

ESTTA Tracking number: **ESTTA745148**

Filing date: **05/09/2016**

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	Casey's Retail Company
Granted to Date of previous extension	05/08/2016
Address	One S.E. Convenience Blvd. Ankeny, IA 50021 UNITED STATES

Attorney information	Christine Lebron-Dykeman McKee, Voorhees & Sease PLC 801 Grand Ave. Suite 3200 Des Moines, IA 50309 UNITED STATES mvslit@ipmvs.com Phone:515-288-3667
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Applicant Information

Application No	86637343	Publication date	11/10/2015
Opposition Filing Date	05/09/2016	Opposition Period Ends	05/08/2016
Applicant	BirdShack, LLC 818 SW 3rd Ave. #239 Portland, OR 97204 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: On-line retail store services featuring bread-ing, marinades, paper products and packaging, and food service supplies
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	4775857	Application Date	10/09/2014
Registration Date	07/21/2015	Foreign Priority Date	NONE
Word Mark	NONE		

Design Mark	
Description of Mark	The mark consists of a rooster on top of a weathervane.
Goods/Services	Class 030. First use: First Use: 2013/09/00 First Use In Commerce: 2013/09/00 pizza Class 035. First use: First Use: 2013/09/00 First Use In Commerce: 2013/09/00 Retail store services featuring convenience store items and gasoline

Related Proceedings	Serial No. 86/637337
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Attachments	86419140#TMSN.png(bytes) 86637343.pdf(1888162 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	/Christine Lebron-Dykeman/
Name	Christine Lebron-Dykeman
Date	05/09/2016

2. Upon information and belief, BirdShack, LLC (“Applicant”) is a Delaware Corporation with a principal place of business at 818 SW 3rd Av. #239 Portland Oregon 97204.

3. Opposer is the owner of U.S. Trademark Registration No. 4,775,857 for a Rooster on a Weathervane, issued July 5, 2015, for retail store services featuring convenience store items and gasoline in Class 35 and pizza in Class 30. A true and correct copy of this Registration Certificate is attached as Exhibit A. This registration is in full force and effect.

4. Opposer has provided convenience store services, and take-out pizza services under this mark since at least as early as September 2013. By virtue of its extensive sales, Casey’s design mark has become distinctive and widely recognized by members of the public who, upon seeing the Rooster on a Weathervane mark in connection with convenience store services and take-out pizza services, identify the same with Opposer.

5. Opposer has invested a great deal of time and money in promoting its goods and services under the Rooster on a Weathervane and it continues to use and promote its restaurant, bar, banquet and special event services under these marks.

6. On April 21, 2014, Applicant filed application Serial No. 86/637,343 to register the Rooster on a Weathervane mark for use in connection with providing on-line retail store services featuring breadings, marinades, paper products and packaging, and food service supplies.

7. Opposer acquired trademark rights in and to the Rooster on a Weathervane mark for Opposer's goods and services that pre-date the constructive use of Applicant’s Chicken on a Weathervane mark.

8. Applicant's mark has the same or highly similar meaning and commercial impression in comparison to Opposer's mark. As such, Applicant's mark is likely to be confused with Opposer's mark.

9. Applicant's proffered services are highly related to Opposer's services.
10. Upon information and belief, Applicant and Opposer's services are intended to be advertised and sold through similar channels of trade.
11. Applicant's mark, when used for services recited in the application, is likely to cause confusion, mistake or deception within the meaning of § 2(d) of the Trademark Act, 15 U.S.C. § 1052(d) in that consumers of Opposer's services are likely to believe that Applicant's services are either those offered by Opposer or are in some way legitimately connected with Opposer, all to Opposer's damage.
12. Use and application for registration of the Chicken on a Weathervane design by Applicant is without Opposer's consent.
13. Registration of the mark Chicken on a Weathervane design by Applicant will provide Applicant with the prima facie exclusive rights therein, and would thus, in addition, harm Opposer by interfering with Opposer's rights to use its Rooster on a Weathervane mark.
14. Opposer has the right to continue using the Rooster on a Weathervane mark in connection with its services and related services and to use the mark without interference by Applicant and without confusion, mistake or deception.
15. Opposer hereby appoints McKee, Voorhees & Sease, PLC, 801 Grand Avenue, Suite 3200, Des Moines, Iowa 50309, as its attorney, to act on its behalf and to receive all correspondence related to this opposition.

WHEREFORE, Opposer believes it will be damaged by the registration of the Chicken on a Weathervane mark by Applicant and prays that the registration be denied.

Respectfully submitted,

/s/ Christine Lebrón-Dykeman

Christine Lebrón-Dykeman

Brandon Clark

McKEE, VOORHEES & SEASE, P.L.C.

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ATTORNEYS FOR OPPOSER,
CASEY'S RETAIL COMPANY

CERTIFICATE OF FILING

I hereby declare that the foregoing documents has been filed via the Electronic System for Trademark Trial and Appeals (ESTTA) this 9th day of May, 2016.

/s/ Christine Lebrón-Dykeman

CERTIFICATE OF SERVICE

I hereby declare that the foregoing document was served upon the following the 9th day of May, 2016, via:

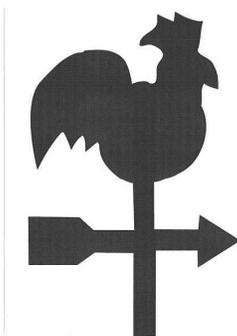
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| <input checked="" type="checkbox"/> 1 st Class U.S. Mail | <input type="checkbox"/> Federal Express |
| <input type="checkbox"/> Facsimile | <input type="checkbox"/> Hand Delivery |
| <input type="checkbox"/> Other _____ | |

Nathan W. Johnson
Bradley Arant Boult Cummings LLP
1819 5th Ave. N.
Birmingham, Alabama 35203-21210

/s/ Christine Lebrón-Dykeman

United States of America

United States Patent and Trademark Office



Reg. No. 4,775,857

Registered July 21, 2015

Int. Cls.: 30 and 35

TRADEMARK

SERVICE MARK

PRINCIPAL REGISTER

CASEY'S RETAIL COMPANY (IOWA CORPORATION)
ONE S. E. CONVENIENCE BLVD.
ANKENY, IA 50021

FOR: PIZZA, IN CLASS 30 (U.S. CL. 46).

FIRST USE 9-0-2013; IN COMMERCE 9-0-2013.

FOR: RETAIL STORE SERVICES FEATURING CONVENIENCE STORE ITEMS AND GAS-
OLINE, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 9-0-2013; IN COMMERCE 9-0-2013.

THE MARK CONSISTS OF A ROOSTER ON TOP OF A WEATHERVANE.

SER. NO. 86-419,140, FILED 10-9-2014.

DANNEAN HETZEL, EXAMINING ATTORNEY



Michelle K. Lee

Director of the United States
Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

Requirements in the First Ten Years*

What and When to File:

First Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

Second Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.* See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*

What and When to File:

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at <http://www.uspto.gov>.