

AKIN GUMP
STRAUSS HAUER & FELD LLP

Attorneys at Law

DANIEL MOFFETT
210.281.7155/fax: 210.224.2035
dmoffett@akingump.com

June 26, 2006

Box TTAB FEE

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Re: *House of Blues Brands Corp. v. Pamela Collum*
Mark: SMOKINGHEART RACING TEAM (AND DESIGN)
Serial No.: 76/626,881
Attorney Docket No. 064163.0005

Dear Madam:

Enclosed please find the following for filing in the above-identified matter:

- Notice of Opposition (Original and two copies);
- The Commissioner is authorized to withdraw the filing fee of \$300.00 from Deposit Account No. 01-0477. A duplicate of this cover letter is enclosed; and
- A return receipt acknowledgment postcard.

The Commissioner is hereby authorized to charge any deficiency or credit any overpayment in the fees indicated above to Deposit Account No. 01-0477.

Respectfully submitted,



Daniel Moffett

Enclosures



06-28-2006

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

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

House of Blues Brands Corp.,	§	Serial No. 76/626,881
	§	
Opposer,	§	
	§	
v.	§	Mark: SMOKINGHEART RACING TEAM (AND DESIGN)
	§	
Pamela Collum,	§	Opposition No. _____
	§	
Applicant.	§	

NOTICE OF OPPOSITION

HOUSE OF BLUES BRANDS CORP., a Delaware corporation having an office at 6255 Sunset Boulevard, 16th Floor, Hollywood, California 90028, believes that it will be damaged by registration of the mark shown in Application Serial No. 76/626,881 in International Classes 25 and 41, and hereby opposes same.

As grounds for opposition, it is alleged:

1. Applicant seeks registration on the Principal Register of the word mark and related design, SMOKINGHEART RACING TEAM (AND DESIGN), in International Class 25 for "clothing, namely, shirts, jackets and caps" and International Class 41 for "entertainment services, namely, conducting vehicle racing services principally for female participants." Applicant's mark was published in the December 27, 2005 issue of the Trademark Office Official Gazette on page TM 64.

2. On information and belief, Applicant's application for the mark SMOKINGHEART RACING TEAM (AND DESIGN) was filed based upon an intent to use.

3. Opposer, in conjunction with its parent company, HOB Entertainment, Inc., is a nationally and internationally renowned provider of restaurant, nightclub, and other services, as well as branded merchandise. These goods and services are offered under the design mark

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depicted below (hereinafter referred to as "HEART DESIGN") in association with Opposer's famous "House of Blues" themed restaurants:



4. Opposer uses the HEART DESIGN in connection with merchandise and services relating to its prominent restaurant and nightclub establishments that are located in major U.S. cities, including Los Angeles, New Orleans, Chicago, Orlando, Myrtle Beach, Las Vegas, Anaheim, Cleveland, and San Diego. The mark is also prominently displayed on the House of Blues website where merchandise related to the House of Blues is displayed and marketed.

5. As evidenced by its U.S. Trademark Registrations, Opposer has the exclusive right to use the HEART DESIGN as a trademark and service mark for the following goods and services:

Registration No.	Goods or Services	Date of Filing	Date of First Use	True and Correct Copy Attached
2,474,032	Bar and restaurant services in Int'l Class 42	10/14/1998	02/1999	Exhibit "A"
2,532,480	Clothing in Int'l Class 25	10/14/1998	02/1999	Exhibit "B"
2,897,520	Printed matter in Int'l Class 16	08/24/1999	02/2001	Exhibit "C"
2,805,124	Radio and television production and programming services; entertainment services in Int'l Class 41	10/14/1998	06/2003	Exhibit "D"

6. Opposer has also filed applications for registration based upon an intent to use the HEART DESIGN in connection with prerecorded audio and musical products as shown in U.S. Application Serial No. 78/185,025; in connection with casino entertainment services as shown in

U.S. Application Serial No. 78/584,592; and in connection with nightclub services as shown in U.S. Application Serial No. 78/728,628.

