

ESTTA Tracking number: **ESTTA260445**

Filing date: **01/14/2009**

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	Hijos de Rivera, S.A.		
Entity	Corporation	Citizenship	Spain
Address	Poligono de la Grela - Bens gambrinos La Coruna (Galicia), 15008 SPAIN		

Attorney information	Justin R. Young DINEFF TRADEMARK LAW LIMITED 160 North Wacker Drive Chicago, IL 60606 UNITED STATES tmlaw@dineff.com Phone:3123381000
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### Applicant Information

Application No	77502282	Publication date	12/16/2008
Opposition Filing Date	01/14/2009	Opposition Period Ends	01/15/2009
International Registration No.	NONE	International Registration Date	NONE
Applicant	Sociedad Anonima Damm 515, RosellÃ³n Barcelona 08025, SPAIN		

### Goods/Services Affected by Opposition


Class 032. All goods and services in the class are opposed, namely: Beers
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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.	2165199	Application Date	10/22/1996
Registration Date	06/16/1998	Foreign Priority Date	NONE
Word Mark	ESTRELLA GALICIA		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 032. First use: beers

Related Proceedings	Cancellation No. 92050179
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Attachments	75185769#TMSN.gif ( 1 page )( bytes ) opposition estrella damm inedit.pdf ( 11 pages )(81242 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	/justinyoung/
Name	Justin R. Young
Date	01/14/2009

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

In the matter of Application Serial No. **77/502282**  
For the mark **ESTRELLA DAMM INEDIT**  
Published in the "Official Gazette" of **December 16, 2008**

<b>Hijos de Rivera, S.A.,</b>	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No.
	)	
<b>Sociedad Anonima Damm</b>	)	
	)	
Applicant,	)	
	)	

Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

**NOTICE OF OPPOSITION**

Hijos de Rivera, S.A., (hereinafter referred to as "Opponet"), a corporation organized under the laws of Spain, having its principal place of business at Poligono de la Grela-Bens Gambrinos, 2-10 La Coruña (Galicia) 15008, Spain, believes that it will be damaged by the registration of the mark "ESTRELLA DAMM INEDIT", shown in Serial Number 77/502282 in Class 32, and hereby opposes same in accordance with 15 U.S.C. § 1063 and 37 C.F.R. § 2.101.

As grounds for the opposition, Opposer alleges as follows:

1. Applicant seeks to register “ ESTRELLA DAMM INEDIT” as a trademark for “beers” in International Class 32, as evidenced by the publication of said mark in the *Official Gazette* of the December 16, 2008 issue.

2. Opposer is the owner of all right, title, and interest in and to the mark “ESTRELLA GALICIA” in connection with “beers”.

3. Opposer is the owner of the Federal Registration No. 2,165,199 for its mark “ESTRELLA GALICIA & Design” issued by the United States Patent and Trademark Office in connection with “beers” and of the goodwill associated therewith. See Exhibit “A”.

4. Opposer’s Federal Registration No. 2,165,199 is valid, subsisting, and provides *prima facie* evidence of Opposer’s ownership of its mark “ESTRELLA GALICIA & Design”, of the validity of said mark, and of Opposer’s exclusive right to use the mark in commerce. See Exhibit “B”.

5. Opposer has adopted and continuously used its mark “ESTRELLA GALICIA” in connection with “beers” as early as 1906 in Spain and October 1996 in the United States.

6. Since the initial adoption and use of Opposer’s mark “ESTRELLA GALICIA”, Opposer has engaged in extensive advertising and generated significant sales of its goods under its mark “ESTRELLA GALICIA”.

7. By virtue of the aforesaid extensive use, advertising, sale and promotion, consumers have come to recognize and associate Opposer’s mark “ESTRELLA GALICIA” with Opposer and its products. As a result, Opposer has acquired substantial and valuable goodwill in the mark “ESTRELLA GALICIA”, and the mark has become a distinctive indicator of the origin of Opposer’s goods, prior to the filing date of the opposed application, and prior to any priority date that can be relied upon by Applicant.

8. Notwithstanding Opposer's prior established rights in the mark "ESTRELLA GALICIA", Applicant has filed Application No. 77/502282 with the United States Patent and Trademark Office on June 18, 2008 for registration of the mark "ESTRELLA DAMM INEDIT" for "*beers*" in International Class 32.

9. Upon information and belief, Applicant made no use of its alleged mark prior to the filing date of its application.

10. Applicant's application to register the mark "ESTRELLA DAMM INEDIT" is without Opposer's consent or permission.

11. There is no issue as to priority. The filing date of Applicant's mark is subsequent to the first use date of Opposer's mark "ESTRELLA GALICIA", subsequent to the issuance date of Opposer's registration and subsequent to the introduction and use of Opposer's mark "ESTRELLA GALICIA" to the marketplace and the purchasing public.

