

ESTTA Tracking number: **ESTTA312018**

Filing date: **10/16/2009**

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	William A. Klapperman
Granted to Date of previous extension	11/01/2009
Address	11355 West Olympic Blvd., Suite 100 Los Angeles, CA 90064 UNITED STATES
Party who filed Extension of time to oppose	WilliamA.Klapperman
Relationship to party who filed Extension of time to oppose	spaces were placed between William and A. and Klapperman

Attorney information	Dax Alvarez Blakely Sokoloff Taylor & Zafman LLP 12400 Wilshire Boulevard, 7th Floor Los Angeles, CA 90025-1040 UNITED STATES dax_alvarez@bstz.com Phone:310.207.3800
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**Applicant Information**

Application No	77401523	Publication date	05/05/2009
Opposition Filing Date	10/16/2009	Opposition Period Ends	11/01/2009
Applicant	RTS Consultants, LLC 72 North Main Street, Suite 208 Hudson, OH 44236 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 043. All goods and services in the class are opposed, namely: restaurant services
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**Grounds for Opposition**

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

## Marks Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	BROWN DERBY		
Goods/Services	restaurant services and related goods and services		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	HOLLYWOOD BROWN DERBY		
Goods/Services	restaurant services and related goods and services		

Attachments	8610.M001 Notice of Opposition.PDF ( 5 pages )(134986 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	/dax alvarez/
Name	Dax Alvarez
Date	10/16/2009

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

_____	)	
William A. Klapperman,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. _____
	)	
RTS Consultants, LLC	)	
	)	
Applicant.	)	Serial No. 77/401,523
	)	
Mark: HOLLYWOOD BROWN DERBY	)	
Serial No.: 77/401,523	)	
Filed: February 20, 2008	)	
Published: May 5, 2009	)	
_____	)	

**NOTICE OF OPPOSITION**

Opposer, William A. Klapperman (hereinafter "Opposer"), by and through his undersigned attorneys, opposes the application for registration of the above-referenced mark, namely Serial No. 77/401,523, for the reason that Opposer will be damaged by the registration of the mark on the Principal Register, as set forth below:

1. Opposer, William A. Klapperman, is an individual and United States citizen, having a place of business at 11355 West Olympic Boulevard, Suite 100, Los Angeles, California 90064.
2. Upon information and belief, RTS Consultants, LLC (hereinafter "Applicant") is a Ohio limited liability company with a place of business at 72 North Main Street, Suite 208, Hudson, Ohio 44236.

3. Opposer is the owner of the marks BROWN DERBY and HOLLYWOOD BROWN DERBY for use in connection with restaurant services and other related goods and services.

4. Opposer has used and continues to use the marks and names BROWN DERBY and HOLLYWOOD BROWN DERBY for almost eighty (80) years directly or through predecessors in interest in connection with restaurant services and related goods and services.

5. Opposer has developed valuable goodwill associated with the marks BROWN DERBY and HOLLYWOOD BROWN DERBY in connection with restaurant services and related goods and services.

6. Upon information and belief, Applicant filed a trademark application for registration of the mark HOLLYWOOD BROWN DERBY under 15 U.S.C. § 1051(b) on or about February 20, 2008.

7. Upon information and belief, Applicant seeks registration for use of the mark HOLLYWOOD BROWN DERBY in connection with "restaurant services."

8. Upon information and belief, the services for which Applicant seeks registration are highly similar to Opposer's services and may be marketed in a manner to associate Applicant's services with Opposer.

9. Applicant's US Application for registration of the mark HOLLYWOOD BROWN DERBY is identical to Opposer's famous marks BROWN DERBY and HOLLYWOOD BROWN DERBY as to be likely, when used in connection with Applicant's services, to cause or result in dilution of Opposer's trademarks as defined in Section 43(c) of the Trademark Act, 15 U.S.C. § 1125(d).

10. Due to the similarities between the Opposer's marks and the mark for which Applicant seeks registration, prospective purchasers or consumers of Applicant's services and Opposer's services are likely to be confused and mistaken or deceived as to the source, sponsorship or association of Applicant and Opposer and their respective goods and services.

11. Opposer's goods and services and Applicant's services are closely related such that prospective purchasers are likely to believe that they emanate from a single source.

12. Opposer would be damaged by registration of the mark on the grounds that confusion, mistake or deceit as to the source, sponsorship or association will likely result.

13. Due to Applicant's knowledge of Opposer's prior rights to the marks BROWN DERBY and HOLLYWOOD BROWN DERBY, Applicant's filing of US Application Serial No. 77/401,523 constituted a knowingly false representation of material fact.

14. Despite Applicant's knowledge of Opposer's prior rights to the marks BROWN DERBY and HOLLYWOOD BROWN DERBY in connection with restaurant services and related goods and services, Applicant executed the declaration in support of US Application Serial No. 77/401,523 stating that it believes the Applicant to be entitled to use such mark in commerce; to the best of its knowledge and belief no other person, firm, corporation or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely when used on or in connection with the goods/services of such other person to cause confusion or to cause mistake or to deceive, and that all statements made of its knowledge are true; and that all

statements made on information and belief are believed to be true. In filing the  
aforementioned declaration, Applicant committed fraud on the United States Patent and  
Trademark Office.

WHEREFORE, the Opposer prays that U.S. Application Serial No. 77/401,523 be  
rejected and the mark sought for the services therein specified in International Class 43 be  
denied and refused. Opposer herewith submits this Notice of Opposition along with the  
requisite filing fee in the amount of \$300.00.

Please charge any fees or credit any overpayment to our Deposit Account No. 02-  
2666.

Respectfully submitted,

BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP

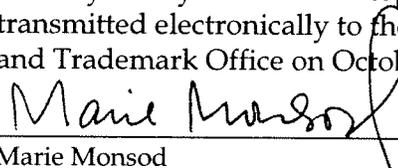
Dated: October 16, 2009

By:

  
Day Alvarez  
Counsel for Opposer

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Los Angeles, California 90025-01026  
(310) 207-3800

I hereby certify that this correspondence is being  
transmitted electronically to the United States Patent  
and Trademark Office on October 16, 2009.

  
Marie Monsod

October 16, 2009

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document entitled:

**NOTICE OF OPPOSITION**

was served on counsel for Applicant by first class mail, postage prepaid, in a sealed enveloped addressed as follows:

Karen K. Hammond  
Porter Wright Morris & Arthur LLP  
41 South High Street  
Columbus, Ohio 43215

Executed on October 16, 2009, at Los Angeles, California.

  
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Marie Monsod