

ESTTA Tracking number: **ESTTA926751**

Filing date: **10/05/2018**

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	Dietz & Watson
Granted to Date of previous extension	10/06/2018
Address	5701 Tacony Street Philadelphia, PA 19135 UNITED STATES

Attorney information	John S. Child, Jr. Paul & Paul 1717 Arch Street, Suite 3740 Philadelphia, PA 19103 UNITED STATES info@paulandpaul.com, johnchild@paulandpaul.com 215-568-4900
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### Applicant Information

Application No	87836254	Publication date	08/07/2018
Opposition Filing Date	10/05/2018	Opposition Period Ends	10/06/2018
Applicant	Red Bear American Charcuterie, LLC 3316 Tejon Street Denver, CO 80211 UNITED STATES		


### Goods/Services Affected by Opposition

Class 029. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Bacon; Beef; Beef jerky; Beef patties; Corned beef; Ham; Meat; Meat, preserved; Mortadella; Salami; Sausages; All natural meats; Blood sausage; Chicken; Cured meats; Dried beef; Dried meat; Frankfurters; Fresh meat; Ground meat; Hamburger; Packaged meats; Preserved meats and sausages; Processed meat; Salted meat; Salted meats; Smoked meats; Wieners
Class 035. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Providing a website used to place on-line commercial orders in the field of food and meat products; Computerized on-line ordering services in the field of food and meat products; Retail on-line ordering services featuring food and meat products also accessible by telephone, facsimile and mail order

### Grounds for Opposition


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

U.S. Registration No.	2200123	Application Date	02/27/1996
Registration Date	10/27/1998	Foreign Priority Date	NONE
Word Mark	BLACK BEAR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1996/03/00 First Use In Commerce: 1996/03/00 meat and poultry products, namely, lunch meats including ham, turkey, chicken, roast, beef, liverwurst and bologna		

U.S. Registration No.	2122231	Application Date	02/27/1996
Registration Date	12/16/1997	Foreign Priority Date	NONE
Word Mark	BLACK BEAR OF THE BLACK FOREST		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1996/03/00 First Use In Commerce: 1996/03/00 meat and poultry products, namely, lunch meats including ham, turkey, chicken, roast beef, liverwurst and bologna		

U.S. Registration No.	2271394	Application Date	06/17/1997
Registration Date	08/24/1999	Foreign Priority Date	NONE
Word Mark	BLACK BEAR OF THE BLACK FOREST		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 029. First use: First Use: 1996/03/10 First Use In Commerce: 1996/03/10 meat, cheese, and poultry

U.S. Registration No.	3741902	Application Date	02/24/2009
Registration Date	01/26/2010	Foreign Priority Date	NONE
Word Mark	BLACK BEAR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1996/01/01 First Use In Commerce: 1996/01/01 Cheese; Spicy pickles Class 030. First use: First Use: 1999/01/01 First Use In Commerce: 1999/01/01 Horseradish; Mustard		


U.S. Registration No.	3831641	Application Date	01/08/2010
Registration Date	08/10/2010	Foreign Priority Date	NONE
Word Mark	BLACK BEAR		

Design Mark	<b>BLACK BEAR</b>
Description of Mark	NONE
Goods/Services	Class 029. First use: First Use: 1999/01/01 First Use In Commerce: 1999/01/01 Cole slaw; Potato salad Class 030. First use: First Use: 1999/01/01 First Use In Commerce: 1999/01/01 Macaroni salad

U.S. Registration No.	4144891	Application Date	05/20/2010
Registration Date	05/22/2012	Foreign Priority Date	NONE
Word Mark	BLACK BEAR		
Design Mark	<b>BLACK BEAR</b>		
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2007/12/31 First Use In Commerce: 2007/12/31 Salads except macaroni, rice, and pastasalad		

U.S. Registration No.	5040519	Application Date	02/02/2016
Registration Date	09/13/2016	Foreign Priority Date	NONE
Word Mark	BLACK BEAR OF THE BLACK FOREST		

