

ESTTA Tracking number: **ESTTA217199**

Filing date: **06/11/2008**

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	Constellation Spirits Inc.
Granted to Date of previous extension	06/11/2008
Address	1 South Dearborn, Suite 1700 Chicago, IL 60603 UNITED STATES
Party who filed Extension of time to oppose	PLANET 10 SPIRITS, LLC
Relationship to party who filed Extension of time to oppose	PLANET 10 SPIRITS, LLC merged into BARTON BRANDS, LTD. on February 29, 2008. BARTON BRANDS, LTD. then changed its name to CONSTELLATION SPIRITS INC. on March 1, 2008.

Correspondence information	Jeffrey H. Brown Michael Best & Friedrich LLP 180 N. Stetson, Suite 2000 Chicago, IL 60601 UNITED STATES jhbrown@michaelbest.com
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Applicant Information

Application No	77229067	Publication date	02/12/2008
Opposition Filing Date	06/11/2008	Opposition Period Ends	06/11/2008
Applicant	Kesselman, Joshua 2550 E Desert Inn Rd #19 Las Vegas, NV 89121 UNITED STATES		

Goods/Services Affected by Opposition

Class 034. All goods and services in the class are opposed, namely: Cigarette tubes; Cigarette-rolling machines; Cigarette papers; Cigarette rolling papers
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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.	2788499	Application Date	11/18/2002
Registration Date	12/02/2003	Foreign Priority Date	NONE
Word Mark	EFFEN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2003/04/08 First Use In Commerce: 2003/04/08 vodka		

U.S. Registration No.	2788500	Application Date	11/18/2002
Registration Date	12/02/2003	Foreign Priority Date	NONE
Word Mark	EFFEN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2003/04/08 First Use In Commerce: 2003/04/08 vodka		

U.S. Registration No.	3252791	Application Date	10/10/2006
Registration Date	06/19/2007	Foreign Priority Date	NONE
Word Mark	EFFEN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2003/04/08 First Use In Commerce: 2003/04/08 Distilled Spirits		

U.S. Registration No.	2938623	Application Date	02/10/2003
Registration Date	04/05/2005	Foreign Priority Date	NONE
Word Mark	EFFEN BLACK CHERRY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2003/06/01 First Use In Commerce: 2003/06/01 vodka		

U.S. Registration No.	3309990	Application Date	08/18/2006
Registration Date	10/09/2007	Foreign Priority Date	NONE
Word Mark	EFFEN RASPBERRY		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 2006/08/01 First Use In Commerce: 2006/08/01 Vodka

U.S. Application No.	77174439	Application Date	05/07/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	EFFEN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 2003/06/00 First Use In Commerce: 2003/06/00 financial sponsorship of entertainment events, fashion shows, nightlife and lifestyle events, sporting events, cultural events and musical performances		

U.S. Application No.	77329418	Application Date	11/14/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	EFFEN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 021. First use: beverage glassware, ice buckets, cocktail shakers, bottle openers		

U.S. Application No.	77330957	Application Date	11/15/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	EFFEN IS A FIVE-LETTER WORD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2007/08/00 First Use In Commerce: 2007/08/00 Distilled Spirits		

Attachments	76467741#TMSN.gif (1 page)(bytes) 76467743#TMSN.gif (1 page)(bytes) 77017563#TMSN.jpeg (1 page)(bytes) 76489233#TMSN.gif (1 page)(bytes) 78955458#TMSN.jpeg (1 page)(bytes) 77174439#TMSN.jpeg (1 page)(bytes) 77329418#TMSN.jpeg (1 page)(bytes) 77330957#TMSN.jpeg (1 page)(bytes) C0858565.PDF (15 pages)(542513 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	/Jeffrey H. Brown/
Name	Jeffrey H. Brown
Date	06/11/2008

CERTIFICATE OF TRANSMISSION

I hereby certify that this Notice of Opposition is being transmitted by the Electronic System for Trademark Trials and Appeals to the United States Patent and Trademark Office on June 11, 2008.


Gina A. Bilotto

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

In the Matter of Trademark Applicant:)
)
Joshua Kesselman)
)
Serial No. : 77/229067)
)
Filed : July 13, 2007)
)
Mark: : EFFEN)

Published in the Official Gazette dated February 12, 2008

CONSTELLATION SPIRITS INC. (f/k/a)
PLANET 10 SPIRITS, LLC)
Opposer,)
)
v.) Opp. No.
)
JOSHUA KESSELMAN,)
)
Applicant.)

