

ESTTA Tracking number: **ESTTA1187024**

Filing date: **01/26/2022**

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 parties oppose registration of the indicated application.

### Opposers information

Name	New Dairy Trademark Holding, LLC
Granted to date of previous extension	01/26/2022
Address	8750 NORTH CENTRAL EXPRESSWAY, SUITE 400 DALLAS, TX 75231 UNITED STATES

Name	COMERCIALIZADORA DE LACTEOS Y DERIVADOS, S.A. DE C.V.
Granted to date of previous extension	01/26/2022
Address	CALZADA CARLOS HERRERA ARALUCE NO. 185 PARQUE INDUS. CARLOS A. HERRERA ARALUCE GOMEZ PALACIO, DURANGO, 35079 MEXICO

Attorney information	LAURA T. GEYER VORYS, SATER, SEYMOUR AND PEASE LLP 1909 K STREET NW, SUITE 900 WASHINGTON, DC 20006 UNITED STATES Primary email: <a href="mailto:iplaw@vorys.com">iplaw@vorys.com</a> Secondary email(s): <a href="mailto:ltgeyer@vorys.com">ltgeyer@vorys.com</a> , <a href="mailto:refryar@vorys.com">refryar@vorys.com</a> , <a href="mailto:jspiantandida@vorys.com">jspiantandida@vorys.com</a> 202-467-8800
Docket no.	080011-02

### Applicant information

Application no.	90510712	Publication date	09/28/2021
Opposition filing date	01/26/2022	Opposition period ends	01/26/2022
Applicants	Woodward Sandoval, Guillermo #2340 RUE ADRIANE LA JOLLA, CA 92037 UNITED STATES  Galindo Martin del Campo, Victor Manuel #2340 RUE ADRIANE LA JOLLA, CA 92037 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: Preserved meat, fish, poultry and game meat, especially dried meat for human consumption; Canned, frozen, dried and cooked fruits and vegetables, processed vegetables and legumes for human consumption; jellies, jams, compotes

## Grounds for opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)

## Marks cited by opposer as basis for opposition


U.S. registration no.	2703415	Application date	10/01/1999
Register	Principal		
Registration date	04/08/2003	Foreign priority date	NONE
Word mark	BORDEN		
Design mark			
Description of mark	NONE		
Goods/services	<p>Class 001. First use: First Use: 1929/00/00 First Use In Commerce: 1929/00/00 [ADHESIVES FOR USE IN THE CONSTRUCTION INDUSTRY; WOOD ADHESIVES FOR USE IN THE CONSTRUCTION, FURNITURE AND CABINET MAKING INDUSTRIES AND FOR DOORS, WINDOWS, MOLDING AND MILLWORK; CASE INS AND CASEINATES FOR USE IN THE CONSTRUCTION, FURNITURE AND CABINET MAKING INDUSTRIES AND IN DOORS, WINDOWS, MOLDING AND MILLWORK]</p> <p>Class 016. First use: First Use: 1947/00/00 First Use In Commerce: 1947/00/00 [Adhesives for stationery, repair and household purposes]</p> <p>Class 017. First use: First Use: 1932/00/00 First Use In Commerce: 1932/00/00 [SYNTHETIC RESINS IN LIQUID AND POWDER FORM, FOR USE IN THE CONSTRUCTION, FURNITURE, AUTOMOTIVE, BALLISTICS, AEROSPACE,ELECTRONICS, STEEL, FOUNDRY AND INDUSTRIAL RE-FRACTORY INDUSTRIES AND FOR AIRCRAFT, HEATING AND AIR CONDITIONING EQUIPMENT AND BRAKES]</p> <p>Class 029. First use: First Use: 1856/00/00 First Use In Commerce: 1856/00/00 Milk, flavored milk, buttermilk, and half and half, cream, yogurt and flavored yogurt, powdered, evaporated, and condensed milk, butter, cheese, cream-cheese, cottage cheese, sour cream, eggnog,[ liquid and powdered non-dairy coffee creamer, ] mincemeat, dry soup mixes, bouillons, bouillon in powder and granular form,dehydrated vegetable flakes, dehydratedsoup mixes, soup bases, soup stocks, liquid or concentrated broth or bouillon, bouillon cubes, granulated bouillon and dehydrated broth, potato chips</p> <p>Class 030. First use: First Use: 1973/00/00 First Use In Commerce: 1973/00/00 Ice cream, [sorbet][, frozen ice confections,] ice cream mixes, milk-based frozen desserts, [frozen-yogurt, pretzels, coffee, popped popcorn, baked corn puffs,crackers, pasta and noodles, tomato andnon-tomato based pasta sauces]</p>		

