

ESTTA Tracking number: **ESTTA397182**

Filing date: **03/09/2011**

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	Abita Brewing Company, LLC
Granted to Date of previous extension	03/09/2011
Address	P. O. Box 1510 Abita Springs, LA 70420 UNITED STATES

Attorney information	Raymond G. Areaux (33643) Carver, Darden, Koretzky, Tessier, Finn, Blossman & Areaux, LLC 1100 Poydras Street, Suite 3100 New Orleans, LA 70163 UNITED STATES areaux@carverdarden.com Phone:(504) 585-3803
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**Applicant Information**

Application No	85063984	Publication date	11/09/2010
Opposition Filing Date	03/09/2011	Opposition Period Ends	03/09/2011
Applicant	Bird, Darrell D PO Box 740181 Houston, TX 77274 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 033. All goods and services in the class are opposed, namely: Liquor
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	2213433	Application Date	05/01/1997
Registration Date	12/22/1998	Foreign Priority Date	NONE
Word Mark	ANDYGATOR		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 1995/02/10 First Use In Commerce: 1998/08/11 beer, ale, lager, malt liquor

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	The mark consists of the image of an alligator's head, as depicted in Exhibits B and C attached to the Notice of Opposition.		
Goods/Services	beer, ale, lager, malt liquor		

Attachments	Notice of Opposition.16995.pdf ( 13 pages )(4870674 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	/Theodore S. Owers III/
Name	Raymond G. Areaux (33643)
Date	03/09/2011

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

**Abita Brewing Company, LLC**  
*Opposer*

v.

**Darrell D. Bird**  
*Applicant*

\* Opposition No.: *to be assigned*  
\*  
\* Serial No. 85/063,984  
\*  
\* Mark: GATOR  
\*  
\*

**NOTICE OF OPPOSITION**

Abita Brewing Company, LLC, a limited liability company organized under the laws of Louisiana, whose address is Post Office Box 1510, Abita Springs, Louisiana, 70420, believes that it will be damaged by the grant of a registration to Darrell D. Bird for the term GATOR as set forth in Application Serial No. 85/063,984 and hereby opposes the same.

As grounds for opposition, Opposer alleges as follows:

1. Applicant seeks to register the term GATOR in International Class 33 for goods identified as "Liquor" as evidenced by the filing of trademark application Serial No. 85/063,984 ("the '984 Application") on June 16, 2010 with an intent-to-use basis and the publication for opposition of the '984 Application on November 9, 2010.

2. Opposer is the owner of U.S. Registration No. 2,213,433 of the trademark ANDYGATOR for "beer, ale, lager, malt liquor," issued on December 22, 1998. This registration claims a date of first use at least as early as February 10, 1995 and a date of first use in commerce at least as early as August 11, 1998. A true copy of a current printout from the electronic database records of the USPTO for this registration is attached as Exhibit A.

3. Opposer is the owner of a common-law trademark consisting of the image of an alligator's head. This trademark is used by Opposer on the same alcoholic beverage products as its ANDYGATOR trademark. A sample of this trademark as it appears on a label for Opposer's alcoholic beverage products is attached as Exhibit B.

4. Opposer's ANDYGATOR trademark and its common-law trademark consisting of the image of an alligator's head are collectively referred to hereafter as the "Abita Gator Marks."

5. In addition to the alcoholic beverage products identified in U.S. Registration No. 2,213,433, Opposer has developed, marketed, and distributed – and continues to currently market and distribute – various clothing and promotional items bearing the Abita Gator Marks, including caps, T-shirts, beverage ware, and tap handles. Samples of these items are attached as Exhibit C.

6. Opposer owns and has continuously used the Abita Gator Marks in connection with the goods described herein since long before the June 16, 2010 filing date of the '984 Application.

7. By virtue of the substantial delivery of the goods described herein under the Abita Gator Marks, persons familiar with such goods have come to recognize the Abita Gator Marks as an indication of a unique brand of goods. Consequently, Opposer has established valuable good will in the Abita Gator Marks.

8. By virtue of its exclusive and continuous use of the Abita Gator Marks, Opposer has acquired and is the sole owner of common law, state statutory, and other trademark, service mark, trade name, and related rights to the Abita Gator Marks.

9. Applicant's goods intended to be offered in connection with the term GATOR are closely related to the goods offered by Opposer in connection with the Abita Gator Marks and

are sold, distributed or provided, or likely to be sold, distributed or provided, through the same or commercially related channels of trade to the same or overlapping classes of purchasers, consumers or users.

10. Persons familiar with Opposer's goods marketed under the Abita Gator Marks, upon seeing advertisements for Applicant's goods sold, distributed or provided under the confusingly similar term GATOR, would be likely to believe, and would be justified in so believing, that such goods originated from Opposer or were produced in association, connection or affiliation with, or under sponsorship, approval or authorization by, Opposer. Thus, the term GATOR, as used in connection with Applicant's goods, would lead persons familiar with the Abita Gator Marks to believe that Applicant's goods are provided or originated by, sold or distributed in association, connection or affiliation with, or under sponsorship, approval, authorization or license from Opposer.

