

ESTTA Tracking number: **ESTTA681618**

Filing date: **07/02/2015**

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	Allied Lomar, Inc.		
Entity	Corporation	Citizenship	California
Address	401 California Drive Suite 500 Burlingame, CA 94010 UNITED STATES		

Attorney information	Robert Andris Gordon & Rees 275 Battery Street Suite 2000 San Francisco, CA 94111 UNITED STATES mkanach@gordonrees.com Phone:4159865900		
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Applicant Information

Application No	86352064	Publication date	06/09/2015
Opposition Filing Date	07/02/2015	Opposition Period Ends	07/09/2015
Applicant	Diageo North America, Inc. 801 Main Avenue Norwalk, CT 06851 UNITED STATES		

Goods/Services Affected by Opposition

Class 016. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Paper, posters, photographs, stationery; printed matter, namely, newsletters and brochures all in the fields of alcoholic beverages and distillation of alcoholic beverages; Coasters of paper
Class 021. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Beverage glassware, and coasters not of paper and not being table linen
Class 025. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: T-shirts, shirts, tank tops, sleepwear, caps, hats

Applicant Information

Application No	86356224	Publication date	06/09/2015
Opposition Filing Date	07/02/2015	Opposition Period Ends	07/09/2015
Applicant	Diageo North America, Inc. 801 Main Avenue Norwalk, CT 06851		

	UNITED STATES
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Goods/Services Affected by Opposition

<p>Class 016. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Paper, posters, photographs, stationery; printed matter, namely, newsletters and brochures all in the fields of alcoholic beverages and distillation of alcoholic beverages; Coasters of paper</p>
<p>Class 021. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Beverage glassware, and coasters not of paper and not being table linen</p>
<p>Class 025. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: T-shirts, shirts, tank tops, sleepwear, caps, hats</p>
<p>Class 035. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Retail store services featuring whiskey and whiskey based beverages and also featuring branded merchandise, namely, apparel and apparel accessories, housewares, jewelry, gift novelties, and office and stationery supplies</p>

Applicant Information

Application No	86356228	Publication date	06/09/2015
Opposition Filing Date	07/02/2015	Opposition Period Ends	07/09/2015
Applicant	Diageo North America, Inc. 801 Main Avenue Norwalk, CT 06851 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 016. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Paper, posters, photographs, stationery; printed matter, namely, newsletters and brochures all in the fields of alcoholic beverages and distillation of alcoholic beverages; Coasters of paper</p>
<p>Class 021. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Beverage glassware, and coasters not of paper and not being table linen</p>
<p>Class 025. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: T-shirts, shirts, tank tops, sleepwear, caps, hats</p>
<p>Class 035. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Retail store services featuring alcohol and alcohol based beverages and also featuring branded merchandise, namely, apparel and apparel accessories, housewares, jewelry, gift novelties, and office and stationery supplies</p>
<p>Class 040. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Alcohol distillery services</p>
<p>Class 041. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Educational and entertainment services, namely, guided tours of a distillery and adjoining visitor center featuring information regarding alcoholic beverages, brand history and distillation processes</p>

Applicant Information

Application No	86356231	Publication date	06/09/2015
Opposition Filing	07/02/2015	Opposition Period Ends	07/09/2015

Date		od Ends	
Applicant	Diageo North America, Inc. 801 Main Avenue Norwalk, CT 06851 UNITED STATES		

Goods/Services Affected by Opposition

Class 016. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Paper, posters, photographs, stationery; printed matter, namely, newsletters and brochures all in the fields of alcoholic beverages and distillation of alcoholic beverages; Coasters of paper
Class 021. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Beverage glassware, and coasters not of paper and not being table linen
Class 025. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: T-shirts, shirts, tank tops, sleepwear, caps, hats

Grounds for Opposition

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

U.S. Registration No.	3113783	Application Date	10/04/2004
Registration Date	07/11/2006	Foreign Priority Date	NONE
Word Mark	STITZEL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2003/02/03 First Use In Commerce: 2003/02/03 distilled spirits		

Attachments	78494057#TMSN.png(bytes) Opposition-STITZEL-WELLER with Exhibit A.pdf(256831 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 Overnight Courier on this date.

Signature	/Michael D. Kanach/
Name	Michael D. Kanach

Date	07/02/2015
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial Nos. 86/352,064, 86/356,224, 86/356,228, and 86/356,231
Published in the Official Gazette on June 9, 2015
Marks: STITZEL-WELLER, SW STITZEL-WELLER,
STITZEL-WELLER DISTILLERY, STITZEL-WELLER

ALLIED LOMAR, INC.

Opposer,

vs.

DIAGEO NORTH AMERICA, INC.

Applicant.