	Class 032. First use: First Use: 1980/00/00 First Use In Commerce: 1980/00/00 [Lemon, lime, fig and prune juice and concentrates, concentrates used in the preparation of fruit drinks, condensed lemon juice], fruit juice		
U.S. registration no.	921370	Application date	05/15/1970
Register	Principal		
Registration date	10/05/1971	Foreign priority date	NONE
Word mark	BORDEN		
Design mark			
Description of mark	NONE		
Goods/services	<p>Class 001. First use: First Use: 1968/11/05 First Use In Commerce: 1968/11/05 [ORGANIC AND CHEMICAL FERTILIZERS]</p> <p>Class 002. First use: First Use: 1969/10/16 First Use In Commerce: 1969/10/16 [INKS FOR GENERAL USE; STENCIL INKS IN BULK AND AEROSOL FORM; PRINTING AND LITHOGRAPHIC INKS][SPRAY COATING FOR PRESERVATION AND PROTECTION OF METAL, WOOD, PAPER AND LEATHER; METAL PRIMER TO STOP RUST AND PREVENTCORROSION; LACQUERS, VARNISHES, PAINTS,AND ENAMELS]</p> <p>Class 004. First use: First Use: 1970/05/00 First Use In Commerce: 1970/05/00 [DRY LUBRICANTS FOR GENERAL USE PENETRATING OIL; MINERAL WAX; AND SILICONE LUBRICANTS]</p> <p>Class 005. First use: First Use: 1969/07/09 First Use In Commerce: 1969/07/09 [MEDICINES AND PHARMACEUTICAL PREPARATIONS; MINERAL, VITAMIN, AND OTHER FEED SUPPLEMENTS FOR LIVESTOCK AND POULTRY, MEDICATED ADDITIVES FOR THE BATH, MEDICATEDSKIN OINTMENTS AND CREAMS, MEDICATED SKIN POWDER, AND THERAPEUTIC PREPARATIONS FOR INFANTS AND INVALIDS PREPARED FROM WHOLE MILK, SKIM MILK, LACTOSE, CRYSTALLINE VITAMIN B1, COD LIVER OIL CONCENTRATEAND FERRIC CITRATE]</p> <p>Class 027. First use: First Use: 1969/07/10 First Use In Commerce: 1969/07/10</p>		


