

ESTTA Tracking number: **ESTTA180472**

Filing date: **12/13/2007**

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	Carlsberg A/S		
Entity	Corporation	Citizenship	Denmark
Address	Ny Carlsberg Vej 100 Copenhagen V, 1760 DENMARK		

Attorney information	Diane Plaut Fross Zelnick Lehrman & Zissu, P.C. 866 UN Plaza New York, NY 10017 UNITED STATES dplaut@fzlj.com Phone:212-813-5914		
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### Applicant Information

Application No	77238792	Publication date	11/13/2007
Opposition Filing Date	12/13/2007	Opposition Period Ends	12/13/2007
Applicant	Well Luck Co., Inc. 104 Harbor Drive Jersey City, NJ 07305 UNITED STATES		

### Goods/Services Affected by Opposition

Class 032. All goods and services in the class are opposed, namely: Beers; mineral and aerated waters; fruit drinks and fruit juices; syrups for making beverages
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### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

### Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	906899	Application Date	12/15/1969
Registration Date	01/26/1971	Foreign Priority Date	NONE
Word Mark	ELEPHANT		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class U048 (International Class 032). First use: First Use: 1967/05/18 First Use In Commerce: 1967/05/18 [ BEER AND ] MALT LIQUOR

Attachments	elephant king - nOTICE OF oPPOSITION (f0173029).pdf ( 5 pages )(881369 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	/dianeplaut/
Name	Diane Plaut
Date	12/13/2007

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

Opposer's Ref: CGB 07/11534

In the Matter of Application Serial No. 77/238,792  
Mark: ELEPHANT KING

-----X		
CARLSBERG A/S,	:	
	:	
Opposer,	:	Opposition No. _____
	:	
- against -	:	
	:	
WELL LUCK CO., INC.	:	
	:	
Applicant.	:	
-----X		

**NOTICE OF OPPOSITION**

Opposer, Carlsberg A/S, a Denmark corporation located and doing business at Ny Carlsberg Vej 100, 1760 Copenhagen V, Denmark, believes that it would be damaged by the issuance of a registration for the trademark ELEPHANT KING as applied for in Application Serial No. 77/238,792, and therefore opposes same in Class 32 only. Classes 29 and 30 are not opposed. As grounds for its opposition, Opposer, by its attorneys, Fross Zelnick Lehrman & Zissu, P.C., alleges as follows:

**COUNT I – Section 2(d)**

- 1) Opposer is the owner of U.S. Registration No. 906899 for the trademark ELEPHANT, which has been in use in commerce for malt liquor in International Class 32 since at least as early as 1967. This registration is incontestable. A TESS printout of this registration is attached as Exhibit A.

- 2) Applicant is the owner of Application Serial No. 77/238,792, filed on the basis of intent to use on July 25, 2007 for the mark ELEPHANT KING for “meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs; milk; edible oils and fats” in International Class 29; “coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour; honey, treacle; yeast, baking powder; salt, mustard; vinegar, sauces; spices; ice” in International Class 30; and “beers; mineral and aerated waters; fruit drinks and fruit juices; syrups for making beverages” in International Class 32.
- 3) On information and belief, Applicant made no use of the ELEPHANT KING mark prior to its filing date of July 25, 2007. Thus, Opposer has priority.
- 4) The Applicant’s mark ELEPHANT KING includes the entirety of Opposer’s mark ELEPHANT. Therefore, the marks are highly similar in sound, appearance, meaning and overall commercial impression.
- 5) Applicant’s goods in Class 32 are related to Opposer’s goods, malt liquor.
- 6) For the above reasons, any use of the mark ELEPHANT KING by Applicant in connection with its goods in International Class 32 is likely to cause confusion, or to cause mistake or to deceive the public, and cause the public to believe that these goods sold under the ELEPHANT KING mark emanate from or are otherwise sponsored by or endorsed by Opposer, in violation of Section 2(d) of the Lanham Act, 15 U.S.C., § 1052(d).

#### COUNT II - FRAUD

- 7) In addition, on information and belief, the application as filed is fraudulent because Applicant has included standard full class heading listings of goods, including some

specific goods, for which Applicant has no bona fide intention to use the mark, rendering the whole application invalid.

- 8) Opposer will be damaged by the registration of the mark ELEPHANT KING to Applicant because it will cause confusion and adversely affect Opposer's valuable goodwill in its mark.

WHEREFORE, it is respectfully requested that this opposition be sustained and that the registration sought by Application Serial No. 77/238,792 be denied.

Dated: New York, New York  
December 13, 2007

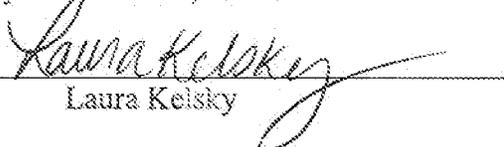
Respectfully submitted,

FROSS ZELNICK LEHRMAN  
& ZISSU, P.C.

By:   
Diane Marcovici Plaut  
David Ehrlich  
Attorneys for Opposer  
866 United Nations Plaza  
New York, New York 10017  
(212) 813-5900

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served by First Class mail upon Registrant, to the attention of Michael M. Yi, Esq., Lee Anav Chung, LLP, 350 5<sup>th</sup> Avenue, Suite 5411, New York, New York 10118-5411, this 13th day of December, 2007.

  
Laura Kelsky

# EXHIBIT A



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Typed Drawing

Word Mark	ELEPHANT
Goods and Services	IC 032, US 048, G & S: [ BEER AND ] MALT LIQUOR, FIRST USE: 19670518, FIRST USE IN COMMERCE: 19670518
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	72346221
Filing Date	December 15, 1969
Current Filing Basis	1A
Original Filing Basis	1A
Registration Number	0906899
Registration Date	January 26, 1971
Owner	(REGISTRANT) CARLSBERG BRYGGERIERNE DBA THE CARLSBERG BREWERIES CORPORATION DENMARK COPENHAGEN DENMARK  (LAST LISTED OWNER) CARLSBERG A/S CORPORATION BY ASSIGNMENT DENMARK NY CARLSBERG VEJ 100 DK-1799 COPENHAGEN V DENMARK
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	DAVID EHRLICH
Prior Registrations	0673627
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15, SECT 8 (6-YR), SECTION 8(10-YR) 20010515.
Renewal	1ST RENEWAL 20010515
Live/Dead Indicator	LIVE