

ESTTA Tracking number: **ESTTA213328**

Filing date: **05/23/2008**

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	McCormick Distilling Co., Inc.
Granted to Date of previous extension	05/25/2008
Address	One McCormick Lane Weston, MO 64098 UNITED STATES

Attorney information	Michael Elbein Hovey Williams LLP 10801 Mastin Blvd.Suite 1000 Overland Park, KS 66210 UNITED STATES tmdocketing.elbein@hoveywilliams.com Phone:(913) 647-9050
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### Applicant Information

Application No	77191217	Publication date	11/27/2007
Opposition Filing Date	05/23/2008	Opposition Period Ends	05/25/2008
Applicant	Keystone Distillery, LLC 120 East Baltimore Pike Media, PA 19063 UNITED STATES		

### Goods/Services Affected by Opposition

Class 033. All goods and services in the class are opposed, namely: Alcoholic beverages, namely, Vodka
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### 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.	2288344	Application Date	03/28/1996
Registration Date	10/26/1999	Foreign Priority Date	NONE
Word Mark	TEQUILA ROSE		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 033. First use: First Use: 1996/01/00 First Use In Commerce: 1996/01/00 creme liqueur
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Attachments	75079914#TMSN.gif ( 1 page )( bytes ) NoticeofOpposition - with Service.pdf ( 5 pages )(43975 bytes ) Exhibit 1.pdf ( 4 pages )(95615 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	/michael elbein/
Name	Michael Elbein
Date	05/23/2008

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

In the matter of Trademark Application Serial No.77/191217  
For the Mark: BLACK ROSE VODKA and Design  
Published in the *Official Gazette* of November 27, 2007

McCORMICK DISTILLING CO., INC.	)	
	)	
Opposer,	)	
	)	
vs.	)	Opposition No. _____
	)	
KEYSTONE DISTILLERY LLC	)	
	)	
Applicant.	)	

**NOTICE OF OPPOSITION**

In the matter of Trademark Application Serial No. No.77191217, for the mark BLACK ROSE VODKA and Design, filed May 26, 2007 and published for Opposition in the *Official Gazette* of November 27, 2007.

McCormick Distillery Co., Inc., a Missouri corporation, One McCormick Lane, Weston, Missouri 64098 (“McCormick” or “Opposer”) believes that it will be damaged by registration of the mark shown in the above-identified application for the services identified in the above-referenced application and opposes the same. The grounds for the opposition are as follows:

1. Keystone Distillery LLC (“Keystone” or “Applicant”) seeks to register BLACK ROSE VODKA and design as a trademark for alcoholic beverages, namely, Vodka, in International Class 33, as evidenced by the publication of the mark in the *Official Gazette* of November 27, 2007.

2. The application being opposed was filed on May 26, 2007, on the basis of Section 1(b) (“intent to use”) of the Trademark Act. Thus, Applicant’s priority date is May 26, 2007.

3. Opposer, on its own and/or through its predecessors in interest and/or related entities, is and has been engaged in the sale, *inter alia*, of alcoholic beverages of various types since at least as early as 1903; and has built a successful business.

4. Opposer, on its own and/or through its predecessors in interest and/or related entities, has used the TEQUILA ROSE trademark in commerce in connection with creme liqueur in International Class 33, since at least as early as January 1996.

5. Opposer’s use of the TEQUILA ROSE trademark in connection with its creme liqueur product, an alcoholic beverage, has been continuous, commercially significant and substantially exclusive.

6. Opposer is the owner of U.S. Trademark Registration No. 2288344, directed to the TEQUILA ROSE Mark. This registration is valid, subsisting and incontestable. The application that resulted in this registration was filed on March 28, 1996, and the registration issued on October 26, 1999. The term TEQUILA is disclaimed in the registration. The pertinent information about this registration from the United States Patent and Trademark Office website is attached as Exhibit 1 and incorporated by reference in this Notice of Opposition.

7. Opposer has, since prior to the filing date or claimed date of first use of the application being opposed, used TEQUILA ROSE as a mark in connection with its creme liqueur goods and business.

8. Opposer’s TEQUILA ROSE mark is inherently distinctive as applied to Opposer’s goods and business.

9. By virtue of Opposer's continuous use in commerce of its TEQUILA ROSE mark, such mark has become well and favorably known to the relevant trade and public in connection with such products and business.

10. In the application being opposed, there are no restrictions on trade channels, so it must be assumed that the goods identified in Class 33 in that application will travel through all trade channels appropriate for goods and services of that type.

11. The goods listed in the application, "alcoholic beverages, namely Vodka" are sufficiently related to Opposer's creme liqueur sold under the TEQUILA ROSE mark. Applicant also sells other alcoholic beverages, so it is likely that consumers will assume that Applicant is the source of any vodka with the mark BLACK ROSE VODKA. Both marks contain the term ROSE with a generic type of alcoholic beverage.

12. Applicant's trademark as applied to the goods listed in the application being opposed so resemble Opposer's TEQUILA ROSE mark as used by Opposer and applied to Opposer's products, that it is likely to cause confusion, mistake and/or deception, and thus should not be registered, under Section 2(d) of the Trademark Act.

13. If Applicant is permitted to register BLACK ROSE VODKA for the goods set forth in the application being opposed, confusion of the relevant trade and public is likely to result.

