

ESTTA Tracking number: **ESTTA738717**

Filing date: **04/07/2016**

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	Blue Dog Bakery, LLC		
Entity	Limited Liability Company	Citizenship	Washington
Address	3302 Fuhrman Ave Suite 301 Seattle, WA 98102 UNITED STATES		

Attorney information	Melinda S. Giftos Whyte Hirschboeck Dudek, S.C. PO Box 1379 Madison, WI 53701-1379 UNITED STATES ptomailbox@whdlaw.com, mgiftos@whdlaw.com Phone:608.234.6076		
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### Applicant Information

Application No	86780467	Publication date	03/08/2016
Opposition Filing Date	04/07/2016	Opposition Period Ends	04/07/2016
Applicant	Blue Buffalo Company, Ltd. 11 River Road Wilton, CT 06897 UNITED STATES		

### Goods/Services Affected by Opposition


Class 031. First Use: 2015/10/01 First Use In Commerce: 2015/10/01 All goods and services in the class are opposed, namely: Dog biscuits; Dog treats
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### Grounds for Opposition

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


### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	4312468	Application Date	07/30/2012
Registration Date	04/02/2013	Foreign Priority Date	NONE
Word Mark	BLUE DOG BAKERY		

Design Mark	
Description of Mark	The mark consists of the words "BLUE", "DOG", and "BAKERY" stacked on top of each other with the word "BLUE" on top; "DOG" in the middle and "BAKERY" on the bottom, all within a shaded square.
Goods/Services	Class 031. First use: First Use: 2012/04/00 First Use In Commerce: 2012/04/00 Pet food

U.S. Registration No.	3699462	Application Date	06/28/2007
Registration Date	10/20/2009	Foreign Priority Date	NONE
Word Mark	BLUE DOG BAKERY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 031. First use: First Use: 1998/04/08 First Use In Commerce: 1998/04/08 Pet food		

U.S. Registration No.	2376523	Application Date	04/24/1998
Registration Date	08/15/2000	Foreign Priority Date	NONE
Word Mark	BLUE DOG BAKERY		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 031. First use: First Use: 1998/04/08 First Use In Commerce: 1998/04/08 Dog biscuits

Attachments	85690234#TMSN.png( bytes ) 77218045#TMSN.png( bytes ) 75473625#TMSN.png( bytes ) Notice of Opposition BLUE DENTAL BONES.pdf(13964 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	/Melinda S. Giftos/
Name	Melinda S. Giftos
Date	04/07/2016

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

In the matter of trademark application Serial No. 86/780,467  
For the mark BLUE DENTAL BONES

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BLUE DOG BAKERY, LLC,

Opposer,

vs.

Opposition No. \_\_\_\_\_

BLUE BUFFALO COMPANY, LTD.,

Applicant.

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**NOTICE OF OPPOSITION**

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Blue Dog Bakery, LLC (“**Opposer**”), believes that it will be damaged by registration of the BLUE DENTAL BONES mark as applied for in Application Serial No. 86/780,467 (“**Application**”), which was filed by Blue Buffalo Company, Lt. (“**Applicant**”). Opposer therefore opposes the same, pursuant to Section 13(a) of the Trademark Act of 1946, as amended (the Lanham Act), 15 U.S.C. § 1063(a). The grounds for opposition are as follows:

1. Opposer is the owner of all right, title, and interest in and to the BLUE DOG BAKERY trademark which it has used extensively on and in connection with pet food, as well as dog treats and biscuits since at least as early as April 8, 1998.

2. Because of the well-known nature and high quality of the goods offered by Opposer under the BLUE DOG BAKERY mark, as well as decades of use of the mark, Opposer has developed substantial good will in its BLUE DOG BAKERY mark.

3. Opposer’s rights in its BLUE DOG BAKERY mark have been recognized by the

United States Patent and Trademark Office (“USPTO”), which issued to Opposer:

- a. U.S. Registration No. 2,376,523 for the BLUE DOG BAKERY (& Design) trademark for dog biscuits in International Class 31;
- b. U.S. Registration No. 3,699,462 for the BLUE DOG BAKERY trademark for pet food in International Class 31; and
- c. U.S. Registration No. 4,312,468 for the BLUE DOG BAKERY (& Design) trademark for pet food in International Class 31.

(collectively "**Opposer's Registrations**").

4. Since long prior to the filing date of Applicant’s Application, and since long prior to any use claimed by Applicant, Opposer has continuously and exclusively used its BLUE DOG BAKERY mark in interstate commerce in connection with the advertising, promotion, and sale of the aforementioned goods.

5. Opposer has spent considerable resources to develop, promote and distribute its products under the BLUE DOG BAKERY mark.

6. Opposer has established strong common law rights in and to the BLUE DOG BAKERY mark.

7. Upon information and belief, Applicant is a limited liability company organized under the laws of Delaware, with a business address at 11 River Road, Wilton, Connecticut 06897.

8. On October 7, 2015, Applicant filed the Application, U.S. Application Serial No. 86/780467, for registration of the mark BLUE DENTAL BONES in connection with dog biscuits and dog treats, with a claimed date of first use of October 1, 2014 ("**Opposed mark**").

9. The Application is pending and was published for opposition on March 8, 2016.

**COUNT I – LIKELIHOOD OF CONFUSION – 15 U.S.C. § 1052(d)**

10. Opposer's BLUE DOG BAKERY mark is inherently distinctive, strong and entitled to a broad scope of protection.
11. Opposer's Registrations are valid, subsisting and in full force and effect.
12. Opposer has used its BLUE DOG BAKERY mark since long prior to the filing date of the Application for the Opposed mark.
13. The Opposed mark is confusingly similar in sight, sound and connotation to Opposer's BLUE DOG BAKERY mark.
14. The goods of Opposer and Applicant are identical and/or closely related.
15. Opposer's goods and Applicant's goods are sold through the same channels of trade to the same classes of prospective purchasers.
16. The parties advertise and promote their respective goods in the same or similar types of media and other channels of trade.
17. Applicant is not affiliated with, connected with, or endorsed or sponsored by Opposer. Opposer has not approved any of the goods offered or sold or offered for sale by Applicant in connection with the Opposed mark.
18. Applicant's use and registration of the Opposed mark will injure and damage Opposer and the goodwill and reputation of Opposer's BLUE DOG BAKERY mark.
19. Applicant's use and registration of the Opposed mark is likely to cause confusion, mistake and deception in the minds of the public and will cause damage and injury to both Opposer and the public. Therefore, the registration of the Opposed mark should be denied, *inter alia*, under Section 2(d) of the Federal Trademark Act.

Opposer files this Notice of Opposition and respectfully requests that this opposition be

sustained and the Application herein opposed be rejected; that registration of the Opposed mark be refused; and for such other and further legal and equitable relief as may be deemed to be just and proper.

Dated: April 7, 2016

Respectfully submitted,

s/Melinda S. Giftos

Melinda S. Giftos

Attorney for Opposer

Whyte Hirschboeck Dudek S.C.  
33 East Main Street, Suite 300  
PO Box 1397  
Madison, WI 53701-1397  
Telephone: 608-255-4440  
Fax: 608-258-7138  
mgiftos@whdlaw.com

**CERTIFICATE OF SERVICE**

I hereby certified that I have sent this Notice of Opposition via electronic mail and First Class Mail on April 7, 2016 to counsel for Applicant:

Edmund J. Ferdinand, III  
Ferdinand IP LLC  
129 Post Road East  
Westport, CT 06880  
[jferdinand@24iplg.com](mailto:jferdinand@24iplg.com)

s/Melinda S. Giftos