

ESTTA Tracking number: **ESTTA537327**

Filing date: **05/13/2013**

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

Proceeding	91210046
Party	Defendant Liquid Evolutions LLC
Correspondence Address	BRAD M BEHAR BRAD M BEHAR & ASSOCIATES PLLC 94 2ND ST MINEOLA, NY 11501-3008 UNITED STATES
Submission	Answer and Counterclaim
Filer's Name	Brad M. Behar
Filer's e-mail	trademarks@beharlawfirm.com
Signature	/Brad M. Behar/
Date	05/13/2013
Attachments	5-13-13 Answer and Counterclaims to Notice of Opposition - LEBLVD 91210046.pdf (1 page)(313710 bytes)

Registrations Subject to the filing

Registration No	3119488	Registration date	07/25/2006
Registrant	LEBLON HOLDINGS LLC 41 West 25th Street, Fifth Floor New York, NY 10010 UNITED STATES		
Grounds for filing	The registration is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used.		

Goods/Services Subject to the filing

Class 033. First Use: 2005/09/02 First Use In Commerce: 2005/10/04 All goods and services in the class are requested, namely: Cacha�sa, namely, Brazilian rum
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Registration No	3783397	Registration date	05/04/2010
Registrant	Leblon Holdings LLC 41 West 25th Street, Fifth Floor New York, NY 10010 UNITED STATES		

Goods/Services Subject to the filing

Class 033. First Use: 2005/09/02 First Use In Commerce: 2005/10/04 All goods and services in the class are requested, namely: Cacha�sa, namely, Brazilian rum
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application No. 85/776,139
Published on February 26, 2013 for LEBLVD

LEBLON HOLDINGS LLC,	:	
Opposer,	:	
	:	
vs.	:	OPPOSITION NO. 91210046
	:	
LIQUID EVOLUTIONS, LLC	:	
Applicant.	:	
	:	

ANSWER TO NOTICE OF OPPOSITION

Applicant, Liquid Evolutions, LLC (hereinafter “Applicant”), by its undersigned counsel, hereby answers the notice of opposition as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 and the allegations are therefore denied.
2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 and the allegations are therefore denied.
3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3 and the allegations are therefore denied.
4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4 and the allegations are therefore denied.
5. Applicant admits that it filed U.S. application serial number 85/776139 for the mark LEBLVD on November 9, 2012 under Section 1(b) of the Trademark Act for “Alcoholic beverages except beers; Prepared alcoholic cocktails” in International Class 33, otherwise,

Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 and the allegations are therefore denied.

6. Denied.

7. Denied.

8. Denied.

9. Applicant admits that it did not use its mark LEBLVD in connection with the goods listed in the subsection application, namely “Alcoholic beverages except beers; Prepared alcoholic cocktails” prior to the filing of the subsection application for LEBLVD on November , 2012, otherwise denied.

10. Denied.

FIRST AFFIRMATIVE DEFENSE

Opposer’s asserted marks LEBLON and LEBLON (with design) are primarily geographically descriptive and have not acquired distinctiveness or secondary meaning.

SECOND AFFIRMATIVE DEFENSE

Opposer’s asserted marks LEBLON and LEBLON (with design) are geographically deceptively misdescriptive.

Applicant reserves the right to amend this answer to assert any additional affirmative defenses that may become apparent and available.

APPLICANT'S COUNTERCLAIMS FOR CANCELLATION

Applicant (and Petitioner) Liquid Evolutions LLC, a limited liability company organized and existing under the laws of the State of Connecticut, having a place of business at 48 Union Street #1C, Stamford Connecticut 06906, believes that it is and will continue to be damaged by registration numbers Registration No. 3,119,488 and 3,783,397, and hereby petitions to cancel said registrations under the provisions of 2(e)(2) and 2(e)(3) of the Trademark Act of 1946, 15 U.S.C. §1052.

As grounds for cancellation, Applicant (and Petitioner) alleges as follows:

1. In U.S. Opposition No. 91210046, Opposer Leblon Holdings, LLC (“Opposer”) asserts the marks LEBLON and LEBLON (with design) for use in connection with Brazilian rum, also called “cachaca,” including U.S. Registration No. 3,119,488 and 3,783,397, as a basis for refusal for Applicant’s U.S. Application Serial No. 85/776,139 for the mark LEBLVD for “Alcoholic beverages except beers; Prepared alcoholic cocktails” under Section 2(d) of the Trademark Act. Collectively the marks LEBLON and LEBLON (with design) are referred to herein as the “LEBLON Marks.”
2. The term “Leblon” is known for being one of the most affluent neighborhoods in Rio de Janeiro, Brazil as shown in the attached website printout from Wikipedia. See Exhibit A.
3. The term “Leblon” is geographically descriptive of a place in Brazil.
4. Opposer’s registrations are for, and upon information and belief, Opposer uses the LEBLON Marks, in connection with the sale of Brazilian rum.
5. Upon information and belief, Opposer’s Brazilian rum originates from Leblon, Brazil.

6. The term “Leblon” is a geographically descriptive term when used in connection with Brazilian rum originating from Leblon, Brazil.

7. Alternatively, upon information and belief, Opposer’s Brazilian rum does not originate from Leblon, Brazil and thus the LEBLON Marks are geographically deceptively misdescriptive.

