

ESTTA Tracking number: **ESTTA563803**

Filing date: **10/08/2013**

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	Anheuser-Busch, LLC
Granted to Date of previous extension	10/16/2013
Address	One Busch Place St. Louis, MO 63118 UNITED STATES

Attorney information	Janet Shih Hajek Holland & Hart LLP PO Box 8749 ATTN: Trademark Docketing Denver, CO 80201 UNITED STATES docket@hollandhart.com, aanderson@hollandhart.com, jshajek@hollandhart.com, lmroot@hollandhart.com, trademarks@anheuser-busch.com Phone:(303) 295-8119
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Applicant Information

Application No	85674705	Publication date	06/18/2013
Opposition Filing Date	10/08/2013	Opposition Period Ends	10/16/2013
Applicant	EJMV INVESTMENTS, LLC 8950 RAILWOOD DRIVE HOUSTON, TX 77078 UNITED STATES		

Goods/Services Affected by Opposition

Class 032. All goods and services in the class are opposed, namely: Beers
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Grounds for Opposition

The mark is merely descriptive	Trademark Act section 2(e)(1)
The mark is primarily geographically descriptive	Trademark Act section 2(e)(2)

Attachments	Notice of Opposition - FRIO.pdf(19119 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	/Janet Shih Hajek/
Name	Janet Shih Hajek
Date	10/08/2013

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

ANHEUSER-BUSCH, LLC, Opposer, v. EJMV INVESTMENTS, LLC, Applicant.	Opposition No.: Mark: FRIO Serial No.: 85/674,705
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NOTICE OF OPPOSITION

Anheuser-Busch, LLC (“Opposer”), a Missouri limited liability company, having a principal place of business at One Busch Place, St. Louis, Missouri, 63118, believes that it will be damaged by the registration of the mark FRIO shown in U.S. Trademark Application Serial No. 85/674,705 and hereby opposes it. As grounds for its Notice of Opposition, Opposer alleges that, upon actual knowledge with respect to itself and its own actions, and upon information and belief as to other matters:

1. Opposer is the leading brewer and marketer of beer in the United States, and Opposer and its predecessors have been marketing beer for more than a century.
2. Opposer uses and has an interest in the ability to use the merely descriptive term “cold” in connection with the sale of beverages and related products.
3. Opposer has an interest in the ability to use the merely descriptive term “frio,” which is the Spanish translation of the term “cold,” and the geographically descriptive term “Frio,” which refers to the Frio River in the state of Texas, in connection with the sale of beverages and related products.

4. On or about July 11, 2012, Mexcor, Inc. (“Mexcor”) filed an intent-to-use application to register the mark FRIO in connection with “beers” in International Class 32 (the “Application”).

5. On or about August 20, 2013, Mexcor assigned the Application to EJMV Investments, LLC (the “Applicant”). The assignment document reflecting this assignment was filed with the USPTO on or about August 20, 2013 pursuant to Reel 5094 and Frame 0817 – 0820.

6. On or about April 25, 2013, Mexcor filed an amendment with the U.S. Patent & Trademark Office (“USPTO”) to amend the Application to include the following translation in the Application: The English translation of “FRIO” in the mark is “COLD.”

7. On or about April 25, 2013, Mexcor also filed a Response to Office Action (along with a Petition to Revive), asserting that “the word FRIO in Texas connotes the River Frio in Texas” and that “[w]ater from this river is incorporated into Applicant’s goods.”

8. In its Response to Office Action dated April 25, 2013, Mexcor also submitted that “consumers of Applicant’s goods would not immediately associate the word FRIO with ‘cold’, but rather the spirit of the Great State of Texas.”

9. Opposer operates breweries throughout the United States, including in the state of Texas in which the Frio River is located. Opposer also promotes its beer through the sponsorship of sporting and entertainment events throughout the United States, including in the state of Texas. Opposer therefore has an interest in the ability to use the geographically descriptive term FRIO to refer to the Frio River, the region

surrounding the river, and the state of Texas in connection with the promotion of Opposer's brewery, beer, and beer-sponsored sporting and entertainment events.

