

ESTTA Tracking number: **ESTTA778207**

Filing date: **10/21/2016**

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	Schlotterbeck & Foss Company
Granted to Date of previous extension	10/26/2016
Address	3 Ledgeview Drive Westbrook, ME 04092 UNITED STATES

Correspondence information	Jeffrey C. Joyce Bohan Mathers, LLC PO Box 449 Portland, ME 04112-0449 UNITED STATES trademarks@bohanmathers.com Phone:2077733132
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**Applicant Information**

Application No	86876213	Publication date	06/28/2016
Opposition Filing Date	10/21/2016	Opposition Period Ends	10/26/2016
Applicant	Wicked Good Cupcakes, LLC 132 Chief Justice Cushing Highway #30 Cohasset, MA 02025 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 030. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Bakery desserts; Bakery goods; Bakery products; Cakes
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act Section 2(d)
No bona fide intent to use mark in commerce for identified goods or services	Trademark Act Section 1(b)

**Mark Cited by Opposer as Basis for Opposition**

U.S. Registration No.	3733099	Application Date	08/01/2007
Registration Date	01/05/2010	Foreign Priority Date	NONE
Word Mark	WICKED GOOD		

Design Mark	<h1>WICKED GOOD</h1>
Description of Mark	NONE
Goods/Services	<p>Class 029. First use: First Use: 1988/03/01 First Use In Commerce: 1988/03/02  Jams; jellies; fruit butters; fruit spreads; fruit preserves; and fruit-based fillings for pastries and pies</p> <p>Class 030. First use: First Use: 1988/03/01 First Use In Commerce: 1988/03/01  Ice cream; sherbet; chocolate and marshmallow toppings for ice cream; flavoringsyrup and food flavorings, which are not essential oils, for ice cream and sherbet; thickening agents and natural sweeteners for use in cooking, namely, fruit-based bases for ice cream and sherbet; natural sweeteners containing pieces of fruit and thickening agents for ice creamand sherbet; flavoring syrup, namely, fruit-based syrups used as flavoring agents; natural sweeteners, not containing pieces of fruit, and thickening agents for ice cream and sherbet; extracts used as flavorings for ice cream and sherbet; fruit-based toppings for ice cream not containing pieces of fruit; nut-based toppings for ice cream; fruit-based flavorings not containing pieces of fruit for ice cream and sherbet, namely, extracts of fruits used to flavor ice cream and sherbet; nut-based flavorings for ice cream and sherbet, namely, extracts of nuts used to flavor ice cream and sherbet; fruit-based variegates for ice cream and sherbet, namely, extracts of fruits whichare rippled into the ice cream and sherbet to add or vary the flavor thereof; nut-based variegates for ice cream and sherbet, namely, extracts of nuts which are rippled into the ice cream and sherbetto add or vary the flavor thereof; and condiments, namely, mustards, seasonings, salad dressings, relishes, salsas and chutneys</p> <p>Class 032. First use: First Use: 1988/03/01 First Use In Commerce: 1988/03/01  Syrups for making soft drinks</p>

Attachments	77244378#TMSN.png( bytes ) Notice of Opposition 201601021.pdf(99245 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	/Jeffrey C. Joyce/
Name	Jeffrey C. Joyce
Date	10/21/2016

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

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In re Application Serial No. 86876213  
Published: June 28, 2016  
For the mark: WICKED GOOD CAKES

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Schlotterbeck & Foss Company,	)	
Opposer,	)	
v.	)	Opposition No. _____
Wicked Good Cupcakes, LLC,	)	
Applicant.	)	

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NOTICE OF OPPOSITION

Schlotterbeck & Foss Company, a corporation organized under the laws of the State of Maine, having its principal place of business at 3 Ledgeview Drive, Westbrook, ME 04092 (“Opposer”) believes that it will be damaged by registration of the mark shown in Application Serial No. 86876213 for goods in International Class 30 shown and identified in said application which was filed on January 14, 2016 by or on behalf of Wicked Good Cupcakes, LLC, believed to be a limited liability company organized under the laws of Massachusetts with a principal place of business at 132 Chief Justice Cushing Highway #30, Cohasset, Massachusetts 02025 (“Applicant”) and hereby opposes same.

As grounds of opposition, Opposer states that:

1. Opposer is the owner of U.S. Registration No. 3733099 of the standard character mark WICKED GOOD (“Opposer’s Mark”) for use on and in connection with “Jams; jellies; fruit butters; fruit spreads; fruit preserves; and fruit-based fillings for pastries and pies” in International Class 29, “Ice cream; sherbet; chocolate and marshmallow toppings for ice

cream; flavoring syrup and food flavorings, which are not essential oils, for ice cream and sherbet; thickening agents and natural sweeteners for use in cooking, namely, fruit-based bases for ice cream and sherbet; natural sweeteners containing pieces of fruit and thickening agents for ice cream and sherbet; flavoring syrup, namely, fruit-based syrups used as flavoring agents; natural sweeteners, not containing pieces of fruit, and thickening agents for ice cream and sherbet; extracts used as flavorings for ice cream and sherbet; fruit-based toppings for ice cream not containing pieces of fruit; nut-based toppings for ice cream; fruit-based flavorings not containing pieces of fruit for ice cream and sherbet, namely, extracts of fruits used to flavor ice cream and sherbet; nut-based flavorings for ice cream and sherbet, namely, extracts of nuts used to flavor ice cream and sherbet; fruit-based variegates for ice cream and sherbet, namely, extracts of fruits which are rippled into the ice cream and sherbet to add or vary the flavor thereof; nut-based variegates for ice cream and sherbet, namely, extracts of nuts which are rippled into the ice cream and sherbet to add or vary the flavor thereof; and condiments, namely, mustards, seasonings, salad dressings, relishes, salsas and chutneys” in International Class 30, and “Syrups for making soft drinks” in International Class 32 (all together, “Opposer’s Goods”).

