

ESTTA Tracking number: **ESTTA549552**

Filing date: **07/19/2013**

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 | Ninkasi Brewery, LLC |
| Granted to Date of previous extension | 07/20/2013 |
| Address | 272 Van Buren St. Eugene, OR 97402 UNITED STATES |

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|----------------------------|--|
| Correspondence information | JANE M YATES WATKINSON, LAIRD, RUBENSTEIN, BALDWIN & BURGESS, PC 101 East Broadway Suite 200 Eugene, OR 97402 UNITED STATES jyates@wrlaw.com Phone:5414842277 |
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Applicant Information

| | | | |
|------------------------|---|------------------------|------------|
| Application No | 85718981 | Publication date | 05/21/2013 |
| Opposition Filing Date | 07/19/2013 | Opposition Period Ends | 07/20/2013 |
| Applicant | Derek S. T. P.O. Box 2273 Glen Ellyn, IL 60137 UNITED STATES | | |

Goods/Services Affected by Opposition

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|---|
| Class 032. All goods and services in the class are opposed, namely: Beer |
| Class 033. All goods and services in the class are opposed, namely: Wine |

Grounds for Opposition

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

| | | | |
|-----------------------|--------------------|-----------------------|------------|
| U.S. Registration No. | 4293378 | Application Date | 03/05/2012 |
| Registration Date | 02/19/2013 | Foreign Priority Date | NONE |
| Word Mark | BABYLON DOUBLE IPA | | |
| Design Mark | | | |

| | |
|---------------------|---|
| Description of Mark | NONE |
| Goods/Services | Class 032. First use: First Use: 2012/05/00 First Use In Commerce: 2012/05/00 Beer |

| | |
|-------------|---------------------------------------|
| Attachments | opposition _071813_.pdf(12710 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 | /JANE M YATES/ |
| Name | JANE M YATES |
| Date | 07/19/2013 |

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

Ninkasi Brewery, LLC

Serial No. 85718981

Application

Opposer,

v.

Mark: BABYLONIAN HOOCH

Derek S. T.

Applicant.

Opposition No. _____

NOTICE OF OPPOSITION

Ninkasi Brewery, LLC (Ninkasi) opposes the application of Derek S. T. (Applicant) for registration of the trademark BABYLONIAN HOOCH, serial no. 85718981, for “beer” and “wine”.

Ninkasi believes that it will be damaged by registration of the mark shown in application 85718981, and opposes the same on the following grounds:

Priority and likelihood of confusion.

1. Ninkasi is an Oregon limited liability company with a principal place of business located at 272 Van Buren, Eugene, Oregon 97402.
2. Upon information and belief, Derek S. T. is an individual (Applicant) with an address of P.O. Box 2273, Glen Ellyn, Illinois 60137.
3. Ninkasi is the 3rd largest craft beer producer in Oregon.
4. Ninkasi owns the mark BABYLON for “beer” and the federal trademark registration incorporating the BABYLON mark, namely BABYLON DOUBLE IPA, registration no. 4293378 (collectively referred to as the “BABYLON MARK”).

5. Due to widespread sales and continuous and extensive market development and advertising, the BABYLON MARK identifies Ninkasi's goods and distinguishes them from the goods of others.
6. Ninkasi established valuable goodwill and exclusive rights in the BABYLON MARK through sales, advertising, and promotion of "beer" using the BABYLON MARK.
7. On September 1, 2012, Applicant filed application serial no. 85718981 to register BABYLONIAN HOOCH as a mark in International Class 32 for "beer" and in International Class 33 for "wine"(Applicant's Mark).
8. Applicant filed Applicant's Mark under Section 1(b) on an intent-to-use basis.
9. Applicant's Mark was published in the *Official Gazette* on May 21, 2013.
10. Ninkasi has extended time to oppose the application through and including July 20, 2013.
11. Ninkasi has continuously and exclusively used the BABYLON MARK in connection with "beer" produced and sold by Ninkasi since at least as early as May 2012, prior to Applicant's filing date.
12. Ninkasi's rights in the BABYLON MARK are superior to Applicant's rights in Applicant's Mark.
13. Applicant's Mark is highly similar to the BABYLON MARK in sound, meaning, appearance, and commercial impression.
14. Applicant's intended use of Applicant's Mark for "beer" is for the exact same goods offered by Ninkasi using the BABYLON MARK.

15. Applicant's intended use of Applicant's Mark for "wine" is highly related to the goods offered by Ninkasi using the BABYLON MARK.
16. Ninkasi has nationwide rights in the BABYLON MARK by virtue of its federal trademark registration. Ninkasi distributes its beers throughout the western United States and its beers are sold nationwide.
17. Because of the substantial similarity of the marks and the relatedness of the goods, the use and registration of Applicant's Mark is likely to cause confusion, mistake, or deception in the mind of the public and to cause the public to incorrectly assume that the goods identified by Applicant's Mark are produced or sold by Ninkasi.
18. For the reasons set forth in the preceding paragraphs, Applicant is not entitled to register Applicant's Mark, and the application should be denied in accordance with §§ 2(d) of the Latham Act, 15 USC §§ 1052(d) and 1063(a).

WHEREFORE, Ninkasi believes that it will be damaged by registration of Applicant's Mark and prays that application no. 85718981 be refused, that no registration be issued to Applicant, and that this Opposition be sustained in favor of Ninkasi.

Ninkasi Brewery, LLC
Opposer
By its attorney,

/Jane M Yates/
Jane M Yates
Watkinson Laird Rubenstein Baldwin & Burgess, P.C.
101 E. Broadway, Suite 200
Eugene, OR 97401
Phone: 541-484-2277

Dated: July 19, 2013

Certificate of Service

I hereby certify that on July 19, 2013, a copy of the foregoing was sent by U.S. mail to the following correspondent of record:

D. S. T.
PO BOX 2273
GLEN ELLYN, ILLINOIS 60138-2273
UNITED STATES

Jane M Yates/
Jane M Yates