

ESTTA Tracking number: **ESTTA455343**

Filing date: **02/08/2012**

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	Diageo North America, Inc.
Granted to Date of previous extension	02/08/2012
Address	801 Main Avenue Norwalk, CT 06851 UNITED STATES

Attorney information	Evan Gourvitz 801 Main Avenue Norwalk, CT 06851 UNITED STATES trademarks@diageo.com, gina.vendittelli@diageo.com, nicole.damato@diageo.com, evan.gourvitz@diageo.com Phone:(203) 229-2100
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Applicant Information

Application No	85372597	Publication date	10/11/2011
Opposition Filing Date	02/08/2012	Opposition Period Ends	02/08/2012
Applicant	Captain Russell Corp. 525 Broad Street Cumberland, RI 02864 UNITED STATES		

Goods/Services Affected by Opposition

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

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.	972985	Application Date	03/06/1972
Registration Date	11/13/1973	Foreign Priority Date	NONE
Word Mark	CAPTAIN MORGAN		
Design Mark			

Description of Mark	NONE
Goods/Services	Class U049 (International Class 033). First use: First Use: 1971/12/23 First Use In Commerce: 1971/12/23 RUM

U.S. Registration No.	3466371	Application Date	10/12/2007
Registration Date	07/15/2008	Foreign Priority Date	NONE

Word Mark	CAPTAIN MORGAN
Design Mark	

Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 2006/04/01 First Use In Commerce: 2006/04/01 Brewed malt-based alcoholic beverage in the nature of a beer

U.S. Registration No.	3509465	Application Date	05/18/2007
Registration Date	09/30/2008	Foreign Priority Date	NONE

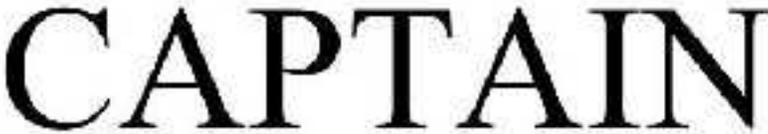
Word Mark	CAPTAIN MORGAN
Design Mark	

Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 2006/05/01 First Use In Commerce: 2006/05/01 brewed malt based alcoholic beverage in the nature of beer; beer; lager

U.S. Registration No.	3159948	Application Date	04/29/2004
Registration Date	10/17/2006	Foreign Priority	NONE

		Date	
Word Mark	CAPTAIN MORGAN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 1982/04/15 First Use In Commerce: 1982/04/15 Alcoholic Beverage, namely, distilled spirits		

U.S. Registration No.	3805205	Application Date	09/19/2007
Registration Date	06/22/2010	Foreign Priority Date	NONE

Word Mark	CAPTAIN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 1995/00/00 First Use In Commerce: 1995/00/00 Distilled spirits, excluding tequila and mezcal		

Attachments	77303060#TMSN.jpeg (1 page)(bytes) 77184278#TMSN.jpeg (1 page)(bytes) 78410544#TMSN.jpeg (1 page)(bytes) 77283163#TMSN.jpeg (1 page)(bytes) Notice of Opposition CAPTAIN MORGAN v. CAPTAIN RUSSELL CORP.pdf (22 pages)(4752186 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	/Evan Gourvitz/
Name	Evan Gourvitz
Date	02/08/2012

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

In the Matter of Application Serial No. 85/372,597
Published in the Official Gazette on October 11, 2011
Mark: CAPTAIN RUSSELL CUBA LIBRE
International Class: 33

DIAGEO NORTH AMERICA, INC.,

Opposer,

-against-

CAPTAIN RUSSELL CORP.,

Applicant.

Opposition No. _____

NOTICE OF OPPOSITION

Opposer Diageo North America, Inc. (“Opposer”) believes that it will be damaged by the registration of the mark CAPTAIN RUSSELL CUBA LIBRE (“Applicant’s Mark”) for “[a]lcoholic cocktail mixes, namely, rum and cola mixes” in International Class 33, as shown in the above-noted intent-to-use application, Serial No. 85/372,597, and hereby opposes the same pursuant to Section 13(a) of the Trademark Act of 1946, as amended (the “Lanham Act”), 15 U.S.C. § 1063(a).