COUNT I

Primarily Geographically Descriptive and Lack of Secondary Meaning

8. Opposer has asserted alleged rights to the LEBLON Marks for use in connection with Brazilian rum against Applicant in the present proceeding.

9. The term “Leblon” is primarily descriptive of the geographic location for the origin of Opposer’s Brazilian rum.

10. The primary significance of the term LEBLON is a generally known geographic location.

11. Opposer has not made substantially exclusive use of either of the LEBLON Marks, and, therefore, the marks have not acquired distinctiveness or secondary meaning.

12. The LEBLON Marks do not indicate the source of Opposer’s goods.

COUNT II

In the Alternative, Geographically Deceptively Misdescriptive

13. Opposer has asserted alleged rights to the LEBLON Marks for use in connection with Brazilian rum against Applicant in the present proceeding.

14. The primary significance of the term LEBLON is a generally known geographic location in Rio de Janeiro, Brazil.

15. Upon information and belief, the consuming public is likely to believe the place identified by the mark indicates the origin of the goods bearing the mark.

16. Upon information and belief, Opposer's Brazilian rum is not manufactured in Leblon, Brazil.

17. Upon information and belief, the misrepresentation of the place of origin of Opposer's goods would be a material factor in a consumer's decision to purchase the goods.

By reason of the foregoing, Opposer is and will be damaged by the continued registration of Opposers' alleged marks LEBLON and LEBLON (with design), U.S. Registration Nos. 3,119,488 and 3,783,397, and those registrations should be cancelled.

Respectfully submitted,
BRAD M. BEHAR & ASSOCIATES, PLLC

Dated: May 13, 2013

/s/Brad M. Behar
Brad M. Behar
94 Second Street
Mineola, NY 11501-3008
(516) 741-6500

Attorneys for Applicant
LIQUID EVOLUTIONS, LLC

EXHIBIT A

Leblon

From Wikipedia, the free encyclopedia

Leblon is the most affluent neighbourhood in Rio de Janeiro, Brazil. Neighboring **Ipanema** is regarded as the second most affluent area in Rio de Janeiro. It is also the name of the local beach. The neighbourhood is located in the southern zone of the city, between Lagoa Rodrigo de Freitas, Morro Dois Irmãos and the Jardim de Alá channel, bordering the Gávea, Ipanema, Lagoa and Vidigal neighbourhoods.

- [[1]] (http://www.amoleblon.com.br/) (pt)

History

The neighbourhood was named after a 19th century French businessman, Charles Le Blond, who owned the area.^[1]

Characteristics

It is located west of Ipanema. In the north, it is bordered by Gávea and, in the west, by a towering hill called Dois Irmãos, which translates as "two brothers", because of its split peak.

Leblon is similar to Ipanema but even more exclusive, being the home of rich and famous people. The beach is quieter and more relaxed than the hip and trendy beach of Ipanema.

Leblon in Popular Culture

Leblon is known for being a very cosmopolitan neighbourhood, with a lively nightlife across its bars, restaurants and nightclubs. Leblon has been either referenced or depicted in the following media:

In Television:

- *Viver a Vida*, a telenovela produced by Rede Globo aired from September 2009 to May 2010.
- *Páginas da Vida*, a telenovela produced by Rede Globo aired from July 2006 to March 2007.
- *Mulheres Apaixonadas*, a telenovela produced by Rede Globo aired from February to October 2003.
- *Laços de Família*, a telenovela produced by Rede Globo aired from June 2000 to February 2001.
- *Por Amor*, a telenovela produced by Rede Globo aired from October 1997 to May 1998.
- *História de Amor*, a telenovela produced by Rede Globo aired from July 1995 to March 1996.

In Music:

Leblon has also been the subject of many songs such as

- "Falso Leblon", "Choque de Ordem", "Haiti", "O namorado" and "O querer" by Caetano Veloso
- "Óculos" by Paralamas do Sucesso
- "Inverno" by Adriana Calcanhotto
- "Sexo, amor, traição" by Luciana Mello
- "Andar, andar" and "Tesoura do desejo" by Alceu Valença
- "Aquilo bom (garotas do Leblon)" by Elba Ramalho
- "Daqui pro Meier" by Ed Motta
- "Balanço Zona Sul" by Wilson Simonal
- "Completamente Blue" by Cazuza
- "Virgem" by Marina Lima

among many others.

- ↑ http://leblon.com.br/leblonhis1.shtml

Retrieved from "http://en.wikipedia.org/w/index.php?title=Leblon&oldid=540529648"

Categories: Neighbourhoods in Rio de Janeiro (city) | Beaches of Brazil

Coordinates: 22°59′0.82″S 43°13′19.78″W﻿ / ﻿-22.983561111111°S 43.222161111111°W﻿ / -22.983561111111; -43.222161111111



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CERTIFICATE OF SERVICE

I certify that on this 13th day of May 2013, the accompanying APPLICANT'S ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS was caused to be served on Opposer Leblon Holdings, LLC by electronically filing one copy thereof with the United States Patent and Trademark Office Trademark Trial and Appeal Board and by depositing a copy via United States Postal Service as first class mail, postage prepaid, in an envelope addressed to Opposer's counsel of record:

Lora A. Moffatt, Esq.
Salans LLP
Rockefeller Center, 620 Fifth Avenue
New York, NY 10020

/s/ Brad M. Behar
Brad M. Behar
BRAD M. BEHAR & ASSOCIATES, PLLC
94 Second Street
Mineola, NY 11501