

ESTTA Tracking number: **ESTTA562818**

Filing date: **10/02/2013**

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	Abita Brewing Company, LLC
Granted to Date of previous extension	10/02/2013
Address	Post Office Box 1510 Abita Springs, LA 70420 UNITED STATES
Attorney information	RAYMOND G AREAUX (#33,643) CARVER, DARDEN, KORETZKY, TESSIER, FINN, BLOSSMAN & AREAUX, LLC 1100 POYDRAS STREET, SUITE 3100 NEW ORLEANS, LA 70163 UNITED STATES areaux@carverdarden.com Phone:(504) 585-3803

Applicant Information

Application No	85828864	Publication date	06/04/2013
Opposition Filing Date	10/02/2013	Opposition Period Ends	10/02/2013
Applicant	CERVECERIA ARTESANAL LACH, S.A. DE C.V. ASTURIAS 1 MEXICO, 03400 MEXICO		

Goods/Services Affected by Opposition

Class 032. First Use: 2011/09/01 First Use In Commerce: 2011/09/01
All goods and services in the class are opposed, namely: Beer; Beer, ale, lager, stout and porter; Malt beer; Pale beer

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2213433	Application Date	05/01/1997
Registration Date	12/22/1998	Foreign Priority Date	NONE
Word Mark	ANDYGATOR		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 1995/02/10 First Use In Commerce: 1998/08/11 beer, ale, lager, malt liquor

Attachments	Notice of Opposition - 18706.pdf(25377 bytes) Exhibit A.pdf(1325377 bytes) Exhibit B.pdf(418358 bytes) Exhibit C.pdf(508628 bytes) Exhibit D.pdf(280611 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	/Theodore S. Owers III/
Name	RAYMOND G AREAUX (#33,643)
Date	10/02/2013

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

Abita Brewing Company, LLC
Opposer

v.

Cerveceria Artesanal Lach, S.A. de C.V.
Applicant

* Opposition No.: *to be assigned*

*

* Serial No. 85/828,864

*

* Proposed Design:

*

*



NOTICE OF OPPOSITION

Abita Brewing Company, LLC, a limited liability company organized under the laws of Louisiana, whose address is Post Office Box 1510, Abita Springs, Louisiana, 70420, believes that it will be damaged by the grant of a registration to Cerveceria Artesanal Lach, S.A. de C.V. for the proposed design as set forth in Application Serial No. 85/828,864 and hereby opposes the same.

As grounds for opposition, Opposer alleges as follows:

1. Applicant seeks to register the design shown above (the “Amargator Design”) in International Class 032 for goods identified as “Beer; Beer, ale, lager, stout and porter; Malt beer; Pale beer,” as evidenced by the filing of trademark application Serial No. 85/828,864 (“the ‘864 Application”) on January 22, 2013 and the publication for opposition of the ‘864 Application on June 4, 2013. The literal element AMARGATOR is a prominent feature of the Amargator Design.

2. Opposer is the owner of U.S. Registration No. 2,213,433 of the trademark ANDYGATOR for “beer, ale, lager, malt liquor” issued on December 22, 1998. This registration claims a date of first use at least as early as February 10, 1995 and a date of first use

in commerce at least as early as August 11, 1998. A true copy of a current printout from the electronic database records of the USPTO for this registration is attached as Exhibit A.

3. In addition to U.S. Registration No. 2,213,433, Opposer is the owner of a common-law trademark consisting of the image of an alligator. This trademark is used by Opposer on the same beer products as its ANDYGATOR trademark. A sample of this trademark as it appears on packaging for Opposer's beer product is attached as Exhibit B.

4. Opposer's registered ANDYGATOR trademark and its common-law trademark consisting of the image of an alligator are collectively referred to hereafter as the "Abita Gator Marks."

5. In addition to the goods identified in U.S. Registration No. 2,213,433, Opposer has developed, marketed, and distributed – and continues to currently market and distribute – various promotional items bearing the Abita Gator Marks, including but not limited to apparel and beverage ware. Examples of some of Opposer's promotional items bearing the Abita Gator Marks are attached as Exhibits C and D.

