

ESTTA Tracking number: **ESTTA656675**

Filing date: **02/18/2015**

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 Companies, LLC
Granted to Date of previous extension	04/01/2015
Address	One Busch Place St. Louis, MO 63118 UNITED STATES

Attorney information	Bryan K. Wheelock Harness, Dickey & Pierce P.L.C. 7700 Bonhomme, Suite 400 St. Louis, MO 63105 UNITED STATES bwheelock@hdp.com,jsamuels@hdp.com,dmotley@hdp.com,kbearley@hdp.com,jgebhardt@hdp.com
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**Applicant Information**

Application No	86333218	Publication date	12/02/2014
Opposition Filing Date	02/18/2015	Opposition Period Ends	04/01/2015
Applicant	Kylene E. Staron 1234 15th Street, Apt. 5 Miami Beach, FL 33139 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 032. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Beverages, namely non-alcoholic beverages, namely energy drinks, sports drinks, concentrates and powders for making beverages, namely energy drinks and sports drinks
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**Grounds for Opposition**

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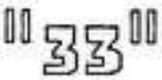
**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	1907436	Application Date	04/29/1994
Registration Date	07/25/1995	Foreign Priority Date	NONE

Word Mark	33
Design Mark	
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1991/05/01 First Use In Commerce: 1991/05/01 clothing, namely, shirts [, hats and jackets ]

U.S. Registration No.	2127964	Application Date	11/10/1994
Registration Date	01/13/1998	Foreign Priority Date	NONE
Word Mark	"33"		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1939/00/00 First Use In Commerce: 1939/00/00 beer		

U.S. Registration No.	387845	Application Date	11/14/1940
Registration Date	06/03/1941	Foreign Priority Date	NONE
Word Mark	A LITTLE NIP "33"		

Design Mark	  
Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 1940/10/09 First Use In Commerce: 1940/10/09 Beer, Ale, and Other Malt Beverages

U.S. Registration No.	386222	Application Date	02/08/1940
Registration Date	04/01/1941	Foreign Priority Date	NONE
Word Mark	A LITTLE NIP "33"		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1934/10/03 First Use In Commerce: 1934/10/03 Beer, Ale, and Other Malt Beverages		

Attachments	74527089#TMSN.png( bytes ) 71437870#TMSN.png( bytes ) 71428361#TMSN.png( bytes ) 2-18-2015 - Notice of Opposition.pdf(19175 bytes )
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	Ex. 1 _ U.S. Reg. No. 1907436.PDF(17556 bytes ) Ex. 2_ U.S. Reg. No. 2127964.PDF(22185 bytes ) Ex. 3_ U.S. Reg. No. 387845.PDF(46713 bytes ) Ex. 4_ U.S. Reg. No. 386222.PDF(52703 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	/Bryan K. Wheelock/
Name	Bryan K. Wheelock
Date	02/18/2015

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

*In re* U.S. Trademark Application Serial No. 86/333218 for **33** filed July 10, 2014, and Published  
in the *Official Gazette* on December 2, 2014

Anheuser-Busch, LLC,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. _____
	)	
Kylene E. Staron,	)	
	)	
Applicant.	)	

**NOTICE OF OPPOSITION**

Anheuser-Busch, LLC, a limited liability company of the State of Missouri, having a principal place of business at One Busch Place, St. Louis, MO 63118, (hereinafter “Anheuser-Busch” or “Opposer”), believes that it is being damaged, and will be damaged, by the registration of the mark shown in Application Serial No. 86/333218 (hereinafter “the ‘218 Application”), in International Class 32 by Kylene E. Staron, (hereinafter “Applicant”), filed on July 10, 2014, and published on December 2, 2014, and hereby opposes the same. The time for Opposer to file this Opposition was extended until April 1, 2015, by TTAB order dated December 30, 2014.

The grounds for the opposition are as follows:

1. Since long prior to the filing date of the ‘218 Application and at least as early as January 1, 1939, Opposer has continuously used marks comprising 33 on beverages.
2. On July 10, 2014, Applicant filed for a registration on 33 for “beverages, namely non-alcoholic beverages, namely energy drinks, sports drinks, concentrates and powders for making

beverages, namely energy drinks and sports drinks” in Class 32 as shown in the ‘218 Application.