NOTICE OF OPPOSITION

CONSTELLATION SPIRITS INC. ("Opposer"), a Delaware corporation, believes that it will be damaged by the registration of the mark EFFEN shown in Serial No. 77/229067, in International Class 34 for cigarette tubes; cigarette-rolling machines; cigarette papers; cigarette

rolling papers (“Applicant’s Mark”), by Joshua Kesselman (“Applicant”), and hereby opposes the registration of said application.

PLANET 10 SPIRITS, LLC filed the Request for Extension of Time to File Notice of Opposition on February 27, 2008. Opposer, CONSTELLATION SPIRITS INC., is filing this Notice of Opposition on the grounds of privity with PLANET 10 SPIRITS, LLC. PLANET 10 SPIRITS, LLC merged into BARTON BRANDS, LTD. on February 29, 2008. BARTON BRANDS, LTD. then changed its name to CONSTELLATION SPIRITS INC. on March 1, 2008. These changes were recorded with the USPTO at Reel/Frame 3740/445 on March 14, 2008 and Reel/Frame 3741/495 on March 17, 2008 respectively.

As grounds for opposition, Opposer alleges:

1. For many years, and long before Applicant’s actual or constructive first use of Applicant’s Mark, Opposer, including by and through its predecessors in interest, has continuously used, and presently uses, the trademark EFFEN (the “EFFEN Mark”) in interstate commerce throughout the United States in connection with vodka, distilled spirits, beverage glassware, cocktail shakers, and financial sponsorship of entertainment events, fashion shows, nightlife and lifestyle events, sporting events, cultural events and musical performances.

2. Opposer and its predecessors in interest have used the EFFEN Mark in interstate commerce in connection with vodka and distilled spirits since at least as early as April 8, 2003.

3. Opposer is the owner of the following United States Patent and Trademark Office (“USPTO”) applications and registrations together with all right, title and interest in the marks shown therein, and all of the business and good will represented thereby:

<u>Mark</u>	<u>Reg./App. No.</u>	<u>Goods</u>
EFFEN	2788499	Vodka

<u>Mark</u>	<u>Reg./App. No.</u>	<u>Goods</u>
EFFEN	2788500	Vodka
EFFEN	3252791	Distilled Spirits
EFFEN BLACK CHERRY	2938623	Vodka
EFFEN RASPBERRY	3309990	Vodka
EFFEN	77/174439	Financial sponsorship of entertainment events, fashion shows, nightlife and lifestyle events, sporting events, cultural events and musical performances
EFFEN	77/329418	Beverage glassware, ice buckets, cocktail shakers, bottle openers
EFFEN IS A FIVE-LETTER WORD	77/330957	Distilled Spirits

A copy of information regarding these registrations and applications printed from the USPTO web site is attached as Exhibit A to this Notice of Opposition and is incorporated herein by this reference.

4. Opposer and its predecessor in interest have, at great expense, continuously engaged in the sale and promotion of spirits under and in connection with the EFFEN Mark.

5. Opposer and its predecessor in interest have, at great expense, extensively and continuously offered to the public high quality goods and services under the EFFEN Mark. By reason of such efforts and by virtue of the excellence of the goods and services sold under the EFFEN Mark, the public and trade have come to recognize the EFFEN Mark as signifying Opposer and the goods and services offered under the EFFEN Mark, and Opposer enjoys exceedingly valuable goodwill in connection with the goods and services offered under and in connection with the EFFEN Mark.

6. The mark proposed for registration by Applicant, which is identical to Opposer's EFFEN Mark, is confusingly similar in sight, sound, meaning, and commercial impression to the

EFFEN Mark which has been used in interstate commerce prior to any use or application for trademark registration by Applicant. Moreover, the goods and services provided under the EFFEN Mark, and the goods opposed herein are related, and would be promoted through the same channels of trade for sale to, and use by, the same category of purchasers.

7. Opposer believes it will be damaged by the registration of Applicant's Mark in that a substantial portion of the purchasing public and/or the trade is likely to be confused, or mistakenly believe, that Applicant's goods offered under Applicant's Mark originate from Opposer, or from the same source as the goods and services sold under the EFFEN Mark, or that such goods are sponsored by, endorsed by, or affiliated with the source of the goods and services sold under Opposer's EFFEN Mark. Such likelihood of confusion would result both in lost sales to Opposer and in damage to the good will among purchasers and the trade that the EFFEN Mark symbolizes. Persons familiar with the EFFEN Mark would be likely to buy Applicant's goods as and for goods made and sold by Opposer. Furthermore, any defect, objection or fault found with Applicant's goods marketed under Applicant's Mark would reflect upon and seriously injure the reputation which has been established for the goods and services sold under the EFFEN Mark.