	<p>[OILCLOTH; LINOLEUM; VINYL WALL COVERING, AND WALL COVERING WITH FABRIC BACKING TO WHICH A PROTECTIVE AND DECORATIVE VINYL, ACRYLIC, OIL, OR OTHER POLYMERIC COATING HAS BEEN APPLIED]</p> <p>Class 032. First use: First Use: 1969/05/31 First Use In Commerce: 1969/05/31 [PREPARED MIXES FOR MAKING SOFT DRINKS; ORANGE AND LIME SOFT DRINKS, NON-CARBONATED; SUMMER SOFT DRINK PREPARATIONS, FLAVORINGS, EXTRACTS AND SYRUPS; FROZEN CONCENTRATE FOR LEMONADE, LIMEADE, PINK LEMONADE, AND ORANGEADE]</p> <p>Class U001 (International Class 001, 003, 004, 017, 018, 019, 022, 031). First use: First Use: 1969/08/20 First Use In Commerce: 1969/08/20 [FLEXIBLE TRANSPARENT VINYL PLASTIC SHEETS; PLASTIC SHEETING BACKED WITH RUBBER OR POLYURETHANE FOAM; THERMOPLASTIC SYNTHETIC COVERING FOR FURNITURE, BOOKS, CARD TABLES, AND FOR OTHER PROTECTIVE OR DECORATIVE HOME APPLICATIONS; LAMINATED VINYL FILM, SOLD IN ROLLS AND SHEETS, FOR GENERAL USE IN INDUSTRIAL ARTS; SYNTHETIC RESINS FOR USE AS A MOLDING AND CASTING COMPOUND]</p> <p>Class U002 (International Class 006, 013, 014, 015, 016, 018, 020, 021, 022, 034). First use: First Use: 1969/01/09 First Use In Commerce: 1969/01/09 [PLASTIC CUPS AND LIDS; PLASTIC DRINKING TUMBLERS; PLASTIC DRINKING-GLASS COASTERS; PLASTIC FOOD MIXING BOWLS; PLASTIC COMPARTMENTED TRAYS; PLASTIC BAGS-NAMELY, TRASH-CAN LINER BAGS, FOOD STORAGE BAGS, SANDWICH BAGS, PILLOW PROTECTION BAGS, AND ICE-CUBE BAGS]</p> <p>Class U005 (International Class 001, 005, 016, 017). First use: First Use: 1969/11/24 First Use In Commerce: 1969/11/24 [MUCILAGE, ADHESIVE CEMENT GUMS, PASTE, AND CASEIN GLUE; RUBBER AND SYNTHETIC RESIN ADHESIVES; PRESSURE-SENSITIVE TAPE; ADHESIVES FOR INSTALLING TILE AND LINOLEUM; INDUSTRIAL ADHESIVES; AND CORE BINDERS]</p> <p>Class U006 (International Class 001, 002, 003, 004, 005). First use: First Use: 1969/11/26 First Use In Commerce: 1969/11/26 [MODIFIED CASEINS AND CASEINATES FOR INDUSTRIAL USE; SYNTHETIC RESIN EMULSIONS; FORMALDEHYDE; [ CHLORINE FOR SANITIZING; LIVESTOCK SPRAY; RUST PREVENTATIVES; ROOM DEODORANTS; HERBICIDES; INSECTICIDES; SYNTHETIC ORGANIC NITROGEN; BATTERY ACID AND SULFURIC ACID; DIAGNOSTIC REAGENTS FOR LABORATORY USE ]]</p> <p>Class U012 (International Class 006, 017, 019). First use: First Use: 1969/10/00 First Use In Commerce: 1969/10/00 [PLASTIC COMPOSITION MATERIAL FOR SURFACING PLAYGROUNDS AND ATHLETIC AREAS; SPECIAL ADHESIVES FOR USE AS A MASONRY SEALER; TWO-COMPONENT MATERIALS CONSISTING OF A BINDING LIQUID AND POWDERED AGGREGATE, USED AS A COATING FOR THE FINISHING OF THE SURFACE OF INSULATION MATERIAL; TAPE FOR USE ON PIPE THREADS; FLOORING MASTIC FOR CONCRETE, METAL, WOOD, AND OTHER FLOORING SURFACES; METALLIC PATCHING AND REPAIRING PASTES FOR METAL]</p> <p>Class U013 (International Class 006, 007, 011, 017, 020, 021). First use: First Use: 1969/02/04 First Use In Commerce: 1969/02/04 [KITCHEN COLANDERS; PLASTIC DUST PANS; SPRINKLER FITTINGS FOR GARDEN HOSE]</p> <p>Class U023 (International Class 006, 007, 008, 009, 011, 012, 016, 021, 028). First use: First Use: 1969/09/04 First Use In Commerce: 1969/09/04</p>
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	<p>[AUTOMATIC ICE-CREAM CONE MACHINE AND PARTS THEREOF; COMBINATION CHEESE SLICERS AND STORAGE CONTAINERS FOR CUTTING AND STORING BLOCK CHEESES; SPOON-TYPE KITCHEN SCOOPS MADE OF PLASTIC]</p> <p>Class U024 (International Class 007, 011). First use: First Use: 1969/11/24 First Use In Commerce: 1969/11/24</p> <p>[CLOTHES PINS MADE OF PLASTIC AND SPRINKLING CANS FOR DAMPENING CLOTHES]</p> <p>Class U026 (International Class 001, 009, 010). First use: First Use: 1969/01/09 First Use In Commerce: 1969/01/09</p> <p>[OPTICAL COMPARATOR FOR IDENTIFYING A WOMAN'S COMPLEXION COLOR BY COMPARISON WITH ESTABLISHED COLOR STANDARD; CANTESTING MACHINES; APPARATUS IN THE NATURE OF A SCOPE CONTAINING MEANS FOR PROVIDING COLOR STANDARD AND COLOR COMPARISON OF COSMETICS; MEASURING