

ESTTA Tracking number: **ESTTA687094**

Filing date: **07/31/2015**

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	Sazerac Company, Inc.
Granted to Date of previous extension	08/05/2015
Address	3850 North Causeway Boulevard Suite 1695 Metairie, LA 70002 UNITED STATES
Attorney information	Thomas M. Hadid Cooley LLP 1299 Pennsylvania Ave., NW Suite 700 Washington, DC 20004 UNITED STATES trademarks@cooley.com, thadid@cooley.com, pwillsey@cooley.com, vbadolato@cooley.com, smobley@cooley.com Phone:6508497007

Applicant Information

Application No	86427468	Publication date	04/07/2015
Opposition Filing Date	07/31/2015	Opposition Period Ends	08/05/2015
Applicant	Trinity River Distillery LLC 6009 W. Parker Rd Plano, TX 75093 UNITED STATES		

Goods/Services Affected by Opposition

Class 033. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Distilled Spirits
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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.	2852432	Application Date	11/14/2001
Registration Date	06/15/2004	Foreign Priority Date	NONE
Word Mark	FIREBALL		

Design Mark	FIREBALL
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 1988/09/00 First Use In Commerce: 1988/09/00 LIQUEURS

U.S. Registration No.	3550110	Application Date	05/11/2008
Registration Date	12/23/2008	Foreign Priority Date	NONE

Word Mark	FIREBALL
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Design Mark	FIREBALL
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 2007/04/00 First Use In Commerce: 2007/04/00 Whisky

U.S. Registration No.	3734227	Application Date	06/16/2009
Registration Date	01/05/2010	Foreign Priority Date	NONE

Word Mark	FIREBALL
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Design Mark	
Description of Mark	The mark consists of Fiery headed, longtailed creature spewing flames under the curved text "FIREBALL".
Goods/Services	Class 033. First use: First Use: 2007/04/00 First Use In Commerce: 2007/04/00 Whiskey

U.S. Registration No.	4392710	Application Date	01/19/2011
Registration Date	08/27/2013	Foreign Priority Date	NONE
Word Mark	UNLEASH THE DRAGON		
Design Mark			
Description of Mark	The mark consists of a picture of a fire-breathing dragon over the words "UNLEASH THE DRAGON".		
Goods/Services	Class 033. First use: First Use: 2011/01/00 First Use In Commerce: 2011/01/00 Whiskey-based liqueurs		

U.S. Application	85663749	Application Date	06/28/2012
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No.			
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	DRAGON SLAYER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2013/12/00 First Use In Commerce: 2013/12/00 Whisky		

Attachments	76337349#TMSN.png(bytes) 77471284#TMSN.png(bytes) 77760567#TMSN.png(bytes) 85220774#TMSN.png(bytes) 85663749#TMSN.png(bytes) Sazerac - NOO re TEXAS FIRE.pdf(43551 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	/Thomas M. Hadid/
Name	Thomas M. Hadid
Date	07/31/2015

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

In the matter of Application Serial No. 86/427,468
For the Trademark TEXAS FIRE
Published in the Official Gazette on April 7, 2015

SAZERAC COMPANY, INC.)	
)	
Opposer,)	
)	
v.)	
)	Opposition No.
TRINITY RIVER DISTILLERY LLC)	
DBA TEXAS SILVER STAR WHISKEY)	
)	
)	
Applicant.)	
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NOTICE OF OPPOSITION

Opposer Sazerac Company, Inc. (“Sazerac”), a Louisiana corporation having its principal place of business at 3850 N. Causeway Blvd., Suite 1695, Metairie, Louisiana 70002, will be damaged by the issuance of a registration for the mark TEXAS FIRE (hereafter “Applicant’s Mark”), as applied for in Application Serial No. 86/427,468 filed on October 17, 2014 by Applicant Trinity River Distillery LLC dba Texas Silver Star Whiskey, a Texas limited liability company with a mailing address of 6009 West Parker Road, #149-255, Plano, Texas 75093 (“Applicant”). Sazerac, having previously been granted an extension of time to oppose Applicant’s Mark, hereby opposes same.

As grounds for opposition, Sazerac alleges as follows.

