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Filing date: **08/17/2022**

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 party opposes registration of the indicated application.

Opposer information

Name	El Encanto, Inc.
Granted to date of previous extension	08/17/2022
Address	P.O. BOX 293 ALBUQUERQUE, NM 87103 UNITED STATES

Correspondence information	SVITLANA V. ANDERSON ATTORNEY OF RECORD PEACOCK LAW P.C. P.O. BOX 26927 ALBUQUERQUE, NM 87102 UNITED STATES Primary email: docketing@peacocklaw.com Secondary email(s): docketing@peacocklaw.com , dpeacock@peacocklaw.com , dnelson@peacocklaw.com , awerling@peacocklaw.com , sander-son@peacocklaw.com , afieldhack@peacocklaw.com 5059981500
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Applicant information

Application no.	90811577	Publication date	04/19/2022
Opposition filing date	08/17/2022	Opposition period ends	08/17/2022
Applicant	JONES, TODD 445 ALBEE SQUARE WEST BROOKLYN, NJ 11201 UNITED STATES		

Goods/services affected by opposition

Class 030. First Use: Dec 1, 2012 First Use In Commerce: May 1, 2021
All goods and services in the class are opposed, namely: Cookies; Bakery products; Donuts; Doughnut holes; Doughnuts

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.	4894396	Application date	01/09/2015
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Register	Principal		
Registration date	02/02/2016	Foreign priority date	NONE
Word mark	SKINNY MINIS		
Design mark			
Description of mark	NONE		
Goods/services	Class 030. First use: First Use: Dec 30, 2014 First Use In Commerce: Dec 30, 2014 Tortillas		

Attachments	Notice of Opposition_MINI IS THE NEW SKINNY 20220817.pdf(105752 bytes)
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Signature	/Svitlana V. Anderson/
Name	SVITLANA V. ANDERSON
Date	08/17/2022

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

EL ENCANTO, INC.,

Opposer,

v.

TODD JONES,

Applicant.

Opposition Proceeding No. _____

Application No.: 90/811,577

For: MINI IS THE NEW SKINNY

NOTICE OF OPPOSITION

El Encanto, Inc., dba Bueno Foods, a New Mexico corporation, having its principal place of business at P.O. Box 293, Albuquerque, New Mexico 87103 ("Opposer" or "Bueno Foods"), hereby files this opposition to registration of the application filed by Todd Jones ("Applicant"), as Bueno Foods believes that it will be damaged by registration of Application Serial No. 90/811,577 for MINI IS THE NEW SKINNY ("Applicant's Mark"), and requests that registration to Applicant be refused.

Applicant's trademark application Serial No. 90/811,577 for the registration of the mark MINI IS THE NEW SKINNY for "Cookies; Bakery products; Donuts; Doughnut holes; Doughnuts" in International Class 030 was filed on July 05, 2021, as an application with the first use date in commerce of May 1, 2021. The mark published for opposition on April 19, 2022, in the Official Gazette of the United States Patent and Trademark Office. Bueno Foods is now filing the opposition to the above application with this Notice of Opposition.

As grounds of opposition, it is alleged that:

1. Bueno Foods opposes Trademark Application Serial No. 90/811,577 under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d). Applicant's Mark so resembles Bueno

Foods' trademark (listed below) as to be likely, when used on or in connection with the goods of Applicant, to cause confusion, or to cause mistake, or to deceive.

2. Bueno Foods opposes Trademark Application Serial No. 90/811,577 because Applicant's Mark would dilute the distinctive quality of Bueno Foods' famous mark (listed below). There is a likelihood of dilution of the distinctive quality of Bueno Foods' trademark, in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c). Bueno Foods' trademark (defined below) was famous prior to the filing date of the MINI IS THE NEW SKINNY application.

3. On information and belief, Applicant has not used its Applicant's Mark in connection with the goods covered by Application Serial No. 90/811,577 in the ordinary course of trade in the United States prior to the date of first use in commerce of May 1, 2021.

4. Opposer, Bueno Foods, offers and sells goods under the trademark SKINNY MINIS ("BUENO Mark"), as follows (see also the attached certificate of registration incorporated herein by reference):

- SKINNY MINIS, U.S. Registration No. 4,894,396, issued February 02, 2016, for "Tortillas;"

5. Since 2014, Opposer Bueno Foods has been and is still engaged in the manufacture, distribution, sale, marketing, and promotion in interstate commerce within the United States of food products under its BUENO Mark for "Tortillas." Bueno Foods has extensively used the BUENO Mark as its trademark for its food products.

6. Bueno Foods' BUENO Mark, now, and since at least as early as December 30, 2014, has been used by Bueno Foods on or in connection with Bueno Foods' food products in United States commerce. As a result of such use, Bueno Foods' BUENO Mark has become associated in the minds of the purchasing public with Bueno Foods as a source of origin of Bueno Foods' food products.

