ENTERPRISES, LLC,
Opposer,
By counsel,

/David Ludwig/
David Ludwig
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Leesburg, VA 20175
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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this Notice of Opposition is being electronically filed using the Electronic System for Trademark Trials and Appeals (ESTTA) on this 3rd day of September 2015.

/David Ludwig/
David Ludwig

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Opposition has been served upon Applicant by depositing one copy thereof in the U.S. Mail, First Class, postage prepaid, on this 3rd day of September 2015, addressed as follows:

Prometheus Brands, LLC
79 Two Bridges Road
Fairfield, NJ 07004

PETER D. MURRAY
Cooper & Dunham
30 Rockefeller Plz Fl 20
New York, NEW YORK 10112-0077

/David Ludwig/
David Ludwig