

TTAB

Applicant: Torgovy Dom "Aroma" TA Trade House "Aroma"

Ser. No.: 76/521,791

Filed: June 10, 2003

Mark: BLACK STORK

Published in the Official Gazette : September 28, 2004

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D & M NEW WORLD MANAGEMENT, INC.,

Opposer,

v.

OPPOSITION NO: \_\_\_\_\_

TORGOVY DOM "AROMA" TA TRADE HOUSE "AROMA",

Applicant.  
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BOX TTAB-FEE  
Comm. Of Trademarks  
P.O. Box #1451  
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

D & M New World Management, Inc. dba Apollo Fine Spirits believes that it will be seriously harmed by the registration of BLACK STORK by the Applicant and hereby opposes same.

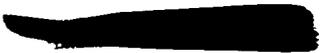
The grounds for the opposition are as follows:

1. Opposer, D & M New World Management, Inc. dba Apollo Fine Spirits, is a New York corporation with a business address of 55 Northern Boulevard, Great Neck, New York 11021.
2. Opposer is the current exclusive distributor in the United States of BLACK STORK brandy.
3. BLACK STORK brandy originated in the Republic of Moldova.

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4. The Joint Stock Company "AROMA" of the Republic of Moldova is the owner of BLACK STORK Trademark Registration 7005 in Moldova and the International Trademark No. 784523 for BLACK STORK, in IC 33.
5. In a letter of February 19, 2002, Opposer was granted exclusive rights to import and distribute WHITE STORK and BLACK STORK brandy from Moldova for the territory of the United States.
6. Since acquiring sole and exclusive rights to import and distribute BLACK STORK. Opposer has sold thousands of bottles of this brandy. Such use represents substantial, prior use in interstate commerce to that claimed by Applicant.
7. Opposer began use of the trademark BLACK STORK on the sale and distribution of brandy in the United States as early as November 2002.
8. Upon information and belief, Applicant's Ser. No. 76/521, 791 was filed as an intent-to-use application on June 10, 2003.
9. Opposer's use of the mark BLACK STORK on brandy has preceded the filing of Applicant's application by more than six months.
10. Upon information and belief, Applicant was once actually the distributor of BLACK STORK brandy in Russia and has now decided to expand its right to the trademark, without permission from the AROMA Republic of Moldova manufacturer. By selling either brandy meant for the Russian market to the American public or manufacturing its own unauthorized version of BLACK STORK, Applicant is not engaged in fair trade.
11. Upon information and belief, the use of the trademark BLACK STORK on a brandy that does not emanate from the Republic of Moldova is fraudulent and deceives the American consumer.
12. It is an unassailable fact that two manufacturers of BLACK STORK brandy will confuse the American public.
13. Applicant and Opposer will sell their BLACK STORK brandy to the same market using identical channels of trade, such as liquor stores.
14. As Opposer is the only Moldova-appointed distributor of BLACK STORK brandy in the United States, it is the only entity with any rights to the U.S. registration of BLACK STORK.
15. Upon information and belief, Applicant has not actually commenced use of the trademark BLACK STORK .
16. As Applicant has not used the BLACK STORK trademark on brandy yet, finding a new, non-infringing trademark would be little hardship.

17. Given that Opposer's rights to BLACK STORK are specifically authorized by the AROMA Moldava corporation, and are consistent with the International Trademark Reg. 784523, only Opposer has rights to BLACK STORK brandy in the United States.
18. Given the extensive prior use of BLACK STORK by Opposer, Applicant's use of BLACK STORK is likely to cause confusion, or to cause mistake or to deceive within the meaning of the Lanham Act Section 2(d), 15 USC 1052 (d).
19. In view of the above, Opposer believes that the registration of BLACK STORK to Applicant would be a serious and unrecoverable infringement of Opposer's trademark rights in the identical mark.

WHEREFORE, Opposer prays that this application Ser. No. 76/521,791 be refused registration and that this Opposition be sustained in favor of Opposer.

Dated: *Oct. 22, 2004*

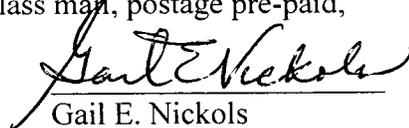
Respectfully submitted,



Gail E. Nickols  
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(212)-354-5650

#### Certificate of Mailing

It is hereby certified that a copy and the original Opposition was served upon the Trademark Trial and Appeal Board, at their address of record: Box TTAB-FEE, P.O. Box #1451, Alexandria, VA 22313-1451, by first class mail, postage pre-paid, this 22<sup>nd</sup> day of October 2004.



Gail E. Nickols