

ESTTA Tracking number: **ESTTA688899**

Filing date: **08/11/2015**

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	DCS Investment Holdings, LLC		
Entity	Limited Liability Company	Citizenship	Florida
Address	505 South Flagler Drive Suite 900 West Palm Beach, FL 33401 UNITED STATES		

Attorney information	Daniel J. Barsky Shutts & Bowen LLP 525 Okeechobee Blvd Suite 1100 West Palm Beach, FL 33401 UNITED STATES ptomail@shutts.com, dbarsky@shutts.com, jtillman@shutts.com Phone:561-835-8500		
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Applicant Information

Application No	86362378	Publication date	07/14/2015
Opposition Filing Date	08/11/2015	Opposition Period Ends	08/13/2015
Applicant	Bella Collina Events LLC 9500 Mt. Carmel Rd Stokesdale, NC 27357 UNITED STATES		

Goods/Services Affected by Opposition

Class 045. First Use: 2013/02/16 First Use In Commerce: 2013/02/16 All goods and services in the class are opposed, namely: Planning and arranging of wedding ceremonies; Providing facilities for wedding ceremonies; Wedding ceremony planning and arranging consultation services

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	86431330	Application Date	10/22/2014
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BELLA COLLINA		

Design Mark	BELLA COLLINA
Description of Mark	NONE
Goods/Services	Class 041. First use: First Use: 2010/01/16 First Use In Commerce: 2010/01/16 Party and wedding reception planning, coordination and consultation services; Special event planning for social entertainment purposes; Providing country club and golf facilities

U.S. Application No.	86431338	Application Date	10/22/2014
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	BC BELLA COLLINA
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Design Mark	
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Description of Mark	The mark consists of a circle with letters "B" and "C" separated by wavy line, encircled by decorative design above words BELLA COLLINA.
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Goods/Services	Class 041. First use: First Use: 2010/01/16 First Use In Commerce: 2010/01/16 Party and wedding reception planning, coordination and consultation services; Special event planning for social entertainment purposes; Providing country club and golf facilities
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Attachments	86431330#TMSN.png(bytes) 86431338#TMSN.png(bytes) 14184094_1.pdf(69228 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	/Daniel J. Barsky/
Name	Daniel J. Barsky
Date	08/11/2015

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

DCS INVESTMENT HOLDINGS, LLC,
Opposer,

v.

BELLA COLLINA EVENTS, LLC

Applicant.

Opposition No.: _____

Serial No.: 86362378

Mark: BELLA COLLINA EVENTS

Filing Date: August 11, 2014

Publication Date: July 14, 2015

NOTICE OF OPPOSITION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

Dear Sir:

Opposer, DCS Investment Holdings, LLC (“DCS” or “Opposer”), a Florida limited liability company, having a principal place of business at 505 South Flagler Drive, Suite 900, West Palm Beach, Florida 33401, believes that it is being, and will continue to be, damaged by the application to register the mark ‘BELLA COLLINA EVENTS’ (“Applicant’s Mark”), Serial No. 86/362378, in International Class 045, dated August 11, 2014 (hereinafter the “Application”) allegedly owned by Bella Collina Events, LLC (“Applicant”) and hereby opposes the same.

As grounds for its opposition, Opposer, by and through its undersigned attorneys, alleges as follows:

1. By the Application filed on August 11, 2014, Applicant seeks to obtain registration on the Principal Register of the trademark BELLA COLLINA EVENTS for “Planning and arranging of wedding ceremonies; Providing facilities for wedding ceremonies; Wedding ceremony planning and arranging consulting services” in International Class 045.

2. Since at least 2010, long before the filing date of the Application and long before the date of first use claimed by Applicant in the Application, Opposer has been, and still is, engaged in the provision of, *inter alia*, wedding planning services, providing facilities for wedding ceremonies, planning and arranging of wedding ceremonies, and other, similar activities, under the mark BELLA COLLINA and related marks.

3. Since at least 2010, long before the filing date of the Application, and long before the date of first use claimed by Applicant in the Application, Opposer has been, and still is, engaged in the development, marketing, promotion, sale of wedding services and facilities bearing Opposer's BELLA COLLINA and related marks.

4. Opposer is seeking registration of 'BELLA COLLINA' under U.S. Serial Number 86/431330, filed on October 22, 2014, for "Party and wedding reception planning, coordination and consultation services; Special event planning for social entertainment purposes; Providing country club and golf facilities" in International Class 041. That application is suspended during the pendency of Applicant's Application. Opposer owns other BELLA COLLINA marks in other international classes, including U.S. Registration Number 2,936,715, for "Real estate development and construction services, namely, planning and developing an upscale residential community and resort" in International Class 037, and U.S. Serial Number 86/431338, for "Party and wedding reception planning, coordination and consultation services; Special event planning for social entertainment purposes; Providing country club and golf facilities" in International Class 041. U.S. Serial Numbers 86/431330 and 86/431338, and U.S. Registration Number 2,936,715 may sometimes hereinafter be referred to as "Opposer's Marks."

5. Opposer owns and relies upon Opposer's Marks for many goods and services, including, without limitations, those goods and services listed in the Application. Opposer has

spent years cultivating and using Opposer's Marks to create a well-known and famous brand. Opposer's use of Opposer's Marks predates Applicant's Application. Moreover, the registration of U.S. Registration Number 2,936,715 predates Applicant's Application by years.