6. Opposer owns and has continuously used the Abita Gator Marks in connection with the goods described herein since long before the January 22, 2013 filing date of the '864 Application and the September 1, 2011 date of first use claimed in the '864 Application.

7. By virtue of the substantially exclusive and continuous delivery of the goods described herein under the Abita Gator Marks, persons familiar with such goods have come to recognize the Abita Gator Marks as an indication of a unique brand of goods. Consequently, Opposer has established valuable good will in the Abita Gator Marks.

8. By virtue of its substantially exclusive and continuous use of the Abita Gator Marks in connection with the goods described herein, Opposer has acquired and is the sole

owner of common law, state statutory, and other trademark, service mark, trade name, and related rights to the Abita Gator Marks.

9. Applicant's goods identified in the '864 Application in connection with the Amargator Design are identical to the goods offered in connection with the Abita Gator Marks and are sold, distributed or provided, or likely to be sold, distributed or provided, through the same or commercially related channels of trade to the same or overlapping classes of purchasers, consumers or users.

10. Persons familiar with Opposer's goods marketed under the Abita Gator Marks, upon seeing advertisements for Applicant's goods sold, distributed or provided under the Amargator Design (which prominently features the term AMARGATOR), would be likely to believe, and would be justified in so believing, that such goods originated from Opposer or were produced in association, connection or affiliation with, or under sponsorship, approval or authorization by, Opposer. Thus, the Amargator Design, as used in connection with Applicant's goods, would lead persons familiar with the Abita Gator Marks to believe that Applicant's goods are provided or originated by, sold or distributed in association, connection or affiliation with, or under sponsorship, approval, authorization or license from Opposer.

11. It is likely that, and Opposer believes that, if Applicant is permitted to register the Amargator Design for the goods identified in the '864 Application, confusion of the trade and public would, or likely would, result by reason of Applicant's use of a design highly similar to the Abita Gator Marks owned and used by Opposer. Such confusion would result in damage and injury to Opposer. Customers, consumers and/or users familiar with the Abita Gator Marks would be likely to purchase, consume, or otherwise use Applicant's goods, believing them to originate from, be sponsored by, or be under license from Opposer. Any defect, objection, fault,

or adverse publicity in connection with Applicant's goods sold, distributed or provided under the Amargator Design would necessarily reflect on and seriously injure the reputation that Opposer has established for the Abita Gator Marks.

12. If Applicant is granted a registration for the Amargator Design for the goods identified in the '864 Application, it would obtain thereby at least *prima facie* exclusive right to use the Amargator Design in connection with such goods. Such registration would be a source of damage and injury to Opposer and Opposer's customers.

13. Considering that the Amargator Design, which prominently features the term AMARGATOR, is highly similar to the Abita Gator Marks owned and used by Opposer, and considering that the goods of the respective parties (to-wit: beer) are identical, Applicant's registration of the Amargator Design is likely to cause confusion, or to cause mistake or to deceive as to the affiliation, connection, or association between the parties or as to the origin, sponsorship, or approval by Opposer of the Applicant's goods.

14. The Abita Gator Marks owned and used by Opposer are distinctive and famous according to a number of factors, and Applicant's registration of the Amargator Design will cause, further, or support, or is likely to cause, further, or support, dilution of the distinctive quality of the Abita Gator Marks and otherwise violate and infringe upon Opposer's rights under Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

WHEREFORE, Opposer, Abita Brewing Company, LLC, prays that after due proceedings are had, Applicant's application Serial No. 85/828,864 be rejected, that registration of the Amargator Design for beer be denied and refused, and that this opposition be sustained.

To the extent any fees are required to file or process these documents, the Commissioner is hereby authorized to charge any and all fees which may be required, or credit any overpayment to, Deposit Account No. 03-0937.