11. It is likely that, and Opposer believes that, if Applicant is permitted to register the term GATOR for the goods identified in the '984 Application, confusion of the trade and public would, or likely would, result by reason of Applicant's use of a term confusingly similar to the Abita Gator Marks owned and used by Opposer. Such confusion would result in damage and injury to Opposer. Customers, consumers and/or users familiar with the Abita Gator Marks owned and used by Opposer would be likely to purchase, consume, or otherwise use Applicant's goods, believing them to originate from, be sponsored by, or be under license from Opposer. Any defect, objection, fault, or adverse publicity in connection with Applicant's goods sold, distributed or provided under the term GATOR would necessarily reflect on and seriously injure the reputation that Opposer has established for the Abita Gator Marks.

12. If Applicant is granted a registration for the term GATOR for the goods identified in the '984 Application, it would obtain thereby at least *prima facie* exclusive right to use such term in connection with such goods. Such registration would be a source of damage and injury to Opposer and Opposer's customers.

13. Considering the similarity of the term sought to be registered by Applicant, (to-wit: GATOR) to the Abita Gator Marks owned and used by Opposer, and considering the similarity of the goods of the respective parties, Applicant's registration of the term GATOR is likely to cause confusion, or to cause mistake or to deceive as to the affiliation, connection, or association between the parties or as to the origin, sponsorship, or approval by Opposer of the Applicant's goods.

14. The Abita Gator Marks owned and used by Opposer are distinctive and famous according to a number of factors, and Applicant's registration of the term GATOR will cause, further, or support, or is likely to cause, further, or support, dilution of the distinctive quality of the Abita Gator Marks owned and used by Opposer and otherwise violate and infringe upon Opposer's rights under Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

**WHEREFORE**, Opposer, Abita Brewing Company, LLC, prays that, after due proceedings are had, Applicant's application Serial No. 85/063,984 be rejected, that registration of the term GATOR therein sought be denied and refused, and that this opposition be sustained.

*This space is intentionally left blank.*

To the extent any fees are required to file or process these documents, the Commissioner is hereby authorized to charge any and all fees which may be required, or credit any overpayment to, Deposit Account No. 03-0937.

Respectfully submitted,



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**RAYMOND G. AREAUX (Reg. #33,643)**  
**THEODORE (TODD) S. OWERS III**  
**IAN C. BARRAS (Reg. #62,812)**  
**J. MATTHEW MILLER III (Reg. #66,178)**  
*Carver, Darden, Koretzky, Tessier,  
Finn, Blossman & Areaux, L.L.C.*  
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New Orleans, Louisiana 70163  
Telephone: 504-585-3803  
Facsimile: 504-585-3801  
E-mail: [areaux@carverdarden.com](mailto:areaux@carverdarden.com)  
*Attorneys for Opposer, Abita Brewing Company, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing Notice of Opposition has been served on Applicant by mailing said copy on March 9, 2011 via first-class mail to the correspondence address of record listed in the Trademark Applications and Registrations Retrieval (TARR) system located at <http://tarr.uspto.gov>:

Darrell D. Bird  
Post Office Box 740181  
Houston, Texas 77274



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Theodore S. Owers III

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

**This page was generated by the TARR system on 2011-03-07 11:20:01 ET**

**Serial Number:** 75284804 Assignment Information      Trademark Document Retrieval

**Registration Number:** 2213433

**Mark (words only):** ANDYGATOR

**Standard Character claim:** No

**Current Status:** The registration has been renewed.

**Date of Status:** 2008-01-19

**Filing Date:** 1997-05-01

**Transformed into a National Application:** No

**Registration Date:** 1998-12-22

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 101

**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:** 830 -Post Registration

**Date In Location:** 2008-01-19

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

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1. ABITA BREWING CO., L.L.C.

**Address:**

ABITA BREWING CO., L.L.C.  
P. O. BOX 1510  
ABITA SPRINGS, LA 70420  
United States

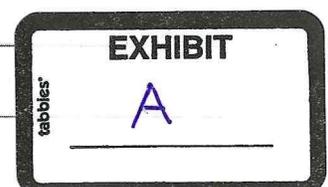
**Legal Entity Type:** Limited Liability Company

**State or Country Where Organized:** Louisiana

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**GOODS AND/OR SERVICES**

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**International Class:** 032

**Class Status:** Active

beer, ale, lager, malt liquor

**Basis:** 1(a)

**First Use Date:** 1995-02-10

**First Use in Commerce Date:** 1998-08-11

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#### ADDITIONAL INFORMATION

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(NOT AVAILABLE)

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#### MADRID PROTOCOL INFORMATION

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(NOT AVAILABLE)

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#### PROSECUTION HISTORY

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

2008-01-19 - First renewal 10 year

2008-01-19 - Section 8 (10-year) accepted/ Section 9 granted

2008-01-14 - Assigned To Paralegal

2008-01-11 - TEAS Section 8 & 9 Received

2007-07-31 - Case File In TICRS

2004-03-31 - Section 8 (6-year) accepted & Section 15 acknowledged

2004-02-18 - Section 8 (6-year) and Section 15 Filed

2004-02-18 - TEAS Section 8 & 15 Received

1998-12-22 - Registered - Principal Register

1998-10-08 - Allowed for Registration - Principal Register (SOU accepted)