As grounds for the opposition, Opposer alleges that:

1. Opposer Diageo North America, Inc. is a Connecticut corporation with its principal place of business located at 801 Main Avenue, Norwalk, Connecticut 06851.
2. Opposer and its predecessors-in-interest have owned and used the CAPTAIN MORGAN and CAPTAIN marks (collectively, “Opposer’s Marks”) in commerce in the United States in connection with alcoholic beverages since at least as early as 1971 – long before the filing date of the intent-to-use application herein opposed, or any other date upon which Applicant can rely in this proceeding.

3. During its continuous use of Opposer's Marks, Opposer and its authorized wholesalers, distributors, and retail accounts have expended considerable time, effort and money in advertising and publicizing the sale of alcoholic beverages bearing those marks in the United States.

4. During its continuous use of Opposer's Marks, Opposer has directly and indirectly sold, and offered for sale, alcoholic beverages bearing those marks throughout the United States.

5. During its continuous use of Opposer's Marks, Opposer has directly and indirectly sold, and offered for sale, alcoholic beverages bearing those mark to wholesalers, distributors, and individuals over the legal purchase age for alcohol throughout the United States.

6. In addition, from a date long prior to any date upon which Applicant can rely in this proceeding, consumers and the public have recognized and commonly used Opposer's Marks to refer to Opposer's alcoholic beverages bearing those marks, and have come to identify Opposer's Marks with Opposer and its alcoholic beverages.

7. Opposer's Marks are strong and famous and have been so from a date prior to any date upon which Applicant can rely in this proceeding.

8. In addition to Opposer's extensive common law rights in Opposer's Marks, Opposer owns U.S. Reg. No. 972,985 for CAPTAIN MORGAN for "rum," registered November 13, 1973 based on use in commerce since December 23, 1971; Reg. No. 3,466,371 for CAPTAIN MORGAN for "[b]rewed malt-based alcoholic beverage in the nature of a beer," registered July 15, 2008 based on use in commerce since April 1, 2006; Reg. No. 3,509,465 for CAPTAIN MORGAN for "brewed malt based alcoholic beverage in the nature of beer; beer; lager," registered September 30, 2008 based on use in commerce since May 1, 2006; Reg. No.

3,159,948 for CAPTAIN MORGAN (stylized) for “[a]lcoholic beverage, namely, distilled spirits,” registered October 17, 2006 based on use in commerce since April 15, 1982; and Reg. No. 3,805,205 for CAPTAIN for “[d]istilled spirits, excluding tequila and mescal,” registered June 22, 2010 based on use in commerce since 1995, among others. Copies of the certificates and electronic status records for these registrations, which are valid, subsisting, and in full force and effect, are attached hereto as Exhibit A.

9. Upon information and belief, Applicant Captain Russell Corp. (“Applicant”) is a Rhode Island corporation with an address of 525 Broad Street, Cumberland, Rhode Island 02864.

10. By the application herein opposed, Serial No. 85/372,597, Applicant seeks to register CAPTAIN RUSSELL CUBA LIBRE for “[a]lcoholic cocktail mixes, namely, rum and cola mixes” in International Class 33.

11. Applicant’s intent-to-use application was filed on July 15, 2011, long after Opposer commenced use of and registered Opposer’s Marks in the United States, and long after Opposer’s Marks became famous in the United States.

12. Applicant’s Mark is confusingly similar in appearance, sound, and commercial impression to Opposer’s Marks.

13. The goods for which Applicant seeks registration are closely related to, and likely to be perceived as closely related to, those in connection with which Opposer uses and has used Opposer’s Marks in the United States.

14. Upon information and belief, the products sold in connection with Opposer’s Marks and the products set forth in Applicant’s Application Serial No. 85/372,597

are intended to be directed to identical classes of purchasers and to be distributed through the same channels of trade in the United States.

