

ESTTA Tracking number: **ESTTA783432**

Filing date: **11/16/2016**

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	Ninkasi Holding Company, Inc.
Granted to Date of previous extension	11/16/2016
Address	155 Blair Blvd Eugene, OR 97402 UNITED STATES
Party who filed Extension of time to oppose	Ninkasi Brewing Company, LLC
Relationship to party who filed Extension of time to oppose	The name Ninkasi Brewing Company, LLC was mistakenly used in the extension of time to oppose. Ninkasi Brewing Company, LLC was the registrant of the Ninkasi Mark. Ninkasi Holding Company, Inc. is the current owner of the Ninkasi Mark. Ninkasi Holding Company, Inc. and Ninkasi Brewing Company, LLC are related entities in privity with each other.

Correspondence information	Daniel K Olson Attorney Watkinson Laird Rubenstein, P.C. 101 East Broadway, Suite 200 Eugene, OR 97401 UNITED STATES dolson@wrlaw.com Phone:5414842277
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**Applicant Information**

Application No	86913897	Publication date	07/19/2016
Opposition Filing Date	11/16/2016	Opposition Period Ends	11/16/2016
Applicant	Barhyte Specialty Foods, Inc. P.O. Box 1499 Pendleton, OR 97801 UNITED STATES		

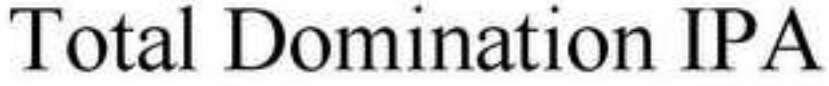
**Goods/Services Affected by Opposition**

Class 030. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Chicken wing sauce
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act Section 2(d)
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**Mark Cited by Opposer as Basis for Opposition**

U.S. Registration No.	3650553	Application Date	12/16/2008
Registration Date	07/07/2009	Foreign Priority Date	NONE
Word Mark	TOTAL DOMINATION IPA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2008/03/18 First Use In Commerce: 2008/03/18 Beer		

Attachments	77634391#TMSN.png( bytes ) OppositionTotalDom111416.pdf(203226 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	/Daniel K Olson/
Name	Daniel K Olson
Date	11/16/2016

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

Ninkasi Holding Company, Inc.

Serial No. 86913897

Application

Opposer,

v.

Mark: TOTAL DOMINATION WING SAUCE

Barhyte Specialty Foods, Inc.  
Applicant.

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

**NOTICE OF OPPOSITION**

Ninkasi Holding Company, Inc. (Ninkasi) opposes the application of Barhyte Specialty Foods, Inc. (Applicant) for registration of the trademark TOTAL DOMINATION WING SAUCE, application serial no. 86913897, for “Chicken Wing Sauce”.

Ninkasi believes that it will be damaged by registration of the mark shown in application serial no. 86913897, and opposes the same on the following grounds:

Priority and likelihood of confusion.

1. Ninkasi is an Oregon limited liability company with a principal place of business located at 155 Blair Blvd, Eugene, Oregon 97402.
2. Upon information and belief, Barhyte Specialty Foods, Inc. is an Oregon corporation (Applicant) with an address of P.O. Box 1499, 912 Airport Road, Pendleton, Oregon 97801.
3. Ninkasi is among the largest craft beer producers in Oregon.

4. Ninkasi owns the mark TOTAL DOMINATION for “beer” and the federal trademark registration incorporating the TOTAL DOMINATION mark, namely TOTAL DOMINATION IPA, registration no. 3650553 (collectively referred to as the “TOTAL DOMINATION MARK”).
5. Due to widespread sales and continuous and extensive market development and advertising, the TOTAL DOMINATION MARK identifies Ninkasi’s goods and distinguishes them from the goods of others.
6. Total Domination IPA, Ninkasi’s beer using the TOTAL DOMINATION MARK, is the top selling India Pale Ale in the state of Oregon and is widely recognized by consumers throughout the United States.
7. Ninkasi established valuable goodwill and exclusive rights in the TOTAL DOMINATION MARK through sales, advertising, and promotion of “beer” using the TOTAL DOMINATION MARK.
8. On February 19, 2016, Applicant filed application serial no. 86913897 to register TOTAL DOMINATION WING SAUCE as a mark in International Class 30 for “Chicken wing sauce” (Applicant's Mark).
9. Applicant filed Applicant’s Mark with a Section 1(b), intent to use basis.
10. Applicant’s Mark was published in the *Official Gazette* on July 19, 2016.
11. Ninkasi has extended time to oppose the application through and including November 16, 2016.
12. Ninkasi has continuously and exclusively used the TOTAL DOMINATION MARK in connection with “beer” produced and sold by Ninkasi since at least as early as March 18, 2009, prior to Applicant’s filing date.