Opposition No. _____

**CONSOLIDATED
NOTICE OF OPPOSITION**

Opposer Allied Lomar, Inc. (“Opposer” or “Allied”), owner of the registered mark STITZEL for whiskey believes it will be damaged by the registration of the marks STITZEL-WELLER, SW STITZEL-WELLER, STITZEL-WELLER DISTILLERY, and STITZEL-WELLER each for various International Classes related to alcoholic beverages, distillery services, beverage glassware, and other products, including International Classes 16, 21, 25, 35, 40, and 41, as shown in the above-noted applications, Serial Nos. 86/352,064, 86/356,224, 86/356,228, and 86/356,231 (“Applicant’s Marks”), and hereby opposes the same pursuant to Section 13(a) of the Trademark Act of 1946, as amended (the “Lanham Act”), 15 U.S.C. § 1063(a).

As grounds for the Opposition, Opposer alleges that:

1. Opposer Allied Lomar, Inc., is a California corporation with its principal place of business located at 401 California Drive, Suite 500, Burlingame, California 94010.
2. Upon information and belief, Applicant Diageo North America, Inc., is a Connecticut corporation with an address of at 801 Main Avenue, Norwalk, CT 06851.
3. Opposer has owned and used a mark consisting of or including “STITZEL” (“Opposer’s Mark”) in commerce in connection with bourbon and whiskey since at least as early as 2003, long before

the July 30, 2014, August 4, 2014 filing dates of the applications herein opposed, or any date upon which Applicant can rely for any of the applications in this proceeding.

4. In addition to Opposer's common law rights in Opposer's Mark, Opposer owns incontestable U.S. Reg. No. 3113783 for STITZEL for "distilled spirits" in International Class 33, registered on July 11, 2006, based on use and use in commerce at least as early as February 3, 2003. Copies of the certificates and electronic status records for this registration, which is valid, subsisting, and in full force and effect, is attached hereto as Exhibit A.

5. By the applications herein opposed, Serial Nos. 86/352,064, 86/356,224, 86/356,228, and 86/356,231, Applicant seeks to register the marks STITZEL-WELLER, SW STITZEL-WELLER, STITZEL-WELLER DISTILLERY, and STITZEL-WELLER each for various International Classes related to alcoholic beverages, distillery services, beverage glassware, and other products.

6. Upon information and belief, Applicant did not seek to register the marks STITZEL-WELLER, SW STITZEL-WELLER, STITZEL-WELLER DISTILLERY, and STITZEL-WELLER in International Class 33 because of Opposer's previously registered trademark for STITZEL in International Class 33 for distilled spirits.

7. Applicant filed its applications for Applicant's Marks on July 30, 2014, and August 4, 2014, long after Opposer commenced use of Opposer's Mark and registered that mark in the United States.

8. Applicant's Marks are each confusingly similar in appearance, sound, meaning, and commercial impression to Opposer's Mark.

9. Each of Applicant's Marks contains Opposer's Mark "STITZEL," spelled the same way, as the first word in each of Applicant's Marks.

<u>Serial No. / Applicant's Mark / Date Filed</u>	<u>Goods/Services</u>
STITZEL-WELLER	IC 016: G & S: Paper, posters, photographs, stationery; printed matter, namely, newsletters and brochures all in the fields of alcoholic

<p>Serial No. 86/352,064</p> <p>July 30, 2014</p>	<p>beverages and distillation of alcoholic beverages; Coasters of paper</p> <p>IC 021: G & S: Beverage glassware, and coasters not of paper and not being table linen</p> <p>IC 025: G & S: T-shirts, shirts, tank tops, sleepwear, caps, hats</p>
<p>STITZEL-WELLER DISTILLERY</p> <p>Serial No. 86/356,228</p> <p>August 4, 2014</p> 	<p>IC 016: G & S: Paper, posters, photographs, stationery; printed matter, namely, newsletters and brochures all in the fields of alcoholic beverages and distillation of alcoholic beverages; Coasters of paper</p> <p>IC 021: G & S: Beverage glassware, and coasters not of paper and not being table linen</p> <p>IC 025: G & S: T-shirts, shirts, tank tops, sleepwear, caps, hats</p> <p>IC 035: G & S: Retail store services featuring alcohol and alcohol based beverages and also featuring branded merchandise, namely, apparel and apparel accessories, housewares, jewelry, gift novelties, and office and stationery supplies</p> <p>IC 040: G & S: Alcohol distillery services</p> <p>IC 041: G & S: Educational and entertainment services, namely, guided tours of a distillery and adjoining visitor center featuring information regarding alcoholic beverages, brand history and distillation processes</p>
<p>SW STITZEL-WELLER</p> <p>Serial No. 86/356,224</p> <p>August 4, 2014</p> 	<p>IC 016: G & S: Paper, posters, photographs, stationery; printed matter, namely, newsletters and brochures all in the fields of alcoholic beverages and distillation of alcoholic beverages; Coasters of paper</p> <p>IC 021: G & S: Beverage glassware, and coasters not of paper and not being table linen</p> <p>IC 025: G & S: T-shirts, shirts, tank tops, sleepwear, caps, hats</p> <p>IC 035: G & S: Retail store services featuring whiskey and whiskey based beverages and also featuring branded merchandise, namely, apparel and apparel accessories, housewares,</p>