1. Sazerac is a company that markets and sells a number of different types and brands of alcoholic beverages and distilled spirits, including without limitation vodkas,

whiskeys, tequilas, liqueurs, and other spirits. Sazerac has marketed and sold alcoholic beverages and distilled spirits in the United States for over a century.

2. Sazerac owns the following United States trademark registrations and applications:

FIREBALL (Reg. No. 2,852,432), issued June 15, 2004, for liqueurs;

FIREBALL (Reg. No. 3,550,110), issued December 23, 2008, for whisky;

FIREBALL and Design



(Reg. No. 3,734,227), issued January 5, 2010, for whisky;



(Reg. No. 4,392,710), issued August 27,

2013, for whiskey-based liqueurs; and

DRAGON SLAYER (Ser. No. 85/663,749), filed on June 28, 2012, for whisky.

(referred to collectively as “the Sazerac Marks”).

3. Sazerac has consistently and continually marketed and sold distilled spirits under its FIREBALL mark and associated FIREBALL component marks since 1988. By virtue of its marketing and the excellence of the underlying products, the public has come to know, rely on, and recognize the Sazerac Marks as a source identifier for Sazerac’s products.

4. Sazerac's FIREBALL product has grown substantially in popularity across the United States. It is extremely well-known among consumers in the alcoholic beverage marketplace.

5. On October 17, 2014, Applicant filed an application to register the mark TEXAS FIRE on an intent-to-use basis in connection with "distilled spirits" in International Class 33.

6. The Sazerac Marks have priority through use in commerce and/or filing dates that predate Applicant's filing date of October 17, 2014.

7. Sazerac's FIREBALL mark is distinctive, strong and well-known.

8. Applicant's Mark, which combines the dominant component "FIRE" with the geographically descriptive term "TEXAS" (to which Applicant has expressly disclaimed exclusive rights), is similar in sight, sound, meaning, and commercial impression to the Sazerac Marks.

9. Applicant's Mark is intended for use in connection with products that are identical to the products Sazerac offers under the Sazerac Marks.

10. Applicant's targeted customer base is identical to the target customer base for Sazerac's alcoholic beverages.

11. As Applicant's description of goods contains no restrictions or limitations as to Applicant's channels of trade, Sazerac may assume that Applicant's Mark, like the Sazerac Marks, will be used in all accepted channels of trade. Therefore, in addition to overlapping consumer bases, Applicant's intended channels of trade for its alcohol-based products overlap with channels of trade used by Sazerac in marketing, selling, and otherwise distributing its alcohol-based products marketed under the Sazerac Marks.

12. If Applicant is permitted to register Applicant's Mark for the goods specified in the Application herein opposed, confusion resulting in damage and injury to Sazerac would occur. Persons familiar with the Sazerac Marks would likely perceive Applicant's products as associated with, affiliated with, or sponsored by Sazerac. Such confusion would inevitably result in damage to Sazerac.

13. Sazerac's customers and the relevant public are likely to misapprehend Applicant's Mark as a Sazerac mark rather than a mark of Applicant and/or believe in error that goods offered under the Applicant's Mark are offered by, in association with, or under license from Sazerac.

14. Any defect, objection to, or fault found with Applicant's alcoholic beverages marketed under its TEXAS FIRE mark would necessarily reflect on and seriously injure the reputation that Sazerac has established for its alcoholic beverage products.

15. Registration of Applicant's Mark would give Applicant *prima facie* evidence of the validity and ownership of Applicant's Mark and of Applicant's exclusive right to use its TEXAS FIRE mark, all to the detriment of Sazerac.

16. Wherefore, Sazerac prays that this Opposition be sustained and that Application Serial No. 86/427,468 be denied and refused registration.

COOLEY LLP

Dated: July 31, 2015

By: /s/ Thomas M. Hadid
Thomas M. Hadid, Esq.
Vincent J. Badolato, Esq.
Peter J. Willsey, Esq.
Attorneys for Opposer
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CERTIFICATE OF SERVICE

I hereby certify that I mailed the foregoing **NOTICE OF OPPOSITION** to the listed Attorney of Record for Applicant by depositing a true and correct copy of the same with the United States Postal Service, first class mail, postage prepaid, in an envelope addressed to:

Trinity River Distillery LLC
6009 West Parker Road
149-255
Plano, Texas 75093-8120

Date: July 31, 2015

By: /s/ Thomas M. Hadid
Thomas M. Hadid