7. Opposer, Bueno Foods, has continuously, extensively, and progressively used the BUENO Mark and has expanded its markets, and distribution channels and sources represented by the BUENO Mark. If registration of the MINI IS THE NEW SKINNY mark sought here to be registered is granted to Applicant, the effect would be to deny to Registrant its legitimate business interest in its BUENO Mark and the opportunity to continue expanding the use of its BUENO Mark to new products and services and forestall legitimate expansion of its business. Opposer's and Applicant's products and services, venues, and services for sale, distribution, and advertising of products are sufficiently related and are commonly used or purchased by the same potential customer such that the public would assume that the products come from the same source and the confusion would restrict and interfere with, and damage Opposer, Bueno Foods, in the unhampered conduct of Bueno Foods' business.

8. Since initial use of its BUENO Mark, Opposer, Bueno Foods, has continuously and extensively used, advertised, promoted, and offered and sold Bueno Foods' goods bearing the BUENO Mark with the result that Bueno Foods' customers, potential customers, and those engaged in the manufacture, distribution, restaurant, and retailing of food products have come to know and recognize Bueno Foods' BUENO Mark and associate same with Bueno Foods and/or the goods sold by Bueno Foods. Bueno Foods thus has expanded its markets, expanded its distribution channels and sources, and has built up extensive goodwill in connection with the development, marketing, distribution and sale of products under its BUENO Mark.

9. Opposer, Bueno Foods, is very well known in the food channels of trade, including whole foods, preserved and prepared foods, prepared and processed meals, frozen and canned foods, and sales to and through distributors, retailers, private, retail, and institutional food service providers, restaurants, and individual consumers.

10. Opposer, Bueno Foods' products and services are sold, advertised and promoted to a wide range of general grocery wholesalers, distributors, and retailers, private and institutional food service providers, restaurants, and individual consumers.

11. Applicant's MINI IS THE NEW SKINNY mark is a colorable imitation of, and so resembles Opposer's BUENO Mark when applied to the goods of the Applicant that it will likely cause confusion or cause mistake or deceive consumers, under Trademark Act Section 2(d), 15 U.S.C. § 1052(d), resulting in damage and detriment to Opposer and its reputation. Applicant's goods are for similar food products as for the BUENO Mark in that both Applicant's goods and Opposer's goods are made using the same general ingredients.

12. Opposer's and Applicant's goods are related in that both market food products provided directly and through private retailers, food service providers, restaurants, and individual consumers.

13. Opposer's and Applicant's goods will be distributed in the same or similar channels of trade.

14. Upon information and belief, Applicant's MINI IS THE NEW SKINNY mark is likely to confuse and mislead purchasers, potential purchasers, and consumers, including Opposer, Bueno Foods' customers and potential customers into mistakenly believing that its goods are provided by, emanate from, or are in some way directly or indirectly associated with Bueno Foods, to the damage and detriment of Bueno Foods and its reputation. Bueno Foods' customers and potential customers, and the consuming public, are also likely to be confused, mistaken or deceived as to the origin and sponsorship of Applicant's goods provided under Applicant's asserted MINI IS THE NEW SKINNY mark.

15. Opposer, Bueno Foods, will be damaged by the issuance of registration to Applicant of its asserted mark MINI IS THE NEW SKINNY in class 030, set forth in Applicant's trademark application Serial No. 90/811,577.

16. The BUENO Mark would be diluted by the registration of Applicant's mark "MINI IS THE NEW SKINNY," Serial No. 90/811,577.

17. Opposer, Bueno Foods, has no control over the nature and quality of Applicant's goods which will be distributed and sold by Applicant under the mark it seeks to register, and possible dissatisfaction with Applicant's goods, by purchasers or user thereof, would damage Bueno Food's goodwill and reputation.

18. Applicant's marks and Opposer's marks are comprised in either whole or significant part of the terms "MINI" and "SKINNY." The marks share the same overall sound, appearance, and commercial impression. The mere fact that Applicant's mark MINI IS THE NEW SKINNY contains additional wording "IS THE NEW" is also not enough to rule out confusion, as the word portion of the "MINI" and "SKINNY" will be more likely to be impressed upon a purchaser's memory and to be used when requesting the goods. Confusion between Opposer's BUENO Mark and Applicant's Mark as to source of origin or sponsorship is extremely likely if Applicant's proposed mark is allowed to register.

19. If registration of the mark sought here to be registered is granted to the Applicant, the effect would be to create for Applicant statutory rights under the Trademark Act and such registration would tend to restrict and interfere with, and damage Opposer, Bueno Foods, in the unhampered conduct of Bueno Foods' business.

Opposer, Bueno Foods, hereby gives notice under Rule 2.122(d), (37 C.F.R. 2.122(d)), Trademark Rules of Practice, that after hearing and in any appeal on this opposition proceeding, it will rely on its registrations and rights thereto as evidence in support of this Notice of Opposition.

WHEREFORE, Opposer, Bueno Foods, believes and avers that it will be damaged by registration of the above asserted mark of Todd Jones and respectfully requests that no registration issue on Application Serial No. 90/811,577. Opposer, Bueno Foods, prays that this

opposition be sustained and that the application for registration hereby opposed be wholly denied, and for such other and further relief that may be deemed proper.

Dated: August 17, 2022

Respectfully submitted,

EL ENCANTO, INC. dba BUENO FOODS

By /Svitlana V. Anderson/
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