SPOONS AND MEASURING CUPS, ALL COMPOSED OF THERMOPLASTIC AND/OR THERMOSETTING RESINS]</p> <p>Class U031 (International Class 007, 011, 012). First use: First Use: 1969/11/24 First Use In Commerce: 1969/11/24</p> <p>[PLASTIC ICE-MAKING TRAYS]</p> <p>Class U037 (International Class 016, 026, 027). First use: First Use: 1969/12/31 First Use In Commerce: 1969/12/31</p> <p>[PLASTIC WRAPPING AND PACKAGING FILM]</p> <p>Class U038 (International Class 009, 016, 028). First use: First Use: 1968/09/00 First Use In Commerce: 1968/09/00</p> <p>[MONTHLY PUBLICATION]</p> <p>Class U042 (International Class 022, 024, 026, 027). First use: First Use: 1969/07/03 First Use In Commerce: 1969/07/03</p> <p>[PLASTIC SHEETING AND VINYL-COATING FABRICS FOR SUCH USES AS SHOWER CURTAINS, CRIB SHEETS, TABLE CLOTHS AND DRAPERIES]</p> <p>Class U046 (International Class 001, 005, 029, 030, 031, 032). First use: First Use: 1968/05/00 First Use In Commerce: 1968/05/00</p> <p>[ FLUID MILK, SKIM MILK, CREAM, EGG NOG, BUTTER, ICE CREAM, ICE MILK, SHERBET, WATER ICES, FROZEN CONFECTIONS, YOGURT AND EGGS; EVAPORATED AND CONDENSED MILK, MALTED MILK, MILK SHAKES, COTTAGE CHEESE, VARIOUS CHEESES, PROCESSED CHEESES, CHEESE FOODS AND CHEESE SPREADS; MILK-BASED DIETARY FOODS, POWDERED MILK AND POWDERED SKIM MILK, INFANT FORMULAE; STABILIZERS, EMULSIFIERS AND FLAVORINGS FOR DAIRY PRODUCTS, FOOD FLAVORING CONCENTRATES, AND VITAMIN AND MINERAL PRODUCTS FOR FORTIFYING FOOD PRODUCTS; FILLED OR IMITATION MILK, CREAM, SOUR CREAM; MARGARINE, VEGETABLE FAT MILK SHAKES, PUDDINGS AND CANNED DESSERTS; GLACE FRUITS, DRIED AND CANNED FRUITS, FRUIT JUICES AND PIE FILLINGS, MINCE MEATS, CANNED VEGETABLES AND VEGETABLE JUICES, CANNED STEW AND HASH, PREPARED RICE AND PASTA DINNERS, PRE-COOKED AND FROZEN MEAT AND FISH PRODUCTS, CANNED SEA FOOD AND SEA FOOD PRODUCTS; DRIED SOUPS AND FLAVORS THEREFOR; DRIED POTATO FLAKES; POWDERED SOFT DRINK MIXES; BOTTLED AND CANNED PICKLES, RELISH AND PEPPERS; PEANUT BUTTER, JELLY, JAM AND PRESERVES; MAYONNAISE AND SALAD DRESSINGS;] COFFEE, [ COFFEE PRODUCTS AND COFFEE LIGHTENER; PET FOODS, SPECIAL-PURPOSE PET FOOD SUPPLEMENTS, SOY BEAN OIL MEAL FOR ANIMALS AND ANIMAL MILK REPLACERS; AND MARSHMALLOWS, POPCORN, CANDY, BISCUITS, CAKES AND PASTRIES, MELBA TOAST, CRACKERS, FILLED CRACKERS AND COOKIES, PRETZELS, POTATO CHIPS, SNACK</p>
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	<p>CHIPS AND PUFFS,BREAD STICKS AND CRUMBS, AND CONES FOR USE WITH ICE CREAM; AND VARIOUS OTHER GOODS ]</p> <p>Class U050 (International Class 003, 006, 014, 016, 017, 019, 020, 021, 022, 024, 026, 027, 028). First use: First Use: 1969/07/10 First Use In Commerce: 1969/07/10</p> <p>[GARMENT HANGERS; FLEXIBLE FRICTION MATS FOR SINKS AND BATHTUBS; SNAPON TYPE PLASTIC BOTTLE CLOSURES; PLASTIC DRINKING STRAWS; PLASTIC FLOOR RUNNERS; SELF-ADHERING PLASTIC FILM SOLD IN ROLL FORM FOR DECORATIVE PURPOSES]</p> <p>Class U052 (International Class 003, 005). First use: First Use: 1968/03/11 First Use In Commerce: 1968/03/11</p> <p>[ACID CLEANER FOR MILK STONE AND WATERSTONE REMOVAL FROM FOOD PROCESSING EQUIPMENT; ACID MODIFIED SYNTHETIC DETERGENT FOR INDUSTRIAL USE; HOUSEHOLD DETERGENT IN LIQUID FORM; CLEANING PREPARATION FOR REMOVING CONTACT CEMENT FROM BRUSHES ANDTOOLS; SYNTHETIC DETERGENT CLEANER FOR HOUSEHOLD, COMMERCIAL, AND INDUSTRIAL USE; COMBINED PREPARATION FOR CLEANING ANDDEGREASING, AND FOR USE AS A WINDOW CLEANER; CLEANER, SANITIZER, AND DEODORANT USED PRIMARILY ON DAIRY FARMS AND FOR FOOD PROCESSING EQUIPMENT AND ESTABLISHMENTS, HAIR SHAMPOO; TOILET SOAP]</p>
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U.S. registration no.	2464457	Application date	07/09/1999
Register	Principal		
Registration date	06/26/2001	Foreign priority date	NONE
Word mark	ELSIE BORDEN		
Design mark			
Description of mark	NONE		
Goods/services	Class 029. First use: First Use: 1999/07/15 First Use In Commerce: 1999/07/15 cheese		