1998-09-16 - Statement Of Use Processing Complete

1998-09-16 - Extension 1 granted

1998-09-01 - Use Amendment Filed

1998-09-01 - Extension 1 filed

1998-03-03 - NOA Mailed - SOU Required From Applicant

1997-12-09 - Published for opposition

1997-11-07 - Notice of publication

1997-10-09 - Approved For Pub - Principal Register

1997-10-08 - Assigned To Examiner

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**ATTORNEY/CORRESPONDENT INFORMATION**

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**Attorney of Record**

RAYMOND G. AREAUX (#33,643)

**Correspondent**

RAYMOND G. AREAUX (#33,643)

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Suite 3100

1100 POYDRAS STREET

NEW ORLEANS LA 70163

Phone Number: (504) 585-3803

Fax Number: (504) 585-3801

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NY-CT-MA-ME-DE-OR-5¢ MI-10¢  
NO ADDITIVES, NO PRESERVATIVES.  
NET CONTENTS: 7 FLUID OZ. 0.207 LITERS  
BREWED AND BOTTLED BY ABITA BREWING CO., INC. ABITA SPRINGS, LA 70400

BREWED & BOTTLED WITH PURE

ARTISIAN WATER  
ABITA SPRINGS, LA

ABITA



ANDYGATOR

MALT LIQUOR  
7 FLUID OZ.

GOVERNMENT WARNING: (1) ACCORDING TO THE SURGEON GENERAL,  
WOMEN SHOULD NOT DRINK ALCOHOLIC BEVERAGES DURING PREGNANCY  
BECAUSE OF THE RISK OF BIRTH DEFECTS. (2) CONSUMPTION OF ALCOHOLIC  
BEVERAGES IMPAIRS YOUR ABILITY TO DRIVE A CAR OR OPERATE  
MACHINERY, AND MAY CAUSE HEALTH PROBLEMS.

EXHIBIT

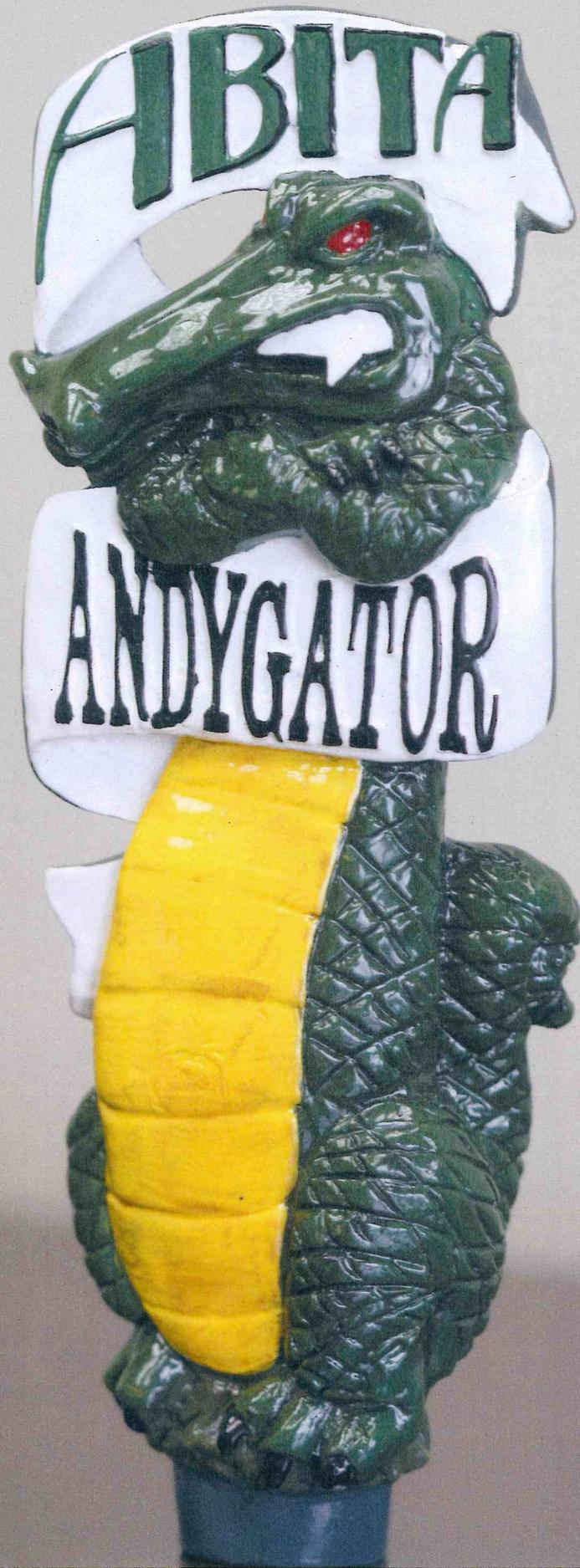
B

tabbies®



EXHIBIT  
C

tabbles



ANDYGATOR



ABITA

Small white manufacturer's tag with illegible text.

