

ESTTA Tracking number: **ESTTA726298**

Filing date: **02/10/2016**

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	The Kitchen Cafe LLC
Granted to Date of previous extension	02/10/2016
Address	1039 Pearl Street Boulder, CO 80302 UNITED STATES

Correspondence information	Timothy Getzoff Holland & Hart LLP 1800 Broadway Boulder, CO 80302 UNITED STATES ncdavis@hollandhart.com, tgetzoff@hollandhart.com, hihamilton@hollandhart.com, docket@hollandhart.com Phone:7209850043
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**Applicant Information**

Application No	86585406	Publication date	10/13/2015
Opposition Filing Date	02/10/2016	Opposition Period Ends	02/10/2016
Applicant	Wolfgang Puck Licensing LLC 3500 Las Vegas Blvd. South, Suite G-1 Las Vegas,, NV 89109 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 043. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: RESTAURANT SERVICES; BAR SERVICES; TAKE-OUT RESTAURANT SERVICES
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**Applicant Information**

Application No	86585377	Publication date	10/13/2015
Opposition Filing Date	02/10/2016	Opposition Period Ends	
Applicant	Wolfgang Puck Licensing LLC 3500 Las Vegas Blvd. South, Suite G-1 Las Vegas,, NV 89109 UNITED STATES		

**Goods/Services Affected by Opposition**


Class 043. First Use: 0 First Use In Commerce: 0
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All goods and services in the class are opposed, namely: RESTAURANT SERVICES; TAKE-OUT RESTAURANT SERVICES

### 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.	4679061	Application Date	07/01/2014
Registration Date	01/27/2015	Foreign Priority Date	NONE
Word Mark	THE KITCHEN UPSTAIRS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 2005/11/00 First Use In Commerce: 2005/11/00 Restaurant and cafe services; bar and lounge services		

U.S. Registration No.	4511498	Application Date	07/10/2012
Registration Date	04/08/2014	Foreign Priority Date	NONE
Word Mark	THE KITCHEN COMMUNITY THROUGH FOOD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 2011/04/00 First Use In Commerce: 2011/04/00 Restaurant and cafe services		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		

Word Mark	THE KITCHEN
Goods/Services	Restaurant, bar, and cafe services

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	THE KITCHEN COMMUNITY		
Goods/Services	Community development services		

U.S. Registration No.	4165447	Application Date	02/18/2011
Registration Date	06/26/2012	Foreign Priority Date	NONE
Word Mark	THE KITCHEN NEXT DOOR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 2011/06/13 First Use In Commerce: 2011/06/13 Restaurant and cafe services		

Attachments	86325955#TMSN.png( bytes ) 85672386#TMSN.png( bytes ) 85246758#TMSN.png( bytes ) Notice of Opposition.pdf(415449 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	/Timothy Getzoff/
Name	Timothy Getzoff
Date	02/10/2016

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

<p>The Kitchen Café, LLC,</p> <p style="text-align:center">Opposer,</p> <p>v.</p> <p>Wolfgang Puck Licensing LLC,</p> <p style="text-align:center">Applicant.</p>	<p><b>Opposition No.:</b></p> <p><b>Marks:</b> THE KITCHEN BY WOLFGANG PUCK; THE KITCHEN COUNTER BY WOLFGANG PUCK</p> <p><b>Serial Nos.:</b> 86585406; 86585377</p>
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**CONSOLIDATED NOTICE OF OPPOSITION**

**Introduction**

Wolfgang Puck Licensing LLC and its related company Wolfgang Puck Worldwide, Inc. (collectively, “Wolfgang Puck”) has adopted, is using, and has applied to register “The Kitchen” and/or “The Kitchen”-formative trademarks to operate a new chain of restaurants. Wolfgang Puck’s “The Kitchen” mark is identical to The Kitchen Café, LLC’s (“The Kitchen”) prior used and registered family of THE KITCHEN marks, which for twelve years The Kitchen has used to market its farm-to-table restaurants and offer food- and environment-conscious community outreach programs. Under THE KITCHEN marks, The Kitchen has become a leader of and champion for the “real food” movement nationwide.