Design Mark	
Description of Mark	The mark consists of a design showing a bear and trees in silhouette inside a diamond with the words "BLACK BEAR of the black forest".
Goods/Services	Class 029. First use: First Use: 2014/11/01 First Use In Commerce: 2014/11/01 Cheese; Meat; Poultry

U.S. Application No.	87757134	Application Date	01/16/2018
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BLACK BEAR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1996/01/01 First Use In Commerce: 1996/01/01 Meat; Poultry		

U.S. Application No.	87757306	Application Date	01/16/2018
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BLACK BEAR OF THE BLACK FOREST		

Design Mark	<p><b>BLACK BEAR OF THE BLACK FOREST</b></p>
Description of Mark	NONE
Goods/Services	Class 029. First use: First Use: 1996/03/00 First Use In Commerce: 1996/03/00 Cheese; Meat; Poultry

Attachments	<p>75064367#TMSN.png( bytes )  75309973#TMSN.png( bytes )  77677585#TMSN.png( bytes )  77908344#TMSN.png( bytes )  85044257#TMSN.png( bytes )  86894705#TMSN.png( bytes )  87757134#TMSN.png( bytes )  87757306#TMSN.png( bytes )  Notice of Opposition.pdf(2205404 bytes )  Exhibit A.pdf(749667 bytes )  Exhibit B.pdf(5209248 bytes )</p>
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Signature	/John S. Child, Jr./
Name	John S. Child, Jr.
Date	10/05/2018

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

	)	
DIETZ & WATSON, INC.,	)	
	)	
Opposer,	)	Opposition No.: _____
v.	)	Application No.: 87/836,254
RED BEAR AMERICAN	)	Mark: <b>RED BEAR</b>
CHARCUTERIE, LLC,	)	
	)	
Applicant.	)	
	)	

**NOTICE OF OPPOSITION**

Dietz & Watson, Inc. ("Opposer") opposes registration of Application Serial No. 87/836,254 for RED BEAR owned by Red Bear American Charcuterie, LLC ("Applicant") under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d). Opposer contends that Applicant's mark so resembles nine registered marks and applications consisting of or containing the words BLACK BEAR as to be likely to cause confusion, or to cause mistake or to deceive when used on related goods and services. The registrations and applications are owned by Black Bear Enterprises, Inc. and Black Bear, Inc. which are privately owned by individuals owning Dietz & Watson, Inc.

1. Opposer is a New Jersey Corporation with a principal place of business at 5701 Tacony Street, Philadelphia, PA 19135.
2. Applicant is a Colorado limited liability company with a principal place of business at 3316 Tejon Street, Denver, CO 80211.
3. As noted in the following Paragraphs 4-13, Applicant's Mark and the Marks relied upon by Opposer have similar features as to their appearance, sound, connotation and commercial impression.

4. On March 15, 2018, Applicant filed application Serial No. 87/836,254 for RED BEAR for “Bacon; Beef; Beef Jerky; Beef patties; Corned beef; Ham; Meat; Meat, preserved; Mortadella; Salami; Sausages; All natural meats; Blood sausage; Chicken; Cured meats; Dried beef; Dried meat; Frankfurters; Fresh meat; Ground meat; Hamburger; Packaged meats; Preserved meats and sausages; Processed meat; Salted meat; Salted meats; Smoked meats; Wieners” in International Class 029 and “Providing a website used to place on-line commercial orders in the field of food and meat products; Computerized on-line ordering services in the field of food and meat products; Retail on-line ordering services featuring food and meat products also accessible by telephone, facsimile and mail order” in International Class 035. A copy of the Trademark Electronic Search System (TESS) record for the above application is attached as Exhibit A.

5. On October 27, 1998, Black Bear Enterprises, Inc. registered U.S. Registration Serial No. 2,200,123 for BLACK BEAR for “Meat and poultry products, namely lunch meats including ham, turkey, chicken, roast beef, liverwurst and bologna.”

