

ESTTA Tracking number: **ESTTA545070**

Filing date: **06/25/2013**

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	Firefly Distilling Company LLC
Granted to Date of previous extension	06/26/2013
Address	6775 Bears Bluff Road Wadmalaw Island, SC 29487 UNITED STATES

Attorney information	John Paul Oleksiuk Cooley LLP 1299 Pennsylvania Avenue, NW Suite 700 Washington, DC 20004 UNITED STATES trademarks@cooley.com,jpo@cooley.com Phone:3108836400
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Applicant Information

Application No	85721375	Publication date	02/26/2013
Opposition Filing Date	06/25/2013	Opposition Period Ends	06/26/2013
Applicant	Liquid Evolutions LLC 48 Union Street #1C Stamford, CT 06906 UNITED STATES		

Goods/Services Affected by Opposition

Class 033. All goods and services in the class are opposed, namely: Alcoholic beverages except beers; Prepared alcoholic cocktails
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Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	85019483	Application Date	04/21/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	FIREFLY TEASERS		
Design Mark			

Description of Mark	The mark consists of the wording "FIREFLY TEASERS" with a design of a firefly comprising the letter "Y". The design of several small star shapes trails the tail of the firefly suggesting a trail of light.
Goods/Services	Class 033. First use: Distilled Spirits

Attachments	SD-#853297-v1-TEMPTI-TEASERS_notice_of_opposition.pdf(83191 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	/John Paul Oleksiuk/
Name	John Paul Oleksiuk
Date	06/25/2013

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

In the matter of Application Serial No. 85/721,375
For the Trademark TEMPTI-TEASERS
Published in the Official Gazette on February 26, 2013

FIREFLY DISTILLING COMPANY LLC)	
)	
Opposer,)	
)	
v.)	
)	
LIQUID EVOLUTIONS LLC,)	Opposition No.
)	
)	
Applicant.)	
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NOTICE OF OPPOSITION

Opposer Firefly Distilling Company LLC (“Firefly”), a Delaware limited liability company having its principal place of business at 6775 Bears Bluff Road, Wadmalaw Island, SC 29487, will be damaged by the issuance of a registration for the mark TEMPTI-TEASERS (hereafter “Applicant’s Mark”), as applied for in Application Serial No. 85/721,375 filed on September 5, 2012 by Applicant Liquid Evolutions LLC, a Connecticut limited liability company having an address of 48 Union Street #1C, Stamford, CT 06906 (“Applicant”). Firefly, having previously been granted an extension of time to oppose Applicant’s Mark, hereby opposes same.

As grounds for opposition, Firefly alleges:

1. Firefly is a company that markets and sells a number of different types and brands of alcoholic beverages and distilled spirits, including without limitation vodka and bourbon. Firefly has marketed and sold alcoholic beverages and distilled spirits in the United States since at least as early as 2006.

2. Firefly filed an intent-to-use trademark application on April 21, 2010 for FIREFLY TEASERS (and Design) in Class 33 for “distilled spirits” (the “Firefly Teasers Mark”). The application was assigned U.S. App. Serial No. 85/019,483. The application was allowed on November 23, 2010, and it remains live.

3. Firefly continues to have a bona fide intent to use its Firefly Teasers Mark on and in connection with distilled spirits.

4. Upon commencing use in commerce of the Firefly Teasers Mark, Firefly intends to file a statement of use, after which the application to register the Firefly Teasers Mark will register in due course, having a nationwide priority date of April 21, 2010.

5. Upon information and belief, Firefly alleges that on September 5, 2012, Applicant filed an intent-to-use application to register the mark TEMPTI-TEASERS in International Class 33 (the “Applicant’s Mark”). Applicant seeks registration in connection with “alcoholic beverages except beers; prepared alcoholic cocktails.”

6. Firefly’s priority filing date of April 21, 2010 predates Applicant’s filing date of September 5, 2012 for the application to register Applicant’s Mark.

7. Upon information and belief, Firefly’s filing date of April 21, 2010 predates any use in commerce of Applicant’s Mark.

8. Products sold in connection with Applicant’s Mark are likely to be confused with and mistaken for Firefly’s distilled spirits products marketed under the Firefly Teasers Mark because Applicant’s Mark is highly similar in commercial impression to Firefly’s Firefly Teasers Mark.

9. Applicant’s Mark is intended for use in connection with products that overlap with and are related to Firefly’s products used in connection with its Firefly Teasers Mark.

10. Applicant's targeted customer base overlaps with the consumers of Firefly's distilled spirits products.

11. As Applicant's goods description contains no restrictions or limitations as to Applicant's channels of trade, Firefly may assume that Applicant's Mark, like Firefly's own Firefly Teasers Mark, will be used in all accepted channels of trade. Therefore, in addition to overlapping consumer bases, Applicant's intended channels of trade for his alcoholic beverage products overlap with channels of trade used by Firefly in marketing, selling, and otherwise distributing its alcohol-based products marketed under its Firefly Teasers Mark.

12. If Applicant is permitted to register Applicant's Mark for the goods specified in the Application herein opposed, confusion resulting in damage and injury to Firefly would likely occur. Persons familiar with Firefly's Firefly Teasers Mark would likely perceive Applicant's products as associated with, affiliated with, or sponsored by Firefly. Such confusion would inevitably result in damage to Firefly.

13. Firefly's customers and the relevant public are likely to misapprehend Applicant's Mark as a Firefly mark rather than a mark of Applicant and/or believe in error that goods offered under the Applicant's Mark are offered by, in association with, or under license from Firefly.

14. Any defect, objection to, or fault found with Applicant's beverages marketed under Applicant's Mark would necessarily reflect on and seriously injure the reputation that Firefly has established for its alcoholic beverage products.

15. Registration of Applicant's Mark would give Applicant prima facie evidence of the validity and ownership of Applicant's Mark and of Applicant's exclusive right to use Applicant's Mark, all to the detriment of Firefly.

Wherefore, Firefly prays that this Opposition be sustained and that Application Serial No. 85/721,375 be denied and refused registration.

Cooley LLP

Dated: June 25, 2013

By: /John Paul Oleksiuk/
Todd Bontemps
John Paul Oleksiuk
Attorneys for Opposer
1299 Pennsylvania Ave., NW, Suite 700
Washington, DC 20004
(310) 883-6400