Wolfgang Puck’s use of the identical “The Kitchen” mark is certain to cause – and indeed already has caused – confusion in the marketplace. The Kitchen raised its concerns regarding actual and likely confusion with Wolfgang Puck in an attempt to resolve this matter amicably (such as, for example, through a minor name change to “Wolfgang Puck’s Kitchen”). Wolfgang Puck, through counsel, refused to even discuss the matter.

As a result, The Kitchen now brings this Consolidated Notice of Opposition to protect its valuable trademark rights and the appurtenant goodwill that The Kitchen has spent enormous resources building over the past twelve years. Because it will be damaged by them, The Kitchen opposes and seeks refusal of Wolfgang Puck's applications to register THE KITCHEN BY WOLFGANG PUCK in connection with *restaurant services; bar services; take-out restaurant services* in Class 43 as shown in U.S. Trademark Application Serial No. 86585406 and THE KITCHEN COUNTER BY WOLFGANG PUCK in connection with *restaurant services; take-out restaurant services* in Class 43 as shown in U.S. Trademark Application Serial No. 86585377 (the "Applications").

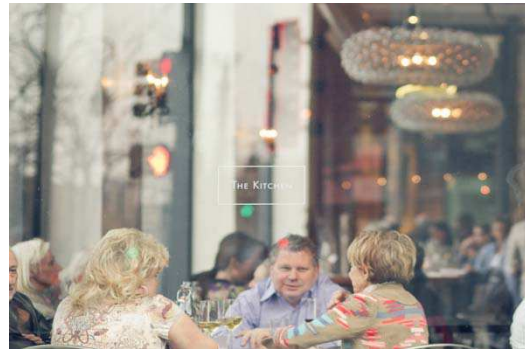
As grounds for its opposition, upon actual knowledge with respect to itself and its own actions, and upon information and belief as to other matters, The Kitchen alleges as follows.

**The Origin and Growth of THE KITCHEN Restaurants.**

1. The Kitchen, a Colorado limited liability company with its principal place of business at 1039 Pearl Street, Boulder, Colorado 80302, was founded by Kimbal Musk, who opened his first restaurant in Boulder under the name THE KITCHEN in 2004.
2. THE KITCHEN restaurant is a community bistro, serving food and drink from a community of like-minded farmers, ranchers, and purveyors who share The Kitchen's quest to promote the "real food" movement by providing accessible, sustainable, and fresh farm-to-table dining. Underlying this concept is a dedication to environmentally-friendly practices, including composting, wind power, eco-friendly packaging, and recycling.
3. After its first THE KITCHEN restaurant proved a success, The Kitchen began opening additional restaurants dedicated to the community and the "real food" movement.
4. In 2005, The Kitchen opened THE KITCHEN UPSTAIRS in Boulder, a cocktail lounge and bar designed for sharing fresh food and good drinks with neighbors.

5. On June 13, 2011, The Kitchen opened its first THE KITCHEN NEXT DOOR restaurant in Boulder, which sought to create a community pub experience. While maintaining a commitment to fresh food and quality drinks, THE KITCHEN NEXT DOOR offers a more casual atmosphere, with regular community happy hours and a more accessible dining experience for families with children.

6. Since opening the original THE KITCHEN restaurant in Boulder, The Kitchen has opened three additional THE KITCHEN restaurants in Denver, Fort Collins, and Chicago, and two additional THE KITCHEN NEXT DOOR restaurants in Denver and Glendale, Colorado.



7. The Kitchen is currently building its next THE KITCHEN restaurant, located in Memphis, Tennessee. It will open this coming year. Additional THE KITCHEN and THE KITCHEN NEXT DOOR restaurants are currently planned to open in 2016 and The Kitchen is actively searching for additional restaurant sites across the country.

**The Kitchen’s Commitment to Community and the Real Food Movement.**

8. Consistent with The Kitchen’s mission of drawing the community together through fresh, healthy food, The Kitchen has informally supported school gardening projects in the Boulder community for years. To expand these efforts nationwide, in 2011, The Kitchen created THE KITCHEN COMMUNITY, a 501(c)(3) non-profit organization, to help the community and kids connect through school gardens across the nation.

9. THE KITCHEN COMMUNITY works with communities and schools, particularly in lower income communities, to teach children and families about growing their own food, nutrition, healthy eating, lifestyle choices, and the environment. Through the

commitment of its members and supporters, The Kitchen has raised tens of millions of dollars and built over 250 Learning Gardens in schools and communities across America, impacting tens, if not hundreds, of thousands of students and their families.