12. The mark "ESTRELLA DAMM INEDIT" that Applicant seeks to register so closely resembles Opposer's mark "ESTRELLA GALICIA" in appearance, sound, and meaning that the use and registration thereof is likely to create the same overall impression on consumers and to cause confusion, mistake, and deception as to the source or origin of Applicant's "*beers*" and will injure and damage Opposer and the goodwill and reputation symbolized by its mark "ESTRELLA GALICIA".

13. Applicant's goods are identical to Opposer's goods that the public is likely to be confused, to be deceived, and to assume erroneously that Applicant's goods are those of Opposer, or that Applicant is in some way connected or affiliated with, or sponsored by Opposer, all to Opposer's irreparable damage.

14. Likelihood of confusion in this case is enhanced by the fact that consumers associate the mark “ESTRELLA GALICIA” with goods sold, approved, or endorsed by Opposer; furthermore, purchasers of Applicant’s goods are prospective purchasers of Opposer’s goods and services, and vice-versa.

15. Applicant’s mark “ESTRELLA DAMM INEDIT” will be marketed and sold to the same consumers and through the same trade channels than Opposer’s “ESTRELLA GALICIA” mark, therefore, is likely to cause confusion or mistake, or to deceive, within the meaning of Section §2(d) of the Trademark Act.

16. Applicant’s mark “ESTRELLA DAMM INEDIT” so closely resembles Opposer’s “ESTRELLA GALICIA” mark that it is deceptive in that it falsely suggests a connection with or approval by Opposer, in violation of Section §2(a) of the Trademark Act. Indeed, Applicant’s mark points uniquely to Opposer, and purchasers will assume that goods offered under Applicant’s alleged mark are connected with or approved by Opposer.

17. If Applicant is permitted to use and register its marks for its goods, as specified in the application herein opposed, confusion resulting in damage and injury to Opposer will likely occur.

18. If Applicant were granted the registration herein opposed it would thereby obtain at least a *prima facie* exclusive right to its mark and the use thereof. Such registration will be a source of damage and injury to Opposer.

WHEREFORE, Opposer respectfully requests that this opposition be sustained and that Application Serial No. 77/502282 be refused, and for such other and further relief as the Commissioner of Patents and Trademarks shall deem proper and required by the Principles of Equity and Good Conscience.

Hijos de Rivera, S.A.  
By and through its attorney

A handwritten signature in blue ink, appearing to read 'Justin R. Young', is written over a faint, light-colored circular stamp or watermark.

Justin R. Young  
DINEFF TRADEMARK LAW LIMITED  
160 N. Wacker  
Chicago, Illinois 60606  
Phone (312) 338-1000  
Facsimile (312) 338-1500  
[tmlaw@dineff.com](mailto:tmlaw@dineff.com)  
Dated: January 14, 2009

# **EXHIBIT “A”**



Int. Cl.: 32

Prior U.S. Cls.: 45, 46 and 48

Reg. No. 2,165,199

United States Patent and Trademark Office

Registered June 16, 1998

TRADEMARK  
PRINCIPAL REGISTER



HIJOS DE RIVERA, S.A. (SPAIN CORPORATION)  
POLIGONO DE LA GRELA-BENS GAMBRINUS  
2-10 15008 LA CORUNA (GALICIA), SPAIN

FOR: BEERS, IN CLASS 32 (U.S. CLS. 45, 46  
AND 48).

OWNER OF SPAIN REG. NO. 696 703,  
DATED 2-27-1978, EXPIRES 12-18-2002.

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

THE MARK IS LINED FOR THE COLORS  
RED AND YELLOW.

THE ENGLISH TRANSLATION OF THE  
TERM "ESTRELLA" IS "STAR".

SER. NO. 75-185,769, FILED 10-22-1996.

N LEETZOW, EXAMINING ATTORNEY

# **EXHIBIT “B”**



Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3514  
www.uspto.gov

REGISTRATION NO: 2165199 SERIAL NO: 75/185769 MAILING DATE: 03/19/2004  
REGISTRATION DATE: 06/16/1998  
MARK: ESTRELLA GALICIA AND DESIGN  
REGISTRATION OWNER: HIJOS DE RIVERA, S.A.

**CORRESPONDENCE ADDRESS:**

MARK S SOMMERS  
FINNEGAN HENDERSON FARABOW GARRETT ET AL  
1300 I ST NW  
WASHINGTON DC 20005-3315

**NOTICE OF ACCEPTANCE**

15 U.S.C. Sec. 1058(a)(1)

THE COMBINED AFFIDAVIT FILED FOR THE ABOVE-IDENTIFIED REGISTRATION MEETS THE REQUIREMENTS OF SECTION 8 OF THE TRADEMARK ACT, 15 U.S.C. Sec. 1058. **ACCORDINGLY, THE SECTION 8 AFFIDAVIT IS ACCEPTED.**

\*\*\*\*\*

**NOTICE OF ACKNOWLEDGEMENT**

15 U.S.C. Sec. 1065

THE AFFIDAVIT FILED FOR THE ABOVE-IDENTIFIED REGISTRATION MEETS THE REQUIREMENTS OF SECTION 15 OF THE TRADEMARK ACT, 15 U.S.C. Sec. 1065. **ACCORDINGLY, THE SECTION 15 AFFIDAVIT IS ACKNOWLEDGED.**

\*\*\*\*\*

**THE REGISTRATION WILL REMAIN IN FORCE FOR CLASS(ES):**

032.

