

ESTTA Tracking number: **ESTTA235942**

Filing date: **09/10/2008**

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	Restaurants Unlimited, Inc.
Granted to Date of previous extension	09/10/2008
Address	1818 N. Northlake Way Seattle, WA 98103 UNITED STATES

Attorney information	Catherine E. Maxson Davis Wright Tremaine LLP 1201 Third Avenue, Suite 2200 Seattle, WA 98101 UNITED STATES catherinemaxson@dwt.com, kristinefyfe@dwt.com Phone:(206) 757-8098
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Applicant Information

Application No	77056413	Publication date	05/13/2008
Opposition Filing Date	09/10/2008	Opposition Period Ends	09/10/2008
Applicant	HUERTA DE ALBALA S.L. Nº 12-3; B Ginecas de Castro y Alvares Arrecife De Lanzarote, SPAIN		

Goods/Services Affected by Opposition

Class 033. All goods and services in the class are opposed, namely: Cooking wine; Fruit wine; Grape wine; Natural sparkling wines; Port wines; Red wine; Sparkling fruit wine; Sparkling wine; Sweet wines; Table wines; White wine; Wines


Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1626442	Application Date	02/21/1990
Registration Date	12/04/1990	Foreign Priority Date	NONE
Word Mark	PALOMINO		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 042. First use: First Use: 1989/11/20 First Use In Commerce: 1989/11/20 restaurant services

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Design Mark			
Goods/Services	Restaurant services, bar services, and hats		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		

Design Mark	
Goods/Services	Restaurant services, bar services, hats, t-shirts, aprons, beer, ale, water, and glasses

Attachments	74031399#TMSN.gif (1 page)(bytes) Horse Design.JPG PALOMINO and Horse Design.JPG Notice of Opposition - 77056413.pdf (3 pages)(131195 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	/catherine e maxson/
Name	Catherine E. Maxson
Date	09/10/2008

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

In the matter of Serial No. 77/056413
Filing Date: December 4, 2006
Mark: TABERNER & Design of Horse
Class: 033
Published: May 13, 2008

RESTAURANTS UNLIMITED, INC.)
)
) Opposer,) Opposition No. _____
 v.)
)
HUERTA DE ALBALA S.L.)
)
) Applicant.)

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

Restaurants Unlimited, Inc. (hereinafter "Opposer") believes that it will be damaged by the registration of Serial No. 77/056413 for TABERNER & Design of Horse for "Cooking wine; Fruit wine; Grape wine; Natural sparkling wines; Port wines; Red wine; Sparkling fruit wine; Sparkling wine; Sweet wines; Table wines; White wine; Wines" in International Class 033, and hereby opposes the registration of such mark.

The name and address of the owner of record of the application is Huerta de Albala S.L., Sociedad De Responsabilidad Limitada Spain, located at N° 12-3° B Ginés de Castro y Alvares, Arrecife De Lanzarote, Spain ("Applicant").

The grounds for this opposition are as follows:

1. Opposer, Restaurants Unlimited, Inc., is a Minnesota corporation, whose address is 1818 North Northlake Way, Seattle, WA 98103 U.S.A.
2. Opposer is the owner of the service mark PALOMINO and Design of Horse, as shown in Registration No. 1,626,442, for "restaurant services," in International Class 042. See Exhibit A. The application underlying this registration was filed on February 21, 1990, and the

registration was issued on December 4, 1990. This registration is now incontestable. Opposer also has common-law service mark and trademark rights in the Design of Horse logo for such goods and services as restaurant services, bar services, and hats, and common-law service mark and trademark rights in PALOMINO and Design of Horse for such goods and services as restaurant services, bar services, hats, t-shirts, aprons, beer, ale, water, and glasses.

3. Through a substantial amount of time and effort in advertising and promotion by Opposer, the excellence of the goods and services provided in connection with the Design of Horse logo mark and PALOMINO and Design of Horse mark, these marks have become strong and are widely recognized by the relevant consuming public so as to create enormous goodwill in the marks to the benefit of Opposer.

4. Applicant filed an intent-to-use application for registration of TABERNER and Design of Horse on December 4, 2006 for "Cooking wine; Fruit wine; Grape wine; Natural sparkling wines; Port wines; Red wine; Sparkling fruit wine; Sparkling wine; Sweet wines; Table wines; White wine; Wines" in International Class 033. The application was assigned Serial Number 77/056413, and published for opposition on May 13, 2008. *See* Exhibit B. Upon information and belief, Applicant has not amended its application to allege use of the mark.

5. Since publication of Applicant's application, Opposer has obtained extensions of time to oppose the registration of Applicant's mark. The most recent deadline for filing an opposition or obtaining an extension expires on September 10, 2008.

6. Applicant's mark is similar to Opposer's service marks and trademarks. In addition, the goods cited by Applicant in its application are related to the services provided by Opposer. In light of the similarity of the respective marks and the goods and services offered by the respective parties, Applicant's trademark so resembles Opposer's service marks and trademarks as to be likely to cause confusion, or to cause mistake, or to deceive within Section 2(d) of the Trademark Act of 1946, 15 U.S.C. § 1052(d). Opposer will therefore be damaged by the registration of Applicant's trademark.

7. Opposer has used its service marks and trademarks prior to any use that Applicant may have made of its mark.

8. In light of the above allegations, Applicant is not entitled to the registration of the trademark represented in the application in connection with the goods listed in its application.

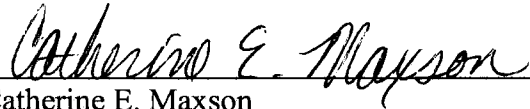
WHEREFORE, Opposer prays that this Notice of Opposition be sustained, that the application with Serial No. 77/056413 be denied, and that no registration be issued thereon to Applicant.

Please charge the applicable fee of \$300.00 per class to our Deposit Account No. 04-0258.

Dated: September 10, 2008

Respectfully submitted,

Restaurants Unlimited, Inc.

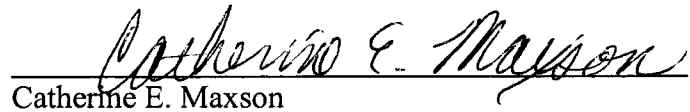


Catherine E. Maxson
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Seattle, WA 98101
(206) 622-3150
Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that this Notice of Opposition is being deposited with the United States Postal Services with sufficient postage as first class mail on September 10, 2008 in an envelope address to Stephen L. Anderson, Anderson & Associates, Suite 208, 32605 Highway 79 South, Temecula, CA 92592.

9-10-08
Date


Catherine E. Maxson