

ESTTA Tracking number: **ESTTA316079**

Filing date: **11/10/2009**

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	BDA Management, Inc.
Granted to Date of previous extension	01/06/2010
Address	16658 Chesterfield Airport Road Chesterfield, MO 63017 UNITED STATES

Correspondence information	BDA Management, Inc. 16658 Chesterfield Airport Road Chesterfield, MO 63017 UNITED STATES Trademark.STL@stinson.com Phone:314-863-0800
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### Applicant Information

Application No	77712309	Publication date	09/08/2009
Opposition Filing Date	11/10/2009	Opposition Period Ends	01/06/2010
Applicant	Clothespin Enterprises, LLC 3502 Cresson Street Philadelphia, PA 19129 UNITED STATES		

### Goods/Services Affected by Opposition

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

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2431286	Application Date	12/21/1999
Registration Date	02/27/2001	Foreign Priority Date	NONE
Word Mark	AMERICA'S PUB		

Design Mark	<b>AMERICA'S PUB</b>
Description of Mark	NONE
Goods/Services	Class 042. First use: First Use: 1995/05/11 First Use In Commerce: 1995/07/12 restaurant and night club services

Attachments	75877740#TMSN.gif ( 1 page )( bytes ) America_s Pub 1.PDF ( 1 page )(6951 bytes ) America_s Pub 2.PDF ( 1 page )(7054 bytes ) America_s Pub 3.PDF ( 1 page )(6977 bytes ) America_s Pub 4.PDF ( 1 page )(4522 bytes ) America_s Pub 5.PDF ( 1 page )(14899 bytes ) America_s Pub 6.PDF ( 1 page )(10238 bytes ) America_s Pub 7.PDF ( 1 page )(5828 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	/laila s. wolfgram/
Name	BDA Management, Inc.
Date	11/10/2009

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

In the matter of Service Mark Application Serial No. 77/712,309 – Published in the Official Gazette (Trademarks) on September 8, 2009.

BDA Management, Inc.,	)	
	)	
Opposer,	)	Opposition No.
	)	
v.	)	
	)	
Clothespin Enterprises, LLC,	)	
	)	
Applicant.	)	
_____	)	

**NOTICE OF OPPOSITION**

BDA Management, Inc. (“Opposer”), a corporation organized and existing under the laws of the State of Missouri, believes that it will be damaged by registration of the mark shown in Serial No. 77/712,309 in International Class 43 and hereby opposes the same.

As grounds for opposition, it is alleged that:

1. Clothespin Enterprises, LLC (“Applicant”) seeks to register THE AMERICAN PUB (“Applicant’s Mark”) as a service mark for bar and restaurant services in International Class 43.

2. Application Serial No. 77/712,309 has a U.S. filing date of April 13, 2009, as evidenced by publication of said mark in the *Official Gazette*, on September 8, 2009. A copy of publication of Applicant’s Mark as it appears in the *Official Gazette* is attached herewith and marked as Exhibit A.

3. Opposer owns U.S. Registration No. 2,431,286 for AMERICA’S PUB (“Opposer’s Mark”), registered on the Principal Register on February 27, 2001 for restaurant and

night club services in International Class 42. A copy of the Certificate of Registration for Opposer's Mark is attached herewith and marked as Exhibit B.

4. Opposer has continually utilized, marketed, and offered its services for sale and is now utilizing, marketing, and offering its services in connection with its AMERICA'S PUB service mark in interstate commerce.

5. Opposer has provided its services in conjunction with its AMERICA'S PUB service mark as hereinbefore referred to throughout in interstate commerce. Opposer has developed an exceedingly valuable goodwill with respect to its AMERICA'S PUB service mark, including spending considerable sums for promotional activities, electronic and printed material promoting these services. Additionally, including by virtue of the excellence of its services, the Opposer has gained for its Mark a valuable reputation.

6. Applicant filed the subject application on April 13, 2009 which is more than nine (9) years after Opposer filed its application for its AMERICA'S PUB service mark on December 21, 1999. Priority of filing date is not at issue.

7. Opposer's Section 15 Affidavit was accepted by the U.S. Trademark Office on April 14, 2007.

8. The mark proposed for registration by the Applicant, namely, THE AMERICAN PUB, is confusingly similar to Opposer's AMERICA'S PUB service mark. Applicant's Mark will be used in connection with services which are identical to the services which Opposer offers in commerce. Opposer believes that, after a reasonable opportunity for further investigation and discovery, the evidence will show that Opposer markets its services to a spectrum of customers who are the same customers to whom Applicant will be marketing its services. Applicant's THE AMERICAN PUB service mark so nearly resembles Opposer's AMERICA'S PUB service mark

when applied to Opposer's advertisements for its services that Applicant's mark is likely to be confused therewith and mistaken therefor.

9. Applicant's THE AMERICAN PUB service mark is deceptively similar to Opposer's AMERICA'S PUB service mark so as to cause confusion and to lead to deception as to the origin of Applicant's services offered under Applicant's Mark.

10. If the Applicant is permitted to use and register Applicant's Mark for use in connection with the services as specified in the application herein opposed, confusion in trade, resulting in damage and injury to Opposer, would be caused and would result by reason of this similarity between Applicant's THE AMERICAN PUB service mark and Opposer's AMERICA'S PUB service mark. Persons familiar with Opposer's AMERICA'S PUB service mark would be likely to see Applicant's services and expecting the services to be somehow associated with the Opposer. Any defect, objection, or fault found with Applicant's services marketed under Applicant's Mark would necessarily reflect upon, and seriously injure, the reputation and goodwill that Opposer has established for its services marketed under Opposer's AMERICA'S PUB service mark.