CRAVEN, TINA L  
PARALEGAL SPECIALIST  
POST-REGISTRATION DIVISION  
(703)308-9500

**PLEASE SEE THE REVERSE SIDE OF THIS NOTICE FOR INFORMATION  
CONCERNING REQUIREMENTS FOR MAINTAINING THIS REGISTRATION  
ORIGINAL**

**REQUIREMENTS FOR MAINTAINING A FEDERAL TRADEMARK REGISTRATION) SECTION 8: AFFIDAVIT OF CONTINUED USE** The registration shall remain in force for 10 years, except that the registration shall be canceled for failure to file an Affidavit of Continued Use under Section 8 of the Trademark Act, 15 U.S.C. Sec. 1058, at the end of each successive 10-year period following the date of registration. **Failure to file the Section 8 Affidavit will result in the cancellation of the registration.**

**II) SECTION 9: APPLICATION FOR RENEWAL** The registration shall remain in force for 10 years, subject to the provisions of Section 8, except that the registration shall expire for failure to file an Application for Renewal under Section 9 of the Trademark Act, 15 U.S.C. Sec. 1059, at the end of each successive 10-year period following the date of registration. **Failure to file the Application for Renewal will result in the expiration of the registration.**

**NO FURTHER NOTICE OR REMINDER OF THESE REQUIREMENTS WILL BE SENT TO THE REGISTRANT BY THE PATENT AND TRADEMARK OFFICE. IT IS RECOMMENDED THAT THE REGISTRANT CONTACT THE PATENT AND TRADEMARK OFFICE APPROXIMATELY ONE YEAR BEFORE THE EXPIRATION OF THE TIME PERIODS SHOWN ABOVE TO DETERMINE APPROPRIATE REQUIREMENTS AND FEES.**



REGISTRATION NO: 2165199 SERIAL NO: 75/185769 MAILING DATE: 07/25/2008  
REGISTRATION DATE: 06/16/1998  
MARK: ESTRELLA GALICIA AND DESIGN  
REGISTRATION OWNER: HIJOS DE RIVERA, S.A.

**CORRESPONDENCE ADDRESS:**

Laurel V. Dineff  
TMLAW Associates  
7646 West 63rd Street  
Summit IL 60501

**NOTICE OF ACCEPTANCE**

15 U.S.C. Sec. 1058(a)(3)

THE COMBINED AFFIDAVIT AND RENEWAL APPLICATION FILED FOR THE ABOVE-IDENTIFIED REGISTRATION MEETS THE REQUIREMENTS OF SECTION 8 OF THE TRADEMARK ACT, 15 U.S.C. Sec. 1058. ACCORDINGLY, THE SECTION 8 AFFIDAVIT IS ACCEPTED.

\*\*\*\*\*

**NOTICE OF RENEWAL**

15 U.S.C. Sec. 1059(a)

THE COMBINED AFFIDAVIT AND RENEWAL APPLICATION FILED FOR THE ABOVE-IDENTIFIED REGISTRATION MEETS THE REQUIREMENTS OF SECTION 9 OF THE TRADEMARK ACT, 15 U.S.C. Sec. 1059. ACCORDINGLY, THE REGISTRATION IS RENEWED.

\*\*\*\*\*

**THE REGISTRATION WILL REMAIN IN FORCE FOR CLASS(ES):**

032.

GILLIS, BURNIE A  
PARALEGAL SPECIALIST  
POST-REGISTRATION DIVISION  
571-272-9500

**PLEASE SEE THE REVERSE SIDE OF THIS NOTICE FOR INFORMATION  
CONCERNING REQUIREMENTS FOR MAINTAINING THIS REGISTRATION  
ORIGINAL**

**REQUIREMENTS FOR MAINTAINING A FEDERAL TRADEMARK REGISTRATION I) SECTION 8: AFFIDAVIT OF CONTINUED USE** The registration shall remain in force for 10 years, except that the registration shall be canceled for failure to file an Affidavit of Continued Use under Section 8 of the Trademark Act, 15 U.S.C. Sec. 1058, at the end of each successive 10-year period following the date of registration. **Failure to file the Section 8 Affidavit will result in the cancellation of the registration.**

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing NOTICE OF OPPOSITION was served on this date January 14, 2009 upon Applicant's Attorney of Record at its address of record by First-Class mail, postage prepaid, as follows:

Mr. Doug Lipstone, Esq.  
Buchalter Nemer  
1000 Wilshire Boulevard, Suite 1500  
Los Angeles, CA 90017-2457

A handwritten signature in blue ink, appearing to read "Justin R. Young", is written over a light yellow rectangular background.

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Justin R. Young  
DINEFF TRADEMARK LAW LIMITED  
160 N. Wacker Drive .  
Chicago, Illinois 60606  
(312) 338 -1000