

ESTTA Tracking number: **ESTTA354978**

Filing date: **06/25/2010**

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	Watermill Express, LLC
Granted to Date of previous extension	07/07/2010
Address	177 West Jessup Brighton, CO 80601 UNITED STATES

Attorney information	Marc C. Levy FAEGRE & BENSON LLP 1700 Lincoln Street 3200 Wells Fargo Center Denver, CO 80203-4532 UNITED STATES trademarkdnvr@faegre.com, mlevy@faegre.com, jcollins@faegre.com Phone:303-607-3500
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Applicant Information

Application No	77765851	Publication date	03/09/2010
Opposition Filing Date	06/25/2010	Opposition Period Ends	07/07/2010
Applicant	GWYNNE 5 BEVERAGE, LLC SUITE 2 2520 FLATBUSH AVENUE BROOKLYN, NY 11234 UNITED STATES		

Goods/Services Affected by Opposition

Class 011. All goods and services in the class are opposed, namely: Temperature controlled beverage dispensing systems comprised of filtering, processing and storing units, for drinking water, spring water, flavored water, table water, aerated water, mineral water, soda water, carbonated water, non-carbonated water, and soft drinks
Class 021. All goods and services in the class are opposed, namely: Bottles, sold empty

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.	1651912	Application Date	03/05/1990
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Registration Date	07/23/1991	Foreign Priority Date	NONE
Word Mark	WATERMILL EXPRESS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1990/08/00 First Use In Commerce: 1990/08/00 coin operated vending machines for dispensing pure water		

Attachments	77765851 THE WATERMILLER and Design.pdf (8 pages)(237122 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	/Marc C. Levy/
Name	Marc C. Levy
Date	06/25/2010

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

WATERMILL EXPRESS, LLC

Opposer,

v.

GWYNNE 5 BEVERAGE, LLC

Applicant.

Opposition No. _____

Mark: **THE WATERMILLER and Design**

Serial No.: 77/765,851

Filing Date: June 23, 2009

Publication Date: March 9, 2010

NOTICE OF OPPOSITION

Watermill Express, LLC (“Opposer”), a limited liability company organized under the laws of the State of Delaware, having its principal place of business at 177 West Jessup, Brighton, Colorado 80601, believes that it will be damaged by the registration of the mark **THE WATERMILLER and Design**, as depicted in Application Serial No. 77/400,548 (“Applicant’s Mark”), and hereby opposes the registration of said application under the provisions of 15 U.S.C. § 1063.

As grounds for its opposition to the registration of Applicant’s Mark, Opposer alleges as follows:

1. Applicant Gwynne 5 Beverage, LLC (“Applicant”) applied for Applicant’s Mark on June 23, 2009, and said application was assigned serial number 77/765,851.
2. Application Serial No. 77/765,851 seeks the registration of Applicant’s Mark, depicted here:



3. Application Serial No. 77/765,851 seeks the registration of Applicant's Mark in connection with the following goods:

"Temperature controlled beverage dispensing systems comprised of filtering, processing and storing units, for drinking water, spring water, flavored water, table water, aerated water, mineral water, soda water, carbonated water, non-carbonated water, and soft drinks" in International Class 11; and

"Bottles, sold empty" in International Class 21.

4. Applicant's Mark was published for Opposition in the *Official Gazette* on March 9, 2010.

5. On April 2, 2010, Opposer requested, and was granted, an extension of time in which to oppose Applicant's Mark, to July 7, 2010.

6. Accordingly, this Notice of Opposition is timely filed.

7. Opposer is the owner of the mark WATERMILL EXPRESS. Since at least as early as August, 1990, Opposer (including its predecessors, related companies and licensees) has used the WATERMILL EXPRESS mark in commerce in connection with filtered water, water treatment processing, vending machines dispensing water and bottles sold for storing water.

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8. Opposer is the owner of the following United States Trademark Registration for the WATERMILL EXPRESS mark:

Mark	Reg. No.	Goods/Class	Reg. Date
WATERMILL EXPRESS	1,651,912	coin operated vending machines for dispensing pure water in International Class 9	July 23, 1991

True and correct printouts of information from the USPTO TARR electronic database showing the current status and title of the above registration are attached as **Exhibit A**.

