

ESTTA Tracking number: **ESTTA712253**

Filing date: **12/02/2015**

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	Pahlavan Family Cellars, LLC
Granted to Date of previous extension	12/02/2015
Address	5511 Highway 128 Geyserville, CA 95441 UNITED STATES

Attorney information	Joan Rochman Manatt Phelps & Phillips, LLP 11355 W. Olympic Blvd. Los Angeles, CA 90064 UNITED STATES JRochman@manatt.com, GDelcoure@manatt.com, IPDocket@manatt.com Phone: 310-312-4311
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**Applicant Information**

Application No	86561142	Publication date	08/04/2015
Opposition Filing Date	12/02/2015	Opposition Period Ends	12/02/2015
Applicant	Treaty Oak Distilling Co. 16604 Fitzhugh Road Dripping Springs, TX 78620 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 033. First Use: 2012/09/01 First Use In Commerce: 2012/09/01 All goods and services in the class are opposed, namely: Vodka
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**Grounds for Opposition**

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

**Mark Cited by Opposer as Basis for Opposition**

U.S. Registration No.	3083639	Application Date	05/12/2004
Registration Date	04/18/2006	Foreign Priority Date	NONE
Word Mark	STARLITE VINEYARDS		

Design Mark	STARLITE VINEYARDS
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 2003/06/30 First Use In Commerce: 2005/07/09 Wines

Attachments	78417758#TMSN.png( bytes ) Starlite Vineyards Notice of Opposition.pdf(283023 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	/J. Rochman/
Name	Joan Rochman
Date	12/02/2015

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

In the matter of Application Serial No. 86/561, 142  
Published in the Official Gazette of August 4, 2015

<p>PAHLAVAN FAMILY CELLARS, LLC</p> <p style="text-align: center;">Opposer,</p> <p>v.</p> <p>TREATY OAK DISTILLING CO.</p> <p style="text-align: center;">Applicant</p>	<p>Opposition No.:</p> <p>Mark:           STARLITE VODKA</p> <p>Serial No.   86/561, 142</p> <p>Filed:         March 11, 2015</p>
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**NOTICE OF OPPOSITION**

Opposer Pahlavan Family Cellars, LLC (“Pahlavan” or “Opposer”) believes that it will be damaged by registration of the mark STARLITE VODKA, Application Serial No. 86/561,142 (“Opposed Application”). As grounds for opposition, Opposer, upon actual knowledge with respect to itself and its own acts, and belief as to other matters, alleges as follows:

1. Pahlavan is a California limited liability company with its principal place of business at 5511 Hwy 128, Geyserville, CA 95411.
2. Treaty Oak Distilling Co. (“Applicant”), a Texas corporation with its principal place of business as 16604 Fitzhugh Road Dripping Springs, TX 78620, filed the Opposed Application with the U. S Patent and Trademark Office (“USPTO”) on or about March 11, 2015. The Opposed Application was published on or about August 4, 2015.
3. On about September 2, 2015, Opposer timely filed a 30 day request for extension of time to oppose the Opposed Application, which was granted by the Trademark Trial and Appeal Board (“TTAB”) on the same day. On or about October 2, 2015, Opposer timely filed a second request for extension of time to oppose, for 60 days, with good cause, which was granted

by the TTAB on October 7, 2015. Accordingly, Opposer has timely filed this Notice of Opposition prior to the expiration of the opposition period.

**Opposer’s Use of the STARLITE VINEYARD Mark**

1. Opposer has used the STARLITE VINEYARD mark since at least as early as 1993, and continuously to the present in connection with wine and a variety of related merchandise and services associated with wine and its winery.

2. By virtue of its longstanding continuous use, Opposer has established valuable goodwill in its STARLITE VINEYARD trademark.

**Opposer’s Federal Registration of the STARLITE VINEYARD**

3. Opposer owns a federal registration for the mark STARLITE VINEYARD, for wine, see Registration No. 3,083,639, attached as **Exhibit A**; Opposer obtained its registration for STARLITE VINEYARD on April 18, 2006.

4. On April 12, 2012 Opposer filed a Section 8 and 15 combined declaration, which was accepted and acknowledged by the USPTO on April 29, 2012.

**Applicant and Its STARLITE VODKA Mark**

5. In March 2015, more than two decades after Opposer’s first use of STARLITE VINEYARD, Applicant filed an application with the USPTO, for the mark STARLITE VODKA, for vodka. A printout from the USPTO website evidencing Applicant’s federal application is attached as **Exhibit B**, the particulars of which are summarized below:

<b>Mark and App No.</b>	<b>Filing Date</b>	<b>Goods/Services as Filed</b>
STARLITE VODKA App. No. 86/561,142	March 11, 2015	Class 33: Vodka

6. The goods that Applicant intends to provide under the STARLITE VODKA mark as listed in the Opposed Application, namely, vodka, are commercially related to the goods offered by Opposer under the STARLITE VINEYARD mark. In addition, the goods that Applicant intends to provide under the STARLITE VODKA mark are, or potentially will be, offered broadly to the same class of consumers as the consumers of Opposer's goods under the STARLITE VINEYARD mark.

7. Applicant's STARLITE VODKA mark is confusingly similar to Opposer's STARLITE VINEYARD mark. Specifically, the dominant, and first element of both marks, is the word STARLITE. Given the shared first component STARLITE, the marks are visually and aurally very similar, making confusion among consumers highly likely. In addition, the fact that the word STARLITE, in both marks, is spelled in an incongruous manner (i.e., Starlite vs. the usual spelling Starlight), results in the marks conveying a similar commercial impression, making it even more likely that consumer confusion will result. Moreover, a likelihood of consumer confusion is even more likely because the second component of both marks is the name of an alcoholic beverage, i.e., wine and vodka.

