

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

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|----------------------------|---|--------------------------------------|
| BIRDS EYE FOODS LLC, |) | |
| |) | |
| Opposer, |) | |
| |) | Opposition No. _____ |
| v. |) | Application Serial No. 86869172 |
| |) | Mark: HAWAIIAN CHIP COMPANY & DESIGN |
| HAWAIIAN CHIP COMPANY LLC, |) | |
| |) | |
| Applicant. |) | |
| _____ |) | |

NOTICE OF OPPOSITION

Birds Eye Foods LLC, a Delaware limited liability company, at 399 Jefferson Road, Parsippany, New Jersey 07054 (“Opposer”), believes that it will be damaged by registration of the mark HAWAIIAN CHIP COMPANY & DESIGN of Application Serial No. 86869172 (“Application”) by Hawaiian Chip Company LLC (“Applicant”) for the goods recited therein, and hereby opposes the Application on the grounds that Applicant’s mark is likely to cause confusion, or to cause mistake or to deceive with respect to Opposer’s prior adoption and use of the mark “HAWAIIAN” (“Opposer’s HAWAIIAN Mark”), and Opposer’s prior registration for Opposer’s HAWAIIAN Mark (“Opposer’s HAWAIIAN Registration”).

Opposer states as follows:

1. Opposer is extensively engaged in the business of manufacturing, marketing and selling a broad range of food products, including potato chips and onion rings (“Opposer’s Goods”).
2. In connection with Opposer’s Goods, Opposer has used Opposer’s HAWAIIAN mark. Opposer has continuously used Opposer’s HAWAIIAN Mark in commerce in connection with Opposer’s Goods since at least as early as 1998.
3. As a result of the quality of Opposer’s Goods and the widespread promotion thereof under Opposer’s HAWAIIAN Mark, Opposer’s Goods have met with substantial commercial success and customer recognition. As a further result, Opposer’s HAWAIIAN Mark has become a symbol of Opposer, its quality products and its goodwill.

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4. In recognition of the valuable rights in and to Opposer's HAWAIIAN Mark, on October 20, 2009, the Office granted Opposer's Registration No. 3697408 for "*potato chips*."

5. Notwithstanding Opposer's prior use of Opposer's HAWAIIAN Mark and Opposer's Registration, on June 7, 2016, Applicant filed the Application seeking registration on the Principal Register of the mark HAWAIIAN CHIP COMPANY & DESIGN for "*potato chips made from sweet potatoes; vegetable chips*" in International Class 29, specifying a date of first use anywhere and in commerce of January 1, 2000.

6. Prior to the filing date and specified dates of first use of the Application, Opposer used Opposer's HAWAIIAN Mark in commerce and Opposer acquired distinctiveness and trademark rights in Opposer's HAWAIIAN Mark. Opposer therefore has priority of trademark rights.

7. The mark of Application is at least substantially similar to Opposer's HAWAIIAN Mark. Further, Opposer's Goods provided under Opposer's HAWAIIAN Mark are at least similar or related to the goods covered by Application Serial No. 86869172. In view thereof, purchasers are likely to mistakenly assume that Applicant's goods of Application Serial No. 86869172 originate from, are sponsored by or are in some way associated with Opposer. The mark of the Application so resembles Opposer's HAWAIIAN Mark and Opposer's Registration as to be likely to cause confusion, or to cause mistake or to deceive. Accordingly, Opposer is likely to be damaged by registration of the mark of Application Serial No. 86869172 for the goods recited therein.

WHEREFORE, Opposer prays that the Application be refused registration, that no registration be issued thereon to Applicant and that this Opposition be sustained in favor of Opposer.

A filing fee for the Notice of Opposition in the amount of \$300 should be charged to Deposit Account No. 18-0013. Any additional fees required should be charged to the same account.

Respectfully submitted,

Dated: December 5, 2016

By: Michelle L. Visser

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First-class mail in an envelope addressed to:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Date: December 5, 2016

Michelle L. Visser
Michelle L. Visser

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing *Notice of Opposition* upon Applicant by causing a true and correct copy thereof to be deposited with the United States Postal Service with sufficient postage as First-class mail in an envelope addressed to:

Kevin W. Herring
Ashford & Wriston LLP
999 Bishop Street,
Suite 1400
Honolulu, HI 96813-4438

Date: December 5, 2016

Michelle L. Visser
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