9. Opposer (including its predecessors, related companies and licensees), manufactures, owns, operates, and licenses to third parties the right to own and operate Watermill Express outlets or stations which include coin operated vending machines for dispensing pure drinking water. There are more than 1,200 Watermill Express outlets located in California, Arizona, Nevada, New Mexico, Colorado, Texas, Louisiana, Florida and Ohio.

10. Opposer is not connected in any way with Applicant and Applicant's use of Applicant's Mark is unauthorized.

11. The WATERMILL EXPRESS mark is distinctive in connection with Opposer's goods and services.

12. Applicant's use of or intended use of Applicant's Mark is without Opposer's consent or permission.

13. Applicant's Mark so resembles the WATERMILL EXPRESS mark as to be likely, when used on or in connection with the goods of the Applicant, to cause confusion, or to cause mistake, or to deceive.

14. Because Applicant's mark so resembles the WATERMILL EXPRESS mark that it is likely to cause confusion, or to cause mistake, or to deceive, Opposer will be damaged by the registration of Applicant's Mark.

15. In accordance with Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), Applicant's Mark should not be registered.

WHEREFORE, Opposer believes that it would be damaged by registration of Applicant's Mark on the principal register and respectfully requests that Application Serial No. 77/765,851 be rejected, that no registration be issued thereon, and that this opposition be sustained in favor of Opposer.

The required opposition fee of \$300.00 accompanies this Notice. If the filing fee is deficient or excessive in any way, the Commissioner is granted authority to credit or debit Deposit Account Number 06-0029.

Dated: June 25, 2010

Respectfully submitted,

By: /Marc C. Levy/
Marc C. Levy
Jennifer Daniel Collins
Faegre & Benson LLP
3200 Wells Fargo Center
1700 Lincoln Street
Denver, Colorado 80203-4532
(303) 607-3500

Attorneys for Opposer
Watermill Express, LLC

Filed Electronically via ESSTA.

CERTIFICATE OF SERVICE

I do hereby certify that on this 25th day of June, 2010, a true and correct copy of the above and foregoing **NOTICE OF OPPOSITION** was sent via first class mail delivery, to:

Pina M. Campagna
Carter, Deluca, Farrell & Schmidt, LLP
445 Broadhollow Rd., Ste 420
Melville, NY 11747-3685

/Jennifer Daniel Collins/

fb.us.5050566.02

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2010-06-25 14:32:14 ET

Serial Number: 74034232 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 1651912

Mark (words only): WATERMILL EXPRESS

Standard Character claim: No

Current Status: This registration has been renewed.

Date of Status: 2001-10-10

Filing Date: 1990-03-05

Transformed into a National Application: No

Registration Date: 1991-07-23

Register: Principal

Law Office Assigned: LAW OFFICE 14

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 40S -Scanning On Demand

Date In Location: 2007-11-08

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. WATERMILL EXPRESS, LLC

Address:

WATERMILL EXPRESS, LLC
177 WEST JESSUP
BRIGHTON, CO 80601
United States

Legal Entity Type: Limited Liability Company

State or Country Where Organized: Delaware

GOODS AND/OR SERVICES

International Class: 009

Class Status: Active

coin operated vending machines for dispensing pure water

Basis: 1(a)

First Use Date: 1990-08-00

First Use in Commerce Date: 1990-08-00

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2007-11-08 - Case File In TICRS

2001-10-10 - First renewal 10 year

2001-10-10 - Section 8 (10-year) accepted/ Section 9 granted

2001-07-16 - Combined Section 8 (10-year)/Section 9 filed

1997-08-04 - Section 8 (6-year) accepted & Section 15 acknowledged

1997-07-17 - Section 8 (6-year) and Section 15 Filed

1991-07-23 - Registered - Principal Register

1991-05-28 - Assigned To Examiner

1991-03-20 - Allowed for Registration - Principal Register (SOU accepted)

1991-03-20 - Assigned To Examiner

1991-03-20 - Assigned To Examiner

1991-03-01 - Assigned To Examiner

1991-02-27 - Statement Of Use Processing Complete

1991-02-19 - Use Amendment Filed

1991-01-08 - Noa Mailed - SOU Required From Applicant

1990-10-16 - Published for opposition

1990-09-15 - Notice of publication

1990-07-27 - Approved For Pub - Principal Register

1990-07-16 - Non-final action mailed

1990-06-20 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

GARRETT M. TUTTLE

Correspondent

GARRETT M. TUTTLE

PERKINS COIE LLP

1899 WYNKOOP STREET, SUITE 700

DENVER, COLORADO 80202-1043
