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

Proceeding	91212861
Party	Plaintiff Fairmont Holdings, Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK
OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

FAIRMONT HOLDINGS, INC.,
a Florida Corporation,

Opposer,

vs.

Opposition No. 91212861
Application Serial No.: 85859951
Word Mark: DEWAR'S LIVE TRUE

BACARDI & COMPANY LIMITED,
a Liechtenstein Company,

Applicant.

_____ /

AMENDED NOTICE OF OPPOSITION

Opposer, FAIRMONT HOLDINGS, INC., a Florida Corporation, by and through its undersigned counsel, hereby files this Amended Notice of Opposition to U.S. Trademark Application Serial Number 85/859951, and states as follows:

1. Opposer is the owner of U.S. Registration Number 4,222,657 and U.S. Application Serial Number 86/085164 for the trademark LIVE TRUE in international classes 033, 034 and 035 for: cigars and related cigar products; wine; on-line retail store services featuring cigars, wine and related products; retail store services featuring cigars, wine and related products; and, retail stores featuring cigars, wine and related products. Opposer also owns extensive common law rights in the LIVE TRUE trademarks with respect to these and other products and services.
2. Since early 2012, Opposer has continuously used, advertised, promoted and offered to the public through various channels of trade and commerce, its products and services bearing the LIVE TRUE trademark, alone, or in combination with other words.
3. During this time, Opposer has made a substantial investment in developing, advertising and marketing its products, services and goodwill in relation to Opposer's LIVE TRUE trademarks, LIVE TRUE marketing campaign and LIVE TRUE brand.

4. Opposer goods offered under its LIVE TRUE trademark are small production, hand crafted, luxury products, of the highest quality.

5. Opposer's customers and the public in general are coming to know and recognize Opposer's LIVE TRUE products, services, marketing campaign and brand, and to associate LIVE TRUE with Opposer and the premium quality products and services offered by Opposer.

6. Opposer has been expanding and intends to continue to expand its LIVE TRUE products , services and brand to include new products and services in classes 033, 034, 035 and otherwise.

7. On or about March 1, 2013, Applicant, BACARDI & COMPANY LIMITED, a Liechtenstein Company, filed U.S. Trademark Application Serial Number 85/859951 seeking to register DEWAR'S LIVE TRUE in international class 033 for alcoholic beverages, except beers (the "Opposed Mark"). On July 29, 2013, the United States Patent And Trademark Office ("USPTO") approved the Opposed Mark for publication. The Opposed Mark was published for opposition in the *Official Gazette* on September 10, 2013 and Opposer filed this opposition in relation to the Opposed Mark on October 8, 2013 .

8. On September 13, 2013, BACARDI & COMPANY LIMITED also filed U.S. Trademark Application Serial Number 79/135543 seeking to register LIVE TRUE (without the DEWAR's moniker) in international class 033 for alcoholic beverages, except beers.. On October 15, 2013, an Office Action was issued against Application Serial Number 79/135543. The USPTO refused registration of LIVE TRUE pursuant to Application Serial Number 79/135543 because of a likelihood of confusion with Opposer's U.S. Registration No. 4,222,657 pursuant to Trademark Act Section 2(d), 15 U.S.C. §1052(d). Applicant has until April 14, 2014 in which to respond to this Office Action.

9. A search of the internet further reveals that Dewar's has launched a marketing campaign using DEWARS LIVE TRUE and LIVE TRUE (without the word DEWARS) to market its Scotch.

10. Applicant, through its activities identified in paragraphs 8 and 9 make it clear that Applicant intends to use and uses LIVE TRUE, without the DEWARS moniker, in addition to DEWAR'S LIVE TRUE, interchangeably, in relation to the goods and marketing of the goods identified in its applications.

11. Applicant's products are a mass produced product of good quality, yet not the small production, hand crafted, premium quality as that of the Opposer's goods.

12. Opposer will be damaged in violation of Section 2(a) and 2(d) of the Trademark Act, public policy and otherwise if Applicant is granted registration of the Opposed Mark, as it is:

- a. likely to cause confusion as to the origin, affiliation and/or association by and between Opposer and Applicant in relation to their goods and services, marketing campaign and brand;
- b. likely to deceive or mislead consumers into mistakenly believing that Opposer and Applicant, and their trademarks, marketing campaign and/or brand are affiliated or associated, thereby deceiving or leaving a consumer to draw the false conclusion that Opposer's goods sold under its LIVE TRUE trademark, campaign and brand are a mass produced product of good quality, rather than highly specialized, hand crafted, premium quality;
- c. likely to result in a high probability that Applicant will continue to use LIVE TRUE, independent of the word DEWARS, in addition to the Opposed Mark, in relation to the goods and marketing of the goods identified in its applications, in clear violation of Opposer's prior and superior rights;
- d. likely to create a legitimacy and potential claim by Applicant to a future legal right to use LIVE TRUE without the "DEWARS" moniker, in clear violation and derogation of Opposer's prior and superior rights.

WHEREFORE, Opposer prays that this Opposition be sustained and that registration to Application Serial Number 85/859951 be refused.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing is being submitted electronically, via the Electronic Filing System, with the Trademark Trial And Appeal Board, on February 7, 2014. I further certify that a true and correct copy of the above and foregoing was served electronically (per agreement) on February 7, 2014 upon Janice Housey, Symbus Law Group, PO Box 11085, McLean, VA 22102-7985, jhousey@symbus.com.

Respectfully submitted,
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By: /s/ Kim Kolback
KIMBERLY KOLBACK