10. In December 2012, Chicago Mayor Rahm Emanuel contributed \$1 million to THE KITCHEN COMMUNITY, which donation blossomed into 100 Learning Gardens in Chicago city schools, and garnered substantial local press. In February 2015, THE KITCHEN COMMUNITY opened its 200th Learning Garden at Camino Nuevo Charter Academy in Los Angeles. And, recently, THE KITCHEN COMMUNITY finalized a lease agreement to open an office in Memphis, Tennessee, where it has begun to build 100 more Learning Gardens.

**The Kitchen's Senior Trademark Rights.**

11. Since opening its first THE KITCHEN restaurant in 2004, The Kitchen has invested considerable resources into developing its common law rights in a family of THE KITCHEN marks for restaurant, bar, and community development, including THE KITCHEN, THE KITCHEN COMMUNITY, THE KITCHEN UPSTAIRS, and THE KITCHEN NEXT DOOR.

12. By virtue of its nationwide, continuous use of THE KITCHEN family of marks, The Kitchen has obtained nationwide common law rights to these marks that predate the filing date of the Applications and any date of first use upon which Wolfgang Puck may rely.

13. The Kitchen also owns several federal United States trademark registrations for its THE KITCHEN family of marks, including THE KITCHEN UPSTAIRS (Reg. No. 4679061), THE KITCHEN NEXT DOOR (Reg. No. 4165447) and THE KITCHEN COMMUNITY THROUGH FOOD (Reg. No. 5411498), with several additional pending applications.

14. These registrations are valid and subsisting and therefore constitute *prima facie* evidence of the validity of the marks and The Kitchen's exclusive right to use the marks in connection with the goods and services set forth in the registrations. The registrations also provide constructive notice of The Kitchen's ownership of the marks set forth in the registrations.

15. The Kitchen's common law and federal registration rights in the marks set forth above are collectively referred to as "THE KITCHEN Marks."

16. The Kitchen's THE KITCHEN restaurants have received numerous accolades from *Food & Wine*, *Zagat's*, *Gourmet*, and the *James Beard Foundation*, with recent rankings among *OpenTable's* 100 best restaurants for foodies in the nation and *Pub to Posh: The Chicago Traveler's* Top 10 Chicago Riverside Restaurants.

17. As a result of the success of The Kitchen's THE KITCHEN-branded restaurants, and as a result of its longstanding and extensive advertising and promotion efforts, THE KITCHEN Marks have become widely and favorably known as identifying The Kitchen's restaurants. The public has come to associate THE KITCHEN Marks exclusively with The Kitchen's restaurants, including their commitment to fresh, healthy food and the "real food" movement.

**Kimbal Musk and Wolfgang Puck Meet in 2012 to Discuss THE KITCHEN Restaurants.**

18. In October 2012, Mr. Musk and Mr. Puck scheduled a meeting for lunch at Spago Beverly Hills to discuss their respective restaurant interests, experiences, and other issues. Mr. Musk, excited to be meeting what he considered an industry legend, discussed his THE KITCHEN-branded restaurants, including his plans for expanding both THE KITCHEN restaurants and THE KITCHEN COMMUNITY Learning Gardens to other communities across



the country. In response, Mr. Puck shared with Mr. Musk some of his sage advice based on his own experiences in the restaurant business.

19. After their lunch meeting, the two parted and Mr. Musk, pleased to have had the opportunity to meet Mr. Puck, thought nothing further of it. Below is a photograph of Mr. Musk and Mr. Puck taken during their meeting in October 2012.



20. In early September 2015, Mr. Musk learned some shocking news – Wolfgang Puck had adopted and was using “The Kitchen” as the name of its new full service restaurant concept and “The Kitchen Counter” as the name of its new counter-service restaurant concept.

21. Wolfgang Puck has applied to register THE KITCHEN BY WOLFGANG PUCK (SN 86585406) and THE KITCHEN COUNTER BY WOLFGANG PUCK (SN 8658377).

