

ESTTA Tracking number: **ESTTA568871**

Filing date: **11/04/2013**

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	USS Seadragon Limited Liability Company
Granted to Date of previous extension	11/03/2013
Address	931 Manhattan Avenue Brooklyn, NY 11222 UNITED STATES
Party who filed Extension of time to oppose	USS Nautilus LLC
Relationship to party who filed Extension of time to oppose	USS Seadragon Limited Liability Company is the parent company of USS Nautilus LLC, and is in privity with USS Nautilus LLC pursuant to TBMP 206.02 and 303.05(b), and thus is a proper opposer in this matter.

Attorney information	Charles G. Zug Nelson Mullins Riley & Scarborough, L.L.P. 1320 Main Street, 17th Floor Columbia, SC 29201 UNITED STATES ip@nelsonmullins.com,geordie.zug@nelsonmullins.com Phone:803-799-2000
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Applicant Information

Application No	85635478	Publication date	05/07/2013
Opposition Filing Date	11/04/2013	Opposition Period Ends	11/03/2013
Applicant	Thomas Brian Bencivengo 32 Frost Street Brooklyn, NY 11211 USX		

Goods/Services Affected by Opposition

Class 043. First Use: 2008/09/15 First Use In Commerce: 2008/09/15 All goods and services in the class are opposed, namely: Restaurant services
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Application void ab initio for not being filed in the name of the proper owner

Marks Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	NO. 7		
Goods/Services	restaurant services		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	NO. 7 SUB		
Goods/Services	restaurant services		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Design Mark			
Goods/Services	restaurant services		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		

Design Mark	
Goods/Services	restaurant services

Attachments	Image of NO 7 Logo.jpg Image of NO 7 SUB logo.jpg Notice of Opposition - NO 7.pdf(68326 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	/Charles G. Zug/
Name	Charles G. Zug
Date	11/04/2013

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

USS Seadragon Limited Liability Company)
)
) Opposer,)
)
) Opposition No.: _____
)
) v.)
) Application Ser. No. 85/635,478
)
)
) Thomas Brian Bencivengo)
) Mark: NO. 7
) Applicant.)
)

NOTICE OF OPPOSITION

USS Seadragon Limited Liability Company, a New York limited liability company ("Opposer"), having an address of 931 Manhattan Avenue, Brooklyn, NY 11222 believing that it will be damaged by registration, hereby opposes Application Serial No. 85/635,478, filed May 25, 2012 in the name of Thomas Brian Bencivengo ("Applicant"), published for opposition in the Official Gazette of May 7, 2013, for the service mark NO. 7, reciting "[r]estaurant services" in Class 43.

The grounds of Opposition are as follows:

1. Opposer is a limited liability company organized under New York law, with an address of 931 Manhattan Avenue, Brooklyn, NY 11222. Opposer is the direct parent company of USS Nautilus LLC, a New York limited liability company that had obtained previous extensions of time to oppose Application Serial No. 85/635,478. Opposer owns

100% of USS Nautilus LLC. Thus, Opposer is in privity with USS Nautilus LLC pursuant to TBMP §§ 206.02 and 303.05(b), and is a proper opposer in this opposition proceeding.

2. Opposer is the ultimate parent company of related companies and/or licenses trademark rights to companies that operate restaurants in New York under the following marks:

Mark	Physical Location of Restaurant(s)
NO. 7	Brooklyn, New York
	Brooklyn, New York
NO. 7 SUB	Manhattan, New York and Brooklyn, New York
	Manhattan, New York and Brooklyn, New York

Hereinafter, the first two marks above are referred to as the "NO. 7 Marks" and last two marks above as the "NO. 7 SUB Marks."

3. In September 2008, a predecessor-in-interest company to the service mark rights in the NO. 7 Marks opened "NO. 7" restaurant in Brooklyn, New York. Restaurant services have been rendered from this location under the NO. 7 Marks in commerce continuously since at least as early as September 2008, such service mark rights in the NO. 7 Marks having been since acquired and now owned by Opposer.