8. The Opposed Application was filed without Opposer's authorization, consent, or prior knowledge.

**FIRST CLAIM FOR RELIEF**  
**(Likelihood of Confusion, 15 U.S.C. § 1052(d))**

9. Opposer repeats and realleges the allegations in preceding paragraphs 1 through 8 as if fully set forth herein.

10. The mark shown in the Opposed Application so resembles Opposer's STARLITE VINEYARD mark previously used by Opposer, that when used on or in connection with the

goods identified in the Opposed Application, is likely to cause confusion or mistake, or to deceive, and Applicant's mark is thus unregistrable under §2(d) of the United States Trademark Act, 15 U.S.C. § 1052(d).

11. Opposer will be damaged by registration of the mark shown in the Opposed Application because such registration will give Applicant prima facie evidence of ownership of and the exclusive right to use a mark that is confusingly similar to Opposer's previously-used, and not-abandoned mark, in derogation of Opposer's rights in its mark.

**SECOND CLAIM FOR RELIEF**  
**(Likelihood of Confusion with Registered Trademarks)**

12. Opposer repeats and realleges the allegations in preceding paragraphs 1 through 8 as if fully set forth herein.

13. The mark shown in the Opposed Application so resembles Opposer's registered STARLITE VINEYARD mark as to be likely, when used on or in connection with the goods identified in the Opposed Application, to cause confusion or mistake, or to deceive, and Applicant's mark is thus unregistrable under §2(d) of the United States Trademark Act, 15 U.S.C. § 1052(d).

14. Opposer will be damaged by registration of the mark shown in the Opposed Application because such registration will give Applicant prima facie evidence of ownership of and the exclusive right to use a mark that is confusingly similar to Opposer's registered marks, in derogation of Opposer's rights in their registered marks.

**THIRD CLAIM FOR RELIEF**  
**(False Suggestion of a Connection)**

15. Opposer repeats and realleges the allegations in preceding paragraphs 1 through 8 as if fully set forth herein.

16. The mark shown in the Opposed Application falsely suggests a connection between Opposer and Applicant, given its similarity to Opposer's mark, and Applicant's mark is thus unregistrable under §2(a) of the United States Trademark Act, 15 U.S.C. § 1052(a).

17. Opposer will be damaged by registration of the mark shown in the Opposed Application because such registration will give Applicant prima facie evidence of ownership of and the exclusive right to use a mark that falsely associates Applicant's goods with Opposer.

18. Opposer's first use of the STARLITE VINEYARD mark predates the filing date of Applicant's Opposed Application for STARLITE VODKA, and any date of first use that may be alleged by Applicant.

WHEREFORE, Opposer believe that they are being damaged, and will be damaged, by the registration of the mark shown in the Application, and requests that this opposition be sustained, and that registration of the Applicant's mark be refused.

Respectfully submitted,

Dated: December 2, 2015

By: /Joan Ohl Rochman  
Joan Ohl Rochman, Esq.  
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Los Angeles, CA 90064  
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Facsimile: (310) 312-4224

Attorneys for Opposer  
PAHLAVAN FAMILY CELLARS, LLC

# **EXHIBIT A**

**Int. Cl.: 33**

**Prior U.S. Cls.: 47 and 49**

**United States Patent and Trademark Office**

**Reg. No. 3,083,639**

**Registered Apr. 18, 2006**

**TRADEMARK  
PRINCIPAL REGISTER**

**STARLITE VINEYARDS**

PAHLAVAN, ARMAN (UNITED STATES INDIVIDUAL)

C/O MANATT, PHELPS & PHILLIPS, LLP

1001 PAGE MILL ROAD, BLDG. 2

PALO ALTO, CA 94304

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "VINEYARDS", APART FROM THE MARK AS SHOWN.

FOR: WINES, IN CLASS 33 (U.S. CLS. 47 AND 49).

SN 78-417,758, FILED 5-12-2004.

FIRST USE 6-30-2003; IN COMMERCE 7-9-2005.

NANCY CLARKE, EXAMINING ATTORNEY

# **EXHIBIT B**



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# STARLITE VODKA

<b>Word Mark</b>	STARLITE VODKA
<b>Goods and Services</b>	IC 033. US 047 049. G & S: Vodka. FIRST USE: 20120901. FIRST USE IN COMMERCE: 20120901
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	<b>86561142</b>
<b>Filing Date</b>	March 11, 2015
<b>Current Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	August 4, 2015
<b>Owner</b>	(APPLICANT) Treaty Oak Distilling Co. CORPORATION TEXAS 16604 Fitzhugh Road Dripping Springs TEXAS 78620
<b>Attorney of Record</b>	Steven D. Smit
<b>Disclaimer</b>	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "VODKA" APART FROM THE MARK AS SHOWN
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Live/Dead Indicator</b>	LIVE

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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **NOTICE OF OPPOSITION** upon Applicant by depositing one copy thereof in the United States Mail, first-class postage prepaid, on December 2, 2015, addressed as follows:

Treaty Oak Distilling Co.  
16604 Fitzhugh Road  
Dripping Springs, TX 78620

With a copy to:

Steven Smit  
Graves Dougherty Hearon & Moody PC  
401 Congress Ave., Suite 2200  
Austin, TX 78701-3790

ssmitt@gdhm.com  
trademarks@gdhm.com



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Gayle K. Delcours