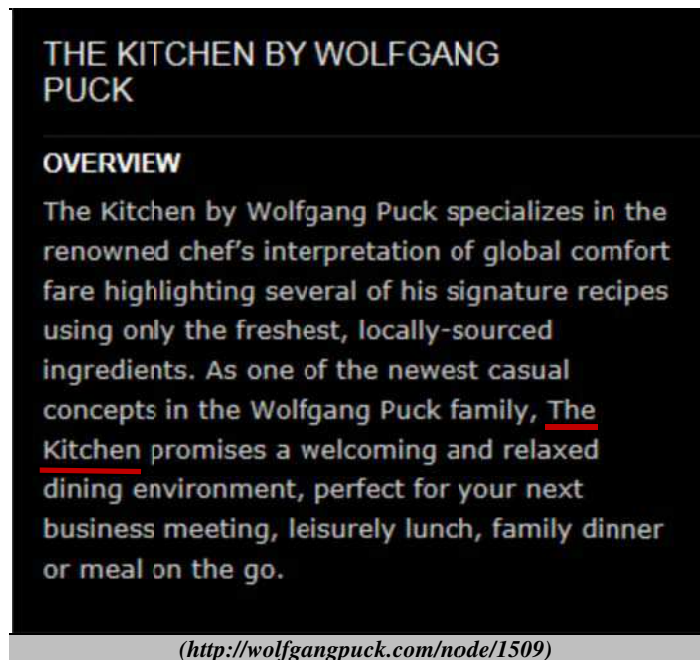
22. However, as is already clear, the new restaurant will be and is already referred to as “The Kitchen” – the exact same mark that The Kitchen has been using and developing for twelve years, and the subject of Mr. Puck’s and Mr. Musk’s friendly discussion only three years ago.

23. Below (and attached as *Exhibit A*) are examples of Wolfgang Puck’s use of “The Kitchen” mark, showing a clear intent that the restaurant be recognized and referred to as just

“The Kitchen,” with the “By Wolfgang Puck” portion of the mark in lower case font, unbolded, and barely noticeable under the dominant “The Kitchen” mark.



24. As shown, Wolfgang Puck is already referring to the restaurant as just “The Kitchen,” including on the below marketing piece on the Wolfgang Puck website (emphasis added).



25. Third parties have likewise already begun calling the new restaurant “The Kitchen,” including in articles by *Michigan Live* (“The Kitchen replaced Bentham’s Riverfront Restaurant this year” and other references) and in the *Grand Rapids Business Journal* (“Austin

Gresham . . . . will oversee culinary development at both The Kitchen and The Kitchen Counter.”).

26. Wolfgang Puck is expanding “The Kitchen” restaurant chain into Dulles International and Reagan National airports, and possibly other airports across the country.

27. This expansion into highly trafficked airports has created actual consumer confusion. Individuals familiar with THE KITCHEN restaurants have asked about The Kitchen’s relationship with Wolfgang Puck and its new “The Kitchen” restaurants, having mistakenly believed that The Kitchen has licensed rights to or otherwise associated with Wolfgang Puck.

**The Kitchen’s Efforts to Avoid Confusion.**

28. Though surprised and dismayed by Wolfgang Puck’s decision to adopt an identical mark for its new restaurant concept, Mr. Musk made several attempts to contact Mr. Puck personally in September 2015, hoping for an amicable resolution.

29. Mr. Puck never returned any of Mr. Musk’s calls. After Mr. Musk’s inquiries were ignored, The Kitchen, through counsel, raised the issue of actual and likelihood of confusion with Wolfgang Puck’s counsel, suggesting that even a minor change to the mark, such as “Wolfgang Puck’s Kitchen,” would be comparatively less conflicting.

30. However, Wolfgang Puck refused to consider any changes to its infringing “The Kitchen” branding. Indeed, Wolfgang Puck’s counsel claimed that Mr. Puck had no recollection whatsoever of his meeting with Mr. Musk in 2012 and declined invitations to discuss the matter further.

31. Despite learning in 2012 about The Kitchen’s longstanding investment in THE KITCHEN Marks, and despite efforts by The Kitchen to avoid a likelihood of confusion through

rebranding of Wolfgang Puck's restaurant, Mr. Puck and Wolfgang Puck refuse to abandon the infringing "The Kitchen" brand.

32. Wolfgang Puck is no stranger to trademark rights. It owns dozens of trademark registrations and aggressively enforces them, including by bringing oppositions against applications to register VIENNA BY WOLFGANG, THE ORIGINAL PIZZA PUCKS, and PUCK HOTEL, among others.