15. Opposer will be damaged by the registration sought by Applicant because such registration will support and assist Applicant in the confusing and misleading use of the mark sought to be registered, and will give color of exclusive statutory rights to Applicant in violation and derogation of the prior and superior rights of Opposer.

16. Opposer also will be damaged by the registration sought by Applicant because such registration will dilute the distinctive qualities of the famous Opposer's Marks.

17. Registration should be refused pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), on the grounds that Applicant's Mark so closely resembles Opposer's Marks as to be likely, when used on or in connection with the goods identified in the Application, to cause confusion, or to cause mistake, or to deceive, with the consequent injury to Opposer and to the public.

18. Registration should be refused pursuant to Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c), on the grounds that Applicant's Mark will cause dilution of the distinctive qualities of Opposer's Marks.

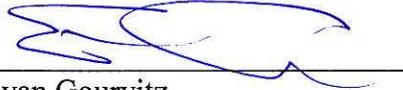
WHEREFORE, Opposer believes it will be damaged by the registration of Applicant's CAPTAIN RUSSELL CUBA LIBRE mark for the goods identified in Application Serial Number 85/372,597 and respectfully requests that the opposition be sustained and registration of said mark be denied.

Pursuant to 37 C.F.R. §2.6(a)(17), Opposer respectfully requests that the \$300.00 statutory filing fee for filing a Notice of Opposition in one class, and any additional amount, be charged to Deposit Account No. 083120.

All communication should be addressed to Opposer's counsel at the below stated address.

Dated: Norwalk, Connecticut
February 8, 2012

Respectfully submitted,



Evan Gourvitz
Diageo North America, Inc.
801 Main Avenue
Norwalk, Connecticut 06851

Counsel for Opposer Diageo North America, Inc.

EXHIBIT A

United States Patent Office

972,985
Registered Nov. 13, 1973

PRINCIPAL REGISTER Trademark

Ser. No. 417,450, filed Mar. 6, 1972

CAPTAIN MORGAN

The Huntington Creek Corporation, (Maryland corporation)
375 Park Ave.
New York, N.Y. 10022

For: RUM, in CLASS 49 (INT. CL. 33).
First use Dec. 23, 1971; in commerce Dec. 23, 1971.

L. STRICKMAN, Examiner

Int. Cl.: 32

Prior U.S. Cls.: 45, 46 and 48

United States Patent and Trademark Office

Reg. No. 3,466,371

Registered July 15, 2008

**TRADEMARK
PRINCIPAL REGISTER**

CAPTAIN MORGAN

DIAGEO NORTH AMERICA, INC. (CONNECTI-
CUT CORPORATION)
801 MAIN AVENUE
NORWALK, CT 06851

FOR: BREWED MALT-BASED ALCOHOLIC BEV-
ERAGE IN THE NATURE OF A BEER, IN CLASS 32
(U.S. CLS. 45, 46 AND 48).

FIRST USE 4-1-2006; IN COMMERCE 4-1-2006.

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

OWNER OF U.S. REG. NOS. 972,985, 3,159,948 AND
OTHERS.

THE NAME(S), PORTRAIT(S), AND/OR SIGNA-
TURE(S) SHOWN IN THE MARK DOES NOT IDEN-
TIFY A PARTICULAR LIVING INDIVIDUAL.

SER. NO. 77-303,060, FILED 10-12-2007.

RON FAIRBANKS, EXAMINING ATTORNEY

Int. Cl.: 33

Prior U.S. Cls.: 47 and 49

United States Patent and Trademark Office

Reg. No. 3,509,465

Registered Sep. 30, 2008

**TRADEMARK
PRINCIPAL REGISTER**

CAPTAIN MORGAN

DIAGEO NORTH AMERICA, INC. (CONNECTI-
CUT CORPORATION)
801 MAIN AVENUE
NORWALK, CT 06851

OWNER OF U.S. REG. NOS. 972,985, 1,285,506,
AND 2,168,573.

FOR: BREWED MALT BASED ALCOHOLIC BEV-
ERAGE IN THE NATURE OF BEER; BEER; LAGER,
IN CLASS 33 (U.S. CLS. 47 AND 49).