2. Opposer’s valid and subsisting registration is incontestable.
3. Opposer is using Opposer’s Mark in commerce on and in connection with Opposer’s Goods.
4. Opposer has used Opposer’s Mark in commerce on and in connection with Opposer’s Goods since at least as early as 1988.
5. Opposer has invested considerable time, money, and effort into the marketing, advertising, and promotion of Opposer’s Mark in connection with the sale of Opposer’s Goods.
6. As a consequence of Opposer’s long and continuous use of, and its considerable investment in marketing, advertising, and promotion of Opposer’s Mark in connection with Opposer’s

Goods, Opposer's Mark has become distinctive of the single source of Opposer's Goods and as such is an asset of great value.

7. As a consequence of Opposer's long and continuous use of, and its considerable investment in marketing, advertising, and promotion of Opposer's Mark in connection with Opposer's Goods, Opposer's Mark has accrued and has significant and valuable goodwill among consumers.
8. Applicant applied to register the standard character mark WICKED GOOD CAKES ("Applicant's Mark") on January 14, 2016, in Application Serial No. 86410681 (the "Application") for use on "Bakery desserts; Bakery goods; Bakery products; Cakes" in International Class 30 ("Applicant's Goods") on the basis of their intent to so use Applicant's Mark.
9. Upon information and belief, Applicant is not using and has not used Applicant's Mark in commerce.
10. Upon information and belief, Applicant does not have a bona fide intention to use Applicant's Mark in commerce.
11. Applicant's Mark is confusingly similar to Opposer's Mark.
12. Applicant's Mark incorporates the entirety of Opposer's Mark.
13. Applicant's Mark incorporates the entirety of Opposer's Mark as its dominant term.
14. Applicant's Mark incorporates the entirety of Opposer's Mark as its dominant term in the dominant first position.
15. Applicant's Goods are closely related to Opposer's Goods.
16. Applicant's Goods are or will be sold in the same channels of trade as are Opposer's Goods.
17. Consumers of Applicant's Goods are the same class of consumers as the consumers of Opposer's Goods.

18. Consumers of Applicant's Goods and consumers of Opposer's Goods are not sophisticated consumers.
19. Opposer's Goods are of the kind that are used in, on, and with Applicant's Goods
20. Consumers of Applicant's Goods ordinarily, usually, and casually purchase Opposer's Goods to use in, on, and with Applicant's Goods.
21. Applicant's Mark when used on Applicant's Goods is so similar to Opposer's Mark as used on Opposer's Goods as to cause consumer confusion, mistake, and deceit within the meaning of Section 2(d) of the Act (15 U.S.C. § 1052(d)).
22. Opposer will be damaged by registration of Applicant's applied-for mark in connection with Applicant's Goods because such registration will afford Applicant the impression that Applicant has exclusive rights in Applicant's Mark and the color of authority to use its confusingly similar mark in commerce in connection with Applicant's Goods.
23. Opposer will be damaged by Applicant's use of its applied-for mark in connection with Applicant's Goods because such use is likely to give to consumers the false impression that Opposer is the source of Applicant's Goods.
24. Opposer will be damaged by Applicant's use of its applied-for mark in connection with Applicant's Goods because such use is likely to give to consumers the false impression of an affiliation or other connection between Applicant and Opposer and/or the false impression of Opposer's sponsorship and endorsement of Applicant's Goods.
25. Opposer will be damaged by Applicant's use of Applicant's Mark in commerce on Applicant's Goods because such use is likely to cause confusion, mistake, and deceit as to the source of Applicant's Goods.

Wherefore, Opposer respectfully requests that this opposition be sustained and that registration of Applicant's Mark be denied and the opposed Application ordered abandoned with prejudice.

Schlotterbeck & Foss Company

By: /Jeffrey Joyce/  
Jeffery C. Joyce, Attorney for Opposer  
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Date: 10/21/2016

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Published: June 28, 2016  
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Opposer,	)	
v.	)	Opposition No. _____
Wicked Good Cupcakes, LLC,	)	
Applicant.	)	

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Notice of Service

This is to certify that the undersigned caused a true and correct copy of this Notice of Opposition to be mailed by First Class Mail, postage prepaid, and directed to RORY P. PHEIFFER. NUTTER MCCLENNEN & FISH LLP, 155 SEAPORT BOULEVARD SEAPORT WEST, BOSTON, MASSACHUSETTS 02210, on October 21, 2016.

/Jeffrey C. Joyce/  
Jeffrey C. Joyce, Esq.