

ESTTA Tracking number: **ESTTA207208**

Filing date: **04/25/2008**

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	Heaven Hill Distilleries, Inc.		
Entity	Corporation	Citizenship	KY
Address	1064 Loretto Road Bardstown, KY 40004 UNITED STATES		

Attorney information	Matthew A. Williams Wyatt, Tarrant & Combs, LLP 500 W. Jefferson St Suite 2800 Louisville, KY 40202 UNITED STATES mwilliams@wyattfirm.com, mcapiro@wyattfirm.com Phone:502 562-7378		
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### Applicant Information

Application No	77266196	Publication date	04/08/2008
Opposition Filing Date	04/25/2008	Opposition Period Ends	05/08/2008
Applicant	DIALLO YASSINN PATRICE 2 SQUARE TRIBORD COURCOURONNES, 91080 FRANCE		

### Goods/Services Affected by Opposition

Class 033. All goods and services in the class are opposed, namely: Alcoholic beverage produced from a brewed malt base with natural flavors, Alcoholic beverages of fruit, Alcoholic fruit extracts, Alcoholic malt coolers, Alcoholic punch, Cachaca, Cognac, Distilled Spirits, Fruit wine, Gin, Hard cider, Natural sparkling wines, Prepared alcoholic cocktail, Prepared wine cocktails, Rum, Sparkling fruit wine, Sparkling grape wine, Sparkling wines, Tequila, Vodka, Whiskey, Wine coolers, wines
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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.	2834133	Application Date	05/23/2003
Registration Date	04/20/2004	Foreign Priority Date	NONE
Word Mark	HPNOTIQ		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 004. First use: First Use: 2003/05/02 First Use In Commerce: 2003/05/02 Candles Class 021. First use: First Use: 2003/03/23 First Use In Commerce: 2003/03/23 Beverage glassware

U.S. Registration No.	2834130	Application Date	05/19/2003
Registration Date	04/20/2004	Foreign Priority Date	NONE
Word Mark	HPNOTIQ		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2003/02/07 First Use In Commerce: 2003/02/07 Clothing, namely, shirts		

U.S. Registration No.	2822475	Application Date	10/31/2002
Registration Date	03/16/2004	Foreign Priority Date	NONE
Word Mark	HPNOTIQ HQOPN		
Design Mark			
Description of Mark	The dotted lines in the drawing indicate the placement of the mark on the container for the goods.		
Goods/Services	Class 033. First use: First Use: 2001/09/00 First Use In Commerce: 2001/09/00 LIQUEUR		

U.S. Registration No.	2642855	Application Date	02/20/2002
Registration Date	10/29/2002	Foreign Priority Date	NONE
Word Mark	HPNOTIQ		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2001/09/00 First Use In Commerce: 2001/09/00 LIQUEUR		

Attachments	76519929#TMSN.gif ( 1 page )( bytes ) 76519684#TMSN.gif ( 1 page )( bytes ) 76463356#TMSN.gif ( 1 page )( bytes ) 76372289#TMSN.gif ( 1 page )( bytes ) HYPNOTIZER Opposition.pdf ( 5 pages )(23073 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 Overnight Courier on this date.

Signature	/Matthew A. Williams/
Name	Matthew A. Williams
Date	04/25/2008

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

HEAVEN HILL DISTILLERIES, INC	)	
	)	
Opposer	)	Opposition No. _____
	)	
v.	)	
	)	Application No.: 77/266,196
	)	Filing Date: August 28, 2007
DIALLO YASSINN PATRICE	)	Mark: HYPNOTIZER
	)	Intl Class: 033
	)	
Respondent.	)	

NOTICE OF OPPOSITION

Opposer, Heaven Hill Distilleries, Inc. ("Heaven Hill"), a Kentucky corporation with its principal place of business at 1064 Loretto Road, Bardstown, Kentucky, U.S.A. 40004 believes that it will be harmed if Application Serial No. 77/266,196 for the mark HYPNOTIZER is allowed to issue as a registration and hereby opposes this application. Heaven Hill is the owner of the HPNOTIQ trademark and has registered this mark for use in connection with a variety of goods including liqueur, an alcoholic beverage, in international class 033. The HPNOTIQ mark has been in use in connection with liqueur since at least September 2001.

