

EL 4115959200S

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

In the Matter of Pending Application Serial No. 76/318023

Mark: KONINGSHOEVEN TRAPPIST ALE

Filed: September 26, 2001

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U.S. Patent & TMO/TM Mail Rcpt Dt. #58

Internationale Vereniging Trappist )  
 )  
Opposer )  
 )  
v. )  
 )  
Bavaria N.V. )  
 )  
Applicant )

Opposition No. \_\_\_\_\_

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CERTIFICATE OF MAILING  
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OF MARCH, 2003.

*Dorothy P. Roane*

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Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

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NOTICE OF OPPOSITION

Pursuant to 15 U.S.C. § 1063 and 37 C.F.R. § 2.104, Internationale Vereniging Trappist  
(also known as the "International Trappist Association") ("Opposer") believes that it would be  
damaged by the registration of the above-identified trademark, and hereby opposes the same, on  
the grounds set forth below.

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***The Parties***

1. Opposer, Internationale Vereniging Trappist, is an international association established in accordance with the under the laws of Belgium, with a business address of Idnr. 3518/98, Antwerpsesteenweg 496, B-2390 -- Westmalle, Belgium. Opposer's members are communities within the Trappist-Cistercian Order located in the countries of Belgium, Germany, and the Netherlands.

2. Applicant, Bavaria N.V., upon information and belief, is a Netherlands corporation located and doing business at Burgemeester v.d. Heuvelstraat 35 5737 BN LIESHOUT, Netherlands.

***The TRAPPIST Mark***

3. Monastic Business Association, Inc. ("MBA") is the owner of U.S. Registration No. 2,135,767 for the collective membership mark TRAPPIST, in International Class 200.

4. The class of persons entitled to use of the TRAPPIST mark are those who have taken vows in the Trappist-Cistercian Order. The mark is used by members to indicate membership in the Trappist-Cistercian Order. MBA controls the use of the TRAPPIST mark in the United States by those members through the rule and constitutions of the Trappist-Cistercian Order.

5. Use of the TRAPPIST mark in the United States by members of the Trappist-Cistercian Order (or by business entities owned and operated by member communities of the Order) in connection with goods and services, is subject to a licensing arrangement between Opposer and such member communities of the Trappist-Cistercian Order. Certain of Opposer's member communities, as "Associate Members" of the MBA, are parties to such a licensing relationship with MBA. As a result, such member communities of Opposer actively export to

and market their goods in the United States consistent with the terms of such licensing.

Applicant, by contrast, is not a party to any licensing arrangement with MBA.

6. The mark TRAPPIST is, in the United States, a famous mark which has been in use by members of the Trappist-Cistercian Order for over 150 years, during which time said mark has developed substantial goodwill and consumer recognition throughout the United States and elsewhere. Opposer's member communities that have a licensing relationship with MBA accordingly benefit from the renown of the TRAPPIST mark in the United States. Those member communities of Opposer that have a licensing relationship with MBA have a significant interest in the prevention of unauthorized uses of the TRAPPIST mark or such other uses as may cause damage to MBA, the Trappist-Cistercian Order, or any of Opposer's member communities.

7. Member communities of Opposer that have a licensing relationship with MBA (along with MBA and its United States member communities), have expended considerable effort and expense in promoting the TRAPPIST mark referred to herein and various goods and services provided thereunder, with the result that the purchasing public in the United States has come to know, rely upon, and recognize the goods and services of such member communities of the Trappist-Cistercian Order by use of the TRAPPIST mark so licensed.

***The Pending Application for KONINGSHOEVEN TRAPPIST ALE***

8. Applicant has filed application Serial No. 76/318023 (the "Pending Application") for the mark KONINGSHOEVEN TRAPPIST ALE (text form) (the "Proposed Mark"), in International Class 32 for "Beers; mineral and aerated water; and other non-alcoholic drinks, namely, soft drinks and flavored drinking waters; fruit drinks and fruit juices."

9. Applicant has designated the law firm TRADEMARK & PATENT

COUNSELORS OF AMERICA, P.C., whose postal address is 915 Broadway, New York, New York 10010, as its designated representative upon whom notice or process in proceedings affecting the mark may be served. The attorney who has corresponded with the Trademark Office regarding the Pending Application is Keith E. Danish, Esq., of that law office.

***The Grounds for Opposition***

10. The goods of the Pending Application are either identical to the goods marketed, advertised for sale, and sold in the United States by member communities of Opposer pursuant to their respective licenses with MBA, or are related to those goods.

11. On information and belief, Applicant intends to market, advertise for sale, and sell, its goods under the Proposed Mark in the same channels of trade, in the same outlets, and to the same customers or customer groups as goods sold in the United States by member communities of Opposer pursuant to their respective licenses with MBA.

12. Due to the relative strength and widespread public recognition of the TRAPPIST mark, purchasers are likely to consider the goods of the Applicant, if provided under the Proposed Mark, as emanating from one or more member communities of Opposer.