COUNT I
FRIO is Merely Descriptive
(15 U.S.C. § 1052(e)(1))

10. Opposer realleges and incorporates by reference the preceding allegations of its Notice of Opposition.

11. The term "FRIO" is merely descriptive and laudatory as this term translates from Spanish into English as meaning "COLD" and the mark merely describes a feature or characteristic, or a desired feature or characteristic, of the goods listed in the Application, namely, beers that have been chilled and have a low temperature.

12. If Applicant is granted registration, Applicant would obtain certain statutory rights, including prima facie rights to the exclusive use of the merely descriptive and laudatory term "FRIO" in connection with "beers" and related goods, including malt liquor and promotional products relating to beer and malt liquor, all to the damage of Opposer.

13. Registration by Applicant of the alleged mark shown in the Application would be inconsistent with Opposer's and others' right to use the Spanish term "FRIO" and the English language translation, "COLD," for "beers" and related goods, including malt liquor and promotional products associated with keeping beer cold or chilled.

14. Upon information and belief, Applicant's alleged mark shown in the Application has not become distinctive of Applicant's goods.

15. Because the alleged mark shown in the Application is merely descriptive and otherwise lacks distinctiveness, it is not entitled to registration on the Principal Register pursuant to Section 2(e)(1) of the Lanham Act, 15 U.S.C. § 1052(e)(1).

COUNT II (In the Alternative)
FRIO is Primarily Geographically Descriptive
(15 U.S.C. § 1052(e)(2))

16. Opposer realleges and incorporates by reference the preceding allegations of its Notice of Opposition.

17. The Frio River is a river in the U.S. state of Texas.

18. The Spanish term “frio” translates into English to mean “cold.” Thus, the name “Frio River” refers to “the spring-fed coolness of the river,” as explained in the Wikipedia attachment submitted by Mexcor in its Response to Office Action filed with the USPTO on or about April 25, 2013 (the “ROA”).

19. Mexcor admitted in its ROA that “the word FRIO in Texas connotes the River Frio in Texas” and that “[w]ater from this river is incorporated into Applicant’s goods.”

20. Mexcor admitted in its ROA that “consumers of Applicant’s goods would not immediately associate the word FRIO with ‘cold’, but rather the spirit of the Great State of Texas.”

21. The primary significance of the mark FRIO is a generally known geographic location, namely, the Frio River in Texas.

22. The goods originate in the place identified in the mark, namely, the Frio River in Texas.

23. If Applicant is granted registration, Applicant would obtain certain statutory rights, including prima facie rights to the exclusive use of the geographically descriptive term “FRIO” to refer to beer originating from or near the Frio River in Texas, all to the damage of Opposer.

24. Registration by Applicant of the alleged mark shown in the Application would be inconsistent with Opposer’s right to use the geographically descriptive term “FRIO” as that term relates to the Frio River and the region surrounding the Frio River in Texas.

25. Upon information and belief, Applicant’s alleged mark shown in the Application has not become distinctive of Applicant’s goods.

26. Because the alleged mark shown in the Application is primarily geographically descriptive and otherwise lacks distinctiveness, it is not entitled to registration on the Principal Register pursuant to Section 2(e)(2) of the Lanham Act, 15 U.S.C. § 1052(e)(2).

WHEREFORE, Opposer believes that it will be damaged by registration of the alleged mark shown in Application Serial No. 85/674,705 and respectfully requests that the opposition be sustained, and that registration to Applicant be refused.

The filing fee in the amount of \$300 is being transmitted electronically with this submission. Any deficiency in the fee should be charged to Deposit Account No. 08-2623.

Dated this 8th day of October, 2013.

Respectfully submitted,

/s/ Janet Shih Hajek _____

Andrea Anderson

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**Attorneys for Opposer
Anheuser-Busch, LLC**

CERTIFICATE OF SERVICE

I certify that on October 8, 2013, I served a copy of the above NOTICE OF OPPOSITION to the following by:

- | | |
|-------------------------------------|----------------------------|
| <input checked="" type="checkbox"/> | U.S. Mail, postage prepaid |
| <input type="checkbox"/> | Hand Delivery |
| <input type="checkbox"/> | Fax |

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/s/Janet Shih Hajek
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