6. On December 16, 1997, Black Bear Enterprises, Inc. registered U.S. Registration N o. 2,122,231 for BLACK BEAR OF THE BLACK FOREST for “Meat and poultry products, namely, lunch meats including ham, turkey, chicken, roast beef, liverwurst, and bologna.”

7. On August 24, 1999, Black Bear, Inc. registered U.S. Registration Serial No. 2,271,394 for BLACK BEAR OF THE BLACK FOREST and Design for “Meat, cheese and poultry.”

8. On January 26, 2010, Black Bear Enterprises, Inc. registered U.S. Registration Serial No. 3,741,902 for BLACK BEAR for “Cheese; Spicy pickles; Horseradish; and Mustard.”

9. On August 10, 2010, Black Bear Enterprises, Inc. registered U.S. Registration Serial No. 3,831,641 for BLACK BEAR for “Cole slaw; Potato salad; and Macaroni salad.”



10. On May 22, 2012, Black Bear Enterprises, Inc. registered U.S. Registration Serial No. 4,144,891 for BLACK BEAR for “Salads except macaroni, rice, and pasta salad.”

11. On September 13, 2016, Black Bear Enterprises, Inc. registered U.S. Registration No. 5,040,519 for BLACK BEAR OF THE BLACK FOREST and Design for “Cheese, meat and poultry.”

12. On January 16, 2018, Black Bear Enterprises, Inc. filed U.S. Application No. 87/757,134 for BLACK BEAR for “Meat and Poultry.”

13. On January 16, 2018, Black Bear Enterprises, Inc. filed U.S. Application No. 87/757,306 for BLACK BEAR OF THE BLACK FOREST for “Cheese, meat and poultry.”

14. The goods identified in the application for RED BEAR are similar to and indeed overlap goods set forth in United States Trademark Registration No. 2,122,231 for BLACK BEAR OF THE BLACK FOREST, Registration No. 2,200,123 for BLACK BEAR, Registration No. 2,271,394 for BLACK BEAR OF THE BLACK FOREST and Design, Registration No. 5,040,519 for BLACK BEAR OF THE BLACK FOREST and Design; Trademark Application No. 87/757,134 for BLACK BEAR and Trademark Application No. 87/757,306 for BLACK BEAR OF THE BLACK FOREST.

15. Black Bear Enterprises, Inc.’s registrations and applications and are also evidence of the family of marks (BLACK BEAR, BLACK BEAR OF THE BLACK FOREST and BLACK BEAR OF THE BLACK FOREST and design) that contain BLACK BEAR as an arbitrary common component. As the mark RED BEAR for similar and overlapping goods shares the dominant portion of the mark, BEAR, likelihood of confusion between the BLACK BEAR family of marks and RED BEAR is thereby increased. In other words, likelihood of confusion for buyers must exist when comparing BLACK BEAR meat products and RED BEAR meat products.

16. As the goods are in some cases identical, the established likely trade channels will be the same. The goods will be sold in supermarkets or similar types of stores.

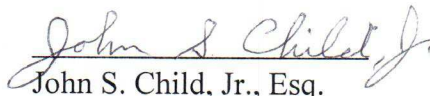
17. With regard to the recitation of services in the application for registration of RED BEAR, there is a web site accessible through [www.blackbeardeli.com](http://www.blackbeardeli.com) which provides information on how to place commercial orders for the meat and food products covered by the BLACK BEAR marks as described here above. A copy of a pertinent portion of the downloaded website is attached as Exhibit B.

18. Accordingly, for the reasons set forth in the preceding paragraphs 1 to 17 and other reasons, issuance of a registration for Applicant's applied-for mark for the applied-for goods and services in Serial No. 87/836,254 will cause harm to Opposer. Sale of RED BEAR deli products will cause confusion to the buying public intending to purchase BLACK BEAR deli products.

