

ESTTA Tracking number: **ESTTA437372**

Filing date: **10/24/2011**

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 parties oppose registration of the indicated application.

Opposers Information

Name	Martini & Rossi Corporation		
Entity	Corporation	Citizenship	Delaware
Address	2701 Le Jeune Road Coral Gables, FL 33134 UNITED STATES		

Name	Bacardi USA, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	2701 Le Jeune Road Coral Gables, FL 33134 UNITED STATES		

Attorney information	Matthew D. Marcotte Kelley Drye & Warren LLP 101 Park Avenue New York, NY 10178 UNITED STATES mmarcotte@kelleydrye.com Phone:(212) 808-7800		
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Applicant Information

Application No	85374266	Publication date	10/11/2011
Opposition Filing Date	10/24/2011	Opposition Period Ends	11/10/2011
Applicant	Stout, Julie Ann #435 2934 N. Beverly Glen Cir. Los Angeles, CA 90077 UNITED STATES		

Goods/Services Affected by Opposition

Class 033. All goods and services in the class are opposed, namely: Alcoholic cocktail mixes

Grounds for Opposition

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

U.S. Registration No.	185413	Application Date	03/01/1923
Registration Date	06/17/1924	Foreign Priority Date	NONE

Word Mark	MARTINI
Design Mark	
Description of Mark	NONE
Goods/Services	Class U047 (International Class 033). First use: First Use: 1890/00/00 First Use In Commerce: 1890/00/00 WINES, SPARKLING WINES, AND WINE VERMOUTH

U.S. Registration No.	1379456	Application Date	06/11/1985
Registration Date	01/21/1986	Foreign Priority Date	NONE

Word Mark	MARTINI
Design Mark	
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 1929/07/29 First Use In Commerce: 1929/07/29 VERMOUTH

U.S. Registration No.	550635	Application Date	06/22/1948
Registration Date	11/13/1951	Foreign Priority Date	NONE

Word Mark	MARTINI AND ROSSI
Design Mark	
Description of Mark	NONE
Goods/Services	Class U047 (International Class 033). First use: First Use: 1882/07/27 First Use In Commerce: 1890/00/00 VERMOUTH, SPARKLING [AND STILL] WINES AND PREPARED WINE APPETIZERS

U.S. Registration No.	2538186	Application Date	04/30/2001
Registration Date	02/12/2002	Foreign Priority Date	NONE
Word Mark	MARTINI & ROSSI		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 1989/00/00 First Use In Commerce: 1989/00/00 ALCOHOLIC BEVERAGES, NAMELY VERMOUTH

U.S. Registration No.	3330476	Application Date	12/04/2003
Registration Date	11/06/2007	Foreign Priority Date	NONE
Word Mark	MARTINI & ROSSI MARTINI 1863 1876 1882 1873		
Design Mark			
Description of Mark	The mark consists of the wording 1863, MARTINI & ROSSI, 1876, 1882, 1873; images of three medals of award from historic beverage competitions in 1876, 1882 and 1873; the word MARTINI; and the designs of flags and coats of arms, a rectangle imposed on a circle, and medals.		
Goods/Services	Class 033. First use: First Use: 2004/05/26 First Use In Commerce: 2004/05/26 VERMOUTH, SPARKLING AND STILL WINES AND PREPARED APERTIFS		

U.S. Registration No.	1390200	Application Date	08/16/1985
Registration Date	04/15/1986	Foreign Priority Date	NONE
Word Mark	M&R MARTINI		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 1973/00/00 First Use In Commerce: 1973/00/00 VERMOUTH

U.S. Registration No.	3181520	Application Date	12/04/2003
Registration Date	12/05/2006	Foreign Priority Date	NONE
Word Mark	MARTINI MARTINI & ROSSI M&R		
Design Mark			
Description of Mark	The mark consists of the wording MARTINI & ROSSI, MARTINI & ROSSI, MARTINI, M&R, and MARTINI and the design of a rectangle imposed on a circle.		
Goods/Services	Class 033. First use: First Use: 2004/05/26 First Use In Commerce: 2004/05/26 VERMOUTH, SPARKLING AND STILL WINES AND PREPARED APERTIFS		