7. Opposer also provides goods and services under the HEART DESIGN in conjunction with its HOUSE OF BLUES mark depicted below [hereinafter referred to as HOUSE OF BLUES (HEART DESIGN)]:



8. Opposer uses the HOUSE OF BLUES (HEART DESIGN) mark in connection with merchandise and services relating to its prominent restaurant and nightclub establishments. The mark is also prominently displayed on the House of Blues website where merchandise related to the House of Blues is marketed and displayed.

9. As evidenced by its U.S. Trademark Registrations, Opposer has the exclusive right to use the HOUSE OF BLUES (HEART DESIGN) as a trademark and service mark for the following goods and services:

Registration No.	Goods or Services	Date of Filing	Date of First Use	True and Correct Copy Attached
2,457,890	Bar and restaurant services in Int'l Class 42	10/14/1998	06/1999	Exhibit "E"
2,507,467	Clothing in Int'l Class 25	10/14/1998	02/1999	Exhibit "F"
2,507,466	Prerecorded audio, video, and musical products in Int'l Class 9	10/14/1998	03/2000	Exhibit "G"
2,881,917	Radio and television production and programming services; entertainment services in Int'l Class 41	10/14/1998	01/2003	Exhibit "H"

Registration No.	Goods or Services	Date of Filing	Date of First Use	True and Correct Copy Attached
2,507,798	Printed matter in Int'l Class 16	08/24/1999	12/1998	Exhibit "I"
2,746,582	Promoting musical tours and music festivals, musical artists, and entertainment in Int'l Class 35	06/04/2002	06/1999	Exhibit "J"
2,723,813	Nightclub services in Int'l Class 41	06/04/2002	06/1999	Exhibit "K"
2,841,104	Ticket agency services in Int'l Class 35	05/31/2002	01/2003	Exhibit "L"

10. Opposer has also filed an application for registration based upon an intent to use the HOUSE OF BLUES (HEART DESIGN) in connection with casino entertainment services as shown in U.S. Application Serial No. 78/584,718.

11. As indicated by its numerous registrations, Opposer is the owner of the HEART DESIGN and HOUSE OF BLUES (HEART DESIGN) marks, and has the right to use the marks for restaurant, bar, and nightclub services and related merchandise, including clothing and entertainment services, such as promotion of live music concerts and festivals.

12. Opposer adopted and began to use the HEART DESIGN and HOUSE OF BLUES (HEART DESIGN) family of marks to identify and distinguish its clothing and entertainment services from those of others prior to any use by Applicant of the SMOKINGHEART RACING TEAM (AND DESIGN) mark in connection with the goods and services recited in application Serial No. 76/626,881, and prior to the filing of said application.

13. Opposer uses its HEART DESIGN and HOUSE OF BLUES (HEART DESIGN) marks in connection with goods and services that are identical to those Applicant intends to use its SMOKINGHEART RACING TEAM (AND DESIGN) mark in connection with, namely clothing and entertainment services. Among the clothing Opposer sells are shirts, jackets, and caps, the same types of clothing identified in Applicant's application. And the entertainment

services that Opposer provides include promotion of live music concerts and festivals, events that, upon information and belief, are promoted in a manner similar to Applicant's vehicle racing services, have similar audiences, and are often held in the same or similar venues.

14. As a result of Opposer's efforts, Opposer has become widely known as a leading provider of clothing and entertainment services, as well as other goods and services, under the HEART DESIGN and HOUSE OF BLUES (HEART DESIGN) marks.

15. As a result of Opposer's nationwide sales of its high-quality goods and services under the HEART DESIGN and HOUSE OF BLUES (HEART DESIGN) marks, and Opposer's nationwide advertising and promotion of these goods and services in connection with the marks, the HEART DESIGN and HOUSE OF BLUES (HEART DESIGN) marks have come to exclusively identify Opposer as the source of the goods and services in the minds of consumers. Opposer's HEART DESIGN and HOUSE OF BLUES (HEART DESIGN) marks represent the substantial goodwill which has accrued to Opposer by virtue of its widespread and prominent use of the marks for its restaurant, bar, and nightclub services and related merchandise, including clothing and entertainment services.