Accordingly, Opposer requests that registration of Applicant's application for RED BEAR, Serial No. 87/836,254 be denied because of likelihood of confusion with Opposer's BLACK BEAR marks and marks containing the words BLACK BEAR for the same goods and services of promoting those same goods through a website.

Respectfully submitted

October 5, 2018

  
John S. Child, Jr., Esq.  
PAUL & PAUL  
1717 Arch Street, Suite 3740  
Philadelphia, PA 19103  
(215) 568-4900

# Exhibit A



United States Patent and Trademark Office

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# RED BEAR

**Word Mark** RED BEAR

**Goods and Services** IC 029. US 046. G & S: Bacon; Beef; Beef jerky; Beef patties; Corned beef; Ham; Meat; Meat, preserved; Mortadella; Salami; Sausages; All natural meats; Blood sausage; Chicken; Cured meats; Dried beef; Dried meat; Frankfurters; Fresh meat; Ground meat; Hamburger; Packaged meats; Preserved meats and sausages; Processed meat; Salted meat; Salted meats; Smoked meats; Wieners

IC 035. US 100 101 102. G & S: Providing a website used to place on-line commercial orders in the field of food and meat products; Computerized on-line ordering services in the field of food and meat products; Retail on-line ordering services featuring food and meat products also accessible by telephone, facsimile and mail order

**Standard Characters Claimed**

**Mark Drawing Code** (4) STANDARD CHARACTER MARK

**Serial Number** 87836254

**Filing Date** March 15, 2018

**Current Basis** 1B

**Original Filing Basis** 1B

**Published for Opposition** August 7, 2018

**Owner** (APPLICANT) Red Bear American Charcuterie, LLC LIMITED LIABILITY COMPANY COLORADO 3316 Tejon Street Denver COLORADO 80211

**Attorney of Record** Mike Rodenbaugh

**Type of Mark** TRADEMARK. SERVICE MARK

## Exhibit B





## SIMPLE INGREDIENTS. SIMPLY PREPARED



### Handcrafted Meats & Cheeses

## CRAFTSMANSHIP AT ITS FINEST

Like any craftsman perfecting a true artisan creation, we are only as good as the tools we use. Every meal is a blank canvas, a chance to express yourself through quality ingredients and unique delectability. Don't simply make a sandwich, use Black Bear handcrafted meats & cheeses...and build a work of art.



Handcrafted Meats & Cheeses



### **ABOUT THE BEAR**

Nestled in the southwest corner of Germany lies a storied culinary hub known as Schwarzwald (the Black Forest), it's in this region that countless generations have perfected ham, sausage, and all the traditional cuisine that defines the very country. Deep in this forest lives the Black Bear, whose majesty lends to its' own legend.

Such is our steadfast commitment to quality, Black Bear of the Black Forest® is fiercely nutritious, fiercely premium, and fiercely delicious; quite simply it's Fiercely Good.

### LOCAL PRODUCT. EUROPEAN QUALITY

Our pride is in the old world tradition of time-honored recipes transcending the generations from the German Black Forest region directly to your table. Using only the cleanest, simple ingredients and animals raised with grain-fed diets and never treated with antibiotics or rBST. Promising you the most delectable tasting meats and cheeses in the deli case, handcrafted in the family owned kitchens of Black Bear of the Black Forest®. Most importantly, we promise product delivered daily to your local ShopRite, made by hand locally for you. Black Bear is the only local, premium brand in the ShopRite deli case.

### NEW LOOK. SAME FIERCE GOODNESS

We haven't changed. Well Maybe a little. Our look has certainly taken a turn for the better, but the steadfast quality remains. Black Bear of the Black Forest® continues to maintain our dedication to producing the best Deli in the world. Please taste for yourself, the fierce quality and flavor you have come know remains the same. Don't forget to also taste our NEW line of **Forest Fresh** all natural products.