6. Since at least before the filing date of the Application, Opposer has continuously used and promoted the BELLA COLLINA marks shown in Opposer's Marks in interstate commerce in connection with its goods, including the goods identified in the registrations and applications for Opposer's Marks. By virtue of Opposer's continuous and substantial use, the Opposer's Marks have become identifiers of Opposer and its goods and services, and distinguish Opposer's goods and services from the goods and services of others. As a result, Opposer has built up, at great expense and effort, valuable goodwill in Opposer's Marks. Opposer has developed a significant amount of goodwill through the use and promotion of Opposer's Marks, such that consumers have come to recognize a family of 'BELLA COLLINA' marks with which Opposer markets and sells its goods and services.

7. In addition to the protection afforded Opposer by its federal trademark registration, Opposer has extensive common law rights in Opposer's Marks throughout the United States, having sold a substantial value of goods and services throughout the United States and having engaged in a nationwide marketing campaign, all under Opposer's Marks. Opposer's common law rights in Opposer's Marks predate the filing date of the Application. Opposer relies on its common law trademark rights in Opposer's Marks.

8. Opposer has used and continues to use Opposer's Marks in connection with wedding events, services, and planning.

9. There is a huge, nationwide demand for wedding events, services, and planning bearing Opposer's Marks. Opposer uses Opposer's Marks in nationwide advertising campaigns

through nationwide publications and magazines directed to the wedding industry and consumers of weddings and wedding services. Goods and services bearing Opposer's Marks are sold through these nationwide marketing campaigns and through Opposer's own website and physical location.

10. Opposer's use of Opposer's Marks predates Applicant's use of Applicant's alleged mark.

11. Indeed, Applicant was aware, at the time of filing the Application, that Opposer's use of Opposer's Marks predates Applicant's use of Applicant's alleged mark. Specifically, on August 1, 2014, counsel for Opposer wrote to counsel for Applicant notifying Applicant of Opposer's use of the BELLA COLLINA mark in, among other things, Opposer's wedding and event venues, and demanding that Applicant cease and desist from using the BELLA COLLINA mark. Applicant's attorney – the same attorney that filed the Application – responded on August 8, 2014, three days before the Application was filed. Therefore, Applicant has pursued the Application with full knowledge of Opposer's use of Opposer's Marks, including Opposer's prior use of the BELLA COLLINA mark for goods and services identical to the goods and services claimed in the Application.

COUNT I
LIKELIHOOD OF CONFUSION

12. Opposer repeats and realleges and incorporates by reference the allegations set forth in paragraphs 1 through 11.

13. Opposer has prior rights in the BELLA COLLINA marks dating from well before Applicant filed the Application and/or commenced use of the BELLA COLLINA mark in United States Commerce.

14. Applicant's Mark is similar in sight, sound, connotation, and overall commercial impression to Opposer's Marks.

15. Applicant's Mark incorporates the Opposer's Marks.

16. Applicant's goods and services are identical or similar to the goods and services for which Opposer is using Opposer's Marks.

17. Opposer will be damaged by registration of the Application in that the BELLA COLLINA mark so resembles Opposer's Marks registered in the United States Patent and Trademark Office, pending before the United States Patent and Trademark Office, and in which Opposer owns common law trademark rights, as to be likely, when used on or in connection with the goods as they are identified in the Application, as to cause confusion, or to cause mistake, or to deceive within the meaning of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052.

COUNT II
DILUTION

18. Opposer repeats and realleges and incorporates by reference the allegations set forth in paragraphs 1 through 17.

19. Through Opposer's extensive advertisement, promotion, and substantial sales, Opposer's Marks have become famous.

20. Any use by Applicant of Applicant's Mark has occurred after Opposer's Marks had already become famous.

21. Consumers are likely to make an association between Applicant's Mark and Opposer's Marks.

22. Applicant's Mark is therefore likely to dilute and impair the distinctiveness of Opposer's Marks.

23. Thus, if Applicant is permitted to register and use Applicant's Mark, they are likely to cause dilution of the distinctive quality of Opposer's Marks, and Applicant's Mark should therefore be refused registration pursuant to the provisions of 15 U.S.C. § 1125(c).

COUNT III
FRAUD

24. Opposer repeats and realleges and incorporates by reference the allegations set forth in paragraphs 1 through 23.

25. Applicant is seeking allowance of the Application and registration of Applicant's Mark despite knowledge that Opposer began its continuous use of the BELLA COLLINA marks long before Applicant's alleged first use of the BELLA COLLINA mark.

26. Applicant has continued to prosecute the Application despite this specific knowledge.

27. Applicant signed the Application with knowledge that it did not have prior and superior use rights to the BELLA COLLINA mark and with knowledge of Opposer's use of Opposer's Marks.

28. Therefore, Applicant should be refused registration of Applicant's Mark for fraud.

Wherefore, Opposer believes and avers that it is being and will continue to be damaged by registration of the proposed trademark as aforesaid, prays that the said application be rejected in accordance with the provisions of the Trademark Act, that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

Dated: Miami, Florida
August 11, 2015

Respectfully submitted,

SHUTTS & BOWEN LLP

Counsel for DCS

525 Okeechobee Boulevard, Suite 1100

West Palm Beach, FL 33401

Telephone (561) 835-8500

Facsimile (561) 822-5527

/s/ Daniel J. Barsky

DANIEL J. BARSKY, ESQ.

Florida Bar No. 0025713

Email: dbarsky@shutts.com

Secondary Email: jtillman@shutts.com

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Notice of Opposition has been served on the following via first class mail on August 11, 2015 to:

David W. Sar, Esq.
Brooks Pierce McLendon Humphrey & Leonard LLP
PO Box 26000
Greensboro, North Carolina 27420-6000

/s/ Daniel J. Barsky
Daniel J. Barsky