	jewelry, gift novelties, and office and stationery supplies
STITZEL-WELLER Serial No. 86/356,231 August 4, 2014 	IC 016: G & S: Paper, posters, photographs, stationery; printed matter, namely, newsletters and brochures all in the fields of alcoholic beverages and distillation of alcoholic beverages; Coasters of paper IC 021: G & S: Beverage glassware, and coasters not of paper and not being table linen IC 025: G & S: T-shirts, shirts, tank tops, sleepwear, caps, hats

10. The goods for which Applicant seeks registration are closely related to those in connection with which Opposer uses Opposer's Mark in commerce.

11. Upon information and belief, the products sold in connection with Opposer's Mark and the products set forth in Applicant's Application Serial Nos. 86/352,064, 86/356,224, 86/356,228, and 86/356,231, and other products sold and intended to be sold by Applicant in connection with Applicant's Marks are intended to be directed to identical classes of purchasers and to be distributed through the same channels of trade. For example, Applicant advertises, promotes, offers for sale, and sells at least one distilled spirit, a bourbon whiskey, using several of Applicant's Marks on the labels.

12. Opposer will be damaged by the registrations sought by Applicant because such registrations will support and assist Applicant in the confusing and misleading use of marks sought to be registered, and will give exclusive statutory rights to Applicant in violation and derogation of the prior and superior rights of Opposer.

13. Registration should be refused pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), on the grounds that Applicant's Marks so closely resembles Opposer's Mark as to be likely, when used on or in connection with the goods identified in the Applications, to cause confusion, or to cause mistake, or to deceive, with the consequent injury to Opposer and the public.

14. Registration of the Applicant's Marks in the designated International Classes has damaged and is damaging Opposer.

15. Applicant's Marks, when used in connection with designated International Classes, listed above, is confusingly similar to Opposer's registered STITZEL mark.

16. Applicant's Marks, when used in connection with designated International Classes, listed above, is likely to cause confusion, mistake, and deception.

17. Applicant's Marks in the designated International Classes has interfered and is interfering with Opposer's use of its STITZEL mark.

18. Applicant's continued use of Applicant's Marks in the designated International Classes and in International Class 33 will seriously damage Opposer.

WHEREFORE, Opposer believes it will be damaged by the registration of Applicant's marks STITZEL-WELLER, SW STITZEL-WELLER, STITZEL-WELLER DISTILLERY, and STITZEL-WELLER for the goods identified in Application Serial Nos. 86/352,064, 86/356,224, 86/356,228, and 86/356,231, and respectfully requests that the opposition be sustained and registration of each of said marks be denied.

Pursuant to Pursuant to 37 C.F.R. §2.6(a)(17), Opposer respectfully requests that the \$4,800.00 statutory filing fee for filing a Notice of Opposition against four applications (in a total of sixteen international classes), and any additional amount, be charged to Deposit Account No. 50-1990.

All communication should be addressed to Opposer's counsel at the below stated address.

Respectfully submitted this 2nd day of July, 2015.

/s/ Michael D. Kanach

Robert P. Andris, Esq. (CA Bar No. 130290)

Email: randris@gordonrees.com

Michael D. Kanach, Esq. (CA Bar No. 271215)

Email: mkanach@gordonrees.com

GORDON & REES LLP

275 Battery Street, Suite 2000

San Francisco, CA 94111

(415) 986-5900

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of the foregoing **CONSOLIDATED NOTICE OF OPPOSITION** to be served this 2nd day of July, 2015, to Applicant's counsel at the address identified on the United States Patent and Trademark Office's TSDR database as follows:

NICOLE D. D'AMATO
DIAGEO NORTH AMERICA, INC.
801 MAIN AVE
NORWALK, CONNECTICUT 06851-1127
UNITED STATES
Email Address: nicole.damato@diageo.com,
diageodocketing@ashurst.com

/s/ Michael Kanach
Michael Kanach

EXHIBIT A

Int. Cl.: 33

Prior U.S. Cls.: 47 and 49

Reg. No. 3,113,783

United States Patent and Trademark Office

Registered July 11, 2006

**TRADEMARK
PRINCIPAL REGISTER**

STITZEL

ALLIED LOMAR, INC. (CALIFORNIA COR-
PORATION)
330 PRIMROSE RD. STE. 402
BURLINGAME, CA 94010

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

FOR: DISTILLED SPIRITS, IN CLASS 33 (U.S. CLS.
47 AND 49).

