

ESTTA Tracking number: **ESTTA696858**

Filing date: **09/18/2015**

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	University of Mississippi
Granted to Date of previous extension	09/20/2015
Address	Office of General Counsel, 209 Lyceum University, MS 38677 UNITED STATES

Attorney information	Larry Leroy "Lee" Tyner, Jr. University of Mississippi Office of General Counsel, 209 Lyceum University, MS 38677 UNITED STATES ltyner@olemiss.edu
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Applicant Information

Application No	86427678	Publication date	03/24/2015
Opposition Filing Date	09/18/2015	Opposition Period Ends	09/20/2015
Applicant	Woodnut Brands Suite 900 Memphis, TN 38103 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: Whiskey
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Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Mark Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	HOTTY TODDY		
Goods/Services	Stemware, cups, decanters, apparel, serving ware, athletic equip-		

	ment, plasticware, glassware, pennants, flags, banners, signage, memorabilia, tickets, educational services, entertainment services, sporting events, fundraising events, alumni services, stationery
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Attachments	Hotty Toddy Opposition September 18 2015.pdf(74657 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	/Lee Tyner/
Name	Larry Leroy "Lee" Tyner, Jr.
Date	09/18/2015

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

University of Mississippi,)	Opposition No. _____
)	
Opposer,)	Application Serial No.: 86/427678
)	Filed: October 18, 2014
v.)	Mark: HOTTY TODDY
Woodnut Brands, LLC)	
)	
Applicant.)	
_____)	

NOTICE OF OPPOSITION

The University of Mississippi, a public university in the State of Mississippi, located and doing business at University, Mississippi 38677, believes that it will be damaged by the registration in International Class 33 of the mark shown in Application Serial No. 86/427678 (“678 Application”) filed by Woodnut Brands, LLC, (“Applicant”), a limited liability company with mailing address at Suite 900, 200 Jefferson Avenue, Memphis, Tennessee 38103, and published in the Official Gazette of March 24, 2015, and hereby opposes registration of the same under the provisions of Section 13 of the Trademark Act of 1946, 15 U.S.C. §1063.

As grounds for opposition, the University of Mississippi alleges, upon actual knowledge with respect to itself and its own acts, and upon information and belief as to other matters:

1. The University of Mississippi is the owner of the common-law word mark Hotty Toddy. “Hotty Toddy” has been the school cheer of the University of Mississippi since at least 1948. Since that time, the mark has been used in conjunction with a variety of goods and services offered by the University.

2. The University of Mississippi has spent significant amounts of money and other resources to market, promote, and advertise its goods identified in paragraph 1. Through these efforts, “Hotty Toddy” enjoys valuable consumer recognition and goodwill, and the public has

come to know “Hotty Toddy” as an indicator of goods and services that originate from the University of Mississippi. “Hotty Toddy” identifies goods and services that originate from the University of Mississippi and distinguishes them from those of others.

4. The University of Mississippi is informed and believes that Applicant, having an address at Suite 900, 200 Jefferson Avenue, Memphis, Tennessee 38103, is the current owner of record of the ‘678 Application, filed on October 18, 2014, for use on whiskey in International Class 33.

5. The University of Mississippi has adopted and used continuously the mark “Hotty Toddy” in interstate commerce since 1948, long before Applicant’s intent-to-use application was filed on October 18, 2014.

6. The word-mark component of the mark depicted in the ‘678 Application is identical to the University’s common law mark “Hotty Toddy” in appearance and commercial impression.

7. Applicant’s goods and services as described in the ‘678 Application are highly related to the goods and services identified with the University of Mississippi’s “Hotty Toddy” mark, referenced in paragraph 1, and with which the University has been using its mark for many years.

8. Prior to Applicant’s filing of the ‘678 Application, the University of Mississippi had already 1) acquired a common-law mark in the words “Hotty Toddy”; 2) used “Hotty Toddy” in commerce in connection with its goods and services; and 3) acquired fame in “Hotty Toddy” for its good and services by virtue of the recognition of the general consuming public of the United States.

9. Upon information and belief, Applicant intends to offer services in whole or in part within the same channels of trade and to the same class of purchasers as the University of Mississippi.

10. The University of Mississippi believes and alleges that when Applicant uses the applied-for design mark in connection with the goods identified in the '678 Application, consumers are likely to believe that the goods originate with the University of Mississippi.

11. The University of Mississippi believes and alleges that registration of the '678 Application will enable Applicant to trade upon and utilize the goodwill established by the University of Mississippi in its "Hotty Toddy" mark.

12. If the Applicant is granted the registration herein opposed, Applicant would thereby obtain at least a *prima facie* exclusive right to the use of its mark. Such registration would be a source of damage and injury to the University of Mississippi, as well as confusion in the relevant marketplace.

13. As a result of the similarity between the University's "Hotty Toddy" mark and the applied-for-mark in the '678 Application and the highly related nature of the goods and services of the parties' marks, the '678 Application is likely to cause confusion, mistake or deception in the trade and among purchasers as to the source, origin or sponsorship of the parties' respective goods and services pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d).

14. The mark identified in the '678 Application would dilute the distinctive quality of the University of Mississippi's "Hotty Toddy" Mark, pursuant to Section 43(c) of the Lanham Act, 15 U.S.C. §1125(c).

15. The mark identified in the '678 Application would falsely suggest a connection with the University of Mississippi, in violation of Section 2(a) of the Lanham Act, 15 U.S.C. §1052(a).

WHEREFORE, the University of Mississippi prays that this Opposition be sustained and that registration of U.S. Trademark Application Serial No. 85/030080 be denied.

Respectfully submitted,

By: _____

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Dated: September 18, 2015