

ESTTA Tracking number: **ESTTA385976**

Filing date: **12/29/2010**

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 parties oppose registration of the indicated application.

Opposers Information

Name	Bavaria USA, Inc.
Granted to Date of previous extension	12/29/2010
Address	5819 Sandshell Ct. Dallas, TX 75252 UNITED STATES

Name	BAVARIA N.V.
Granted to Date of previous extension	12/29/2010
Address	DE STATER 1 NL-5737 RV LIESHOUT, NL-5737 NETHERLANDS

Attorney information	Jennifer Sheehan Anderson Honigman Miller Schwartz and Cohn LLP 38500 Woodward Ave., Suite 100 Bloomfield Hills, MI 48304 UNITED STATES tmdocketing@honigman.com, jpa@honigman.com, janderson@honigman.com
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Applicant Information

Application No	85009664	Publication date	08/31/2010
Opposition Filing Date	12/29/2010	Opposition Period Ends	12/29/2010
Applicant	Missouri I.P. Holdings, LLC 120 South Central Avenue St. Louis, MO 63105 UNITED STATES		

Goods/Services Affected by Opposition

Class 032. All goods and services in the class are opposed, namely: Beer

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	79083101	Application Date	03/22/2010
Registration Date	NONE	Foreign Priority Date	10/07/2009
Word Mark	BAVARIA HOLLAND		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: Beers; mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages		

U.S. Registration No.	2922101	Application Date	07/10/2003
Registration Date	02/01/2005	Foreign Priority Date	NONE
Word Mark	BAVARIA HOLLAND		
Design Mark	<p style="text-align: center;">BAVARIA HOLLAND</p>		
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1997/06/00 First Use In Commerce: 1997/06/00 Beer		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	BAVARIA		
Goods/Services	Beers		

Attachments	79083101#TMSN.jpeg (1 page)(bytes)
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	76531114#TMSN.gif (1 page)(bytes) Opposition.pdf (14 pages)(59850 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	/Jennifer Sheehan Anderson/
Name	Jennifer Sheehan Anderson
Date	12/29/2010

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

In the Matter of Application Serial No. 85/009,664
Published in the Official Gazette of August 31, 2010

BAVARIA N.V. and BAVARIA, USA, INC.

Opposers,

vs.

Opposition No.: _____

MISSOURI I.P. HOLDINGS, LLC,

Applicant.

_____ /

NOTICE OF OPPOSITION

Opposers Bavaria N.V. and Bavaria, USA, Inc. (together, “Bavaria”) believe that they will be damaged by registration of the mark show in Application Serial No. 85/009,664 in International Class 32 and hereby oppose the same. As grounds for opposition, Bavaria alleges as follows:

1. Bavaria N.V. is a public limited liability company organized and existing under the laws of the Netherlands, with offices in Lieshout, Netherlands.
2. Bavaria, USA, Inc. is a corporation organized and existing under the laws of the State of Texas, with offices in Dallas, Texas.
3. Upon information and belief, applicant Missouri I.P. Holdings, LLC is a limited liability company organized and existing under the State of Missouri, with offices in St. Louis, Missouri.
4. On April 8, 2010, Applicant filed Application Serial No. 85/009,664 (the “Opposed Application”) in the United States Patent and Trademark Office under Section 1(b) of

the United States Trademark Act seeking registration for the mark “BAVARII” for “beer” in International Class 32.

5. From a time prior to the filing date of the Opposed Application, or any earlier priority date or date of actual use of the mark shown in the Opposed Application upon which Applicant can rely, and continuously to the present, Bavaria N.V. has used and/or intended to use the marks “BAVARIA HOLLAND” and “BAVARIA” in the United States in connection with beers, mineral and aerated waters and other non-alcoholic drinks, fruit drinks and fruit juices, and syrups and other preparations for making beverages.