11. If the Applicant is granted the registration herein opposed, it would thereby obtain at least a *prima facie* exclusive right to the use of its THE AMERICAN PUB service mark. Such registration would be a source of damage and injury to Opposer. Therefore, Applicant should be denied registration of its THE AMERICAN PUB service mark under Section 2(d) of the Lanham Act.

WHEREFORE, the Opposer prays that Application Serial No. 77/712,309 be rejected, and the mark therein sought be denied and refused.

Attorney for Opposer, the undersigned below, hereby authorizes the Trademark Trial and Appeal Board to deduct the statutory filing fee of \$300.00 for filing this Notice of Opposition from Deposit Account No. 19-4409.

Respectfully submitted,

BDA MANAGEMENT, INC.

By: /s/ Laila S. Wolfgram

Laila S. Wolfgram, Esq.

STINSON MORRISON HECKER LLP

168 N. Meramec Avenue, Suite 400

St. Louis (Clayton), MO 63105

(314) 863-0800 / Fax (314) 259-3983

Attorneys for Opposer

Dated: November 10, 2009  
St. Louis, Missouri

## EXHIBIT A

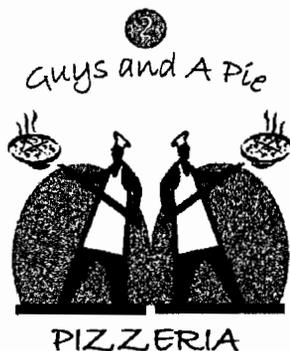
SEPT. 8, 2009

U.S. PATENT AND TRADEMARK OFFICE

TM 1071

### CLASS 43—(Continued).

SN 77-708,552. 2 GUYS AND PIE LLC, BONAIRE, GA. FILED 4-7-2009.



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

THE MARK CONSISTS OF AN IMAGE OF TWO PIZZA MAKERS STANDING BACK TO BACK HOLDING UP A PIZZA. BELOW THE IMAGE IS THE STYLIZED WORD "PIZZERIA". ABOVE THE IMAGE IS THE STYLIZED WORDS "GUYS AND A PIE". ABOVE THE WORDS "GUYS AND A PIE" IS AN IMAGE OF A CIRCLE WITH THE STYLIZED NUMBER "2" INSIDE.

FOR RESTAURANT SERVICES (U.S. CLS. 100 AND 101).

FIRST USE 5-1-2008; IN COMMERCE 6-23-2008.

ANGELA M. MICHELI, EXAMINING ATTORNEY

### CLASS 43—(Continued).

SN 77-712,309. CLOTHESPIN ENTERPRISES, LLC, PHILADELPHIA, PA. FILED 4-13-2009.

## THE AMERICAN PUB

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

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

FOR BAR AND RESTAURANT SERVICES (U.S. CLS. 100 AND 101).

CYNTHIA TRIPI, EXAMINING ATTORNEY

SN 77-717,614. FIAMMAROSSA LLC, NEW YORK, NY. FILED 4-20-2009.

SN 77-711,040. Z GOLF FOOD & BEVERAGE SERVICES, LLC, CAMARILLO, CA. FILED 4-9-2009.

## Z GOLF FOOD & BEVERAGE SERVICES

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

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "GOLF FOOD & BEVERAGE SERVICES", APART FROM THE MARK AS SHOWN.

FOR CONTRACT FOOD SERVICES FOR GOLF VENUES (U.S. CLS. 100 AND 101).

FIRST USE 1-1-1999; IN COMMERCE 1-1-1999.

MICHAEL WEBSTER, EXAMINING ATTORNEY

## Fiammarossa Ristorante

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

THE MARK CONSISTS OF THE WORDS "FIAMMAROSSA RISTORANTE" IN THE DEPICTED FONT OR LOGO-TYPE.

THE ENGLISH TRANSLATION OF 'FIAMMAROSSA' IN THE MARK IS 'FLAMING ROSE' OR 'RED FLAME'. THE ENGLISH TRANSLATION OF RISTORANTE IN THE MARK IS RESTAURANT.

FOR RESTAURANT SERVICES (U.S. CLS. 100 AND 101).

MICHAEL WEBSTER, EXAMINING ATTORNEY

**EXHIBIT B**

**Int. Cl.: 42**

**Prior U.S. Cls.: 100 and 101**

**Reg. No. 2,431,286**

**United States Patent and Trademark Office**

**Registered Feb. 27, 2001**

**SERVICE MARK  
PRINCIPAL REGISTER**

**AMERICA'S PUB**

**KGM MANAGEMENT, INC. (MISSOURI CORPORATION)  
734 WESTPORT PLAZA, SUITE 260  
ST. LOUIS, MO 63146**

**FOR: RESTAURANT AND NIGHT CLUB SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).  
FIRST USE 5-11-1995; IN COMMERCE 7-12-1995.**

**NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "PUB", APART FROM THE MARK AS SHOWN.  
SEC. 2(F).**

**SER. NO. 75-877,740, FILED 12-21-1999.**

**JODI LAUTERBACH, EXAMINING ATTORNEY**

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

In the matter of Service Mark Application Serial No. 77/712,309 – Published in the Official Gazette (Trademarks) on September 8, 2009.

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Opposer,	)	Opposition No.
	)	
v.	)	
	)	
Clothespin Enterprises, LLC	)	
	)	
Applicant.	)	
_____	)	

**CERTIFICATE OF SERVICE**

I hereby certify that on this 10<sup>TH</sup> day of November, 2009, the foregoing was sent via Federal Express, Tracking No. 798125839588 to:

ROBERT A. McKINLEY  
KLEHR HARRISON  
260 S. BROAD STREET  
PHILADELPHIA, PA 19102-5021

Correspondent and Attorney of Record

/s/ Laila S. Wolfgram  
Attorney for Opposer  
BDA Management, Inc.