SER. NO. 78-494,057, FILED 10-4-2004.

FIRST USE 2-3-2003; IN COMMERCE 2-3-2003.

LINDA MICKLEBURGH, EXAMINING ATTORNEY

Generated on: This page was generated by TSDR on 2015-06-26 12:29:42 EDT

Mark: STITZEL

STITZEL

US Serial Number: 78494057 **Application Filing Date:** Oct. 04, 2004
US Registration Number: 3113783 **Registration Date:** Jul. 11, 2006
Register: Principal
Mark Type: Trademark
Status: A Sections 8 and 15 combined declaration has been accepted and acknowledged.
Status Date: May 12, 2012
Publication Date: Apr. 18, 2006

Mark Information

Mark Literal Elements: STITZEL
Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.
Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Related Properties Information

International Registration Number:
International Application(s) /Registration(s) Based on this Property: A0051239

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 incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: distilled spirits
International Class(es): 033 - Primary Class **U.S Class(es):** 047, 049
Class Status: ACTIVE
Basis: 1(a)
First Use: Feb. 03, 2003 **Use in Commerce:** Feb. 03, 2003

Basis Information (Case Level)

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

Current Owner(s) Information

Owner Name: Allied Lomar, Inc.
Owner Address: 1199 Howard Ave. Suite 350
Burlingame, CALIFORNIA 94010
UNITED STATES
Legal Entity Type: CORPORATION **State or Country Where Organized:** CALIFORNIA

Attorney/Correspondence Information

Attorney of Record - None

Correspondent

Correspondent Name/Address: MARCI PALATELLA
 ALLIED LOMAR, INC.
 1199 HOWARD AVE. SUITE 350
 BURLINGAME, CALIFORNIA 94010
 UNITED STATES

Phone: (650) 696-1700

Fax: (650) 342-9003

Correspondent e-mail: julie@inbeverage.com marci@inbeverage.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found**Prosecution History**

Date	Description	Proceeding Number
May 12, 2012	NOTICE OF ACCEPTANCE OF SEC. 8 & 15 - E-MAILED	
May 12, 2012	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	71378
May 11, 2012	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	71378
Apr. 30, 2012	TEAS SECTION 8 & 15 RECEIVED	
Apr. 30, 2012	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Apr. 30, 2012	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Feb. 07, 2012	ATTORNEY REVOKED AND/OR APPOINTED	
Feb. 07, 2012	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Dec. 10, 2008	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	88888
Dec. 10, 2008	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
Jan. 12, 2007	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Jul. 11, 2006	REGISTERED-PRINCIPAL REGISTER	
Apr. 18, 2006	PUBLISHED FOR OPPOSITION	
Mar. 29, 2006	NOTICE OF PUBLICATION	
Feb. 24, 2006	LAW OFFICE PUBLICATION REVIEW COMPLETED	76568
Feb. 09, 2006	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jan. 15, 2006	AMENDMENT FROM APPLICANT ENTERED	69712
Dec. 27, 2005	CORRESPONDENCE RECEIVED IN LAW OFFICE	69712
Dec. 27, 2005	PAPER RECEIVED	
Dec. 09, 2005	ATTORNEY REVOKED AND/OR APPOINTED	
Dec. 09, 2005	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Jun. 24, 2005	NON-FINAL ACTION E-MAILED	6325
Jun. 24, 2005	NON-FINAL ACTION WRITTEN	74288
Jun. 15, 2005	TEAS/EMAIL CORRESPONDENCE ENTERED	76568
Jun. 09, 2005	CORRESPONDENCE RECEIVED IN LAW OFFICE	76568
Jun. 09, 2005	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
May 06, 2005	COMBINED EXAMINER'S AMENDMENT/PRIORITY ACTION ENTERED	76568
May 05, 2005	ASSIGNED TO LIE	76568
Apr. 28, 2005	EXAMINER'S AMENDMENT/PRIORITY ACTION E-MAILED	6326
Apr. 28, 2005	EXAMINERS AMENDMENT AND/OR PRIORITY ACTION - COMPLETED	74288
Apr. 28, 2005	ASSIGNED TO EXAMINER	74288
Oct. 13, 2004	NEW APPLICATION ENTERED IN TRAM	

Maintenance Filings or Post Registration Information

Affidavit of Continued Use: Section 8 - Accepted

Affidavit of Incontestability: Section 15 - Accepted

TM Staff and Location Information



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United States Patent and Trademark Office

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