

ESTTA Tracking number: **ESTTA745632**

Filing date: **05/11/2016**

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	05/11/2016
Address	10400 Linn Station Road, Suite 300 Louisville, KY 40223 UNITED STATES

Attorney information	Shane Rumbaugh Cooley LLP 1299 Pennsylvania Ave, NWSuite 700 Washington, DC 20004 UNITED STATES srumbaugh@cooley.com, trademarks@cooley.com, vbadolato@cooley.com, pwillsey@cooley.com, MOBLEYSG@cooley.com Phone:202-728-7107
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**Applicant Information**

Application No	86648740	Publication date	01/12/2016
Opposition Filing Date	05/11/2016	Opposition Period Ends	05/11/2016
Applicant	Mark Pepe 10 Tomar Ct Bloomfield, NJ 07003 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; Vodka

**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.	1819150	Application Date	02/01/1993
Registration Date	02/01/1994	Foreign Priority Date	NONE
Word Mark	FIRE WATER		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 033. First use: First Use: 1991/10/10 First Use In Commerce: 1991/10/10 liqueur

Attachments	Notice of Opposition.pdf(21613 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	/Shane Rumbaugh/
Name	Shane Rumbaugh
Date	05/11/2016

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

In the Matter of Application Serial No. 86/648,740  
For the Trademark FIREUNDERWATER & Design  
Published in the *Official Gazette* on January 12, 2016

SAZERAC BRANDS, LLC,	)	
	)	
Opposer,	)	
	)	Opposition No.
v.	)	
	)	
MARK PEPE,	)	
	)	
Applicant.	)	
	)	

**NOTICE OF OPPOSITION**

Opposer Sazerac Brands, LLC (“Sazerac”), a Delaware limited liability company with an address of 10400 Linn Station Road, Suite 300, Louisville, Kentucky 40223, will be damaged by the issuance of a registration for the mark FIREUNDERWATER & Design (the “Applicant’s Mark”), as applied for in Application Serial No. 86/648,740 filed on June 2, 2015, by Applicant Mark Pepe, an individual with a mailing address of 10 Tomar Ct., Bloomfield, New Jersey 07003 (“Applicant”).

As grounds for opposition, Sazerac alleges as follows.

1. Sazerac, through its parent company Sazerac Company, Inc. (“Sazerac Company”), markets and sells a number of different types and brands of alcoholic beverages and distilled spirits, including vodkas, whiskeys, tequilas, liqueurs, and other spirits. Sazerac Company has marketed and sold alcoholic beverages and distilled spirits in the United States for over a century.

2. Sazerac owns United States trademark registration (Reg. No. 1,819,150) for the

mark FIRE WATER, issued February 1, 1994, in connection with “liqueur” (referred to as the “FIRE WATER Mark”).

3. Sazerac’s parent company and its predecessors-in-interest have consistently and continually marketed and sold distilled spirits under the FIRE WATER Mark since at least as early as 1991. As a result of marketing efforts and the excellence of the underlying products, the public has come to know, rely on, and recognize Sazerac’s FIRE WATER Mark as a source identifier for Sazerac Company’s products.

4. Sazerac Company’s products offered under its FIRE WATER Mark have grown substantially in popularity across the United States.

5. On June 2, 2015, Applicant filed an application to register the mark FIREUNDERWATER & Design on an intent-to-use basis in connection with “[a]lcoholic beverages except beers; [v]odka” in International Class 33.

6. The FIRE WATER Mark has priority through use in commerce and a filing date prior to Applicant’s filing date of June 2, 2015.

7. The FIRE WATER Mark is strong and well-known.

8. Applicant’s Mark is similar in sight, sound, meaning, and commercial impression to Sazerac’s FIRE WATER Mark.

9. Upon information and belief, Applicant’s Mark is intended for use in connection with products that are closely related to the products Sazerac Company offers under the FIRE WATER Mark.

10. Upon information and belief, Applicant’s target customer base overlaps with the consumers of Sazerac Company’s alcoholic beverages.

11. As Applicant’s description of goods lacks any restrictions or limitations as to the

Applicant's channels of trade, the Board may assume that Applicant's Mark, like Sazerac's FIRE WATER Mark, 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 the channels of trade used in marketing, selling, and otherwise distributing alcohol-based products marketed under the FIRE WATER Mark.

12. 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 Sazerac's FIRE WATER Mark would likely perceive Applicant's products as associated with, affiliated with, or sponsored by Sazerac. Such confusion would inevitably result in damage to Sazerac.

13. Sazerac's customers and the relevant public are likely to misapprehend Applicant's Mark as a Sazerac trademark 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.

14. Any defect, objection to, or fault found with Applicant's alcoholic beverages marketed under the FIREUNDERWATER & Design mark would necessarily reflect on and seriously injure the reputation that Sazerac has established for the alcoholic beverage products offered under the FIRE WATER Mark.

15. 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 the FIREUNDERWATER & Design 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).

16. Wherefore, Sazerac prays that this Opposition be sustained and that Application Serial No. 86/648,740 be denied and refused registration.

COOLEY LLP

Date: May 11, 2016

By: /s/ Peter J. Willsey

Peter J. Willsey, 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. Mark Pepe*, to the listed Attorney of Record 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:

Michael J. Feigin  
Feigin & Associates, LLC  
1037 Route 46 Ste 107  
Clifton, New Jersey 07013-7401

Date: May 11, 2016

By: /s/ Shane Rumbaugh  
Shane M. Rumbaugh