8. If Applicant is permitted to use and register the mark herein opposed for its goods as specified in the application herein opposed, such registration and use by Applicant are likely to cause confusion, deception and mistake, and will seriously damage Opposer.

9. If Applicant were granted the registration herein opposed for the goods herein opposed, it would thereby obtain at least a *prima facie* exclusive right to the use of Applicant's Mark. Such registration would be a source of damage and injury to Opposer.

WHEREFORE, Opposer prays that Applicant's application, Serial No. 77/229067, be rejected, and that the mark therein sought for the goods specified therein be denied and refused.

The PTO is authorized to deduct the filing fee for this Notice of Opposition from deposit account 501965.

The Opposer hereby consents and appoints Jeffrey H. Brown and Luke DeMarte, members of the bar of the State of Illinois, whose address is Michael Best & Friedrich LLP, 180 N. Stetson Avenue, Suite 2000, Chicago, IL 60601, as its duly authorized agents and attorneys in the matter of the opposition above-identified to prosecute said opposition, to transact all business in the Patent and Trademark Office and in the United States courts in connection with this opposition, to sign its name to all papers which may hereafter be filed in connection therewith, and to receive all communications related to the same.

Dated: June 11, 2008

Respectfully submitted,

CONSTELLATION SPIRITS INC.

By: _____


One of its Attorneys

Jeffrey H. Brown
Luke W. DeMarte
Michael Best & Friedrich LLP
180 N. Stetson Avenue
Suite 2000
Chicago, IL 60601
(312) 222-0800

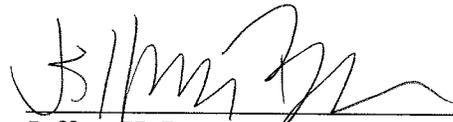
Attorneys for CONSTELLATION SPIRITS INC.

S:\CLIENT\017587\9001\C0831136.1

CERTIFICATE OF SERVICE

The undersigned certifies that on June 11, 2008 the foregoing Notice of Opposition, was served upon Applicant's Correspondent by depositing a copy of said document in the U.S. mail in an envelope addressed to

BBK Tobacco & Foods
3315-B W Buckeye Rd
Phoenix AZ 85009



Jeffrey H. Brown

EXHIBIT A

Int. Cl.: 33

Prior U.S. Cls.: 47 and 49

United States Patent and Trademark Office

Reg. No. 2,788,499

Registered Dec. 2, 2003

**TRADEMARK
PRINCIPAL REGISTER**

EFFEN

JSTAR BRANDS, L.L.C. (ILLINOIS LTD LIAB CO)
640 N. LASALLE ST., SUITE 554
CHICAGO, IL 60610

THE ENGLISH TRANSLATION OF "EFFEN" IS
"EVEN" OR SMOOTH".

FOR: VODKA, IN CLASS 33 (U.S. CLS. 47 AND 49).

SER. NO. 76-467,741, FILED 11-18-2002.

FIRST USE 4-8-2003; IN COMMERCE 4-8-2003.

GEOFFREY FOSDICK, EXAMINING ATTORNEY

Int. Cl.: 33

Prior U.S. Cls.: 47 and 49

United States Patent and Trademark Office

Reg. No. 2,788,500

Registered Dec. 2, 2003

**TRADEMARK
PRINCIPAL REGISTER**

E F F E N

JSTAR BRANDS, L.L.C. (ILLINOIS LTD LIAB CO)
640 N. LASALLE ST., SUITE 554
CHICAGO, IL 60610

THE ENGLISH TRANSLATION OF "EFFEN" IS
"EVEN" OR "SMOOTH".

FOR: VODKA, IN CLASS 33 (U.S. CLS. 47 AND 49).

SER. NO. 76-467,743, FILED 11-18-2002.

FIRST USE 4-8-2003; IN COMMERCE 4-8-2003.

GEOFFREY FOSDICK, EXAMINING ATTORNEY

Int. Cl.: 33

Prior U.S. Cls.: 47 and 49

United States Patent and Trademark Office

Reg. No. 3,252,791

Registered June 19, 2007

TRADEMARK
PRINCIPAL REGISTER

EFFEN

PLANET 10 SPIRITS, LLC (DELAWARE LTD
LIAB CO)
SUITE 540
640 N. LASALLE STREET
CHICAGO, IL 60610

FOR: DISTILLED SPIRITS, IN CLASS 33 (U.S. CLS.
47 AND 49).

FIRST USE 4-8-2003; IN COMMERCE 4-8-2003.

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 2,788,499, 2,788,500,
AND 2,938,623.

THE FOREIGN WORDING IN THE MARK
TRANSLATES INTO ENGLISH AS "EVEN" OR
"SMOOTH".

SER. NO. 77-017,563, FILED 10-10-2006.

