

ESTTA Tracking number: **ESTTA743985**

Filing date: **05/03/2016**

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	Sazerac Brands, LLC
Granted to Date of previous extension	05/18/2016
Address	10400 Linn Station Road Suite 300 Louisville, KY 40223 UNITED STATES
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 Phone:3108836400

Applicant Information

Application No	86750668	Publication date	01/19/2016
Opposition Filing Date	05/03/2016	Opposition Period Ends	05/18/2016
Applicant	Bullshine Distillery LLC 45-5 Karlen Road Helvetia, WV 26224 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

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
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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.	4564436	Application Date	10/26/2010
Registration Date	07/08/2014	Foreign Priority Date	NONE
Word Mark	FUEL YOUR FIRE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2014/03/24 First Use In Commerce: 2014/03/24 Distilled spirits and liqueurs; prepared alcoholic cocktails		

Attachments	76337349#TMSN.png(bytes) 77471284#TMSN.png(bytes) 77760567#TMSN.png(bytes) 85161357#TMSN.png(bytes) Sazerac - Notice of Opposition re BULLSHINE FIREBULL.pdf(32727 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	05/03/2016

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

In the Matter of Application Serial No. 86/750,668
For the Trademark BULLSHINE FIREBULL
Published in the *Official Gazette* on January 19, 2016

SAZERAC BRANDS, LLC,)	
)	
Opposer,)	
)	Opposition No.
v.)	
)	
BULLSHINE DISTILLERY LLC,)	
)	
Applicant.)	
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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 BULLSHINE FIREBULL (the “Applicant’s Mark” or the “BULLSHINE FIREBULL Mark”), as applied for in Application Serial No. 86/750,668 filed on September 8, 2015, by Applicant Bullshine Distillery LLC, a West Virginia limited liability company with a principal address at 45-5 Karlen Road, Helvetia, West Virginia 26224 (“Applicant”).

As grounds for its 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.

2. Sazerac, through SCI, and its predecessors-in-interest have marketed and sold distilled spirits under Sazerac's distinctive FIREBALL mark since at least as early as 1988. In addition, Sazerac, through SCI, has for several years used related marks, such as FUEL YOUR FIRE and a "FIREBALL and Dragon Man Design" Logo, to offer and sell distilled spirits throughout the United States. The foregoing marks shall be referred to collectively herein as "Sazerac's Marks."

3. By virtue of marketing efforts 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.

4. Sazerac owns the following United States trademark registrations for the Sazerac Marks:

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,

FUEL YOUR FIRE (Reg. No. 4,564,436), issued July 8, 2014, for distilled spirits and liqueurs; prepared alcoholic cocktails.

5. 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.

6. On September 8, 2015, Applicant filed an application to register the mark BULLSHINE FIREBULL based on a claimed intent to use the mark in commerce in connection with “[a]lcoholic beverages except beers” in International Class 33.

7. The Sazerac Marks have priority through use in commerce and a filing date prior to Applicant’s filing date of January 19, 2016.

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

9. Applicant’s Mark is similar in sight, sound, meaning, and commercial impression to the Sazerac Marks. Notably, the distinctive FIREBULL element contains only one letter different from the FIREBALL mark.

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

11. On information and belief, Applicant’s targeted customer base overlaps with the consumers of Sazerac’s alcoholic beverages.

12. As Applicant’s description of goods contains no restrictions or limitations as to Applicant’s channels of trade, the Board 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 (through SCI) in marketing, selling, and otherwise distributing its alcohol-based products marketed under the Sazerac Marks.

13. If Applicant is permitted to register the BULLSHINE FIREBULL Mark for the goods specified in the Application herein opposed, confusion resulting in damage and injury to Sazerac will 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.

14. 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.

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

16. 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 BULLSHINE FIREBULL 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, Sazerac requests that the Board sustain this Opposition and that registration of Application Serial No. 86/750,668 be refused.

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COOLEY LLP

Date: May 3, 2016

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

Peter J. Willsey, Esq.

Vincent J. Badolato, Esq.

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Attorneys for Sazerac Brands, LLC

CERTIFICATE OF SERVICE

I hereby certify that I mailed the foregoing **NOTICE OF OPPOSITION** regarding *Sazerac Brands, LLC. v. Bullshine Distillery LLC* to the listed Attorney of Record for Applicant by depositing a true and correct copy of the same via United States first class mail, postage prepaid, in an envelope addressed to:

Mr. Kendal M. Sheets
Sheets Law Office
P.O. Box 71
McLean, Virginia 22101-0071

Date: May 3, 2016

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