6. Bavaria N.V. owns Application Serial No. 79/083,101 for the mark “BAVARIA HOLLAND” that is pending for beers, mineral and aerated waters and other non-alcoholic drinks, fruit drinks and fruit juices, and syrups and other preparations for making beverages. A copy of the record of this application taken from the TARR electronic database of the Patent and Trademark Office and showing the current status and title of this application is attached hereto as Exhibit 1 and is incorporated by reference herein as if set forth in full.

7. From a time prior to the filing date of the Opposed Application, or any earlier priority date or date of actual use of the mark shown in the Opposed Application upon which Applicant can rely, and continuously to the present, Bavaria, USA, Inc. has used the marks “BAVARIA HOLLAND” and “BAVARIA” in the United States in connection with beer.

8. Bavaria, USA, Inc. owns United States Trademark Reg. No. 2,922,101 for the mark “BAVARIA HOLLAND” for beer. This registration is valid and subsisting. A copy of the record of this registration taken from the TARR electronic database of the Patent and Trademark Office and showing the current status and title of this registration is attached hereto as Exhibit 2 and is incorporated by reference herein as if set forth in full.

FIRST CLAIM FOR RELIEF
(Likelihood of Confusion With Registered Trademark)

9. Bavaria repeats and realleges the allegations in the preceding paragraphs 1-8 as if fully set forth herein.

10. The mark shown in the Opposed Application so resembles Bavaria, USA, Inc.'s registered "BAVARIA HOLLAND" mark as to be likely, when used on or in connection with the goods in International Class 32 identified in the Opposed Application, to cause confusion, to cause mistake, or to deceive.

11. Applicant's mark is thus unregistrable in International Class 32 under Section 2(d) of the United States Trademark Act, 15 U.S.C. § 1052(d).

12. Bavaria, USA, Inc. will be damaged by registration of the mark shown in the Opposed Application because Applicant's mark is confusingly similar to Bavaria, USA, Inc.'s and Bavaria N.V.'s marks and because registration of Applicant's mark will give Applicant *prima facie* evidence of ownership of and the exclusive right to use a mark that is confusingly similar to Bavaria, USA, Inc.'s registered mark, in derogation of Bavaria, USA, Inc.'s rights in its registered mark.

SECOND CLAIM FOR RELIEF
(Likelihood of Confusion With Previously-Used Trademark)

13. Bavaria repeats and realleges the allegations in the preceding paragraphs 1-12 as if fully set forth herein.

14. The mark shown in the Opposed Application so resembles Bavaria, USA, Inc.'s and Bavaria N.V.'s "BAVARIA HOLLAND" and "BAVARIA" marks, previously used and/or intended to be used in the United States and not abandoned, as to be likely, when used on or in connection with the goods in International Class 32 identified in the Opposed Application, to cause confusion, to cause mistake, or to deceive.

15. Applicant's mark thus is unregistrable in International Class 32 under Section 2(d) of the United States Trademark Act, 15 U.S.C. § 1052(d).

16. Bavaria, USA, Inc. and Bavaria N.V. will be damaged by registration of the mark shown in the Opposed Application because Applicant's mark is confusingly similar to Bavaria, USA, Inc.'s and Bavaria N.V.'s marks and because such registration will give Applicant *prima facie* evidence of ownership of and the exclusive right to use a mark that is confusingly similar to Bavaria, USA, Inc.'s and Bavaria N.V.'s previously-used and not abandoned marks, in derogation of Bavaria, USA, Inc.'s and Bavaria N.V.'s rights in their marks.

THIRD CLAIM FOR RELIEF
(Dilution)

17. Bavaria repeats and realleges the allegations in the preceding paragraphs 1-16 as if fully set forth herein.

18. Bavaria's "BAVARIA" and "BAVARIA HOLLAND" marks have achieved an extraordinary level of fame and consumer recognition. As a result of Bavaria's extensive advertising, promotion, and use of the "BAVARIA" and "BAVARIA HOLLAND" marks, those marks have acquired enormous goodwill, and have come to be identified immediately with Bavaria as the source of goods and services.

