

ESTTA Tracking number: **ESTTA155516**

Filing date: **08/08/2007**

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	Margaritaville Enterprises, LLC
Granted to Date of previous extension	08/08/2007
Address	256 Worth Avenue, Suite Q-R Palm Beach, FL 33480 UNITED STATES
Attorney information	Kristen L. Fancher and Joel R. Feldman Greenberg Traurig, LLP 3290 Northside Parkway, Suite 400 Atlanta, GA 30327 UNITED STATES atltrademark@gtlaw.com Phone:678-553-2165

Applicant Information

Application No	78934907	Publication date	04/10/2007
Opposition Filing Date	08/08/2007	Opposition Period Ends	08/08/2007
Applicants	Hashaw, Archie G. Jr. 44 WINDMILL DRIVE Hempstead, TX 77445 UNITED STATES Hashaw, Melinda 44 WINDMILL DRIVE Hempstead, TX 77445 UNITED STATES		

Goods/Services Affected by Opposition

Class 043. First Use: 2004/01/01 First Use In Commerce: 2006/07/01 All goods and services in the class are opposed, namely: Rental of bar equipment
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2463238	Application Date	04/08/1999
Registration Date	06/26/2001	Foreign Priority	NONE

		Date	
Word Mark	JIMMY BUFFETT'S MARGARITAVILLE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1999/02/04 First Use In Commerce: 1999/02/04 Restaurant, bar and nightclub services		

U.S. Registration No.	3192551	Application Date	12/01/2005
Registration Date	01/02/2007	Foreign Priority Date	NONE
Word Mark	JIMMY BUFFETT'S MARGARITAVILLE		
Design Mark			
Description of Mark	The mark consists of The words JIMMY BUFFETT'S MARGARITAVILLE and a Parrot Design.		
Goods/Services	Class 035. First use: First Use: 1985/02/01 First Use In Commerce: 1985/02/01 Retail stores, on-line stores and mail order catalogs featuring a wide array of merchandise in the nature of novelty items, souvenirs, clothing, headwear, books, recordings, beverage ware, and printed material		

U.S. Registration No.	3117269	Application Date	12/01/2005
Registration Date	07/18/2006	Foreign Priority Date	NONE
Word Mark	JIMMY BUFFETT'S MARGARITAVILLE		
Design Mark			
Description of Mark	The mark consists of The words JIMMY BUFFETT'S MARGARITAVILLE and Parrot Design.		
Goods/Services	Class 021. First use: First Use: 1999/02/01 First Use In Commerce: 1999/02/01 Beverage glassware, mugs, foam drink holders; portable coolers; bottles, sold empty, namely water bottles		

U.S. Registration No.	3117272	Application Date	12/01/2005
Registration Date	07/18/2006	Foreign Priority Date	NONE
Word Mark	JIMMY BUFFETT'S MARGARITAVILLE		
Design Mark			
Description of Mark	The mark consists of The words JIMMY BUFFETT'S MARGARITAVILLE and a Parrot Design.		
Goods/Services	Class 028. First use: First Use: 2002/08/05 First Use In Commerce: 2002/08/05 Baseballs; Golf balls; Volleyballs		

U.S. Registration No.	3192548	Application Date	12/01/2005
Registration Date	01/02/2007	Foreign Priority Date	NONE
Word Mark	JIMMY BUFFETT'S MARGARITAVILLE		
Design Mark			

Description of Mark	The mark consists of The words JIMMY BUFFETT'S MARGARITAVILLE and a Parrot Design.
Goods/Services	Class 025. First use: First Use: 1999/02/01 First Use In Commerce: 1999/02/01 Shirts, T-shirts, tank tops, sweat shirts, denim jackets, headwear

U.S. Registration No.	3117270	Application Date	12/01/2005
Registration Date	07/18/2006	Foreign Priority Date	NONE
Word Mark	JIMMY BUFFETT'S MARGARITAVILLE		
Design Mark			
Description of Mark	The mark consists of The words JIMMY BUFFETT'S MARGARITAVILLE and Parrot Design.		
Goods/Services	Class 022. First use: First Use: 1999/02/01 First Use In Commerce: 1999/02/01 Lanyards for holding keys, whistles, badges and identification cards		

U.S. Registration No.	3117268	Application Date	12/01/2005
Registration Date	07/18/2006	Foreign Priority Date	NONE
Word Mark	JIMMY BUFFETT'S MARGARITAVILLE		
Design Mark			
Description of Mark	The mark consists of The words JIMMY BUFFETT'S MARGARITAVILLE and Parrot Design.		
Goods/Services	Class 014. First use: First Use: 1999/02/01 First Use In Commerce: 1999/02/01 Jewelry		

