

ESTTA Tracking number: **ESTTA80061**

Filing date: **05/10/2006**

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	PRZEDSIĘBIORSTWO POLMOS BIALYSTOK S.A.
Granted to Date of previous extension	05/10/2006
Address	15-950 UL. ELEWATORSKA 20 BIALYSTOK, 15-950 POLAND

Attorney information	John Margiotta Fross Zelnick Lehrman & Zissu, P.C. 866 United Nations Plaza New York, NY 10017 UNITED STATES Strickland-Docket@fzlj.com, jmarginotta@fzlj.com Phone:(212) 813-5900
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Applicant Information

Application No	76620736	Publication date	01/10/2006
Opposition Filing Date	05/10/2006	Opposition Period Ends	05/10/2006
Applicant	A & A Lazur Company 585 Meserole Street Brooklyn, NY 11237 UNITED STATES		

Goods/Services Affected by Opposition

Class 033. First Use: 2004/10/04 First Use In Commerce: 2004/10/04 All goods and services in the class are opposed, namely: ALCOHOLIC BEVERAGES, NAMELY, VODKA

Attachments	Notice of Opposition.pdf (4 pages)(1125080 bytes)
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Signature	/Laura Popp-Rosenberg/
Name	Laura Popp-Rosenberg, Esq.
Date	05/10/2006

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

In re Serial No. 76/620736

Opposer's Ref. No. CEDC 0513289

Trademark: BAK'S BISON GRASS VODKA (and Design)

Published in the Official Gazette: January 27, 2006

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PRZEDSIĘBIORSTWO POLMOS :
BIALYSTOK S.A., :
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Opposer, : Opposition No. _____
 :
- against - :
 :
A & A LAZUR COMPANY, :
 :
Applicant. :
 :
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Przedsiębiorstwo Polmos Białystok S.A. ("Opposer"), a corporation organized and existing under the laws of Poland, located at 20 Elewatorska Str., 15-950 Białystok, Poland, believes that it will be damaged by registration of the trademark BAK'S BISON GRASS VODKA (and Design) (the "Applied-For Mark") as shown in the above-identified application, and having sought extensions of time to oppose, hereby opposes the same.

As grounds of opposition, it is alleged that:

COUNT I

1. Opposer or its predecessors have since long before a date on which Applicant can rely been engaged in the production in Poland of ŻUBRÓWKA brand vodka, which is vodka infused with the Hierchloe grass. Hierchloe grows in the Białowieża Primeval Forest, which is located in the eastern part of Poland. Herds of European bison graze on Hierchloe grass in the Białowieża Primeval Forest and thus Hierchloe is known as "bison grass." ŻUBRÓWKA brand

vodka is produced by the following method. The flavor is extracted from Hierchloe grass by crushing selected grasses and forcing vodka over and through it repeatedly. This extract is then mixed in correct proportions with triple distilled rye vodka until the correct taste is achieved. Finally, a single blade of bison grass is added to every bottle to symbolize the natural origin of its unique flavor.

2. ŻUBRÓWKA is an iconic Polish brand of vodka.

3. During the communist years, ŻUBRÓWKA brand vodka was produced by Polish distilleries under the authority of the Polish government. After the fall of the Communist regime, in 1999, 25 Polish distilleries participated in an auction and bid for the exclusive right to produce and own formerly state-owned products and brands. As part of this agreement and auction, Opposer acquired exclusive ownership of the right to produce ŻUBRÓWKA brand vodka and to use the ŻUBRÓWKA trademark as well as the trademarks BISON BRAND VODKA, the BISON word mark, and a bottle containing a blade of grass in a bottle, among other related rights.

4. Opposer is the owner of U.S. Reg. No. 2,858,179 for the mark ŻUBRÓWKA BISON VODKA and Bison Design for use in connection with vodka. Opposer is also the owner of U.S. Application Serial Nos. 75/127541 for ŻUBRÓWKA BISON BRAND VODKA and Design for vodka, 75/115913 for ZUBROWKA in connection with vodka, and 76/131488 for BISON for alcoholic beverages.

5. By the application here opposed, Applicant seeks to register as a trademark for “alcoholic beverages, namely vodka” selected elements from a label used on a product that it calls BAK’S BISON GRASS VODKA. The elements from its label that applicant claims as a trademark are the words BAK’S BISON GRASS VODKA, a drawing of a bison’s head, a

drawing of a side view of a bison, and a drawing of a blade of bison grass.

6. The specimen of use filed by Applicant in its trademark application shows a bottle of BAK'S BISON GRASS VODKA on which the word mark ŻUBRÓWKA also appears.

7. The trademark for which Applicant seeks registration so resembles Opposer's trademarks as to be likely, when used on Applicant's products, to cause confusion and mistake and to deceive with consequent injury to Opposer and to the public.

8. Upon information and belief, Applicant adopted the BAK'S BISON GRASS VODKA and Design mark with the intention of creating confusion and association with Opposer and Opposer's products.

9. Upon information and belief, Applicant uses the word mark ŻUBRÓWKA on its product with the intention and result of increasing the likelihood of such confusion and association.

10. Opposer will be damaged by the registration sought by Applicant because such registration would support and assist Applicant in the confusing and misleading use of Applicant's marks and will give color of exclusive statutory rights in Applicant in violation and derogation of the prior and superior rights of Opposer and in violation and derogation of Section 2(d) of the Lanham Act, 15 U.S.C. Section 1052(d).

COUNT II

11. Opposer repeats and realleges the allegations set forth in paragraphs 1 through 10 as though fully set forth herein.

12. Upon information and belief, Applicant is merely an importer and distributor of ŻUBRÓWKA vodka produced in Poland.

13. The specimen of use filed by Applicant in its trademark application states that the

product is imported.

14. Applicant does not own any of the elements of its label design that identify the product as the Polish iconic brand ŻUBRÓWKA.

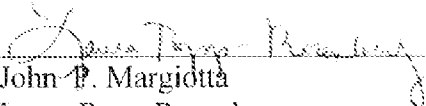
15. In applying to register a mark that incorporates elements that identify the product as the Polish iconic brand ŻUBRÓWKA, including but not limited to the term BISON GRASS VODKA and bison designs, Applicant has fraudulently represented that it is the owner of those elements used on the label of its imported product.

16. Based on the above, registration of BAK'S BISON GRASS VODKA and Design should be denied.

WHEREFORE, Opposer requests that its Notice of Opposition be granted and that Applicant's application to register BAK'S BISON GRASS VODKA and Design be denied in all respects.

Dated: New York, New York
May 10, 2006

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

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