

ESTTA Tracking number: **ESTTA364536**

Filing date: **08/23/2010**

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	Terra Sul Corporation a/k/a Churrascaria Boi Na Brasa
Granted to Date of previous extension	08/21/2010
Address	70 Adams Street, Store #4 Newark, NJ 07105 UNITED STATES

Correspondence information	Eamon J Wall Attorney Wall & Tong, LLP 25 James Way Eatontown, NJ 07724 UNITED STATES ewall@walltong.com, lcrater@walltong.com, docketing@walltong.com Phone:7325422280
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Applicant Information

Application No	77779339	Publication date	06/22/2010
Opposition Filing Date	08/23/2010	Opposition Period Ends	08/21/2010
Applicant	Boi Na Brasa, Inc. 4025 William D. Tate Grapevine, TX 76051 UNITED STATES		

Goods/Services Affected by Opposition

Class 043. First Use: 1999/07/19 First Use In Commerce: 2000/09/11 All goods and services in the class are opposed, namely: restaurant and bar services
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Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Geographic indication which, if used on or in connection with wine or spirits, identifies a place other than the origin of the goods	Uruguay Round Agreements Act section 2(9)
Priority and likelihood of confusion	Trademark Act section 2(d)
The mark is primarily geographically deceptively misdescriptive	Trademark Act section 2(e)(3)

Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	77813335	Application Date	08/26/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BOI NA BRASA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 1996/04/01 First Use In Commerce: 1996/04/01 RESTAURANT AND BAR SERVICES; RESTAURANT SERVICES; RESTAURANT AND CATERING SERVICES; RESTAURANT AND CAFE SERVICES; TAKE OUT RESTAURANT SERVICES		

U.S. Application No.	77813416	Application Date	08/26/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	CHURRASCARIA BOI NA BRASA		
Design Mark			
Description of Mark	The mark consists of words CHURRASCARIA BOI NA BRASA surrounding gaucho carving meat.		
Goods/Services	Class 043. First use: First Use: 1996/04/01 First Use In Commerce: 1996/04/01 RESTAURANT AND BAR SERVICES; RESTAURANT SERVICES; RESTAURANT AND CATERING SERVICES; RESTAURANT AND CAFE SERVICES; TAKE OUT RESTAURANT SERVICES		

Related Proceedings	Cancellation No. 92047056 (Registration No. 2534608 for identical mark as herein), Petition to Cancel granted June 12, 2009
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Attachments	77813335#TMSN.jpeg (1 page)(bytes) 77813416#TMSN.jpeg (1 page)(bytes) TSUL_T005eNoticeOfOpposition.pdf (6 pages)(209949 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	/EJ Wall/
Name	Eamon J Wall
Date	08/23/2010

Grounds for Opposition

1. For many years and since long prior to the filing date of United States Trademark Application Serial No. 77/779,339, Opposer Terra Sul Corporation (“Terra Sul”) adopted and has continuously used in interstate commerce, and not abandoned, the term BOI NA BRASA as a trade mark in connection with restaurant and bar services. Opposer Terra Sul Corporation is the true and correct owner of the BOI NA BRASA mark.
2. Since its adoption and use of the BOI NA BRASA mark, Terra Sul has extensively advertised, distributed, and sold services bearing the BOI NA BRASA mark and maintained high quality standards relating thereto. As a consequence, the consuming public and the trade have come to recognize the BOI NA BRASA mark as being used by Terra Sul or by a single source, and to associate and identify services provided under the BOI NA BRASA mark with Terra Sul or by a single source. Terra Sul derives substantial goodwill and value from this identification by the consuming public and the trade.
3. By the Application opposed herein, Applicant Boi Na Braza, Inc., a Texas Corporation with a business address of 4025 William D. Tate Grapevine TEXAS 76051 (“Applicant”) seeks to register the word mark BOI NA BRAZA on the Principal Register for use in connection with “Restaurant and bar services” in International Class 043.
4. Applicant’s applied-for mark BOI NA BRAZA is confusingly similar in sight, sound, meaning, and commercial impression to Terra Sul’s mark BOI NA BRAZA, and the services identified in the BOI NA BRAZA application (i.e., “restaurant and bar services”) are identical to the services sold by Terra Sul under the BOI NA BRASA mark.

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5. Applicant's applied-for mark BOI NA BRAZA, when used in connection with Applicant's services as identified in the subject application, so resembles Terra Sul's previously used BOI NA BRASA mark as to be likely to cause confusion, mistake and/or to deceive consumers concerning an affiliation, connection, association, or sponsorship with the source of the services sold under the Terra Sul's BOI NA BRAZA mark in violation of 15 U.S.C. Section 1052(d) with consequent injury to Terra Sul, the public and/or the trade.

6. Pursuant to 15 U.S.C. §1063(a), Terra Sul will be damaged by the registration of the BOI NA BRAZA mark in favor of Applicant in that a substantial portion of the purchasing public and/or the trade is likely to be confused or mistakenly believe, through Applicant's intended use of the BOI NA BRAZA mark, that the Applicant is affiliated with, sponsored by, endorsed by, or otherwise associated with Terra Sul. Such likelihood of confusion will result in damage to the goodwill enjoyed by Terra Sul Marine among purchasers and the trade symbolized by the BOI NA BRAZA mark. Registration of the BOI NA BRAZA mark in favor of Applicant will support and assist Applicant in confusing and misleading the consuming public through the use of the mark, and, in addition, will give exclusive statutory right to Applicant in violation and derogation of prior and superior rights of Terra Sul.

7. Terra Sul's mark BOI NA BRASA is properly translated from Portuguese to English as "Ox in embers."

8. The Application opposed herein incorrectly indicates that the mark BOI NA BRAZA is translated into English from Portuguese as "Steer in embers." Specifically, the word "Braza" exists, if at all, as a slang term for "things Brazilian." Thus, Applicant's applied-for mark BOI NA BRAZA may possibly be translated as "Ox in Brazil" or perhaps "Brazilian Ox." In either case, the Brazilian connotations of the term Braza evidence a geographic commercial impression to the relevant consumer.

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9. Applicant's applied-for mark BOI NA BRAZA, when properly translated from Portuguese to English and used in connection with the services set forth in the registration, is merely descriptive or deceptively misdescriptive of them within the meaning of Section 2(e) of the Trademark Act, primarily geographically descriptive of them within the meaning of Section 2(e) of the Trademark Act, and/or primarily geographically deceptively misdescriptive of them within the meaning of Section 2(e) of the Trademark Act.

10. Terra Sul notes that its petition to cancel Registration No. 92047056 for the identical mark BOI NA BRAZA was granted by the TTAB June 12, 2009.

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WHEREFORE, Terra Sul Corporation prays:

(A) that registration of Application Serial No. 77/779,339 in favor of Applicant Boi Na Braza, Inc. be **DENIED**; and

(B) that such other, further, and different relief be granted at the discretion of the Trial Trademark and Appeal Board pursuant to Section 18 of the Trademark Act (15 U.S.C. § 1068).

Respectfully submitted,

Dated: August 23, 2010

WALL & TONG LLP



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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Notice of Opposition has been served with sufficient postage via Express Mail Post Office to Addressee, upon counsel for Applicant THOMPSON & KNIGHT LLP on this 23rd day of August, 2010 at the following correspondence address on file with the United States Patent and Trademark Office:

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Eamon J. Wall