13. Concurrent use of the Proposed Mark by the Applicant and of the TRAPPIST mark by Opposer's member communities (pursuant to their respective licenses with MBA) may result in irreparable damage to the reputation and goodwill of Opposer's member communities, because purchasers are likely to attribute the source of Applicant's goods to one or more member communities of Opposer, or to believe that Applicant's services are affiliated with, endorsed by, approved by, or sponsored by Opposer or any of its member communities.

14. Registration to Applicant of the Proposed Mark herein opposed would provide Applicant with the *prima facie* exclusive right to use the Proposed Mark in commerce on or in connection with the goods of the Pending Application.

15. As a result of registration to Applicant of the Proposed Mark (and therewith, the *prima facie* exclusive right to use the mark in commerce on or in connection with goods provided by Opposer), confusion in the trade is likely to result from concurrent use of the TRAPPIST mark by member communities of Opposer (pursuant to their respective licenses with MBA) and that of the Applicant, all to the great detriment of Opposer and its member communities, who have expended considerable sums and effort in promoting their goods bearing the TRAPPIST mark pursuant to their respective licenses with MBA.

16. The Proposed Mark, when used on or in connection with the goods enumerated in the Pending Application, would be likely to cause confusion in the minds of consumers as to the source of the products or services of Applicant or one or more member communities of Opposer, or to cause mistake, or to deceive, within the meaning of 15 U.S.C. § 1052(d). Therefore, the Proposed Mark is not registrable pursuant to 15 U.S.C. § 1052, and registration to Applicant should be refused.

17. Opposer and its member communities have legitimate and significant concerns about the public's perception in the United States of the Trappist-Cistercian Order (of which Opposer's member communities are a part) in the manner in which the TRAPPIST mark is and would be used in connection with certain products including, but not limited to, alcoholic beverages, and especially in connection with a brand of products (indeed, a brand which uses the trademark components TRAPPIST and ALE) that would designate both (1) non-alcoholic beverages of the type commonly accessible to, and/or purchased, and/or consumed by children,

and (2) alcoholic beverages intended for adults.

18. The Proposed Mark, when used on or in connection with the goods enumerated in the Pending Application, may disparage or falsely suggest a connection with persons, institutions, or beliefs, or to bring them into contempt or disrepute, within the meaning of 15 U.S.C. § 1052(a). Therefore, the Proposed Mark is not registrable pursuant to 15 U.S.C. § 1052, and registration to Applicant should be refused.

19. The Proposed Mark includes the component ALE (a type of alcoholic beverage), though all but one of the applied-for goods of the Pending Application are in the nature of non-alcoholic beverages.

20. The Proposed Mark, when used on or in connection with some or all of the goods enumerated in the Pending Application, would be deceptively misdescriptive of them within the meaning of 15 U.S.C. § 1052(e)(1). Therefore, the Proposed Mark is not registrable pursuant to 15 U.S.C. § 1052, and registration to Applicant should be refused.

21. The Proposed Mark includes the component KONINGSHOEVEN. In response to an inquiry by the Trademark Office (in Office Action No. 1 for the Pending Application) regarding trade significance, Applicant stated (by counsel) on May 6, 2002, that the "trade significance" of "Koningshoeven" is as a trademark for the Applicant's goods.

22. The Examining Attorney had previously stated an understanding (in Office Action No. 1 for the Pending Application) that "Koningshoeven" was an "abbey" and that the goods constituted "ale made by trappist [*sic*] monks from the abbey of Koningshoeven."

23. Upon information and belief, the goods which are the subject of the Pending Application are not made or will not be "made" by monks from the Abbey of Koningshoeven, which is a member community of Opposer.

24. Upon information and belief, the goods which are the subject of the Pending Application are not made or will not be "made" by members of the Trappist-Cistercian Order, i.e., by "Trappist monks."

25. Applicant is a secular business entity which is neither owned nor operated by members of the Trappist-Cistercian Order (of which Opposer's member communities are a part).

26. The Proposed Mark, when used on or in connection with the goods enumerated in the Pending Application, would be "deceptive" within the meaning of 15 U.S.C. § 1052(a). Therefore, the Proposed Mark is not registrable pursuant to 15 U.S.C. § 1052, and registration to Applicant should be refused.

27. By reason of all the foregoing, Opposer believes that it would be damaged by registration of the mark which is the subject of the Pending Application, and Opposer hereby opposes the same.

**WHEREFORE**, Opposer respectfully requests that this Notice of Opposition be sustained, and that Pending Application Serial No. 76/318023 be denied registration.

Please recognize as counsel for Opposer in this proceeding, Scot A. Duvall of the law firm Middleton Reutlinger, whose address is 2500 Brown & Williamson Tower, Louisville, Kentucky 40202-3410, and whose telephone number is (502) 584-1135.

Respectfully submitted,



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Counsel for Opposer

Dated: March 25, 2003

Internationale Vereniging Trappist (also known as the "International Trappist Association")