

ESTTA Tracking number: **ESTTA693138**

Filing date: **09/02/2015**

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	Sazerac Company, Inc.
Granted to Date of previous extension	09/02/2015
Address	3850 North Causeway Boulevard Suite 1695 Metairie, LA 70002 UNITED STATES

Attorney information	Mary J. Klumpp Cooley LLP 1299 Pennsylvania Ave., NW Suite 700 Washington, DC 20004 UNITED STATES trademarks@cooley.com, mklumpp@cooley.com, pwillsey@cooley.com, vbadolato@cooley.com Phone:202-842-7800
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**Applicant Information**

Application No	86463568	Publication date	05/05/2015
Opposition Filing Date	09/02/2015	Opposition Period Ends	09/02/2015
Applicant	Bently Heritage L.L.C. 990 Ironwood Drive, Suite 300 Minden, NV 89423 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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**Mark Cited by Opposer as Basis for Opposition**

U.S. Registration No.	3506350	Application Date	10/07/2002
Registration Date	09/23/2008	Foreign Priority Date	NONE
Word Mark	KISS		

Design Mark	<h1>KISS</h1>
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 2006/11/00 First Use In Commerce: 2006/11/00 Vodka

Attachments	78171791#TMSN.png( bytes ) NOO_EVE'S KISS.pdf(22873 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	/Mary J. Klumpp/
Name	Mary J. Klumpp
Date	09/02/2015

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

In the matter of Application Serial No. 86/463,568  
For the Trademark EVE’S KISS  
Published in the Official Gazette on May 5, 2015

SAZERAC COMPANY, INC.,	)	
	)	
Opposer,	)	
	)	Opposition No. _____
v.	)	
	)	
Bently Heritage L.L.C.,	)	
	)	
Applicant.	)	
_____	)	

**NOTICE OF OPPOSITION**

Opposer Sazerac Company, Inc. (“Sazerac”), a Louisiana corporation having its principal place of business at 3850 N. Causeway Boulevard, Suite 1695, Metairie, Louisiana 70002, will be damaged by the issuance of a registration for the mark EVE’S KISS, as applied for in Application Serial No. 86/463,568 filed on November 24, 2014 (“Applicant’s Mark”), by Applicant Bently Heritage L.L.C., a limited liability company organized under the laws of Nevada and having its principal place of business at 990 Ironwood Drive, Suite 300, Minden, Nevada (“Applicant”). Sazerac, having previously been granted an extension of time to oppose Applicant’s Marks, hereby opposes same.

As grounds for opposition, Sazerac alleges:

1. Sazerac markets and sells a number of different types and brands of alcoholic beverages and distilled spirits, including whiskey, vodka, rum, gin, liqueurs and tequila. Sazerac has

marketed and sold alcoholic beverages and distilled spirits in the United States for over a century.

2. Sazerac owns an incontestable U.S. Trademark Registration (Reg. No. 3506350) for the KISS mark, which was issued September 23, 2008 in connection with “vodka.”

3. Sazerac and its predecessors in interest have consistently and continually marketed and sold distilled spirits under the KISS mark since at least as early as November, 2006. By virtue of their efforts and by virtue of the excellence of their products, the public has come to know, rely upon, and recognize the KISS mark as a source identifier for Sazerac’s vodka products. Sazerac has gained valuable reputation and goodwill through the use and recognition of its KISS mark.

4. On November 24, 2014, Applicant filed an application to register Applicant’s Mark in connection with “distilled spirits” in Class 33.

5. Opposer’s claimed first use date of November 2006, as identified in Sazerac’s KISS registration, predates Applicant’s filing date of November 24, 2014. There is no issue of priority.

6. Applicant’s Mark is likely to be confused with and mistaken for Sazerac’s KISS mark because Applicant’s Mark is highly similar in terms of sight, sound, and meaning to Sazerac’s KISS mark. Because Applicant’s Mark contains the same dominant “KISS” component, Applicant’s Mark is visually and phonetically identical to Sazerac’s KISS Mark. Thus, Applicant’s Mark creates the same or a very similar commercial connotation as Sazerac’s KISS mark, particularly given the virtually identical nature of the products offered under the marks at issue.

7. Applicant’s customer base for the products associated with Applicant’s Mark overlaps with the consumers and purchasers of Sazerac’s alcoholic beverages marketed and sold under the

KISS mark and with the consumers and purchasers of Sazerac's other alcoholic beverages and distilled spirits products.

8. Upon information and belief, Applicant's Mark, like Sazerac's KISS mark, will be used and displayed in all accepted channels of trade for distilled spirits. Therefore, in addition to overlapping consumer bases, Applicant's channels of trade for its alcoholic beverages overlap with the channels of trade used by Sazerac in marketing, selling, and otherwise distributing its KISS vodka products.

9. 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 likely occur. Consumers familiar with Sazerac's mark would likely perceive Applicant's alcoholic beverages as associated or affiliated with or sponsored by Sazerac. Such confusion would inevitably result in damage to Sazerac.

10. Customers of Sazerac's products and the relevant public are likely to believe in error that alcoholic beverages offered under Applicant's Mark are offered by or in association with or under license from Sazerac.

11. Any defect, objection to, or fault found with Applicant's goods marketed under Applicant's Mark would necessarily reflect on and injure the reputation that Sazerac has established for its alcoholic beverages and distilled spirits products.

12. 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 Applicant's Mark, all to the detriment of Sazerac.

15. Wherefore, Sazerac prays that this Opposition be sustained and that Application Serial No. 86/463,568 be denied and refused registration.

COOLEY LLP

Date: September 2, 2015

By: /Mary J. Klumpp/

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Vincent J. Badolato

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*Counsel for Sazerac Company, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on September 2, 2015, I mailed the foregoing NOTICE OF OPPOSITION to 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:

D. Peter Harvey  
Harvey Siskind LLP  
Four Embarcadero Center, 39th Fl.  
San Francisco, CA 94111-4115

Date: September 2, 2015

/Mary J. Klumpp/  
Mary J. Klumpp

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