U.S. Registration No.	3117267	Application Date	12/01/2005
Registration Date	07/18/2006	Foreign Priority Date	NONE
Word Mark	JIMMY BUFFETT'S MARGARITAVILLE		
Design Mark			
Description of Mark	The mark consists of The words JIMMY BUFFETT'S MARGARITAVILLE and Parrot Design.		
Goods/Services	Class 009. First use: First Use: 2002/09/25 First Use In Commerce: 2002/09/25 Decorative magnets		

U.S. Registration No.	3192546	Application Date	12/01/2005
Registration Date	01/02/2007	Foreign Priority Date	NONE
Word Mark	JIMMY BUFFETT'S MARGARITAVILLE		
Design Mark			
Description of Mark	The mark consists of The words JIMMY BUFFETT'S MARGARITAVILLE and Parrot Design.		
Goods/Services	Class 006. First use: First Use: 1999/02/01 First Use In Commerce: 1999/02/01 Metal key rings; Metal license plates		

Attachments	75678384#TMSN.gif (1 page)(bytes) 78764975#TMSN.jpeg (1 page)(bytes) 78764926#TMSN.jpeg (1 page)(bytes) 78764965#TMSN.jpeg (1 page)(bytes) 78764946#TMSN.jpeg (1 page)(bytes) 78764939#TMSN.jpeg (1 page)(bytes) 78764919#TMSN.jpeg (1 page)(bytes) 78764911#TMSN.jpeg (1 page)(bytes) 78764898#TMSN.jpeg (1 page)(bytes) MARGARITAVILLE ENTERPRISES v. HASHAW - Notice of Opposition.pdf (10 pages)(540893 bytes)
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Signature	/joel r. feldman/
Name	Kristen L. Fancher and Joel R. Feldman
Date	08/08/2007

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

_____)	
MARGARITAVILLE ENTERPRISES,)	
LLC)	
)	
Opposer,)	Opposition No. _____
)	
v.)	
)	Serial No.: 78/934,907
ARCHIE G. HASHAW, JR. and)	
MELINDA HASHAW,)	Filed: July 21, 2006
)	Published: April 10, 2007
Applicants.)	
_____)	

NOTICE OF OPPOSITION

Opposer Margaritaville Enterprises, LLC (“Opposer”), by and through its undersigned counsel, hereby opposes the application for registration of the THE MARGARITA SHOP mark and design, filed on behalf of Archie G. Hashaw, Jr. and Melinda Hashaw (collectively, “Applicants”) on July 21, 2006, bearing Serial No. 78/934,907, for the reasons that Opposer would be damaged thereby, and states as follows:

OPPOSER’S BACKGROUND

1. Opposer is a Delaware limited liability company with a principal address at 256 Worth Avenue, Suite Q-R, Palm Beach, Florida 33480.
2. Opposer is the successor-in-interest to trademarks filed and registered by Jimmy Buffett, an internationally famous musician, songwriter and entertainer.
3. Jimmy Buffett has recorded and sold over 32 albums and performed in thousands of live concerts in the past thirty-six (36) years.

4. Jimmy Buffett's songs and persona and Opposer's business are closely connected with a tropical theme including, but not limited to, beaches, tropics, leisure and islands.

5. Opposer owns over 100 federal trademark applications and registrations incorporating the MARGARITAVILLE mark for various goods and services ranging from sound recordings, clothing, travel bags, printed items, beach accessories, sports equipment, barware and tequila, to restaurants, hotels, casinos, stores, and nightclubs.

6. Opposer owns and licenses the mark MARGARITAVILLE for stores and restaurants in: (a) Key West, Florida; (b) Orlando, Florida; (c) Las Vegas, Nevada; (d) Charleston, South Carolina; (e) Myrtle Beach, South Carolina; (f) New Orleans, Louisiana; (g) Cancun, Mexico; (h) Cozumel, Mexico; (k) Montego Bay, Jamaica; (l) Negril, Jamaica; (m) Ocho Rios, Jamaica; (n) Grand Turk; and (o) Grand Cayman.

7. Among the applicable marks, Opposer owns nine United States Trademark Registrations incorporating the following design (hereinafter "Margaritaville Parrot Design"):



- a. Registration No. 2,463,238 for restaurant, bar and nightclub services, in International Class 42;

- b. Registration No. 3,192,551 for retail stores, on-line stores and mail order catalogs featuring a wide array of merchandise in the nature of novelty items, souvenirs, clothing, headwear, books, recordings, beverageware, and printed material, in International Class 35;
- c. Registration No. 3,117,269 for beverage glassware, mugs, foam drink holders; portable coolers; bottles, sold empty, namely water bottles, in International Class 21;
- d. Registration No. 3,117,272 for baseballs; golf balls; volleyballs, in International Class 28;
- e. Registration No. 3,192,548 for shirts, T-shirts, tank tops, sweat shirts, denim jackets, headwear, in International Class 25;
- f. Registration No. 3,117,270 for lanyards for holding keys, whistles, badges and identification cards, in International Class 22;
- g. Registration No. 3,117,268 for jewelry, in International Class 14;
- h. Registration No. 3,117,267 for decorative magnets, in International Class 9; and
- i. Registration No. 3,192,546 for metal key rings; metal license plates, in International Class 6.

