

ESTTA Tracking number: **ESTTA352645**

Filing date: **06/14/2010**

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	Sazerac Company, Inc.
Granted to Date of previous extension	06/16/2010
Address	803 Jefferson Highway New Orleans, LA 70152 UNITED STATES

Attorney information	Kathryn Robinson Cooley LLP 777 6th Street, NW, Suite 1100 Washington, DC 20001 UNITED STATES krobinson@cooley.com , bryan.boyle@cooley.com, trademarks@cooley.com Phone:650-843-5000
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Applicant Information

Application No	77833019	Publication date	02/16/2010
Opposition Filing Date	06/14/2010	Opposition Period Ends	06/16/2010
Applicant	Journey's End Vineyards (Pty) Ltd Sir Lowry's Pass, Somerset West Farm 1399, Sir Lowry's Pass Road Western Cape, 7129 SOUTH AFRICA		

Goods/Services Affected by Opposition

Class 033. All goods and services in the class are opposed, namely: Alcoholic beverages, including wines, spirits and liqueurs, with all of the aforementioned goods excluding beers

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.	1667801	Application Date	03/12/1991
Registration Date	12/10/1991	Foreign Priority Date	NONE
Word Mark	DR. MCGILLICUDDY'S		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 1982/01/25 First Use In Commerce: 1982/01/25 liqueurs

U.S. Registration No.	2847730	Application Date	03/10/2000
Registration Date	06/01/2004	Foreign Priority Date	NONE
Word Mark	DR. MCGILLICUDDY'S FIREBALL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2001/03/00 First Use In Commerce: 2001/03/00 whiskey-based liqueurs		

U.S. Registration No.	2997888	Application Date	07/27/2004
Registration Date	09/20/2005	Foreign Priority Date	NONE
Word Mark	DR. MCGILLICUDDY'S FIREBALL		
Design Mark	 <p>DR. MCGILLICUDDY'S FIREBALL</p>		
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2001/03/00 First Use In Commerce: 2001/03/00 whiskey-based liqueurs		

U.S. Registration No.	2289105	Application Date	01/05/1999
Registration Date	10/26/1999	Foreign Priority Date	NONE
Word Mark	DR. MINT		

Design Mark	DR. MINT		
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 1991/09/26 First Use In Commerce: 1991/09/26 Liqueurs		

U.S. Registration No.	3023696	Application Date	12/03/2004
Registration Date	12/06/2005	Foreign Priority Date	NONE

Word Mark	THE DOCTOR IS IN		
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Design Mark	THE DOCTOR IS IN		
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 1996/09/30 First Use In Commerce: 1996/09/30 alcoholic beverages, namely, liqueurs		

U.S. Application No.	77955587	Application Date	03/10/2010
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	SHOOTER DOCTOR		
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Design Mark	SHOOTER DOCTOR		
Description of Mark	NONE		
Goods/Services	Class 033. First use: Distilled Spirits; Liqueurs		

U.S. Application No.	77955556	Application Date	03/10/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	SHOT DOCTOR		
Design Mark	SHOT DOCTOR		
Description of Mark	NONE		
Goods/Services	Class 033. First use: Distilled Spirits; Liqueurs		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	GET A SHOT OF THE DOCTOR		
Goods/Services	Alcoholic beverages		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	VISIT THE DOCTOR		
Goods/Services	Alcoholic beverages		

Attachments	78457249#TMSN.jpeg (1 page)(bytes) 75617043#TMSN.gif (1 page)(bytes) 78526640#TMSN.jpeg (1 page)(bytes) 77955587#TMSN.jpeg (1 page)(bytes) 77955556#TMSN.jpeg (1 page)(bytes) THE CAPE DOCTOR Notice of Opposition.pdf (6 pages)(187770 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	/KDR/
Name	Kathryn Robinson
Date	06/14/2010

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

In the matter of Application Serial No. 77/833,019
For the Trademark THE CAPE DOCTOR
Published in the Official Gazette on February 16, 2010

SAZERAC COMPANY, INC.)	
)	
Opposer,)	
)	Opposition No.
v.)	
)	
JOURNEY'S END VINEYARDS (PTY), LTD.)	
)	
Applicant.)	
_____)	

NOTICE OF OPPOSITION

Opposer Sazerac Company, Inc. ("Sazerac"), a Louisiana corporation having its principal place of business at 803 Jefferson Highway, New Orleans, Louisiana 70152, will be damaged by the issuance of a registration for the mark THE CAPE DOCTOR (hereafter "Applicant's Mark"), as applied for in Application Serial No. 77/833,019 filed on September 23, 2009 by Applicant Journey's End Vineyards (Pty), Ltd., a South African corporation at Sir Lowry's Pass, Somerset West Farm 1399, Sir Lowry's Pass Road, Western Cape 7129, South Africa ("Applicant"). Sazerac, having previously been granted an extension of time to oppose Applicant's Mark, hereby opposes same.

As grounds for opposition, Sazerac alleges:

1. Sazerac is a company that markets and sells a number of different types and brands of alcoholic beverages and distilled spirits, including without limitation vodka, whiskey,

liqueurs, and wines. Sazerac has marketed and sold alcoholic beverages and distilled spirits in the United States for over a century.

2. Sazerac has consistently and continually marketed and sold liqueurs and schnapps under its DR. MCGILLICUDDY'S mark and associated DOCTOR component marks since 1982. By virtue of its marketing and by virtue of the excellence of the underlying product, the public has come to know, rely on, and recognize the DR. MCGILLICUDDY'S mark and associated DOCTOR component marks as a source identifier for Sazerac's liqueurs and schnapps.

