

ESTTA Tracking number: **ESTTA708089**

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

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	Sazerac Brands, LLC
Granted to Date of previous extension	11/11/2015
Address	10400 Linn Station Road, Suite 300 Louisville, KY 40223 UNITED STATES
Party who filed Extension of time to oppose	Sazerac Company, Inc.
Relationship to party who filed Extension of time to oppose	Sazerac Company, Inc. has assigned its U.S. trademarks to Sazerac Brands, LLC, the recordation of which occurred on November 11, 2015. Sazerac Brands, LLC is a wholly-owned subsidiary of Sazerac Company, Inc.

Attorney information	Thomas M. Hadid Cooley LLP 1299 Pennsylvania Ave., NW Suite 700 Washington, DC 20004 UNITED STATES trademarks@cooley.com, thadid@cooley.com, vbadolato@cooley.com, pwillsey@cooley.com Phone:6508497007
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Applicant Information

Application No	86523184	Publication date	07/14/2015
Opposition Filing Date	11/11/2015	Opposition Period Ends	11/11/2015
Applicant	McCormick Distilling Co., Inc. One McCormick Lane Weston, MO 64098 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: Alcoholic beverages except beers; Whiskey
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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		
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		

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		

Attachments	76337349#TMSN.png(bytes) 77471284#TMSN.png(bytes) 77760567#TMSN.png(bytes) 85220774#TMSN.png(bytes) Sazerac - NOO re PLATTE VALLEY FIRESHINE.pdf(42828 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	11/11/2015

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

In the Matter of Application Serial No. 86/523,184
For the Trademark PLATTE VALLEY FIRESHINE
Published in the *Official Gazette* on July 14, 2015

SAZERAC BRANDS, LLC,)	
)	
Opposer,)	
)	Opposition No.
v.)	
)	
MCCORMICK DISTILLING CO., INC.,)	
)	
Applicant.)	
_____)	

NOTICE OF OPPOSITION

Opposer Sazerac Brands, LLC (“Sazerac”), a Delaware limited liability company having its principal place of business at 10400 Linn Station Road, Suite 300, Louisville, Kentucky 40223, will be damaged by the issuance of a registration for the mark PLATTE VALLEY FIRESHINE (the “Applicant’s Mark”), as applied for in Application Serial No. 86/523,184, filed on February 3, 2015, by Applicant McCormick Distilling Co., Inc., a Missouri corporation with a mailing address of One McCormick Lane, Weston, Missouri 64098 (“Applicant”).

As grounds for opposition, Sazerac alleges 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:

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; and,



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

2013, for whiskey-based liqueurs.

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

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 source identifiers for Sazerac’s products.

1. 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.

2. On February 3, 2015, Applicant filed an application to register the mark PLATTE VALLEY FIRESHINE on an intent-to-use basis in connection with “[a]lcoholic beverages except beers; [w]hiskey” in International Class 33.

3. The Sazerac Marks have priority through use in commerce and filing dates prior to Applicant’s filing date of February 3, 2015.

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

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

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

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

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.

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.

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.

11. Any defect, objection to, or fault found with Applicant's alcoholic beverages marketed under its PLATTE VALLEY FIRESHINE mark would necessarily reflect on and seriously injure the reputation that Sazerac has established for its alcoholic beverage 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 its PLATTE VALLEY FIRESHINE mark, all to the detriment of Sazerac. As such, for the reasons set forth herein, registration of Applicant's Mark should be denied pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d).

WHEREFORE, based on the foregoing, Opposer requests that the Board sustain this Opposition and that registration of Application Serial No. 86/523,184 be refused.

COOLEY LLP

Date: November 11, 2015

By: /s/Thomas M. Hadid

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*Attorneys for Opposer,
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CERTIFICATE OF SERVICE

I hereby certify that on November 11, 2015, I mailed the foregoing NOTICE OF OPPOSITION regarding *Sazerac Brands, LLC. v. McCormick Distilling Co., Inc.* to correspondent 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:

Mr. Michael Elbein
Hovey Williams LLP
10801 Mastin Street, Suite 1000
Overland Park, Kansas 66210-1697
United States

Date: November 11, 2015

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