U.S. Registration No.	4002282	Application Date	12/16/2010
Registration Date	07/26/2011	Foreign Priority Date	NONE
Word Mark	MARTINI		

Design Mark			
Description of Mark	The mark consists of the white term "MARTINI" in a black rectangle with a red circle in the background. The rectangle and circle are outlined in gold and white to form a rectangle with two curved sides.		
Goods/Services	Class 033. First use: First Use: 2007/10/00 First Use In Commerce: 2007/10/00 Sparkling wines; Vermouth		

U.S. Registration No.	4002283	Application Date	12/16/2010
Registration Date	07/26/2011	Foreign Priority Date	NONE
Word Mark	MARTINI		
Design Mark			
Description of Mark	The mark consists of the term "MARTINI" in a rectangle with a circle in the background. The rectangle and circle are outlined to form a rectangle with two curved sides.		
Goods/Services	Class 033. First use: First Use: 2009/05/00 First Use In Commerce: 2009/05/00 Sparkling wines		

Attachments	73542527#TMSN.gif (1 page)(bytes) 76248593#TMSN.gif (1 page)(bytes) 78336582#TMSN.jpeg (1 page)(bytes) 73553773#TMSN.gif (1 page)(bytes) 78336583#TMSN.jpeg (1 page)(bytes) 85199744#TMSN.jpeg (1 page)(bytes) 85199754#TMSN.jpeg (1 page)(bytes) TEENYMARTINI.PDF (5 pages)(53714 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	/Matthew D. Marcotte/
Name	Matthew D. Marcotte
Date	10/24/2011

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

NOTICE OF OPPOSITION

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MARTINI AND ROSSI CORPORATION and	:	
BACARDI U.S.A., INC.,	:	
	:	
Opposers,	:	
	:	
v.	:	
	:	Opposition No.
JULIE ANN STOUT,	:	
	:	
Applicant.	:	
	:	
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TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

MARTINI AND ROSSI CORPORATION, a Delaware corporation, with a place of business in Coral Gables, Florida, and BACARDI U.S.A., INC., a Delaware corporation, with a place of business in Coral Gables, Florida, (collectively "Opposers"), believe that they will be damaged by registration of the designation TEENYMARTINI for "Alcoholic cocktail mixes" in International Class 33 shown in application Serial No. 85/374,266 filed by JULIE ANN STOUT, (hereinafter "Applicant") and hereby oppose the same.

As grounds therefore, it is alleged that:

1. Opposer Martini & Rossi Corporation is the owner in the United States of the names and trademarks MARTINI and MARTINI & ROSSI for alcoholic beverages, as well as other designations and trademarks.
2. Opposer Bacardi U.S.A., Inc. is now and has for many years been engaged under license from Martini & Rossi Corporation in the advertising, promotion, distribution, and sale in the continental United States of alcoholic beverages under the names and trademarks

MARTINI and MARTINI & ROSSI and is the owner of a number of other names and trademarks for rum, distilled spirits, and other beverages.

3. Beginning long prior to the July 21, 2011 filing date of the intent to use application herein opposed, Opposers and their predecessors used the trademarks MARTINI and MARTINI & ROSSI in connection with the advertising, promotion, and sale of their world renowned alcoholic beverage products. By virtue of the widespread sales and extensive advertising and promotion of MARTINI and MARTINI & ROSSI alcoholic beverage products and the excellence of the alcoholic beverages themselves, the names and marks MARTINI and MARTINI & ROSSI are among the most highly recognized trademarks in the United States. The value of the reputation and goodwill of the MARTINI and MARTINI & ROSSI marks is incalculable and rightfully belongs exclusively to Opposers.