U.S. application no.	88427610	Application date	05/13/2019
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Registration date	NONE	Foreign priority date	NONE
Word mark	ELSIE BORDEN		
Design mark			
Description of mark	<p>The mark consists of the block print word "BORDEN" beneath a stylized cow head set against a daisy, which features the stylized word "ELSIE" on one petal to the right of the cow head. The cow is wearing a daisy flower necklace.</p>		
Goods/services	<p>Class 005. First use: First Use: 0 First Use In Commerce: 0 dairy-based nutritional supplements; dairy and non-dairy-based nutritional supplements; protein supplements; nutritionally fortified beverages for use as nutritional supplements; powdered nutritionally fortified beverages for use as nutritional supplements</p> <p>Class 029. First use: First Use: 0 First Use In Commerce: 0 milk; low-fat milk; non-fat milk; chocolate milk; flavored milk; buttermilk; lactose-reduced milk; lactose-free milk; shelf-stable milk; extended shelf-life milk; butter; heavy cream; light cream; flavored creams; half and half; non-alcoholic eggnog; dairy-based beverages; fat-free cream; cream; whipped cream; whipping cream; sour cream; cream cheese; cottage cheese; quark; foods and beverages made primarily of quark, namely, dips, drinks, spreads, toppings, fillings, snack blends, shakes, and smoothies; snacks in the nature of dairy-based snack bars; dairy-based snack foods, namely, dairy-based smoothies and shakes; dairy-based dips; dairy-based meal replacement bars and beverages, not for medical purposes; dairy- food package combinations consisting primarily of cottage cheese, sour cream, quark, dairy based dips and dairy based spreads; food package combinations consisting primarily of cottage cheese and also containing fresh, processed and artificial fruit; other dairy- and non-dairy-based foods and beverages, namely, soups, dips, dairy based spreads and non-dairy based spreads in the nature of garlic based spread, fruit based spreads, nut based spreads</p> <p>Class 030. First use: First Use: 0 First Use In Commerce: 0 ice cream; sherbet; sorbet; frozen confections, namely, frozen juice ice bars, frozen ice cream bars, ice cream bars, ice cream sandwiches, ice cream pre-packaged in individual cups, ice cream cones containing ice cream packed inside a foil container; salad dressing; quark based puddings, cookies, brownies, dessert gelatins, pies, candies, and sauces; dairy and non-dairy based salad dressings, sauces and chocolate spreads; other dairy- and non-dairy-based</p>		

