

ESTTA Tracking number: **ESTTA534261**

Filing date: **04/25/2013**

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	Fertitta Hospitality, LLC
Granted to Date of previous extension	04/28/2013
Address	1510 West Loop South Houston, TX 77027 UNITED STATES

Attorney information	William D. Raman FLECKMAN & MCGLYNN, PLLC P.O. Box 685108 Austin, TX 78768-5108 UNITED STATES raman@fleckman.com, trademarks@fleckman.com, jennings@fleckman.com Phone:(512) 476-7900
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Applicant Information

Application No	85657016	Publication date	10/30/2012
Opposition Filing Date	04/25/2013	Opposition Period Ends	04/28/2013
Applicant	Fertitta Entertainment LLC 1505 South Pavilion Center Drive Las Vegas, NV 89135 UNITED STATES		

Goods/Services Affected by Opposition

Class 041. First Use: 2007/02/23 First Use In Commerce: 2007/02/23
All goods and services in the class are opposed, namely: Entertainment in the nature of casino services

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
The mark is primarily merely a surname	Trademark Act section 2(e)(4)

Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	85315323	Application Date	05/09/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	FERTITTA		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 029. First use: First Use: 2006/12/12 First Use In Commerce: 2006/12/12 Olive oil

U.S. Application No.	85319256	Application Date	05/12/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	FERTITTA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 2011/05/11 First Use In Commerce: 2011/05/11 Restaurant and bar services; spa services, namely, providing temporary accommodations and meals to clients of a health or beauty spa; and resort lodging services; excluding casino services		

Related Proceedings	Opposition Nos. 91205982 and 91205984
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Attachments	Notice of Opposition.pdf (4 pages)(1711645 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	/William D. Raman/
Name	William D. Raman
Date	04/25/2013

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

In the Matter of Application
Serial Nos. 85/657,016

Published in the Official Gazette
on October 30, 2012

Fertitta Hospitality, LLC,

Opposer,

v.

Fertitta Entertainment, LLC,

Applicant.

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Opposition No. ***

Marks: FERTITTA

NOTICE OF OPPOSITION

BOX TTAB

FEE

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

Madam:

Fertitta Hospitality, LLC (“Opposer”), a Texas limited liability company having an address of 1510 West Loop South, Houston, Texas 77027, believes that it will be damaged by registration by Fertitta Entertainment, LLC of the mark FERTITTA in Application Serial No. 85/657,016 in International Class 41, and hereby opposes the same.

As grounds of opposition, it is alleged that:

1. Applicant seeks to register the mark FERTITTA as a mark for casino services.

2. The application to register the mark for such services was filed as a use-based application on June 20, 2012, and published for opposition on October 30, 2012. The application alleges a date of first use of February 23, 2007. The time for filing an opposition has been extended until April 28, 2012, which falls on a Sunday, making the present Notice of Opposition due on Monday, April 29.
3. Opposer and its predecessors-in-interest (collectively hereafter referred to as "Opposer") have used the name FERTITTA as a trade name or trademark, or as part of a trade name or trademark for various goods and services for many years. For example, Opposer has used the mark FERTITTA as a trademark for olive oil products since at least as early as 2006 (Application SN 85/315,323). Additionally, Opposer has used FERTITTA as a mark for restaurant, bar, spa, and resort lodging services, including use on the Internet promoting such services, since at least as early as May 11, 2011 (Application SN 85/319,256). Still further, Opposer has featured the tagline "A FERTITTA ENTERTAINMENT COMPANY" on a restaurant menu and on a promotional brochure for the dining, entertainment, hospitality, and gaming services of a related company. (See, Exhibits A and B). Moreover, Opposer's Chairman and CEO, Tilman Fertitta, has received extensive publicity and recognition in connection with his association with Opposer, Landry's, Inc., and with various other predecessor entities owned or controlled by Mr. Fertitta that include his surname within their name. These entities include, for example, Fertitta Hospitality, Inc. and Fertitta Holdings, LLC. Opposer has operated dining, hospitality, entertainment and gaming services under business names that include the name "Fertitta" for many years. As a result, on information and belief, Opposer has

developed and enjoys significant goodwill and common law rights under the name and mark FERTITTA.

4. On information and belief, Opposer's use of "FERTITTA" as a name or mark in connection with its goods and services predates the first trademark use by Applicant of "FERTITTA" for the services listed in the present application.
5. To the extent that Opposer's use of the mark FERTITTA has caused the mark to become distinctive of Opposer's goods and services, Applicant's mark, FERTITTA, when used for the services identified in the application, so resembles Opposer's mark, FERTITTA, as to be likely to cause confusion, mistake, or deception.
6. The name "Fertitta" is primarily merely a surname. On information and belief, the designation "Fertitta" is not distinctive of Applicant's services identified in the present application, and Applicant is not entitled to registration of this surname in connection with such services on the Principal Register.
7. If Applicant is granted the registration herein opposed, it would thereby obtain at least a prima facie exclusive right to the use of the designation FERTITTA for the services identified in its application. Such registration would be a source of damage and injury to Opposer.

Wherefore, Opposer prays that this Opposition be sustained and that the mark of Application Serial No. 85/657,016 be refused registration.

Please direct all communications concerning the referenced opposition proceeding to the following:

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Respectfully submitted,

By: 
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Attorney for Opposer

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Dated: 4/25/13