4. In April, 2010, a predecessor-in-interest company to the service mark rights in the NO. 7 SUB Marks opened the first NO. 7 SUB restaurant in Manhattan, New York. Restaurant services have been rendered under the NO. 7 SUB Marks in commerce continuously since at least as early as April 2010, such service mark rights in the NO. 7 SUB Marks having been since acquired and now owned by Opposer.

5. Opposer will rely in this opposition in its common law rights in the NO. 7 Marks and NO. 7 SUB Marks for restaurant services. The NO. 7 Marks and NO. 7 SUB Marks are inherently distinctive, or in the alternative have acquired distinctiveness through long time use, substantial promotion and advertising, media coverage, and consumer renown.

6. Applicant is an individual and, upon information and belief, a U.S. citizen with address of 32 Frost Street, Apt 3, Brooklyn, New York 11211. In 2008, Applicant acquired a 2% ownership interest in the company that originally operated the aforementioned NO. 7 restaurant in Brooklyn, New York.

7. Application Serial No. 85/635,478 was filed in the name of Applicant on May 25, 2012 to register the mark NO. 7 in standard characters reciting "[r]estaurant services" in Class 43. Applicant's application was published for opposition in the Official Gazette of May 7, 2013.

8. Applicant has never personally rendered restaurant services in commerce under the mark NO. 7.

9. Applicant has never owned a controlling interest in any company that has rendered restaurant services in commerce under the mark NO. 7.

10. Applicant has never been involved in supervising or controlling the day-to-day restaurant operations and services of any restaurant rendering services under the mark NO. 7.

11. At the time of filing Application Serial No. 85/635,478 (and prior to such filing date) Applicant did not control the quality of restaurant services rendered under the mark NO. 7. Applicant was not the proper owner of the mark NO. 7 as of the filing date of Application Serial No. 85/635,478, and thus Application Serial No. 85/635,478 is void *ab initio*.

12. In the alternative, Applicant's alleged NO. 7 mark in Application Serial No. 85/635,478 is a colorable imitation of, and so resembles, Opposer's NO. 7 Marks and NO. 7 SUB Marks as to be likely, when applied to the services recited in Applicant's application, to cause confusion or mistake or to deceive purchasers into believing that Applicant's services originate from, or are sponsored by, Opposer in violation of Section 2(d) of the Lanham Act, resulting in injury to Opposer. The services as described in Application Ser. No. 85/635,478 are legally identical to the services that have been advertised, promoted, and rendered by Opposer under its NO. 7 Marks and NO. 7 SUB Marks. The service mark rights that Opposer has acquired and that have inured to Opposer's benefit in the NO. 7 Marks and NO. 7 SUB Marks pre-date the filing date of Application Ser. No. 85/635,478, and thus Opposer has superior priority over Applicant.

13. Opposer avers that it will be damaged by the registration of the alleged NO. 7 mark by Applicant, as set forth in Application Ser. No. 85/635,478, because if registration is granted it would create a *prima facie* exclusive right to use the NO. 7 mark to the exclusion of others, including Opposer.

WHEREFORE, Opposer requests that the opposition to Application Ser. No. 85/635,478 for NO. 7 be sustained in favor of Opposer, and that no registration be issued thereon to Applicant.

The filing fees required by 37 C.F.R. 2.6(a)(17) for filing this Notice of Opposition on behalf of Opposer are enclosed herewith.

NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.

Dated: November 4, 2013

By: /Charles G. Zug/
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Attorneys for USS Seadragon Limited Liability Company

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing NOTICE OF OPPOSITION has been served on Thomas Brian Bencivengo, by causing such copy to be mailed, on November 4, 2013, via First Class Mail, postage prepaid, to the current attorney of record for Applicant for Application Ser. No. 85/635,478:

Terrence A. Oved, Esq.
Oved & Oved LLP
401 Greenwich Street
New York, NY 10013-2326

Dated: November 4, 2013

/Charles G. Zug/
Charles G. Zug