3. Opposer (itself and through its predecessor in interest) has used, and is using, marks including 33 in interstate commerce in connection with beer and related merchandise, since long prior to the filing of the ‘218 Application, and Opposer is the owner of four U.S. trademark registrations on marks including 33, for beer and related merchandise, including: U.S. Reg. No. 1,907,436 on 33 for clothing, namely shirts, hats and jackets, issued July 25, 1995 (a copy of which is attached as Exhibit 1); U.S. Reg. No. 2,127,964 on “33” for beer, issued January 13, 1998 (a copy of which is attached as Exhibit 2); Reg. No. 387,845 on A LITTLE NIP “33” for “beer, ale and other malt beverages,” issued June 3, 1941 (a copy of which is attached as Exhibit 3); and U.S. Reg. No. 386,222 on A LITTLE NIP “33” for “beer, ale and other malt beverages,” issued April 1, 1941 (a copy of which is attached as Exhibit 4) (collectively hereafter “Opposer’s 33 Marks”).

5. Opposer’s use of 33 long pre-dates the filing date of the ‘218 Application.

6. The grant of a registration to Applicant on 33 as sought in the ‘218 Application should be denied on the grounds of Opposer’s prior use and registration of Opposer’s 33 marks.

7. The mark sought to be registered by Applicant is confusingly similar to Opposer’s 33 Marks and the use and registration of 33 by Applicant is likely to cause confusion or mistake in the minds of the public, and lead the public and prospective purchasers to believe that Applicant’s goods are those of Opposer or are endorsed, sponsored, or otherwise affiliated or connected with Opposer, or that Opposer’s goods and services are associated with Applicant, contrary to 15 U.S.C. § 1052(d), and all to the damage and injury of the purchasing public and to the damage and injury of Opposer.

WHEREFORE, Anheuser-Busch files this Notice of Opposition and prays that the aforesaid Application of Kylene E. Staron, herein opposed, be refused; that no registration be issued thereon to Applicant; and for such other and further relief as may be deemed just and proper.

The Commissioner is hereby authorized to charge Deposit Account No. 08-0750 in the amount of \$300 to cover the filing fees for this Notice of Opposition against the '218 Application. It is believed that this is the correct fee. However, the Commissioner is authorized to charge any additional fees to Deposit Account No. 08-0750 and requested to address all correspondence regarding this opposition to:

Bryan K. Wheelock  
Harness, Dickey & Pierce, P.L.C.  
7700 Bonhomme Avenue, Suite 400  
St. Louis, Missouri 63105  
Telephone: (314)726-7505  
Facsimile: (314)726-7501  
Email: bwheelock@hdp.com

Dated: February 18, 2015

Respectfully submitted,

By: /Bryan K. Wheelock/  
Bryan K. Wheelock, MO #32571  
Email: bwheelock@hdp.com  
Joel R. Samuels, MO #63587  
Email: jsamuels@hdp.com  
HARNES, DICKEY & PIERCE, P.L.C.  
7700 Bonhomme Ave., Suite 400  
Clayton, Missouri 63105  
Phone: (314) 726-7500  
Fax: (314) 726-7501

*Attorneys for Opposer  
Anheuser-Busch, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served via U.S. Mail, postage fully pre-paid and by electronic mail, on this 18th day of February, 2015, upon the following:

Kylene E. Staron  
1234 15th Street, Apt. 5  
Miami Beach, Florida 33139  
daileykye@yahoo.com

*Applicant*

/Bryan K. Wheelock/

61437242.1

# **EXHIBIT 1**

Int. Cl.: 25

Prior U.S. Cl.: 39

**United States Patent and Trademark Office** **Reg. No. 1,907,436**  
Registered July 25, 1995

**TRADEMARK  
PRINCIPAL REGISTER**

33

LATROBE BREWING COMPANY (PENNSYLVANIA CORPORATION)  
119 JEFFERSON STREET  
LATROBE, PA 15650

FIRST USE 5-1-1991; IN COMMERCE 5-1-1991.  
OWNER OF U.S. REG. NO. 387,845.