3. Sazerac owns the following United States trademark applications and registrations:

DR. MCGILLICUDDY'S; International Class 33 (Registration No. 1,667,801) in connection with "liqueurs;"

DR. MCGILLICUDDY'S FIREBALL; International Class 33 (Registration No. 2,847,730) in connection with "whiskey-based liqueurs;"

DR. MCGILLICUDDY'S FIREBALL; International Class 33 (Registration No. 2,997,888) in connection with "whiskey-based liqueurs;"

DR. MINT; International Class 33 (Registration No. 2,289,105) in connection with "liqueurs;"

THE DOCTOR IS IN; International Class 33 (Registration No. 3,023,696) in connection with "alcoholic beverages, namely, liqueurs;"

SHOOTER DOCTOR; International Class 33 (Application No. 77/955,587) in connection with "distilled spirits; liqueurs;" and

SHOT DOCTOR; International Class 33 (Application No. 77/955,556) in connection with "distilled spirits; liqueurs."

4. Sazerac owns the following common law trademarks in connection with its liqueurs and schnapps products:

GET A SHOT OF THE DOCTOR; and
VISIT THE DOCTOR.

(Marks set forth in Paragraphs 3 and 4 above collectively hereafter the “DOCTOR Marks.”)

5. Sazerac has used its DOCTOR Marks in commerce prior to Applicant’s filing date of September 23, 2009.

6. Upon information and belief, Sazerac alleges that on September 23, 2009, Applicant filed an application to register the mark THE CAPE DOCTOR on an intent to use basis (Section 1(b)). Applicant seeks registration in connection with “alcoholic beverages, including wines, spirits and liqueurs, with all of the aforementioned goods excluding beers” in International Class 33.

7. Applicant’s Mark is likely to be confused with and mistaken for Sazerac’s liqueurs and schnapps marketed under the DOCTOR Marks because Applicant’s Mark is confusingly similar in sight, sound, and commercial impression to Sazerac’s DOCTOR Marks. Applicant’s THE CAPE DOCTOR mark includes the entire DOCTOR component of Sazerac’s Marks. In addition, the commercial connotation created by both marks is highly similar, if not identical, with the same reference to the dominant DOCTOR component.

8. Applicant’s Mark is intended for use in connection with products that are identical to Sazerac’s products. Applicant has registered its THE CAPE DOCTOR mark for “alcoholic beverages, including wines, spirits and liqueurs, with all of the aforementioned goods excluding beers.” Sazerac has used its DOCTOR Marks in connection with liqueurs, whiskey-based

liqueurs, and schnapps products. Thus, Applicant's goods description contains products both: identical to; and clearly related to those sold under Sazerac's DOCTOR Marks.

9. Applicant's targeted customer base is identical to that of Sazerac's alcoholic beverages and distilled spirits customer base, including wines, spirits, and liqueurs.

10. As Applicant's goods description contains no restrictions or limitations as to Applicant's channels of trade, Sazerac may assume that Applicant's Mark, like Sazerac's own DOCTOR Marks, will be used in all accepted channels of trade. Therefore, in addition to overlapping consumer bases, Applicant's intended channels of trade for its alcoholic beverages overlap with the channels of trade used by Sazerac in marketing, selling, and otherwise distributing its liqueurs and schnapps marketed under its DOCTOR Marks.

11. If Applicant is permitted to register Applicant's Mark for the goods specified in the Application herein opposed, confusion resulting in damage and injury to Sazerac would likely occur. Persons familiar with Sazerac's DOCTOR Marks would likely perceive Applicant's products as associated, affiliated with, or sponsored by Sazerac. Such confusion would inevitably result in damage to Sazerac.

12. Sazerac's customers and the relevant public are likely to misapprehend Applicant's Mark as a Sazerac mark rather than a mark of Applicant and/or believe in error that goods offered under the Applicant's THE CAPE DOCTOR mark are offered by, in association with, or under license from Sazerac.


13. Any defect, objection to, or fault found with Applicant's beverages marketed under its THE CAPE DOCTOR mark would necessarily reflect on and seriously injure the reputation that Sazerac has established for its alcoholic beverage and distilled spirits products.

14. Registration of Applicant's Mark would give Applicant *prima facie* evidence of the validity and ownership of Applicant's Mark and of Applicant's exclusive right to use its THE CAPE DOCTOR mark, all to the detriment of Sazerac.

15. Wherefore, Sazerac prays that this Opposition be sustained and that Application Serial No. 77/833,019 be denied and refused registration.

COOLEY LLP

Date: June 14, 2010

By: 
Kathryn D. Robinson
Todd S. Bontemps
Attorneys for Opposer
Five Palo Alto Square
3000 El Camino Real
Palo Alto, California 94306-2155
(650) 843-5000

CERTIFICATE OF SERVICE

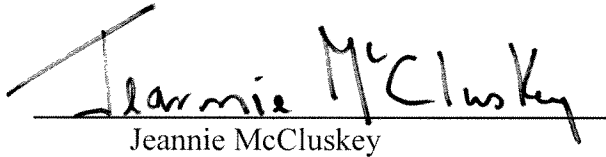
I hereby certify that on June 14, 2010, I mailed the foregoing NOTICE OF OPPOSITION regarding Sazerac Company, Inc. v. Journey's End Vineyards (Pty), Ltd. to Applicant and listed Attorney of Record for Applicant by depositing a true and correct copy of the same with the United States Postal Service, first class mail, postage prepaid, in an envelope addressed to:

(Marked "PAR AVION")
Journey's End Vineyards, (Pty), Ltd.
Sir Lowry's Pass, Somerset West Farm 1399, Sir Lowry's Pass Road
Western Cape 7129
South Africa

and

Burton S. Ehrlich
Ladas & Parry LLP
224 S. Michigan Ave., Ste. 1600
Chicago, IL 60604

Date: June 14, 2010


Jeannie McCluskey