THE NAME "CAPTAIN MORGAN" DOES NOT
IDENTIFY A LIVING INDIVIDUAL.

FIRST USE 5-1-2006; IN COMMERCE 5-1-2006.

SN 77-184,278, FILED 5-18-2007.

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

MARK SPARACINO, EXAMINING ATTORNEY

Int. Cl.: 33

Prior U.S. Cls.: 47 and 49

United States Patent and Trademark Office

Reg. No. 3,159,948

Registered Oct. 17, 2006

TRADEMARK
PRINCIPAL REGISTER

Captain Morgan

DIAGEO NORTH AMERICA, INC. (CONNECTI-
CUT CORPORATION)
801 MAIN AVE
NORWALK, CT 06851

FOR: ALCOHOLIC BEVERAGE, NAMELY, DIS-
TILLED SPIRITS, IN CLASS 33 (U.S. CLS. 47 AND 49).

FIRST USE 4-15-1982; IN COMMERCE 4-15-1982.

THE NAME IN THE MARK DOES NOT IDENTI-
FY A LIVING INDIVIDUAL.

SN 78-410,544, FILED 4-29-2004.

CHERYL CLAYTON, EXAMINING ATTORNEY

United States of America

United States Patent and Trademark Office

CAPTAIN

Reg. No. 3,805,205

Registered June 22, 2010

Int. Cl.: 33

TRADEMARK

PRINCIPAL REGISTER

DIAGEO NORTH AMERICA, INC. (CONNECTICUT CORPORATION)
801 MAIN AVENUE
NORWALK, CT 06851

FOR: DISTILLED SPIRITS, EXCLUDING TEQUILA AND MEZCAL, IN CLASS 33 (U.S. CLS. 47 AND 49).

FIRST USE 0-0-1995; IN COMMERCE 0-0-1995.

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

OWNER OF U.S. REG. NOS. 972,985, 3,262,926 AND OTHERS.

SER. NO. 77-283,163, FILED 9-19-2007.

LAURA KOVALSKY, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office



United States Patent and Trademark Office

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Word Mark	CAPTAIN MORGAN
Goods and Services	IC 033. US 049. G & S: RUM. FIRST USE: 19711223. FIRST USE IN COMMERCE: 19711223
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	72417450
Filing Date	March 6, 1972
Current Filing Basis	1A
Original Filing Basis	1A
Registration Number	0972985
Registration Date	November 13, 1973
Owner	(REGISTRANT) HUNTINGTON CREEK CORPORATION, THE CORPORATION MARYLAND 375 PARK AVE. NEW YORK NEW YORK 10022 (LAST LISTED OWNER) DIAGEO NORTH AMERICA, INC. CORPORATION CONNECTICUT 801 Main Ave Norwalk CONNECTICUT 06851
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	DANA M. GILLAND
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 8 (6-YR). SECTION 8(10-YR) 20040130.
Renewal	2ND RENEWAL 20040130
Live/Dead Indicator	LIVE

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CAPTAIN MORGAN

Word Mark CAPTAIN MORGAN

Goods and Services IC 032. US 045 046 048. G & S: Brewed malt-based alcoholic beverage in the nature of a beer. FIRST USE: 20060401. FIRST USE IN COMMERCE: 20060401

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 77303060

Filing Date October 12, 2007

Current Filing Basis 1A

Original Filing Basis 1A

Published for Opposition April 29, 2008

Registration Number 3466371

Registration Date July 15, 2008

Owner (REGISTRANT) Diageo North America, Inc. CORPORATION CONNECTICUT 801 Main Avenue Norwalk CONNECTICUT 06851

Attorney of Record Elliot Basner

Prior Registrations 0972985;1285506;3159948;AND OTHERS

Type of Mark TRADEMARK

Register PRINCIPAL

Other Data The name(s), portrait(s), and/or signature(s) shown in the mark does not identify a particular living individual.