13. Ninkasi's rights in the TOTAL DOMINATION MARK are superior to Applicant's rights in Applicant's Mark.
14. Applicant's Mark is highly similar to the TOTAL DOMINATION MARK in sound, meaning, appearance, and commercial impression.
15. Applicant's intended use of Applicant's Mark for "Chicken Wing Sauce" is for goods that travel in the same channels of trade as those offered by Ninkasi using the TOTAL DOMINATION MARK.
16. Applicant states in its press release on June 24, 2016 that "Beer and wings go well together," and that Applicant's Total Domination Wing Sauce labels were both "[i]nspired by the look of labels in Oregon's booming craft beer industry" and created to "fit in with the feel of local craft breweries in [Oregon]." *See* Exhibit A.
17. Ninkasi has nationwide rights in the TOTAL DOMINATION MARK by virtue of its federal trademark registration. Ninkasi distributes its beers throughout the United States and its beers are sold nationwide.
18. Because of the substantial and intentional similarity of the marks and the relatedness of the goods, the use and registration of Applicant's Mark is likely to cause confusion, mistake, or deception in the mind of the public and to cause the public to incorrectly assume that the goods identified by Applicant's Mark are produced or sold by Ninkasi.
19. For the reasons set forth in the preceding paragraphs, Applicant is not entitled to register Applicant's Mark, and the application should be denied in accordance with §§ 2(d) of the Latham Act, 15 USC §§ 1052(d) and 1063(a).

WHEREFORE, Ninkasi believes that it will be damaged by registration of Applicant's Mark and prays that application serial no. 86913897 be refused, that no registration be issued to Applicant, and that this Opposition be sustained in favor of Ninkasi.

Ninkasi Holding Company, Inc.  
Opposer  
By its attorney,

/Daniel K Olson/  
Daniel K Olson  
Watkinson Laird Rubenstein, P.C.  
101 E. Broadway, Suite 200  
Eugene, OR 97401  
Phone: 541-484-2277

Dated: November 16, 2016

Certificate of Service

I hereby certify that on November 16, 2016, a copy of the foregoing was sent by first class U.S. mail and electronic mail to the Applicant's attorney of record:

Paul A. Raney  
Kell, Alterman & Runstein LLP  
520 SW Yamhill Street  
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Portland, Oregon 97204  
UNITED STATES

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/Daniel K Olson/  
Daniel K Olson

## Exhibit A

### Barhyte Specialty Foods Launches Total Domination Wing Sauce Line

Five Flavors Under the New Brand Hope to Capture the Hearts –and Taste buds- of People Everywhere

Pendleton, Ore. (June 24, 2016)- Barhyte Specialty Foods is ready to dominate the nation with the launch of a new brand: Total Domination Wing Sauces. Featuring five new flavors, the line is meant to complement Americans' obsession with chicken wings– it was predicted that Americans would eat 1.3 billion chicken wings during the week of Super Bowl 50! But the sauces are much more versatile than the name suggests, pairing well with all types of meat, seafood and even vegetables. Total Domination Wing Sauces will debut at the 2016 Summer Fancy Food Show in New York, in booth number 1856.



Barhyte hired a local designer to create different label options for the new brand. Inspired by the look of labels in Oregon's booming craft beer industry, the wing sauce label design feels high-end, crisp and clean. It's both simple, yet powerful, as a name like "Total Domination" provokes.

Says company CEO, Chris Barhyte, of the Total Domination brand, "We wanted to create a label that was going to be fun and fit in with the feel of local craft breweries in our state. Beer and wings go well together, so it's a perfect match."

Inspired partially by the unique flavors of the Pacific Northwest, the brand will initially include five sauces in varying degrees of spiciness, which is displayed on each label's "heat bar". The spiciest flavor, which also features sweet notes, is the Scotch Bonnet Pepper and Blackberry Wing Sauce, followed by the Hatch Pepper Wing Sauce. With mid-level heat is the brand's Pepper and Garlic Wing Sauce followed by Sweet Chili-Yaki Wing Sauce. On the mild end of the spectrum is a classic Honey BBQ Wing Sauce.

Barhyte Specialty Foods will begin selling Total Domination Wing Sauces in the summer of 2016 online at Barhyte.com for six dollars a bottle. They also plan to get the line into both large and small grocery stores across the United States.

#### ABOUT BARHYTE SPECIALTY FOODS

Barhyte Specialty Foods, based out of Pendleton, Oregon, has roots dating back 200 years and 6,000 miles away in Germany, where Jacobus Barhyte first created a sweet-and-sour mustard that he brought to the US. Many generations later, Jan and Suzie Barhyte began selling mustard from the original recipe, as well as other signature creations, through their Swift and Martin Station Deli in Pendleton. Thanks to overwhelming demand, the family launched their own manufacturing operation in 1977. Today, the company offers more than 65 award-winning mustards, marinades, salad dressings and other condiments through multiple premium brands, such as the signature Saucy Mama name, as well as through co-branded and private label relationships.

CONTACT: Colette Harris, Marketing & PR Manager  
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