	<p>foods and beverages,namely, ice cream desserts, frozen confections, cakes, ice cream cakes, custardbars, pies; cheesecake, cupcakes</p> <p>Class 032. First use: First Use: 0 First Use In Commerce: 0</p> <p>fruit juice; concentrated fruit juices;other dairy- and non-dairy-based foods and beverages, namely, beverages whose primary ingredient is fruit juice which also contain dairy</p>
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Attachments	<p>75812572#TMSN.png( bytes )</p> <p>72359758#TMSN.png( bytes )</p> <p>75747000#TMSN.png( bytes )</p> <p>88427610#TMSN.png( bytes )</p> <p>BOLDEN Ser No 90510712 Notice of Opposition.pdf(475960 bytes )</p> <p>Exhibit A.pdf(961277 bytes )</p>
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Signature	/Reed E. Fryar/
Name	Reed E. Fryar
Date	01/26/2022



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

In the Matter of Serial Number 90/510,712.

Comercializadora de Lacteos y Derivados, S.A. de  
C.V., and

New Dairy Trademark Holding, LLC,

Opposers,

v.

Victor Manuel Galindo Martin del Campo, and  
Guillermo Woodward Sandoval

Applicants.

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

**NOTICE OF OPPOSITION**

Comercializadora de Lacteos y Derivados, S.A. de C.V. and New Dairy Trademark Holding, LLC (each an “Opposer” and collectively the “Opposers”) believe they are and will continue to be damaged by registration of Application Serial No. 90510712 for the mark BOLDEN, and therefore oppose the same. In support of this Notice of Opposition, Opposers allege the following:

1. Comercializadora de Lácteos y Derivados, S.A. de C.V. (hereafter, “COMLADE”) is a Mexican *sociedad anónima de capital variable* with offices located at Parque Indus. Carlos A. Herrera Araluce, Calzada Carlos Herrera Araluce No. 185, Gómez Palacio, Durango, Mexico 35079.

2. New Dairy Trademark Holding, LLC (hereafter “Borden”) is a Delaware corporation located at 8750 North Central Expressway, Suite 400, Dallas, Texas, United States 75231.




3. According to current TSDR records, Applicants Victor Manuel Galindo Martin del Campo and Guillermo Woodward Sandoval (each an “Applicant” and collectively the “Applicants”) are individuals located at #2340 Rue Adriane, La Jolla, CA92037.

**Factual Background**

4. COMLADE is the owner of the mark BORDEN (the “BORDEN Mark”) and a number of BORDEN-formative marks (together, the “BORDEN Marks”), which it and / or its predecessors-in-interest and / or licensees have used and promoted continuously throughout the United States in connection with a variety of *dairy and non-dairy foods and beverages* since at least as early as 1954. As a result of such continuous use, COMLADE owns strong common law rights in the BORDEN Marks in connection with the BORDEN Goods and related goods and services.

5. A sample of the federal registrations and applications that COMLADE owns comprising or containing the word BORDEN are below (hereafter the “BORDEN Registrations and Applications”):

Mark	Reg. or App. No.	Relevant Goods	Filing Date and / or Reg. Date
BORDEN	2,703,415	IC 29 – Milk, flavored milk, buttermilk, and half and half, cream, yogurt and flavored yogurt, powdered, evaporated, and condensed milk, butter, cheese, cream-cheese, cottage cheese, sour cream, eggnog, mincemeat, dry soup mixes, bouillons, bouillon in powder and granular form, dehydrated vegetable flakes, dehydrated soup mixes, soup bases, soup stocks, liquid or concentrated broth or bouillon, bouillon cubes, granulated bouillon and dehydrated broth, potato chips  IC 30 – ice cream, ice cream mixes, milk-based frozen desserts	Registered Apr. 8, 2003  Incontestable

Mark	Reg. or App. No.	Relevant Goods	Filing Date and / or Reg. Date
		IC 32 – fruit juice	
	0,921,370	IC 01 – coffee	Registered Oct. 5, 1971  Incontestable
	2,464,457	IC 29 – cheese	Registered June 26, 2001  Incontestable
	88/427,610	IC 29 – milk; low-fat milk; non-fat milk; chocolate milk; flavored milk; buttermilk; lactose-reduced milk; lactose-free milk; shelf-stable milk; extended shelf-life milk; butter; heavy cream; light cream; flavored creams; half and half; non-alcoholic eggnog; dairy-based beverages; fat-free cream; cream; whipped cream; whipping cream; sour cream; cream cheese; cottage cheese; quark; foods and beverages made primarily of quark, namely, dips, drinks, spreads, toppings, fillings, snack blends, shakes, and smoothies; snacks in the nature of dairy-based snack bars; dairy-based snack foods, namely, dairy-based smoothies and shakes; dairy-based dips; dairy-based meal replacement bars and beverages, not for medical purposes; dairy- food package combinations consisting primarily of cottage cheese, sour cream, quark, dairy based dips and dairy based spreads; food package combinations consisting primarily of cottage cheese and also containing fresh, processed and artificial fruit; other dairy- and non-dairy-based foods and beverages, namely, soups, dips, dairy based spreads and non-dairy based spreads in the nature of	Filing Date May 13, 2019