19. Bavaria's "BAVARIA" and "BAVARIA HOLLAND" marks are famous under the Lanham Act, specifically 15 U.S.C. § 1125 *et seq.*

20. Registration of Applicant's mark is likely to cause dilution of the distinctiveness of Bavaria's marks by eroding consumers' exclusive identification of Bavaria's marks with Bavaria, and otherwise lessening the capacity of Bavaria's marks to identify and distinguish Bavaria's goods and services in violation of Section 43(c)(1) of the Lanham Act, 15 U.S.C. § 1125(c)(1).

WHEREFORE, Opposers Bavaria, USA, Inc. and Bavaria N.V. pray for judgment sustaining this opposition and refusing registration of the mark shown in the Opposed Application in Class 32.

Please charge the filing fees for this opposition to Deposit Account No. 503145 and direct all correspondence and communications in this opposition to the undersigned.

HONIGMAN MILLER SCHWARTZ
AND COHN LLP

By: /Jason R. Abel/
Jason R. Abel
Jennifer Sheehan Anderson
2290 First National Building
660 Woodward Avenue
Detroit, MI 48226-3506
(313) 465-7302

ATTORNEYS FOR OPPOSERS

Dated: December 29, 2010

EXHIBIT 1

Thank you for your request. Here are the latest results from the [TARR web server](#).

This page was generated by the TARR system on 2010-12-29 13:45:37 ET

Serial Number: 79083101 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: (NOT AVAILABLE)

Mark



(words only): [BAVARIA HOLLAND](#)

Standard Character claim: No

Current Status: A non-final action has been mailed. This is a letter from the examining attorney requesting additional information and/or making an initial refusal. However, no final determination as to the registrability of the mark has been made.

Date of Status: 2010-07-19

Filing Date: 2010-03-22

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: [Principal](#)

Law Office Assigned: [LAW OFFICE 112](#)

Attorney Assigned:
[IZZI MARILYN D](#)

Current Location: [M3X -TMO Law Office 112 - Examining Attorney Assigned](#)

Date In Location: 2010-07-16

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

1. Bavaria N.V.

Address:

Bavaria N.V.
De stater 1 NL-5737 RV Lieshout
Netherlands

Legal Entity Type: Naamloze Vennootschap

State or Country Where Organized: (NOT AVAILABLE)

GOODS AND/OR SERVICES

International Class: 032

Class Status: Active

Beers; mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages

Basis: 66(a)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

Color(s) Claimed: The color(s) blue (pms 287), gold (pms 871), white is/are claimed as a feature of the mark.

Description of Mark and Any Color Part(s): White: the outer rim of the label and the word element BAVARIA. Gold: the outside of the "compass" element, the second rim of the label and the word element HOLLAND. Blue: the inside of the "compass" element and the inside of the label.

Design Search Code(s):

05.07.02 - Bundles, grain; Haystacks; Stalks (grain)

13.01.02 - Blow torch; Propane torches; Torches; Welding torch

17.07.05 - Compasses (directional); Directional compasses, including mariner's compasses and compass points

20.03.10 - Alcohol bottle labels; Bottles, labels for alcohol bottles; Labels, alcohol bottles

24.01.02 - Shields or crests with figurative elements contained therein or superimposed thereon

26.13.21 - Quadrilaterals that are completely or partially shaded

MADRID PROTOCOL INFORMATION

International Registration Number: 1040226

International Registration Date: 2010-03-22

Priority Claimed: Yes

Date of Section 67 Priority Claim: 2009-10-07

International Registration Status: [Request For Extension Of Protection Processed](#)

Date of International Registration Status: 2010-06-25

International Registration Renewal Date: 2020-03-22

Notification of Designation Date: 2010-06-24

Date of Automatic Protection: 2011-12-24

Date International Registration Cancelled: (DATE NOT AVAILABLE)

First Refusal: [Yes](#)

