

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

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Bacardi & Company Limited,	:	
	:	
Opposer,	:	
	:	
v.	:	Opposition No. _____
	:	
Tequila Centinela, S.A. de C.V.,	:	Ser. No. 76/ 137,400
	:	Mark: CABRI-COLA and
	:	Design
Applicant.	:	
-----x		

NOTICE OF OPPOSITION

Opposer, Bacardi & Company Limited, ("Bacardi") asserts that it will be damaged by registration of the mark that is the subject of the application referenced above, and accordingly, for the reasons set forth below, opposes registration of that mark.

I. PARTIES

1. (a) Tequila Cazadores, S.A. de C.V. ("Cazadores") was a corporation organized and existing under the laws of the United Mexican States and had its principal address at Libremiento Sur-e Km-3, Arandas, Jalisco, Mexico. Cazadores was engaged in the business of manufacturing and marketing alcoholic beverages, namely tequila, which it marketed under the brand name CAZADORES throughout the United Mexican states and in the United States of America.

(b) Bacardi is a corporation organized and existing under the laws of Liechtenstein and has its principal address at 1000 Bacardi Road, Nassau, Bahamas. On May 31, 2002, Bacardi acquired all right, title and interest to the business operated by Cazadores, including all rights in the CAZADORES trademark as well as in the deer head design and the CAZADORES label. As such, Bacardi is the successor-in-interest to the CAZADORES trademark rights. (Hereinafter, "Opposer" shall refer to Cazadores and/or Bacardi.)

2. Tequila Centinela, S.A. de C.V. ("Centinela" or "Applicant") is a corporation, on information and belief, organized and existing under the laws of the United Mexican States, and has its principal address at Km. 3 Carretera, Arandas-Tepatitlan, Arandas, Jalisco, Mexico. Centinela is engaged in the manufacture and marketing of tequila in Mexico and on information and belief in the United States of America.

II. FACTS

3. Opposer is a recognized leader in the production and distribution of alcoholic beverages, including tequila. In connection with the production and sale of its tequila, Opposer has adopted a distinctive label that is affixed to bottles in which tequila is sold. These labels prominently display the mark CAZADORES and the image of the head of a male deer with noticeable horns. Opposer has marketed and sold tequila with the use of the CAZADORES mark in Mexico since 1971. Since that time Opposer has secured

trademark registrations for CAZADORES and the deer design used on labels for tequila and similar beverages.

4. (a) Opposer has been engaged in marketing tequila in commerce between the United States and a foreign country (i.e., Mexico) since 1986. Since this time, it has marketed and sold tequila in the United States in bottles with labels that include the mark CAZADORES and the design of a deer head. One example of the deer head design is shown in the attached.

(b) Opposer is the owner of U.S. Registration No. 1,863,882 for the mark CAZADORES for tequila. This registration issued November 22, 1994. Specimens submitted in connection with this registration show labels affixed to bottles of tequila that bear the wording CAZADORES and the design of the deer head.

(c) Opposer is the owner of U.S. Ser. No. 78/149,334 for the mark CAZADORES and Design which shows Opposer's label for its tequila. This application was filed July 31, 2002 and is currently pending in the USPTO.

5. A Section 8 and 15 affidavit evidencing the continued use of Opposer's registered trademark (Reg. No. 1,863,882) in the U.S. was filed and acknowledged and accepted by the U.S. Trademark Office. Thus, this registration is valid and subsisting and is incontestable.

6. Opposer presently markets and sells its tequila under the brand name CAZADORES and with labels showing both that word mark and the design of the deer head in various U.S. states.

