

ESTTA Tracking number: **ESTTA722485**

Filing date: **01/25/2016**

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	Jack Daniel's Properties, Inc.
Granted to Date of previous extension	01/24/2016
Address	4040 Civic Center Drive, Suite 528 San Rafael, CA 94903 UNITED STATES

Attorney information	Christopher C. Larkin Seyfarth Shaw LLP 2029 Century Park East, Suite 3500 Los Angeles, CA 90067-3021 UNITED STATES clarkin@seyfarth.com, kelko@seyfarth.com Phone:(310) 277-7200
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Applicant Information

Application No	86615120	Publication date	07/28/2015
Opposition Filing Date	01/25/2016	Opposition Period Ends	01/24/2016
Applicant	Nelson's Green Brier Distillery, LLC 1414 Clinton Street Nashville, TN 37203 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

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.	42663	Application Date	04/22/1904
Registration Date	05/24/1904	Foreign Priority Date	NONE
Word Mark	OLD NO. 7		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 1875/01/00 First Use In Commerce: 1875/01/00 WHISKIES

U.S. Registration No.	3505179	Application Date	03/20/2008
Registration Date	09/23/2008	Foreign Priority Date	NONE
Word Mark	OLD NO. 7		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 1875/06/01 First Use In Commerce: 1875/06/01 Alcoholic beverages, namely, distilled spirits		

Attachments	70042663#TMSN.png(bytes) 77427325#TMSN.png(bytes) Notice of Opposition.pdf(227760 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	/Christopher C. Larkin/
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Name	Christopher C. Larkin
Date	01/25/2016

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

In the Matter of Application Serial No. 86/615,120
Published in the Official Gazette of July 28, 2015

JACK DANIEL'S PROPERTIES, INC.,

Opposer,

v.

NELSON'S GREEN BRIER DISTILLERY,
LLC,

Applicant.

Opposition No.: _____

NOTICE OF OPPOSITION

Opposer Jack Daniel's Properties, Inc. ("Opposer") believes that it will be damaged by registration of the mark shown in Application Serial No. 86/615,120 and hereby opposes the same. As grounds for opposition, Opposer alleges as follows:

1. Opposer is a Delaware corporation with offices in San Rafael, California.
2. Upon information and belief, applicant Nelson's Green Brier Distillery, LLC ("Applicant") is a Delaware limited liability company with an address of record in Nashville, Tennessee.
3. On April 30, 2015, Applicant filed Application Serial No. 86/615,120 (the "Opposed Application") to register the claimed mark OLD NO. 5 in standard characters on the Principal Register for goods identified therein as "whiskey" on the basis of Applicant's alleged intention to use the mark in commerce. Upon information and belief, Applicant has not commenced use of its claimed mark in commerce in connection with whiskey, but intends to use the mark in connection with Tennessee whiskey.

4. From a time long prior to the filing date of the Opposed Application, or any earlier date of actual use of the mark shown in the Opposed Application upon which Applicant can rely, and continuously to the present, Opposer and its predecessors-in-interest have used the mark OLD NO. 7 in the United States in connection with Tennessee whiskey. The OLD NO. 7 mark was first used in the United States in 1875 and has been used continuously since then, except for the periods of national and state Prohibition and for certain other periods. By virtue of extensive sales and advertising of Tennessee whiskey sold under the OLD NO. 7 mark, the mark has become famous in the United States. Upon information and belief, Applicant was aware of Opposer's famous OLD NO. 7 mark when Applicant selected the mark shown in the Opposed Application.

5. Opposer owns United States Trademark Registration No. 42,663 for the mark OLD NO. 7 (stylized) for whiskies and United States Trademark Registration No. 3,505,179 for the mark OLD NO. 7 for alcoholic beverages namely distilled spirits. These registrations are valid and subsisting and have become incontestable. Copies of the records of these registrations taken from the TSDR electronic database of the Patent and Trademark Office and showing the current status and title of the registrations are attached hereto as Exhibit 1.

6. The goods identified in the Opposed Application are identical to the goods identified in Opposer's pleaded registrations, and are thus deemed to travel through identical channels of trade to the identical classes of customers. Purchasers and prospective purchasers of Applicant's goods, including Tennessee whiskey, sold under Applicant's claimed mark OLD NO. 5 are likely to believe mistakenly that Applicant's goods originate with, or are licensed, sponsored, or authorized by, Opposer.

FIRST CLAIM FOR RELIEF
(Likelihood of Confusion With Registered Trademarks)

7. Opposer repeats and realleges the allegations in preceding paragraphs 1-6 as if fully set forth herein.

8. The mark shown in the Opposed Application so resembles Opposer's registered OLD NO. 7 mark as to be likely, when used on or in connection with the goods identified in the Opposed Application, to cause confusion, to cause 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).

9. 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 mark, in derogation of Opposer's rights in its registered mark.