Mark	Reg. or App. No.	Relevant Goods	Filing Date and / or Reg. Date
		garlic based spread, fruit based spreads, nut based spreads  IC 32 – fruit juice; concentrated fruit juices; other dairy- and non-dairy-based foods and beverages, namely, beverages whose primary ingredient is fruit juice which also contain dairy	

A copy of the TSDR records for the BORDEN Registrations and Applications is attached as **Exhibit A**.

6. Borden licenses rights from COMLADE to use the BORDEN Marks for a variety of dairy and non-dairy foods.

7. On February 4, 2021, long after Opposers’ first use of any of the BORDEN Marks, Applicants filed Application Serial No. 90/510,712 to register the mark BOLDEN for *Preserved meat, fish, poultry and game meat, especially dried meat for human consumption; Canned, frozen, dried and cooked fruits and vegetables, processed vegetables and legumes for human consumption; jellies, jams, compotes* in International Class 29 (hereafter, the “**BOLDEN Application**”).

8. The BOLDEN Application is based on Applicants’ intent to use the mark in commerce.

9. Opposers were unable to find evidence of use of the applied-for mark BOLDEN.

10. The BOLDEN Application published for opposition on September 28, 2021.

11. On October 27, 2021, Opposers each filed a request for a 90-day extension of the deadline to oppose the BOLDEN Application, which requests were granted.

### **Standing**

12. Opposers have standing in this proceeding because they believe they are and will be damaged by registration of the applied-for mark BOLDEN appearing in the BOLDEN Application by virtue of Opposers' prior common law rights and the priority of the BORDEN Registrations and Applications.

**Claim One - Likelihood of Confusion**

13. Opposers re-allege and incorporate by reference Paragraphs 1 through 14.

14. Applicants' applied-for mark BOLDEN appearing in the BOLDEN Application is likely to cause consumer confusion with Opposers' BORDEN Marks and the marks appearing in Opposers' BORDEN Registrations and Applications.

15. The mark appearing in the BOLDEN Application is highly similar to the BORDEN Mark and the marks appearing in Opposers' BORDEN Registrations and Applications, for several reasons. Foremost, the literal element of the applied-for mark is the word BOLDEN, which differs from the mark BORDEN only by one letter. Otherwise, the mark begins with and ends with the same BO- and -DEN letters and still contains only two syllables. A consumer glancing at the applied-for mark may very easily confuse it with the BORDEN mark.

16. Additionally, the goods at issue are highly related. On the one hand, the BOLDEN Application claims, in short, fruits and vegetables, jellies and jams, and meat. All of these are foods that are closely related to the foods claimed in the BORDEN Registrations and Applications.

17. Opposers have not consented to the use of the word BOLDEN by Applicants.

18. Opposers have not consented to Applicants' filing of the BOLDEN Application.

19. Opposers and / or their predecessors-in-interest and / or licensees have used and promoted the BORDEN Marks continuously in the United States since before the application filing date of the BOLDEN Application.

20. The application filing dates of the BORDEN Registrations and Applications precede the application filing date of the BOLDEN Application.

21. As a result of Opposers' prior use of the BORDEN Marks and the prior application dates of the BORDEN Registrations and Applications, Opposers have prior rights to Applicants' with respect to the BORDEN Marks and any mark confusingly similar thereto, including the mark covered by the BOLDEN Application.

22. Therefore, the mark appearing in the BOLDEN Application so resembles a mark previously used and / or registered by Opposers as to be likely, when used on or in connection with the covered goods, to cause confusion, mistake or deception among the consuming public and should be refused under 15 U.S.C. § 1052(d).

### **Claim Two – Likelihood of Dilution**

23. Opposers re-allege and incorporate by reference Paragraphs 1 through 14.

24. Through extensive use and promotion, Opposers' distinctive BORDEN Mark, by itself and as embodied in the BORDEN Registrations and Applications, has become famous as defined under 15 U.S.C. § 1125(c).