7. The design of the deer head appearing directly beneath the word mark CAZADORES on labels affixed to bottles of tequila has been widely used in advertising materials in the United States.
8. Upon information and belief, Centinela has been marketing a tequila drink under the brand name CABRI-COLA in Mexico and has begun to market this tequila drink under that brand name in the United States. In connection with its marketing of a tequila drink, Centinela employs a mark consisting of the word CABRI-COLA, underneath which is shown a design evidencing the head of a male goat, with horns, in essentially the same posture as the deer head appearing in the design represented on labels affixed to bottles of tequila sold by Opposer.
9. Centinela has applied for registration of its mark, consisting of the word CABRI-COLA and the head of a goat, appearing on labels affixed to bottles of various types of alcoholic beverage, in the USPTO. The subject application has been assigned serial number 76/137,400, and the mark was published for opposition in the Official Gazette on October 1, 2002. Opposer is filing this opposition in response to the publication of Centinela's mark for opposition.
10. Opposer's use of the design of the deer head on labels affixed to tequila sold in the United States predates by many years the use of Centinela's mark by Centinela. Opposer's mark has become recognized by the public as indicative of Opposer's tequila and its high quality.
11. Registration of Centinela's mark CABRI-COLA and design as shown on labels affixed to tequila marketed in the United States would likely result in confusion as to the source or origin of tequila being marketed by Centinela. Specifically, the design in

Applicant's mark is visually so similar to the design of the deer head appearing on labels of tequila sold under Opposer's marks, that the products of the two parties will not be readily distinguishable by the public. Further, the registration of the mark CABRI-COLA, including the design here at issue, will likely dilute the distinctive quality of Opposer's marks, which is now highly recognizable and has become famous.

12. The subject application recites "alcoholic beverages, excluding beer, namely distilled liquor, wine, wine coolers, prepared alcoholic cocktails and aperitifs, and alcoholic drinks, namely liqueurs, hard cider, brandy spirits, distilled liquors, distilled spirits, gin, wine, whiskey, vodka, rum, tequila, anisette aguamiel, aguardiente" and is based upon use of the applied for mark in commerce on these goods since May 12, 2000.

13. The subject application included a declaration that the statements made in the application were true.

14. Upon information and belief, Applicant has not made any use of the mark on any of the goods recited in its application, with the exception of a particular tequila-based drink.

15. Upon information and belief, the date of first use in commerce in Centinela's application is not correct.

16. Upon information and belief, Applicant has no bona fide intention to use the mark on any of the goods recited in the application with the exception of tequila.

17. Applicant has intentionally, willfully and fraudulently misstated the scope of its use of the CABRI-COLA mark and its rights therein to secure a registration that would be broader than the protection that would be rightfully afforded to it.

- 18. Such misstatements of use and scope were done with the intention of deceiving and/or defrauding the Trademark Office.
- 19. Such misstatements constitute an abuse of the trademark registration system and the rights derived therefrom.

CONCLUSION

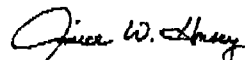
For the reasons set forth above, Opposer respectfully requests that its Opposition be granted and that registration of Applicant's mark that is the subject of this opposition be denied.

This Notice is being filed in triplicate.

Respectfully submitted,

Bacardi & Company Limited

Date: October 29, 2002



Janice W. Housey
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Opposition No. not yet assigned

Bacardi & Company Limited

v.

Tequila Centinela, S.A. de C.V.,

Mark: CABRI-COLA & Design

Box TTAB

COVER SHEET



Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202

Madam:

Enclosed for filing in connection with the above-referenced matter, please find the following:

- (1) Notice of Opposition (in triplicate); and
- (2) Check for \$300.

Respectfully submitted,

Date: October 29, 2002

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Michael J. Mlotkowski
Counsel for Opposer

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PATENT,
TRADEMARK,
COPYRIGHT AND
INTERNET LAW

FACSIMILE

TO: TISA WILLIAMS, TTAB
FROM: Janice Housey, Esq.
FAX NO.: 703-746-7128
RE: NOTICE OF OPPOSITION FOR CABRI-COLA
of PAGES: 8
DATE: April 10, 2003 TIME: 4:13 PM ET
MESSAGE: PER YOUR TELEPHONE CONVERSATION THIS MORNING WITH LOIS ARSENIO, ATTACHED IS A COPY OF THE DATE STAMPED FILING RECEIPT AND NOTICE OF OPPOSITION FOR CABRI-COLA AND DESIGN. WE UNDERSTAND THAT YOUR RECORDS SHOW THAT THE FILING FEE CHECK WAS CASHED. PLEASE INSTITUTE THE OPPOSITION AS QUICKLY AS POSSIBLE. THANK YOU FOR YOUR ATTENTION.

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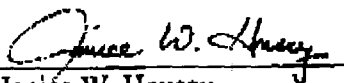
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