8. Opposer's registrations for the Margaritaville Parrot Design give Opposer priority in the design for retail store services since at least February 1985, and for restaurant, bar and nightclub services and beverage glassware since at least February 1999.

9. Although Opposer has trademark rights for all colorations of the Margaritaville Parrot Design, Opposer frequently uses the colors yellow, green, red and blue to color the Margaritaville Parrot Design.

10. Opposer vigilantly monitors all uses of the MARGARITAVILLE mark (including the Margaritaville Parrot Design) by third parties and frequently sends cease-and-desist letters to third parties who are using the marks without authorization.

11. Many third parties have acknowledged the rights of Opposer in the MARGARITAVILLE mark by stopping their use and abandoning applications in response to demand letters from attorneys for Opposer.

12. Because Opposer's MARGARITAVILLE restaurants prominently feature the Margaritaville Parrot Design on signage and menus, consumers associate the Margaritaville Parrot Design with Opposer's restaurant services.

13. Because Opposer's MARGARITAVILLE retail stores, including physical locations, online stores and mail order stores, prominently feature the Margaritaville Parrot Design on signage and numerous products (including beverage glassware), consumers associate the Margaritaville Parrot Design with Opposer's retail store services and beverage glassware products.

14. Opposer has built up valuable goodwill and reputation in the Margaritaville Parrot Design by virtue of its investment of a great deal of time and money in promoting Jimmy Buffett's song *Margaritaville* and Opposer's goods and services under the MARGARITAVILLE and Margaritaville Parrot Design marks, particularly Opposer's restaurant and bar services, retail store services and beverage glassware.

15. By virtue of Opposer's continuous, exclusive, and widespread use of the marks MARGARITAVILLE and the Margaritaville Parrot Design, Opposer is entitled to a broad scope of protection therefor.

APPLICANT'S BACKGROUND

16. Upon information and belief, Applicants are citizens residing in Hempstead, Texas at 44 Windmill Drive, Hempstead, Texas 77445.

17. Applicants seek to register the following THE MARGARITA SHOP mark and design ("Confusingly Similar Parrot Design") in International Class 43 for use in connection with the rental of bar equipment:



18. Applicants filed their application for the Confusingly Similar Parrot Design on July 21, 2006, over twenty-one (21) years after Opposer began using its Margaritaville Parrot Design for retail store services, and over seven (7) years after Opposer began using its Margaritaville Parrot Design for restaurant, bar and nightclub services and beverage glassware.

19. Upon information and belief, Applicants operate the website <http://www.themargaritashop.com/> to promote their business and use the Confusingly Similar Parrot Design on their website.

20. Upon information and belief, Applicants' services are offered in Mobile, Alabama; Phoenix, Arizona; Orange County, California; Riverside County, California; Los Angeles County, California; Raleigh, North Carolina; Oklahoma City, Oklahoma; Dallas, Texas; and Houston, Texas.

21. Upon information and belief, Applicants' bar equipment produces frozen drinks similar to those offered in Opposer's famous MARGARITAVILLE restaurants and those intended to be served in beverage glassware featuring the Margaritaville Parrot Design.

22. Applicants' Confusingly Similar Parrot Design is confusingly similar to Opposer's registered Margaritaville Parrot Design and will dilute the distinguishable nature of Opposer's Margaritaville Parrot Design.

**COUNT I
LIKELIHOOD OF CONFUSION**

23. Opposer repeats and realleges each and every allegation set forth in paragraphs one through twenty-two as though set forth herein.

24. Opposer has been using its Margaritaville Parrot Design in connection with retail store services, restaurant, bar and nightclub services, and beverage glassware long before Applicants applied to register the Confusingly Similar Parrot Design.

25. Applicants' Confusingly Similar Parrot Design and Opposer's Margaritaville Parrot Design both use a confusingly similar yellow, green, red and blue color scheme.

26. Applicants' Confusingly Similar Parrot Design and Opposer's Margaritaville Parrot Design both prominently feature the term "Margarita," in writing across the center of the design elements

27. Applicants' Confusingly Similar Parrot Design and Opposer's Margaritaville Parrot Design both prominently feature a depiction of a parrot on the right-hand side of the design.