SER. NO. 74-527,089, FILED 4-29-1994.

FOR: CLOTHING, NAMELY SHIRTS, HATS AND JACKETS, IN CLASS 25 (U.S. CL. 39).

ANNE L. CORNELIUS, EXAMINING ATTORNEY

# **EXHIBIT 2**

Int. Cl.: 32

Prior U.S. Cls.: 45, 46 and 48

Reg. No. 2,127,964

**United States Patent and Trademark Office**

Registered Jan. 13, 1998

**TRADEMARK  
PRINCIPAL REGISTER**

“33”

LATROBE BREWING COMPANY (PENNSYLVANIA CORPORATION)  
119 JEFFERSON STREET  
LATROBE, PA 15650

OWNER OF U.S. REG. NOS. 386,222 AND 387,845.

SER. NO. 74-597,692, FILED 11-10-1994.

FOR: BEER, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

FIRST USE 0-0-1939; IN COMMERCE 0-0-1939.

ANGELA BISHOP WILSON, EXAMINING ATTORNEY

# **EXHIBIT 3**

Registered June 3, 1941

Trade-Mark 387,845

## UNITED STATES PATENT OFFICE

Latrobe Brewing Company, Latrobe, Pa.

Act of February 20, 1905

Application November 14, 1940, Serial No. 437,870



"33"

### STATEMENT

*To the Commissioner of Patents:*

Latrobe Brewing Company, a corporation duly organized under the laws of the State of Delaware and located in Latrobe, Pennsylvania, and doing business in Latrobe, Pennsylvania, has adopted and used the trade-mark shown in the accompanying drawing, for BEER, ALE, AND OTHER MALT BEVERAGES, in Class 48, Malt beverages and liquors, and presents herewith five facsimiles showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905. The trade-mark has been continuously used and applied to said goods in applicant's business since October 9, 1940.

The trade-mark is applied or affixed to the goods by stenciling it on the bottles in ceramic colors, or by applying labels containing the mark to the bottles, or to the packages for the bottles.

The undersigned hereby appoints Archworth Martin, Esq., 984 Union Trust Bldg., Pittsburgh, Pa., its attorney, to prosecute this application for registration, with full power of substitution and revocation, to sign the drawing, to make alterations and amendments, to receive the certificate and to transact all business in the Patent Office connected therewith.

LATROBE BREWING COMPANY,  
By ANTHONY J. TITO,  
*Secretary-Treasurer.*

# **EXHIBIT 4**



Registered Apr. 1, 1941

Trade-Mark 386,222

PROPERTY of the U. S. Patent Office  
Not to be taken from the files

## UNITED STATES PATENT OFFICE

Latrobe Brewing Company, Latrobe, Pa.

Act of February 20, 1905

Application February 8, 1940, Serial No. 428,361



“ 33 ”

### STATEMENT

*To the Commissioner of Patents:*

Latrobe Brewing Company, a corporation duly organized under the laws of the State of Delaware and located in Latrobe, Pennsylvania, and doing business in Latrobe, Pennsylvania, has adopted and used the trade-mark shown in the accompanying drawing, for BEER, ALE, AND OTHER MALT BEVERAGES, in Class 43, Malt beverages and liquors, and presents herewith five facsimiles showing the trade-mark as actually used by applicant upon the goods, and requests that the same be registered in the United States Patent Office in accordance with the act of February 20, 1905. The trade-mark has been continuously used and applied to said goods in applicant's business since October 3, 1934.

The trade-mark is applied or affixed to the goods by stenciling it on the bottles in ceramic colors, or by applying labels containing the mark to the bottles, or to the packages for the bottles.

The undersigned hereby appoints Archworth Martin, Esq., 513 Union Trust Bldg., Pittsburgh, Pennsylvania, its attorney, to prosecute this application for registration, with full power of substitution and revocation, to sign the drawing, to make alterations and amendments, to receive the certificate and to transact all business in the Patent Office connected therewith.

LATROBE BREWING COMPANY,  
By JOSEPH TITO,  
*Vice President.*