SECOND CLAIM FOR RELIEF
(Likelihood of Confusion with Previously-Used Trademark)

10. Opposer repeats and realleges the allegations in preceding paragraphs 1-6 as if fully set forth herein.

11. The mark shown in the Opposed Application so resembles the OLD NO. 7 mark previously used by Opposer and its predecessors-in-interest in the United States, and not abandoned, as to be likely, when used on or in connection with the goods identified in the Opposed Application, to cause confusion, to cause 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).

12. 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.

WHEREFORE, opposer Jack Daniel's Properties, Inc. prays for judgment sustaining this opposition and refusing registration to the mark shown in the Opposed Application.

Please charge the filing fees for this opposition to Deposit Account No. 50-2291 and direct all correspondence and communication in this opposition to the undersigned.

Respectfully submitted,

SEYFARTH SHAW LLP

Dated: January 25, 2016

By: *s/Christopher C. Larkin*

Christopher C. Larkin
Attorneys for Opposer
JACK DANIEL'S PROPERTIES, INC.

2029 Century Park East
Suite 3500
Los Angeles, CA 90067-3021
Telephone: (310) 277-7200
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EXHIBIT 1

STATUS	DOCUMENTS	MAINTENANCE	Back to Search	 Print
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Mark: OLD NO. 7



US Serial Number: 70042663

Application Filing Date: Apr. 22, 1904

US Registration Number: 42663

Registration Date: May 24, 1904

Register: Principal

Mark Type: Trademark

Status: The registration has been renewed.

Status Date: Jun. 11, 2014

▲ **Mark Information**

▼ [Expand All](#)

▲ **Related Properties Information**

▼ **Goods and Services**

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *.* identify additional (new) wording in the goods/services.

For: WHISKIES

International Class(es): 033

U.S Class(es): 049 - Primary Class

Class Status: ACTIVE

Basis: 1(a)

First Use: Jan. 1875

Use in Commerce: Jan. 1875

▲ **Basis Information (Case Level)**

▼ **Current Owner(s) Information**

Owner Name: JACK DANIEL'S PROPERTIES, INC.

Owner Address: 4040 CIVIC CENTER DRIVE
SUITE 528
SAN RAFAEL, CALIFORNIA UNITED STATES 94903

Legal Entity Type: CORPORATION

DELAWARE

	State or Country Where Organized:
▲ Attorney/Correspondence Information	
▲ Prosecution History	
▲ Maintenance Filings or Post Registration Information	
▲ TM Staff and Location Information	
▲ Assignment Abstract Of Title Information - Click to Load	
▲ Proceedings - Click to Load	

STATUS	DOCUMENTS	MAINTENANCE	Back to Search	Print
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Mark: OLD NO. 7

OLD NO. 7

US Serial Number: 77427325

Application Filing Date: Mar. 20, 2008

US Registration Number: 3505179

Registration Date: Sep. 23, 2008

Filed as TEAS Plus: Yes

Currently TEAS Plus: Yes

Register: Principal

Mark Type: Trademark

Status: A Sections 8 and 15 combined declaration has been accepted and acknowledged.

Status Date: Sep. 30, 2014

Publication Date: Jul. 08, 2008

▲ **Mark Information**

▼ [Expand All](#)

▲ **Related Properties Information**

▼ **Goods and Services**

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Alcoholic beverages, namely, distilled spirits

International Class(es): 033 - Primary Class

U.S Class(es): 047, 049

Class Status: ACTIVE

Basis: 1(a)

First Use: Jun. 01, 1875

Use in Commerce: Jun. 01, 1875

▲ **Basis Information (Case Level)**

▲ **Current Owner(s) Information**

▼ **Attorney/Correspondence Information**

Attorney of Record

Attorney Name:	David S. Gooder	Docket Number:	17080
Attorney Primary Email Address:	jdpilegal@jdpi.com	Attorney Email Authorized:	Yes
Correspondent			
Correspondent Name/Address:	DAVID S. GOODER JACK DANIEL'S PROPERTIES, INC. 4040 CIVIC CENTER DR STE 528 SAN RAFAEL, CALIFORNIA UNITED STATES 94903-4191		
Phone:	415-446-5225	Fax:	415-446-5230
Correspondent e-mail:	jdpilegal@jdpi.com	Correspondent e-mail Authorized:	Yes
Domestic Representative - Not Found			
<ul style="list-style-type: none"> ▲ Prosecution History ▲ Maintenance Filings or Post Registration Information ▲ TM Staff and Location Information ▲ Assignment Abstract Of Title Information - Click to Load ▲ Proceedings - Click to Load 			

CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2016, I served the foregoing Notice of Opposition on the applicant by mailing a copy thereof by First Class Mail, postage prepaid, addressed to applicant's counsel of record at applicant's counsel's correspondence address of record in the records of the Patent and Trademark Office as follows:

Lara Flatau, Esq.
Harwell Howard Hyne Gabbert
& Manner PC
333 Commerce St., Suite 1500
Nashville, TN 37201-1829

s/Eleanor Elko

Eleanor Elko