Live/Dead Indicator LIVE

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Word Mark CAPTAIN MORGAN

Goods and Services IC 033. US 047 049. G & S: brewed malt based alcoholic beverage in the nature of beer; beer; lager. FIRST USE: 20060501. FIRST USE IN COMMERCE: 20060501

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 77184278

Filing Date May 18, 2007

Current Filing Basis 1A

Original Filing Basis 1B

Published for Opposition October 30, 2007

Registration Number **3509465**

Registration Date September 30, 2008

Owner (REGISTRANT) Diageo North America, Inc. CORPORATION CONNECTICUT 801 Main Avenue Norwalk CONNECTICUT 06851

Attorney of Record Steven Rosenthal

Prior Registrations 0972985;1285506;2168573

Type of Mark TRADEMARK

Register PRINCIPAL

Other Data The name "CAPTAIN MORGAN" does not identify a living individual.

Live/Dead Indicator LIVE

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Word Mark CAPTAIN MORGAN
Goods and Services IC 033. US 047 049. G & S: Alcoholic Beverage, namely, distilled spirits. FIRST USE: 19820415. FIRST USE IN COMMERCE: 19820415
Mark Drawing Code (5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM
Serial Number 78410544
Filing Date April 29, 2004
Current Filing Basis 1A
Original Filing Basis 1B
Published for Opposition November 9, 2004
Registration Number 3159948
Registration Date October 17, 2006
Owner (REGISTRANT) Diageo North America, Inc. CORPORATION CONNECTICUT 801 Main Ave Norwalk CONNECTICUT 06851
Attorney of Record the firm of Morgan, Lewis & Bockius LLP, MICHAEL F. CLAYTON, JAMES R. SIMS III, RON N. DREBEN, KAREN A. BUTCHER, BRETT I. MILLER, ANITA B. POLOTT , CAROLE R. KLEIN, ALBERT G. TRAMPOSCH, MEREDITH A. CARLO, JOSEPH E. WASHINGTON, ROBERT P. HENLEY, JAKE D. FELDMAN, ASHLEY A. PHILLIPS, HENRY SHINN, YUN JAE CHUN and KRISTIN H. ALTOFF, members of the District of Columbia Bar, NISHAN KOTTAHACHCHI, a member of the

California Bar, HENRY W. HUFFNAGLE, a member of the Pennsylvania Bar, and BRENDAN J. HUGHES, a member of the Maryland Bar, all located at 1111 Pennsylvania Ave., NW, Washington, D.C. 20004, JEFFREY H. GREENE, a member of the New York Bar, located at 101 Park Avenue, New York, New York 10178, ROCHELLE D. ALPERT, CARLA B. OAKLEY, LESLIE MCKNEW, SHARON SMITH, and MARINA BAGINSKY members of the California Bar, all located at One Market, Spear Street Tower, San Francisco, California 94105, and ANDREW J. GRAY IV and BRUNO W. TARABICHI, members of the California Bar, all located at 2 Palo Alto Square, Suite 700, 3000 El Camino Real, Palo Alto, California 94306, all of whom should receive correspondence and documents related to this application through the offices

Type of Mark TRADEMARK
Register PRINCIPAL
Other Data The name in the mark does not identify a living individual.
Live/Dead Indicator LIVE

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CAPTAIN

Word Mark	CAPTAIN
Goods and Services	IC 033. US 047 049. G & S: Distilled spirits, excluding tequila and mezcal. FIRST USE: 19950000. FIRST USE IN COMMERCE: 19950000
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	77283163
Filing Date	September 19, 2007
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	April 6, 2010
Registration Number	3805205
Registration Date	June 22, 2010
Owner	(REGISTRANT) Diageo North America, Inc. CORPORATION CONNECTICUT 801 Main Avenue Norwalk CONNECTICUT 06851
Attorney of Record	Luaren Mandell
Prior Registrations	0972985;1285506;3262926;AND OTHERS
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of the foregoing NOTICE OF OPPOSITION to be served, via first class mail, postage prepaid, on this 8th day of February 2012, to Applicant at the address identified on the Patent and Trademark Office's TARR database as follows:

Captain Russell Corp.
525 Broad Street
Cumberland, Rhode Island 02864-6919


Gina Vendittelli