25. Opposers' BORDEN Mark, by itself and as embodied in the BORDEN Registrations and Applications, became famous before the filing date of the BOLDEN Application.

26. Therefore, the mark appearing in the BOLDEN Application is likely to dilute the distinctiveness of Opposers' BORDEN Mark, by itself and as embodied in the BORDEN Registrations and Applications, and should be refused under 15 U.S.C. § 1125(c).

### **Relief Sought**

For the foregoing reasons, this opposition should be sustained and Application Serial No. 90/510,712 should be refused. The required fees accompany this Notice of Opposition. Should

the fees be found insufficient for any reason, please charge any additional fees to Deposit Account No. 50-6424. Please direct all correspondence to counsel for Opposer at the address indicated below.

Respectfully submitted,



Dated: January 26, 2022

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William H. Oldach  
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*Attorneys for Opposer*

### **SERVICE**


Pursuant to 37 C.F.R. § 2.105 and TBMP § 309.02(c)(1), service of this Notice of Opposition will be provided by the Board in conjunction with the issuance of the Notice of Institution.



For assistance with TSDR, email [teas@uspto.gov](mailto:teas@uspto.gov) and include your serial number, the document you are looking for, and a screenshot of any error messages you have received.

**Processing Wait Times:** Please note that due to an extraordinary surge in applications, processing times are longer than usual. See [current trademark processing wait times](#) for more information.

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Mark: BORDEN


BORDEN

US Serial Number: 75812572

US Registration Number: 2703415

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor: 

Status: The registration has been renewed.

Status Date: Apr. 10, 2013

Publication Date: Jan. 14, 2003

Application Filing Date: Oct. 01, 1999

Registration Date: Apr. 08, 2003

LIVE/REGISTRATION/Issued and Active

The trademark application has been registered with the Office.

▲ Mark Information

▼ Expand All

▲ Related Properties Information

▲ Goods and Services

▲ Basis Information (Case Level)

▲ Current Owner(s) Information

▲ Attorney/Correspondence Information

▲ Prosecution History

▲ TM Staff and Location Information


▲ Assignment Abstract Of Title Information - Click to Load

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**Processing Wait Times:** Please note that due to an extraordinary surge in applications, processing times are longer than usual. See [current trademark processing wait times](#) for more information.

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Mark: BORDEN




US Serial Number: 72359758

US Registration Number: 921370

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor: 

Status: The registration has been renewed.

Status Date: Sep. 30, 2011

Application Filing Date: May 15, 1970

Registration Date: Oct. 05, 1971

LIVE/REGISTRATION/Issued and Active

The trademark application has been registered with the Office.

▲ Mark Information

▼ Expand All

▲ Related Properties Information

▲ Goods and Services

▲ Basis Information (Case Level)

▲ Current Owner(s) Information

▲ Attorney/Correspondence Information

▲ Prosecution History

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Mark: ELSIE BORDEN



US Serial Number:	75747000	Application Filing Date:	Jul. 09, 1999
US Registration Number:	2464457	Registration Date:	Jun. 26, 2001
Register:	Principal		
Mark Type:	Trademark		
TM5 Common Status	LIVE/REGISTRATION/Issued and Active		
Descriptor:	 The trademark application has been registered with the Office.		
Status:	The registration has been renewed.		
Status Date:	Nov. 10, 2021		
Publication Date:	Feb. 22, 2000	Notice of Allowance Date:	May 16, 2000

▲ Mark Information

▼ Expand All

▲ Related Properties Information

▲ Goods and Services

▲ Basis Information (Case Level)

▲ Current Owner(s) Information

▲ Attorney/Correspondence Information

▲ Prosecution History

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**Processing Wait Times:** Please note that due to an extraordinary surge in applications, processing times are longer than usual. See [current trademark processing wait times](#) for more information.

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Mark: ELSIE BORDEN



US Serial Number: 88427610


Application Filing Date: May 13, 2019

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor: 

LIVE/APPLICATION/Under Examination

Status: A first request for extension of time to file a Statement of Use has been granted.

Status Date: Nov. 30, 2021

Publication Date: Apr. 06, 2021

Notice of Allowance Date: Jun. 01, 2021

▲ Mark Information

▼ Expand All

▲ Goods and Services

▲ Basis Information (Case Level)

▲ Current Owner(s) Information

▲ Attorney/Correspondence Information

▲ Prosecution History

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