Respectfully submitted,

/Theodore S. Owers III/

RAYMOND G. AREAUX (Reg. #33,643)

THEODORE (TODD) S. OWERS III

EMILY LIPPOLD GORDY (Reg. #66,917)

Carver, Darden, Koretzky, Tessier,

Finn, Blossman & Areaux, L.L.C.

1100 Poydras Street, Suite 3100

New Orleans, Louisiana 70163

Telephone: 504-585-3803

Facsimile: 504-585-3801

E-mail: areaux@carverdarden.com

Attorneys for Opposer, Abita Brewing Company, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Notice of Opposition has been served on Applicant by mailing said copy on October 2, 2013 via first-class mail to the correspondence address of record listed in the Trademark Status and Document Retrieval (TSDR) system located at <http://tsdr.uspto.gov>:

Cerveceria Artesanal Lach, S.A. de C.V.

Asturias 1

Mexico 03400

Mexico

/Theodore S. Owers III/

Theodore S. Owers III

4844-0785-0262, v. 1

All Trademark documents should now be available to members of the public using Trademark Status and Document Retrieval (TSDR). Thanks to all who reported difficulties viewing and downloading documents. Your reports were a great help to the office in diagnosing and solving the problem. If you continue to have issues with TSDR please e-mail TSDR@uspto.gov.

STATUS

DOCUMENTS

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Mark: ANDYGATOR

No Image exists for this case.

US Serial Number: 75284804

Application Filing Date: May 01, 1997

US Registration Number: 2213433

Registration Date: Dec. 22, 1997

Register: Principal

Mark Type: Trademark

Status: The registration has been renewed.

Status Date: Jan. 19, 2008

Publication Date: Dec. 09, 1997

Notice of Allowance Date: Mar. 03, 1997

Mark Information

Mark Literal Elements: ANDYGATOR

Standard Character Claim: No

Mark Drawing Type: 1 - TYPESET WORD(S) /LETTER(S) /NUMBER(S)

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of
- Asterisks *...* identify additional (new) wording in the goods/services.

For: beer, ale, lager, malt liquor

International Class(es): 032 - Primary Class

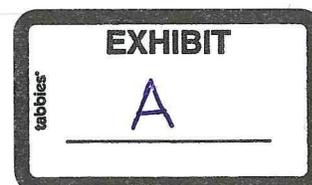
U.S Class(es): 045, 046,

Class Status: ACTIVE

Basis: 1(a)

First Use: Feb. 10, 1995

Use in Commerce: Aug. 11, 1995



Basis Information (Case Level)

Filed Use: No	Currently Use: Yes
Filed ITU: Yes	Currently ITU: No
Filed 44D: No	Currently 44D: No
Filed 44E: No	Currently 44E: No
Filed 66A: No	Currently 66A: No
Filed No Basis: No	Currently No Basis: No

Current Owner(s) Information

Owner Name: ABITA BREWING CO., L.L.C.

Owner Address: P. O. BOX 1510
 ABITA SPRINGS, LOUISIANA 70420
 UNITED STATES

Legal Entity Type: LIMITED LIABILITY COMPANY State or Country Where Organized: LOUISIANA

Attorney/Correspondence Information

Attorney of Record

Attorney Name: RAYMOND G. AREAUX (#33,643) Docket Number: 21.11318

Attorney Primary Email Address: areaux@carverdarden.com Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: RAYMOND G. AREAUX (#33,643)
 Carver, Darden, Koretzky, Tessier, Finn, Blossman
 1100 POYDRAS STREET
 Suite 3100
 NEW ORLEANS, LOUISIANA 70163
 UNITED STATES

Phone: (504) 585-3803 Fax: (504) 585-

Correspondent e-mail: areaux@carverdarden.com Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Jan. 19, 2008	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	65765