28. Applicants' Confusingly Similar Parrot Design and Opposer's Margaritaville Parrot Design both prominently feature depictions of palm trees.

29. Applicants should not be permitted to register and continue to use their Confusingly Similar Parrot Design, as specified in their application. If they are permitted to do so, confusion in the minds of the consuming public, resulting in injury to the Opposer, will likely result. This would diminish significantly the investment Opposer has made in its well-known MARGARITAVILLE trademarks and service marks and the Margaritaville Parrot Design.

30. Persons familiar with Opposer's restaurants, retail stores, website or in possession of any of Opposer's merchandise bearing the Margaritaville Parrot Design, such as beverage glassware, t-shirts, or key chains, will likely mistake Applicants' services for those provided by Opposer. Furthermore, any defect, objection or fault found with Applicants' services marketed under the Confusingly Similar Parrot Design will likely adversely reflect upon and injure the reputation Opposer has established in its goods and services.

31. Due to several virtually identical design elements and the prominent use of the term "Margarita," the concurrent use of the Confusingly Similar Parrot Design by Applicants and the Margaritaville Parrot Design by Opposer will likely result in consumer confusion as to source, sponsorship, approval, or affiliation within the meaning of 15 U.S.C. §§ 1114 and

1125(a), and as such, Opposer is likely to be damaged by the registration of Applicants' proposed design within the meaning of 15 U.S.C. § 1063(a).

32. Applicants' proposed design is unregistrable pursuant to 15 U.S.C. § 1052(d), as it so resembles a mark previously used in the United States by another and not abandoned as to be likely to cause confusion, mistake or to deceive.

COUNT II DILUTION

33. Opposer repeats and reallages each and every allegation set forth in paragraphs one through thirty-two as though set forth herein.

34. Opposer's Margaritaville Parrot Design has achieved national fame and recognition due to the extensive use of the mark, including but not limited to use in connection with advertising and marketing conducted to promote Opposer's goods and services, including its MARGARITAVILLE restaurants, retail stores, and beverage glassware.

35. Opposer's Margaritaville Parrot Design is featured prominently on Opposer's website, www.margaritaville.com.

36. The Margaritaville Parrot Design has been used exclusively and continuously by Opposer for various products and services since as early as February 1985, which is well before the date of Applicants' application.

37. Opposer, as the owner of the famous and distinctive Margaritaville Parrot Design, is entitled to protection against dilution of the distinctive quality of Opposer's well-known Margaritaville Parrot Design, as set forth in 15 U.S.C. § 1125(c).

38. Applicants' proposed Confusingly Similar Parrot Design is virtually identical to Opposer's Margaritaville Parrot Design, which is highly distinctive for a variety of goods and services.

39. Applicants' Confusingly Similar Parrot Design mark so nearly resembles Opposer's federally registered Margaritaville Parrot Design, that Applicants' registration and use of this mark for the rental of bar equipment is likely to cause blurring in the minds of consumers as to the source, sponsorship, or affiliation of Applicants' services with the Margaritaville Parrot Design.

40. Upon information and belief, any use of Applicants' Confusingly Similar Parrot Design in the United States in connection with the services identified in its application therefor, began after Opposer's Margaritaville Parrot Design became famous.

41. Applicants' use and registration of the Confusingly Similar Parrot Design dilutes Opposer's Margaritaville Parrot Design by lessening its capacity to be distinguished and identified as related to Opposer and such use and registration should therefore be prohibited.

CONCLUSION

42. Opposer will be damaged by the registration and use by Applicants of the Confusingly Similar Parrot Design, as set forth in Applicants' Trademark Application Serial No. 78/934,907, because: (1) the mark is confusingly similar to Opposer's registered Margaritaville Parrot Design; and (2) such registration and use will dilute the distinguishable nature of Opposer's famous Margaritaville Parrot Design.

WHEREFORE, Opposer prays that the instant opposition be sustained and registration of Applicants' Confusingly Similar Parrot Design be refused.

This 8th day of August, 2007.

Respectfully submitted,

GREENBERG TRAUIG LLP



Jeffrey M. Smith, Esq.
Kristen L. Fancher, Esq.
Joel R. Feldman, Esq.

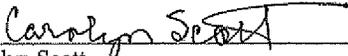
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*Attorneys for Opposer,
Margaritaville Enterprises, LLC*

CERTIFICATE OF ELECTRONIC TRANSMISSION

Date: August 8, 2007

I hereby certify that this paper is being transmitted electronically to the United States Patent & Trademark Office through the ESTTA electronic filing system on the date indicated above and is addressed to the Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, Virginia 22323-1451.



Carolyn Scott
Trademark Paralegal