14. Purchasers or potential purchasers of Applicant's services would likely believe in error that such goods are offered by or in association with or under license from Opposer, or that Opposer and Applicant are otherwise affiliated.

15. Any defect, objection to or fault found with Applicant's goods sold under the BLACK ROSE VODKA mark would necessarily reflect on and injure the reputation that Opposer has

established for its products and business.

16. If Applicant is granted a registration for the BLACK ROSE VODKA mark for the goods listed in this application, it would obtain at least a *prima facie* exclusive right to use the mark. Such registration would be a source of damage and injury to the Opposer for the reasons set forth above.

17. Per the certificate of service below, a true and correct copy of this Notice of Opposition is being served upon the correspondent of record for the application being opposed.

WHEREFORE, McCormick Distilling Co., Inc., prays that registration of the mark of Application Serial No. 77191217 for the goods identified in that application be refused and that this Opposition be sustained.

The \$300 filing fee for this Opposition has been charged to Deposit Account No. 19-0522 through the Trademark Trial and Appeal Board's ESTTA filing system. Any additional fees in connection with this Opposition may also be charged to this account, and any overpayment may be credited to this account.

Respectfully submitted,

/michael elbein/

Michael Elbein  
Matthew B. Walters  
HOVEY WILLIAMS LLP  
10801 Mastin, Suite 1000  
Overland Park, Kansas 66210  
(913) 647-9050 - Phone  
(913) 647-9057 - Fax  
Attorneys for Opposer

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Notice of Opposition, which was filed electronically with the Trademark Trial and Appeal Board, was served upon the Applicant's correspondent of record, this 23d day of May 2008, at the following address:

Keystone Distillery, LLC  
120 E Baltimore Pike  
Media, PA 19063-3809

/Michael Elbein/

Int. Cl.: 33

Prior U.S. Cls.: 47 and 49

**United States Patent and Trademark Office**

Reg. No. 2,288,344

Registered Oct. 26, 1999

**TRADEMARK  
PRINCIPAL REGISTER**

**TEQUILA ROSE**

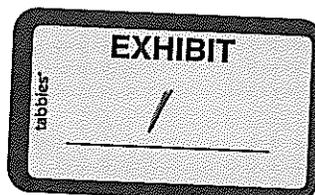
MCCORMICK DISTILLING CO., INC. (MISSOURI CORPORATION)  
ONE MCCORMICK LANE  
WESTON, MO 64098

FOR: CREME LIQUEUR, IN CLASS 33 (U.S. CLS. 47 AND 49).  
FIRST USE 1-0-1996; IN COMMERCE 1-0-1996.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "TEQUILA" , APART FROM THE MARK AS SHOWN.

SER. NO. 75-079,914, FILED 3-28-1996.

JASON TURNER, EXAMINING ATTORNEY



Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2008-05-20 17:58:26 ET

Serial Number: 75079914 Assignment Information      Trademark Document Retrieval

Registration Number: 2288344

Mark (words only): TEQUILA ROSE

Standard Character claim: No

Current Status: Section 8 and 15 affidavits have been accepted and acknowledged.

Date of Status: 2005-11-28

Filing Date: 1996-03-28

Transformed into a National Application: No

Registration Date: 1999-10-26

Register: Principal

Law Office Assigned: LAW OFFICE 108

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 40S -Scanning On Demand

Date In Location: 2006-06-19

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**LAST APPLICANT(S)/OWNER(S) OF RECORD**

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1. McCORMICK DISTILLING CO., INC.

**Address:**

McCORMICK DISTILLING CO., INC.

One McCormick Lane

Weston, MO 64098

United States

**Legal Entity Type:** Corporation

**State or Country of Incorporation:** Missouri

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**GOODS AND/OR SERVICES**

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**International Class:** 033

**Class Status:** Active

creme liqueur

**Basis:** 1(a)

**First Use Date:** 1996-01-00

**First Use in Commerce Date:** 1996-01-00

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**ADDITIONAL INFORMATION**

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**Disclaimer:** "TEQUILA"

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**MADRID PROTOCOL INFORMATION**

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(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

2008-02-14 - TEAS Change Of Correspondence Received

2006-06-19 - Case File In TICRS

2005-11-28 - Section 8 (6-year) accepted & Section 15 acknowledged

2005-11-15 - Assigned To Paralegal

2005-07-19 - Section 8 (6-year) and Section 15 Filed

2005-07-19 - TEAS Section 8 & 15 Received

1999-10-26 - Registered - Principal Register

1999-06-14 - Extension Of Time To Oppose Received

1999-05-11 - Published for opposition

1999-04-09 - Notice of publication

1999-02-03 - Approved for Pub - Principal Register (Initial exam)

1999-01-28 - Examiner's amendment mailed

1998-10-13 - Communication received from applicant

1998-06-05 - Assigned To Examiner

1997-12-08 - Assigned To Examiner

1997-06-01 - Letter of suspension mailed

1997-04-21 - Communication received from applicant

1996-10-21 - Non-final action mailed

1996-10-11 - Assigned To Examiner

1996-10-04 - Assigned To Examiner

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**ATTORNEY/CORRESPONDENT INFORMATION**

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**Attorney of Record**

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**Correspondent**

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