Jan. 19, 2008	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	
Jan. 14, 2008	ASSIGNED TO PARALEGAL	65765
Jan. 11, 2008	TEAS SECTION 8 & 9 RECEIVED	
Jul. 31, 2007	CASE FILE IN TICRS	
Mar. 31, 2004	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	
Feb. 18, 2004	REGISTERED - SEC. 8 (6-YR) & SEC. 15 FILED	
Feb. 18, 2004	TEAS SECTION 8 & 15 RECEIVED	
Dec. 22, 1998	REGISTERED-PRINCIPAL REGISTER	
Oct. 08, 1998	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Sep. 16, 1998	STATEMENT OF USE PROCESSING COMPLETE	
Sep. 16, 1998	EXTENSION 1 GRANTED	
Sep. 01, 1998	USE AMENDMENT FILED	
Sep. 01, 1998	EXTENSION 1 FILED	
Mar. 03, 1998	NOA MAILED - SOU REQUIRED FROM APPLICANT	
Dec. 09, 1997	PUBLISHED FOR OPPOSITION	
Nov. 07, 1997	NOTICE OF PUBLICATION	
Oct. 09, 1997	APPROVED FOR PUB - PRINCIPAL REGISTER	
Oct. 08, 1997	ASSIGNED TO EXAMINER	74299

Maintenance Filings or Post Registration Information

Affidavit of Continued Use: Section 8 - Accepted

Affidavit of Incontestability: Section 15 - Accepted

Renewal Date: Dec. 22, 2008

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: POST REGISTRATION

Date in Location: Jan. 19, 2008

Assignment Abstract Of Title Information

Summary

Total Assignments: 1

Registrant: Abita Brev

Assignment 1 of 1

Conveyance: ASSIGNS THE ENTIRE INTEREST

Reel/Frame: 1858/0215

Pages: 4

Date Recorded: Feb. 19, 1999

Supporting Documents: [assignment-tm-1858-0215.pdf](#)

Assignor

Name: ABITA BREWING COMPANY, INC.

Execution Date: Feb. 17, 1

Legal Entity Type: CORPORATION

State or Country Where Organized: LOUISIAN

Assignee

Name: ABITA BREWING CO., L.L.C.

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: LOUISIAN

Address: 21084 HWY. 36
COVINGTON, LOUISIANA 70443

Correspondent

Correspondent Name: CARVER, DARDEN, KORETZKY, TESSIER ET AL

Correspondent Address: RAYMOND G. AREAUX
1100 POYDRAS STREET
ENTERGY CENTRE, STE. 2700
NEW ORLEANS, LA 70163