I.

COUNT ONE: LIKELIHOOD OF CONFUSION

16. Opposer repeats and realleges the factual allegations in paragraphs 1 through 15 as if fully set forth herein.

17. Applicant's proposed SMOKINGHEART RACING TEAM (AND DESIGN) mark, when used as proposed in connection with the goods and services recited in application Serial No. 76/626,881, is likely to cause confusion, or to cause mistake, or to deceive, as to the source or origin of Applicant's or Opposer's goods and services, or is likely to cause consumers

to believe that Opposer sponsors or approves the goods and services of Applicant when it does not. The proposed use would thereby inflict great injury and damage on Opposer, the reputation of Opposer, and the goodwill accruing to Opposer through its extensive use of the HEART DESIGN and HOUSE OF BLUES (HEART DESIGN) marks in connection with its restaurant, bar, and nightclub services and related merchandise and services, including clothing and entertainment services.

18. If the registration herein opposed is granted, Applicant would thereby obtain at least a *prima facie* exclusive right to use the mark, SMOKINGHEART RACING TEAM (AND DESIGN), in connection with the goods and services recited in application Serial No. 76/626,881, in classes 25 and 41. Such registration would be a source of great injury and damage to Opposer, the rightful owner of the HEART DESIGN and HOUSE OF BLUES (HEART DESIGN) marks for the goods and services set forth hereinabove; and would impair Opposer's continued exclusive right to use said mark in connection with such goods and services.

II.

COUNT TWO: TRADEMARK DILUTION

19. Opposer repeats and realleges the factual allegations in paragraphs 1 through 18 as if fully set forth herein.

20. Opposer has established a business reputation because of its uniformly high quality extensive advertising and sales of its goods and services under the HEART DESIGN and HOUSE OF BLUES (HEART DESIGN) marks. Opposer's business reputation has created a distinctive quality in the HEART DESIGN and HOUSE OF BLUES (HEART DESIGN) marks. As a result of the distinctiveness of the HEART DESIGN and HOUSE OF BLUES (HEART

DESIGN) marks and its extensive and widespread use and advertising in connection with Opposer's high-quality goods and services, the HEART DESIGN and HOUSE OF BLUES (HEART DESIGN) marks have become well known.

21. Opposer has been using and advertising its HEART DESIGN and HOUSE OF BLUES (HEART DESIGN) marks extensively since at least as early as 1998. As such, Opposer's marks became distinctive and famous prior to the filing date of the 76/626,881 application.

22. Applicant's proposed SMOKINGHEART RACING TEAM (AND DESIGN) mark, when used as proposed in connection with clothing, namely, shirts, jackets and caps and entertainment services, namely, conducting vehicle racing services principally for female participants, and advertising and promotional materials associated therewith, is likely to dilute the distinctive quality of Opposer's HEART DESIGN and HOUSE OF BLUES (HEART DESIGN) marks. The proposed use would thereby inflict great injury and damage on Opposer, the reputation of Opposer, and the goodwill accruing to Opposer through its extensive use of the HEART DESIGN and HOUSE OF BLUES (HEART DESIGN) marks in connection with its quality restaurant, bar, and nightclub services and related merchandise and services.

WHEREFORE, Opposer prays that registration of the proposed mark, designated as application Serial No. 76/626,881, be denied.

The Commissioner is hereby authorized to withdraw the filing fee in the amount of \$600 as required under 37 C.F.R. §2.6(a)(17) from Deposit Account No. 01-0477.

Respectfully submitted,

HOUSE OF BLUES BRANDS CORP.

Dated: June 24, 2006

By:

Kirt S. O'Neill

Kirt S. O'Neill, Reg. No. 38,257

Daniel Moffett

Akin Gump Strauss Hauer & Feld LLP

P.O. Box 12870

San Antonio, Texas 78212

Phone: 210.281.7106

Fax: 210.224.2035

E-mail: koneill@akingump.com

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class mail in an envelope addressed to: Box TTAB FEE, Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

Name of Person Signing Certificate: Michele Patterson

Signature: Michele Patterson

Date of Mailing: 6/26/06