4. Opposer Martini & Rossi Corporation is the owner in the United States of all right, title, and interest, in and to the following trademarks registered with the United States Patent and Trademark Office (“PTO”):

- Reg. No. 0,185,413 for the mark MARTINI for “wines, sparkling wines, and wine vermouth” in International Class 33, which issued in 1924;
- Reg. No. 1,379,456 for the mark MARTINI & Design for “vermouth” in International Class 33, which issued in 1986;
- Reg. No. 0,550,635 for the mark MARTINI & ROSSI for “vermouth, sparkling wines and prepared wine appetizers” in International Class 33, which issued in 1951;
- Reg. No. 2,538,186 for the mark MARTINI & ROSSI & Design for “alcoholic beverages, namely, vermouth” in International Class 33, which issued in 2002;
- Reg. No. 3,330,476 for the mark MARTINI & ROSSI MARTINI 1863 1876 1882 1873 & Design for “vermouth, sparkling and still wines, and prepared aperitifs” in International Class 33 which issued in 2007;
- Reg. No. 1,390,200 for the mark M&R MARTINI & Design for “vermouth” in International Class 33 which issued in 1986;

- Reg. No. 3,181,520 for the mark MARTINI MARTINI &ROSSI M&R & Design for “vermouth, sparkling and still wines and prepared aperitifs” in International Class 33 which issued in 2006;
- Reg. No. 4,002,282 for the mark MARTINI & Design for “sparkling wines, vermouth” in International Class 33 which issued in 2011; and
- Reg. No. 4,002,283 for the mark MARTINI & Design for “sparkling wines” in International Class 33 which issued in 2011.

5. The aforesaid registrations are valid and subsisting, unrevoked and uncanceled, and Opposer Martini & Rossi Corporation’s rights to exclusive use of the mark MARTINI in connection with the goods described in Registratoin No. 0,185,413 , MARTINI & Design in connection with the goods described in Registration No. 1,379,456, the mark MARTINI & ROSSI & Design in connection with the goods described in Registration. No. 0,550,635, the mark MARTINI & ROSSI & Design in connection with the goods described in Registration No. 2,538,186, and the mark M&R MARTINI & Design in connection with the goods description in Registration No. 1,390,200 have become incontestable under Section 15 of the Lanham Act, 15 U.S.C. § 1065, by virtue of filing the requisite affidavits under Sections 8 and 15 of the Lanham Act. Opposer Martini & Rossi Corporation owns said registrations and the trademarks shown thereby and all the business and goodwill symbolized thereby and associated therewith in the United States. Bacardi U.S.A., Inc. is a related company whose use of the MARTINI and MARTINI & ROSSI trademarks inures to the benefit of Martini & Rossi Corporation pursuant to 15 U.S.C. §1055.

6. By the application herein opposed, Applicant seeks to register the designation TEENYMARTINI for Alcoholic cocktail mixes,” in International Class 33.

7. Applicant’s designation TEENYMARTINI in application Serial No. 85/374,266 so resembles Opposers’ previously used and registered MARTINI and MARTINI &

ROSSI trademarks as to be likely, when used in connection with Applicant's goods, to cause confusion, to cause mistake, and to deceive with consequent injury to Opposers and the public.

8. Opposers will be damaged by the registration sought by Applicant because such registration would support and assist Applicant in the confusing and misleading use of Applicant's trademark and would give to Applicant color of exclusive statutory rights to such designation in violation and derogation of the prior and superior rights of Opposers.

WHEREFORE, Opposers believe that they would be damaged by registration of Applicant's mark and prays that it be denied.

Please recognize as attorneys for Opposers William R. Golden, Jr., Matthew D. Marcotte, and Anna Jakobsson (members of the Bar of the State of New York) and the firm of Kelley Drye & Warren LLP, 101 Park Avenue, New York, New York 10178. Please address all communications to Matthew D. Marcotte, Esq. of said firm and address.

Dated: New York, New York
October 24, 2011

KELLEY DRYE & WARREN LLP
Attorneys for Opposers
MARTINI & ROSSI CORPORATION and
BACARDI USA, INC.

By: 

William R. Golden, Jr.
Matthew D. Marcotte
Anna Jakobsson
101 Park Avenue
New York, New York 10178
(212) 808-7800

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing NOTICE OF OPPOSITION has been served upon Applicant at the following address of record by first class mail, postage prepaid, this 24th day of October, 2011

Julie Ann Stout
2934 North Beverly Glen Circle #435
Los Angeles CA 90077-1724



Matthew D. Marcotte