Domestic Representative - Not Found

Proceedings - Click to Load

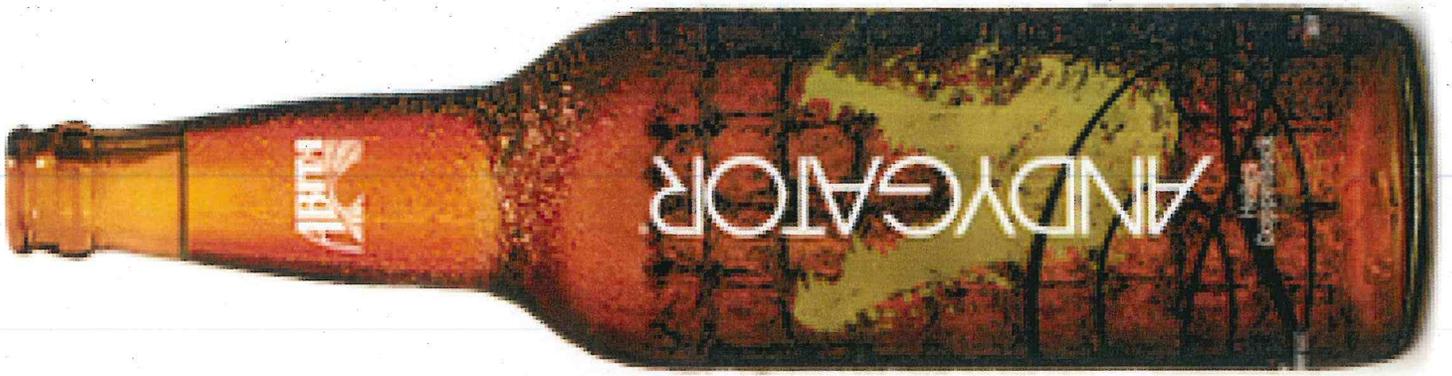
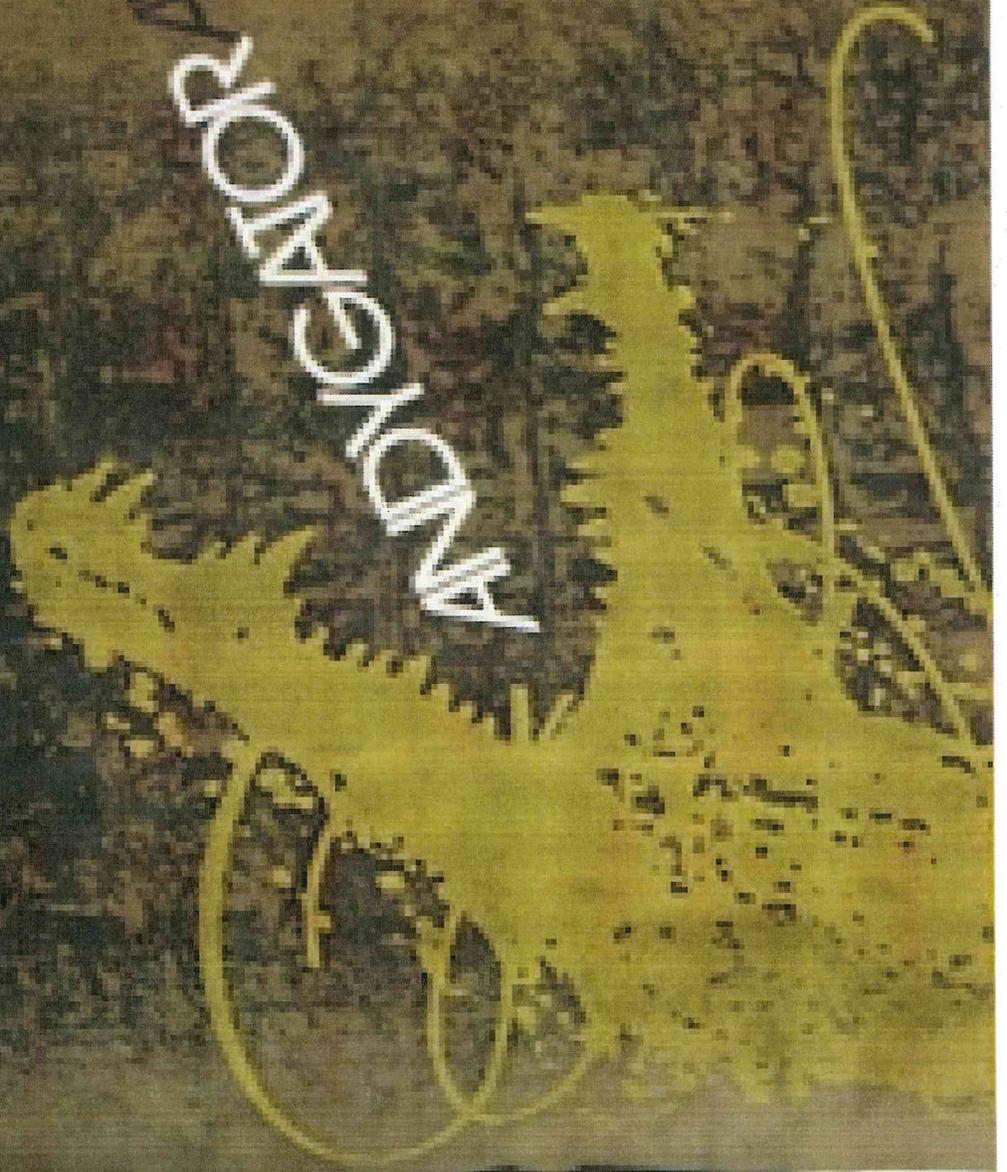


EXHIBIT
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