JAMES MACFARLANE, EXAMINING ATTORNEY

Int. Cl.: 33

Prior U.S. Cls.: 47 and 49

United States Patent and Trademark Office

Reg. No. 2,938,623

Registered Apr. 5, 2005

**TRADEMARK
PRINCIPAL REGISTER**

EFFEN BLACK CHERRY

JSTAR BRANDS LLC (ILLINOIS LTD LIAB CO)
640 N. LASALLE, 5TH FLOOR
CHICAGO, IL 60610

IN THE DUTCH LANGUAGE "EFFEN" MEANS
"EVEN" OR "SMOOTH".

FOR: VODKA, IN CLASS 33 (U.S. CLS. 47 AND 49).

FIRST USE 6-1-2003; IN COMMERCE 6-1-2003.

SN 76-489,233, FILED 2-10-2003.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "BLACK CHERRY" , APART FROM
THE MARK AS SHOWN.

ZACHARY BELLO, EXAMINING ATTORNEY

Int. Cl.: 33

Prior U.S. Cls.: 47 and 49

United States Patent and Trademark Office

Reg. No. 3,309,990

Registered Oct. 9, 2007

TRADEMARK
PRINCIPAL REGISTER

EFFEN RASPBERRY

PLANET 10 SPIRITS, LLC (DELAWARE LTD
LIAB CO)
SUITE 1700
ONE SOUTH DEARBORN
CHICAGO, IL 60603

FOR: VODKA, IN CLASS 33 (U.S. CLS. 47 AND 49).

FIRST USE 8-1-2006; IN COMMERCE 8-1-2006.

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 2,788,499, 2,788,500,
AND 2,938,623.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "RASPBERRY", APART FROM
THE MARK AS SHOWN.

THE FOREIGN WORDING IN THE MARK
TRANSLATES INTO ENGLISH AS "EVEN" OR
"SMOOTH."

SN 78-955,458, FILED 8-18-2006.

TIMOTHY FINNEGAN, EXAMINING ATTORNEY



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EFFEN

Word Mark EFFEN

Translations The foreign wording in the mark translates into English as "even" or "smooth".

Goods and Services IC 036. US 100 101 102. G & S: financial sponsorship of entertainment events, fashion shows, nightlife and lifestyle events, sporting events, cultural events and musical performances. FIRST USE: 20030600. FIRST USE IN COMMERCE: 20030600

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 77174439

Filing Date May 7, 2007

Current Filing Basis 1A

Original Filing Basis 1A

Published for Opposition April 22, 2008

International Registration Number 0944811

Owner (APPLICANT) CONSTELLATION SPIRITS INC. CORPORATION DELAWARE SUITE 1700 1 SOUTH DEARBORN CHICAGO ILLINOIS 60603

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record Jeffrey H. Brown

Prior Registrations 2788499;2788500;2938623

Type of Mark SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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EFFEN

Word Mark EFFEN
 Translations The foreign wording in the mark translates into English as "even" or "smooth."
 Goods and Services IC 021. US 002 013 023 029 030 033 040 050. G & S: beverage glassware, ice buckets, cocktail shakers, bottle openers
 Standard Characters Claimed
 Mark Drawing Code (4) STANDARD CHARACTER MARK
 Serial Number 77329418
 Filing Date November 14, 2007
 Current Filing Basis 1B
 Original Filing Basis 1B
 Published for Opposition April 29, 2008
 Owner (APPLICANT) CONSTELLATION SPIRITS INC. CORPORATION DELAWARE 1 SOUTH DEARBORN, SUITE 1700 CHICAGO ILLINOIS 60603
 Assignment Recorded ASSIGNMENT RECORDED
 Attorney of Record Jeffrey H. Brown
 Prior Registrations 2788499;2788500;3252791;AND OTHERS
 Type of Mark TRADEMARK
 Register PRINCIPAL
 Live/Dead Indicator LIVE

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EFFEN IS A FIVE-LETTER WORD

Word Mark	EFFEN IS A FIVE-LETTER WORD
Translations	The foreign wording in the mark translates into English as "even" or "smooth".
Goods and Services	IC 033. US 047 049. G & S: Distilled Spirits. FIRST USE: 20070800. FIRST USE IN COMMERCE: 20070800
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	77330957
Filing Date	November 15, 2007
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	April 29, 2008
Owner	(APPLICANT) CONSTELLATION SPIRITS INC. CORPORATION DELAWARE 1 SOUTH DEARBORN, SUITE 1700 CHICAGO ILLINOIS 60603
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Jeffrey H. Brown
Prior Registrations	2788499;2788500;3252791;AND OTHERS
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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