On August 28, 2007, Respondent Diallo Yassinn Patrice ("Diallo") filed an application to register the mark HYPNOTIZER, Serial No. 77/266,196, for use in connection with a variety of alcoholic beverages in international class 033. This application was subsequently published for opposition on April 8, 2008.

As grounds for this Opposition, Heaven Hill alleges:

1. Since at least September 2001, Heaven Hill, or its predecessor (collectively “Heaven Hill”), has continuously used the trademark HPNOTIQ in connection with liqueur. More recently, the mark has also been used by Heaven Hill in connection with a variety of other goods, including but not limited to clothing, candles, beverage glassware, jewelry, and lighters.

2. Heaven Hill owns four federal trademark registrations for HPNOTIQ: Reg. Nos. 2834133 (candles & beverage glassware); 2834130 (clothing, namely shirts); 2822475 (liqueur); and 2642855 (liqueur).

3. Heaven Hill’s use of the trademark HPNOTIQ in connection with the sale of liqueur began long before August 28, 2007, the date on which Diallo filed his application.

4. Heaven Hill’s registrations for HPNOTIQ, referenced in numerical paragraph 2, were granted before August 28, 2007, and Heaven Hill has not abandoned the HPNOTIQ mark.

5. The HPNOTIQ mark symbolizes extensive good will and consumer recognition cultivated by Heaven Hill through substantial expenditures of time and effort in advertising, promotions, and by point-of-sale displays circulated throughout the United States.

6. On August 28, 2007, Diallo filed what is now Application Serial No. 77/266,196 to register the HYPNOTIZER mark for use in connection with “Alcoholic beverage produced from a brewed malt base with natural flavors, Alcoholic beverages of fruit, Alcoholic fruit extracts, Alcoholic malt coolers, Alcoholic punch, Cachaca, Cognac, Distilled Spirits, Fruit wine, Gin, Hard cider, Natural sparkling wines, Prepared alcoholic cocktail, Prepared wine cocktails, Rum, Sparkling fruit wine, Sparkling grape wine, Sparkling wines, Tequila, Vodka, Whiskey, Wine coolers, Wines” in international class 033.

7. No proximity analysis is required in this case because Diallo seeks to register a very similar mark—HYPNOTIZER—for a variety of alcoholic beverage products that are in the

same market in which Heaven Hill has built extensive goodwill and customer recognition for its liqueur marketed under the HPNOTIQ mark.

8. Because Diallo intends to use HYPNOTIZER in connection with a variety of alcoholic beverages, Diallo's products bearing the HYPNOTIZER mark will move through the same channels of trade as products bearing Heaven Hill's HPNOTIQ mark.

9. In view of the similarity of the respective marks and the indistinguishable nature of the goods of the respective parties, Diallo's mark so resembles Heaven Hill's registered mark that it is likely to cause confusion or deceive consumers and should therefore be denied registration under Section 2(d) of the Trademark Act.

10. In view of the fame of Heaven Hill's HPNOTIQ mark and the similarity of Diallo's mark, Diallo's registration will destroy or diminish the effectiveness of Heaven Hill's mark to identify and distinguish its goods. Furthermore, it will blur the unique association which has heretofore existed between the HPNOTIQ mark and the goods made and sold by Heaven Hill.

WHEREFORE, Opposer, Heaven Hill Distilleries, Inc. prays that this Opposition be sustained in its favor, that Application Serial No. 77/266,196 be rejected, and that no registration be issued for the mark HYPNOTIZER.

Respectfully submitted,



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David A. Calhoun

Matthew A. Williams

Michael A. Capiro

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*Counsel for Heaven Hill Distilleries, Inc.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served upon

Diallo Yassinn Patrice  
2 Square Tribord  
Courcouronnes 91080  
France

via overnight courier (Federal Express Tracking No. 7918 9081 6737), this 25th day of April,

2008:



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Matthew Williams