33. Under the circumstances – where Wolfgang Puck was on notice of The Kitchen's prior rights to THE KITCHEN Marks, could have chosen any combination of words to name its new restaurant concept, and has steadfastly refused to abandon its Applications – Wolfgang Puck's actions are willful and bound to harm both consumers and The Kitchen.

**COUNT I**  
**Likelihood of Confusion**  
**(15 U.S.C. § 1052(d))**

34. The Kitchen realleges and incorporates by reference the preceding allegations of this Consolidated Notice of Opposition.

35. By virtue of its nationwide common law use and federal registrations, The Kitchen enjoys senior rights in THE KITCHEN Marks in connection with the marketing and sale of its restaurant, bar, and community development services.

36. The marks set forth in the Applications so closely resemble The Kitchen's prior used and registered THE KITCHEN Marks as to be likely, when used in connection with the goods set forth in the Applications, to cause confusion, or to cause mistake, or to deceive under section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

WHEREFORE, The Kitchen believes that it will be damaged by registration of the marks shown in the Applications and respectfully requests that the consolidated opposition be sustained

and that registrations to Applicant be refused. Consolidation of Opposer's oppositions to the Applications is proper because Opposer's claims against each application involve common questions of law and fact. *See* 37 C.F.R. § 2.104(b).

The filing fee, in the amount of \$600, is being transmitted electronically with this submission. Any deficiency in the fee should be charged to Deposit Account No. 082623

Dated: February 10, 2016

Respectfully submitted,

*/s/Timothy P. Getzoff*

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[docketing@hollandhart.com](mailto:docketing@hollandhart.com)

**Attorneys for Opposer  
The Kitchen Café, LLC**

**CERTIFICATE OF SERVICE**

I certify that on February 10, 2016, I served a copy of the above **CONSOLIDATED NOTICE OF OPPOSITION** to the following by U.S. Mail, postage prepaid:

Wolfgang Puck Licensing LLC  
3500 Las Vegas Blvd South, Suite G-1  
Las Vegas, Nevada 89109

Joan Kupersmith Larkin  
Seyfarth Shaw LLP  
2029 Century Park E, Ste 3500  
Los Angeles, CA 90067-3021

*Courtesy copy to [jlarkin@seyfarth.com](mailto:jlarkin@seyfarth.com)*

*/s/ Joyce Crow* \_\_\_\_\_  
Joyce Crow

## Exhibit A

**THE KITCHEN**  
BY WOLFGANG PUCK

**PAIRING MENU**

**Smoked Rushing Waters Trout**  
With marinated beets, horseradish cream & gaufrette potatoes  
*Grüner Veltliner, Lois, Loibner, Kamptal, Austria 2011*

**Creamy Pumpkin Soup**  
With bacon marshmallow & aceto balsamico  
*Wolfgang Puck Sauvignon Blanc, California 2013*

**Weiner Schnitzel**  
With Austrian potato salad & Brandy mustard sauce  
*Domaine Wachau Reisling – Terrassen, Federspiel, Wachau Austria 2013*

**Chocolate Soufflé**  
With salted caramel ice cream  
*Taylor Fladgate 1st Estate*

**SEATING TIMES**

Thursday: 5:30pm, 7:30pm  
Friday: 5pm, 7pm, 9pm  
Saturday: 1pm, 3pm, 5pm, 7pm, 9pm

**PRICE: \$50 per person**

*Menu at The Kitchen by Wolfgang Puck restaurant  
[www.facebook.com/TheKitchenbyWP/photos](http://www.facebook.com/TheKitchenbyWP/photos)*

Reserve  
your  
seat!

**THE KITCHEN**  
BY WOLFGANG PUCK

Limited  
seating  
times

GRWineFestival.com



*Invitation to Grand Rapids International Wine & Food  
Festival ([www.facebook.com/TheKitchenbyWP/photos](http://www.facebook.com/TheKitchenbyWP/photos))*

### THE KITCHEN COUNTER

Quick and delicious, The Kitchen Counter serves freshly baked and made-to-order breakfast and lunch items with ingredients to nourish and delight. Call us at 616.776.6428.

### THE KITCHEN BY WOLFGANG PUCK

Made-from-scratch comfort fare meets authentic global classics in the kitchen of the world's first celebrity chef, Wolfgang Puck. Call us at 616.776.3230 or reserve a table.