

ESTTA Tracking number: **ESTTA750127**

Filing date: **06/03/2016**

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	Hero Spirit, LLC
Granted to Date of previous extension	06/04/2016
Address	411 Great Circle Rd Nashville, TN 37228 UNITED STATES

Attorney information	Keaton H. Osborne Bradley Arant Boult Cummings LLP 1600 Division Street, Suite 700 Nashville, TN 37203 UNITED STATES nashvilleipdocketing@bradley.com, kosborne@bradley.com, cmiller@bradley.com
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Applicant Information

Application No	86819252	Publication date	04/05/2016
Opposition Filing Date	06/03/2016	Opposition Period Ends	06/04/2016
Applicant	Wise Owl Trademark Holdings, LLC 135 West 29th Street, Suite 602 New York, NY 10001 UNITED STATES		

Goods/Services Affected by Opposition

Class 032. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Non-alcoholic cocktail mixes
Class 033. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Alcoholic cocktail mixes

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.	3933423	Application Date	11/20/2009
Registration Date	03/22/2011	Foreign Priority Date	NONE
Word Mark	HEROES VODKA		

Design Mark	HEROES VODKA
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 2009/11/11 First Use In Commerce: 2009/11/11 Vodka

Attachments	77877136#TMSN.png(bytes) COCKTAIL HERO Opposition.pdf(461226 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	/keaton osborne/
Name	Keaton H. Osborne
Date	06/03/2016

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

In the Matter of Application Serial No. 86819252
For the Trademark: COCKTAIL HERO
Published in the *Official Gazette* on April 5, 2016

HERO SPIRIT, LLC,)	
)	
Opposer,)	
)	
v.)	OPPOSITION NO. _____
)	
WISE OWL TRADEMARK)	
HOLDINGS, LLC)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Hero Spirit, LLC (“Opposer”), having its principal place of business at 411 Great Circle Road, Nashville, Tennessee 37228, believes it would be damaged by the registration of the standard character mark COCKTAIL HERO in International Class 32 for “Non-alcoholic cocktail mixes” and International Class 33 for “Alcoholic cocktail mixes” (“Applicant’s Mark”) filed by Wise Owl Trademark Holdings, LLC (the “Applicant”) as an intent-to-use application, U.S. Application Serial No. **86819252** (the “Application”), on April 5, 2016.

Opposer hereby opposes registration of Applicant’s Mark based on the following grounds:

1. Opposer believes that it would be damaged, and avers that it actually would be damaged, by the registration on the Principal Register of the Applicant’s Mark COCKTAIL HERO, which is the subject of Application Serial No. **86819252**.

2. Applicant seeks to register Applicant's Mark for "Non-alcoholic cocktail mixes" in International Class 32 and "Alcoholic cocktail mixes" in International Class 33, as evidenced by the publication of the Application in the *Official Gazette* and the Applicant's Mark shown therein on or about April 5, 2016.

3. Opposer promotes and sells vodka through a variety of channels using its registered trademark for HEROES VODKA (U.S. Reg. No. 3933423), which has a date of first use in commerce of at least as early as 2009. A true and accurate copy of the registration certificate for U.S. Reg. No. 3933423 is attached hereto as **Exhibit A**. U.S. Reg. No. 3933423 shall be referred to as "Opposer's Mark." Opposer's Mark has been associated in the mind of the relevant public with Opposer, and the phrase continues to be understood as a reference to the Opposer and its goods.

4. Opposer's Mark has priority over Applicant's Mark.

5. Opposer promotes and encourages the connection between Opposer and the HEROES VODKA brand by prominently using Opposer's Mark on the internet, on bottle labels, and on advertising, among other uses.

6. The public generally (and particularly that portion consuming the Opposer's goods) recognizes that the Opposer's Mark refer to Opposer and its goods.

7. Applicant has filed the intent-to-use Application for a federal trademark registration with no geographical or other restrictions. If Applicant's Mark is allowed to register and Applicant begins to use the mark in interstate commerce, there is a strong likelihood of confusion with Opposer's goods.

8. First, the Applicant's Mark would be confusingly similar to Opposer's Mark. The proposed COCKTAIL HERO mark would be confusingly similar to the Opposer's Mark, HEROES VODKA.

9. The sight, sound, meaning, and commercial impression of these marks are confusingly similar.

10. The most prominent elements of the Opposer's Mark and the Applicant's Mark are HEROES and HERO, respectively.

11. Second, the goods to be associated with the Applicant's Mark—non-alcoholic cocktail mixes and alcoholic cocktail mixes—are complementary and closely related in the minds of consumers with the Opposer's vodka. Thus, the concurrent use of the subject marks in connection with the intended goods is likely to cause consumer confusion.

12. Consumers would likely encounter the Applicant's goods and the Opposer's goods through similar trade channels under similar conditions, contributing further to consumer confusion.

13. Given these similarities, the Opposer will be damaged by registration and use of Applicant's Mark at least in part because the Applicant's Mark and the associated goods, as listed in the Application, are likely to cause confusion, mistake and deception with Opposer, with Opposer's Mark, and with the goods offered by Opposer. Therefore, registration of Applicant's Mark on the Principal Register and the presumptions that would arise thereby would be inconsistent with Opposer's rights. The Application is therefore due to be refused pursuant to 15 U.S.C. § 1052(d).

14. The registration of Applicant's Mark is inconsistent with Opposer's prior rights in Opposer's Mark, is inconsistent with Opposer's statutory grant of exclusivity of use of the Opposer's Mark, and would destroy Opposer's investment and goodwill in the Opposer's Mark.

15. The fee in the amount of \$600.00 is being submitted simultaneously herewith in accordance with 37 C.F.R. § 2.6(a)(17), representing \$300.00 for each of the two classes opposed. The Commissioner is authorized to debit the deposit account of Bradley Arant Boult Cummings LLP (deposit account No. 504293) for any deficiency in the required fee.

16. Opposer reserves the right to amend this Notice of Opposition upon further investigation and discovery.

WHEREFORE, Opposer respectfully requests that Application Serial No. **86819252** be refused registration and that this Notice of Opposition be sustained in favor of Opposer.

Respectfully submitted,

BRADLEY ARANT BOULT CUMMINGS LLP

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Attorneys for Opposer

Exhibit A

United States of America

United States Patent and Trademark Office

HEROES VODKA

Reg. No. 3,933,423

TRAVIS MCVEY (UNITED STATES INDIVIDUAL)
312 LIND STREET
MCMINNVILLE, TN 37110

Registered Mar. 22, 2011

Int. Cl.: 33

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

TRADEMARK

FIRST USE 11-11-2009; IN COMMERCE 11-11-2009.

PRINCIPAL REGISTER

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 "VODKA", APART FROM THE MARK AS SHOWN.

SER. NO. 77-877,136, FILED 11-20-2009.

DAVID HOFFMAN, EXAMINING ATTORNEY



David J. Kyfos

Director of the United States Patent and Trademark Office