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## About Us

### NESTLED IN THE SOUTHWEST CORNER OF GERMANY

lies a storied culinary hub known as Schwarzwald (the Black Forest), it's in this region that countless generations have perfected ham, sausage, and all the traditional cuisine that defines the very country. Deep in this forest lives the Black Bear, whose majesty lends to its' own legend. Such is our steadfast commitment to quality, Black Bear of the Black Forest® is fiercely nutritious, fiercely premium, and fiercely delicious; quite simply it's Fiercely Good.



*Fiercely Good.*

**Handcrafted Meats & Cheeses**



### Local Product. European Quality

Our pride is in the old world tradition of time-honored recipes transcending the generations from the German Black-Forest region directly to your table. Using only the cleanest, simple ingredients and animals raised with grain-fed diets and never treated with antibiotics or rBST. Promising you the most delectable tasting meats and cheeses in the deli case, handcrafted in the family owned kitchens of Black Bear of the Black Forest®. Most importantly, we promise product delivered daily to your local

ShopRite, made by hand locally for you. Black Bear is the only local, premium brand in the ShopRite deli case.



## HOW TO FIND BLACK BEAR PRODUCTS

Look for this icon on the bottom of every page to quickly find Black Bear product, locations and to shop Online from home delivery.

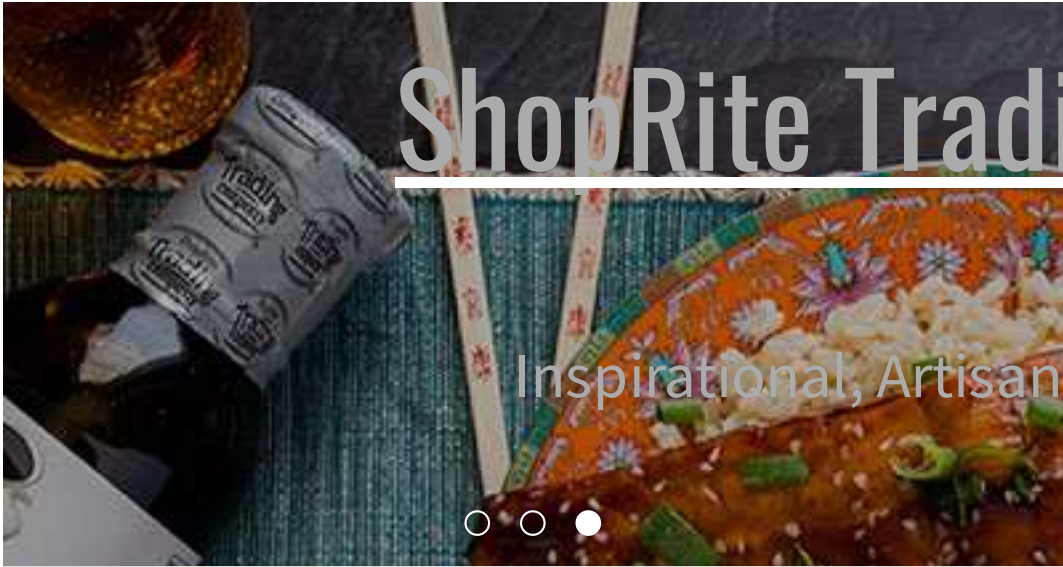
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Healthier Lifestyle  
About Us

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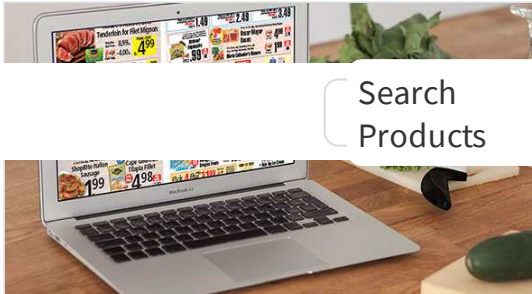
<http://www.blackbeardeli.com/about-us/>







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the heavy lifting




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Get inspired for your next meal

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Join us on a journey to make healthier happen

## DELI, CAKES & CATERING

Easy online ordering on our NEW site!

## PHARMACY

Where caring is our business

## STAY CONNECTED

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