ESTTA Tracking number: **ESTTA714388**
Filing date: **12/14/2015**

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

Proceeding	91224708
Party	Defendant Enoitalia S.p.A.
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Date	12/14/2015
Attachments	Enotalia answer Red Fire.pdf(599194 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 86/579,543

For the Trademark RED FIRE

Published in the Official Gazette on August 25, 2015

SAZERAC BRANDS, LLC,	)	
	)	
Opposer,	)	
v.	)	Opposition No. 705549
	)	
ENOITALIA S.P.A.,	)	
	)	
Applicant.	)	

ANSWER TO NOTICE OF OPPOSITION

In response to Opposer's Notice of Opposition (Opposition") in the proceeding captioned above, Applicant, Enoitalia S.p.A., an Italian corporation with a mailing address of Località Colombara 5, Calmasino I-37011, Bardolino, Verona, Italy ("Applicant") states as follows:

1. Sazerac, through its parent company, Sazerac Company, Inc. ("SCI"), markets and sells a number of different types and brands of alcoholic beverages and distilled spirits, including vodkas, whiskeys, tequilas, and specialty liqueurs. SCI has marketed and sold alcoholic beverages and distilled spirits in the United States for over a century.

Sazerac owns the following United States trademark registrations and application:

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

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")

RESPONSE: Applicant lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in paragraph 1 (first occurrence) of the Notice of Opposition and therefore the allegations are denied.

1. (Second occurrence) 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.

RESPONSE: Applicant lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in paragraph 1 (Second occurrence) of the Notice of Opposition and therefore the allegations are denied.

2. On March 27, 2015, Applicant filed an application to register the mark RED FIRE upon an intent-to-use basis in connection with "wine" in International Class 33.

RESPONSE: Admitted

3. The Sazerac Marks have priority through use in commerce and/or a filing date prior to Applicant's filing date of March 27, 2015.

RESPONSE: Applicant lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in paragraph 3 of the Notice of Opposition and therefore the allegations are denied.

4. Sazerac's FIREBALL mark is strong and well-known.

RESPONSE: Applicant lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in paragraph 4 of the Notice of Opposition and therefore the allegations are denied.

5. Applicant's Mark is similar in sight, sound, meaning, and commercial impression to the Sazerac Marks.

RESPONSE: Denied

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

RESPONSE: Denied.

7. Applicant's targeted customer base overlaps with the consumers of Sazerac's alcoholic beverages.

RESPONSE: Applicant lacks knowledge or information sufficient to form a belief about the truth of the allegation set forth in paragraph 7 of the Notice of Opposition and therefore the allegations are denied.

8. As Applicant's goods description 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.

RESPONSE: Applicant admits that it intends to use its wine in all channels of trade. Applicant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations set forth in paragraph 8 of the Notice of Opposition and therefore the allegations are denied.

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 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.

RESPONSE: Denied.

10. 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.

RESPONSE: Denied.

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

RESPONSE: Denied.

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 its RED FIRE mark, all to the detriment of Sazerac.

RESPONSE: Applicant admits that the registration of Applicant's Mark would give Applicant prima facie evidence of the validity and ownership of Applicant's Mark. The remaining allegations in paragraph 12 are denied.

Wherefore the Opposition should be dismissed.

Respectfully submitted

Enoitalia, S.p.a.

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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 set forth below by First Class Mail on this date. December 14, 2015

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Andrew C. Aitken