PROSECUTION HISTORY

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

[2010-08-06 - Refusal Processed By IB](#)

[2010-07-19 - Non-Final Action Mailed - Refusal Sent To IB](#)

[2010-07-19 - Refusal Processed By MPU](#)

[2010-07-17 - Non-Final Action \(Ib Refusal\) Prepared For Review](#)

[2010-07-16 - Non-Final Action Written](#)

[2010-07-03 - Application Filing Receipt Mailed](#)

[2010-06-29 - Assigned To Examiner](#)

[2010-06-29 - New Application Office Supplied Data Entered In Tram](#)

[2010-06-25 - Limitation Of Goods/Services From IB Entered](#)

[2010-06-25 - Sn Assigned For Sect 66a Appl From IB](#)

ATTORNEY/CORRESPONDENT INFORMATION

Correspondent

[Novagraaf Nederland B.V.](#)

[Hogehilweg 3,](#)

[Postbus 22722](#)

[NL-1100 DE Amsterdam](#)

[NETHERLANDS](#)

EXHIBIT 2

Thank you for your request. Here are the latest results from the [TARR web server](#).

This page was generated by the TARR system on 2010-12-29 13:46:38 ET

Serial Number: [76531114 Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: [2922101](#)

Mark (words only): [BAVARIA HOLLAND](#)

Standard Character claim: [No](#)

Current Status: [Registered](#).

Date of Status: [2005-02-01](#)

Filing Date: [2003-07-10](#)

Transformed into a National Application: [No](#)

Registration Date: [2005-02-01](#)

Register: [Principal](#)

Law Office Assigned: [LAW OFFICE 103](#)

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: [650 -Publication And Issue Section](#)

Date In Location: [2005-02-01](#)

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

1. [Bavaria USA, Inc.](#)

Address:

[Bavaria USA, Inc.](#)
[5819 Sandshell Ct.](#)
[Dallas, TX 75252](#)
[United States](#)

Legal Entity Type: [Corporation](#)

State or Country of Incorporation: [Texas](#)

GOODS AND/OR SERVICES

International Class: [032](#)

Class Status: [Active](#)

[Beer](#)

Basis: [1\(a\)](#)

First Use Date: [1997-06-00](#)

First Use in Commerce Date: [1997-06-00](#)

ADDITIONAL INFORMATION

Section 2(f)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

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

[2005-02-01 - Registered - Principal Register](#)

[2004-11-09 - Published for opposition](#)

[2004-10-20 - Notice of publication](#)

[2004-09-09 - Case File In TICRS](#)

[2004-09-02 - Law Office Publication Review Completed](#)

[2004-09-02 - Assigned To LIE](#)

[2004-08-20 - Approved for Pub - Principal Register \(Initial exam\)](#)

[2004-06-10 - Communication received from applicant](#)

[2004-06-10 - PAPER RECEIVED](#)

[2004-01-14 - Non-final action mailed](#)

[2004-01-09 - Assigned To Examiner](#)

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

[J. Scott Chase](#)

Correspondent

[J. SCOTT CHASE](#)

[1600 PACIFIC AVE STE 3100](#)

[DALLAS TX 75201-3523](#)

[Phone Number: 214-880-0404](#)

[Fax Number: 214-880-0455](#)

CERTIFICATE OF TRANSMITTAL

I hereby certify that on December 29, 2010, the foregoing Notice of Opposition was electronically transmitted in PDF format to the Trademark Trial and Appeal Board through the Electronic System for Trademark Trials and Appeals (ESTTA)

By: /Jason R. Abel/

CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2010, the foregoing Notice of Opposition was served on Applicant by mailing a copy thereof by First Class Mail, postage paid, addressed to Applicant's counsel as follows:

THOMAS A. POLCYN
THOMPSON COBURN LLP
505 N 7TH ST, STE 3500
SAINT LOUIS, MO 63101-1693

By: /Jason R. Abel/