

ESTTA Tracking number: **ESTTA426931**

Filing date: **08/24/2011**

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	University of Tennessee
Granted to Date of previous extension	08/24/2011
Address	719 Andy Holt Tower Knoxville, TN 37996 UNITED STATES

Attorney information	Mark S. Graham Luedeka, Neely & Graham, P.C. P.O. Box 1871 Knoxville, TN 37901-1871 UNITED STATES mgraham@lng-patent.com, mbradford@lng-patent.com Phone:865-546-4305
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**Applicant Information**

Application No	85181825	Publication date	04/26/2011
Opposition Filing Date	08/24/2011	Opposition Period Ends	08/24/2011
Applicant	B and B Partners 4504 Ellistown Road Knoxville, TN 37924 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 033. All goods and services in the class are opposed, namely: Vodka
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**Applicant Information**

Application No	85181827	Publication date	04/26/2011
Opposition Filing Date	08/24/2011	Opposition Period Ends	
Applicant	B and B Partners 4504 Ellistown Road Knoxville, TN 37924 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 033. All goods and services in the class are opposed, namely: Vodka
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## 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. Registration No.	1390743	Application Date	09/26/1984
Registration Date	04/22/1986	Foreign Priority Date	NONE
Word Mark	VOLUNTEERS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1936/00/00 First Use In Commerce: 1936/00/00 WINDOW STICKERS Class 021. First use: First Use: 1962/00/00 First Use In Commerce: 1962/00/00 GLASS MUGS Class 025. First use: First Use: 1936/00/00 First Use In Commerce: 1936/00/00 KNIT SHIRTS		

U.S. Registration No.	1335456	Application Date	09/26/1984
Registration Date	05/14/1985	Foreign Priority Date	NONE
Word Mark	VOLS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1965/00/00 First Use In Commerce: 1965/00/00 Pens, Window and Bumper Stickers [ , Football Game Charts ] Class 018. First use: First Use: 1962/00/00 First Use In Commerce: 1962/00/00 [ General Purpose Gym Bags ] Class 020. First use: First Use: 1962/00/00 First Use In Commerce: 1962/00/00 [ Stadium Chairs ] Class 021. First use: First Use: 1965/00/00 First Use In Commerce: 1965/00/00 [ Drinking Glasses, Plastic Cups and Mugs, ] Shot Glasses [ , Insulating Sleeve- Holders for Beverage Cans ] Class 025. First use: First Use: 1936/00/00 First Use In Commerce: 1936/00/00 Sweat Shirts [ , Sweat Pants, Shirt and Vest Combination ]		

U.S. Registration No.	1368639	Application Date	09/26/1984
Registration Date	11/05/1985	Foreign Priority Date	NONE
Word Mark	TENNESSEE		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	<p>Class 006. First use: First Use: 1961/00/00 First Use In Commerce: 1961/00/00 KEY CHAINS</p> <p>Class 016. First use: First Use: 1936/00/00 First Use In Commerce: 1936/00/00 [ PENS CONTAINING WATCHES, AND ] WINDOW AND PAPER STICKERS</p> <p>Class 018. First use: First Use: 1962/00/00 First Use In Commerce: 1962/00/00 [GENERAL PURPOSE GYM BAGS, AND GARMENT BAGS FOR TRAVEL]</p> <p>Class 020. First use: First Use: 1962/00/00 First Use In Commerce: 1962/00/00 STADIUM CUSHIONS</p> <p>Class 021. First use: First Use: 1965/00/00 First Use In Commerce: 1965/00/00 DRINKING GLASSES, CERAMIC MUGS[, AND GOBLETS]</p> <p>Class 025. First use: First Use: 1936/00/00 First Use In Commerce: 1936/00/00 SWEAT SHIRTS, SWEAT PANTS, CAPS, JACKETS, KNIT SHIRTS, T-SHIRTS, V-NECK SHIRTS, AND SHORTS</p> <p>Class 028. First use: First Use: 1962/00/00 First Use In Commerce: 1962/00/00 STUFFED TOYS</p>

U.S. Registration No.	1334260	Application Date	09/26/1984
Registration Date	05/07/1985	Foreign Priority Date	NONE
Word Mark	UNIVERSITY OF TENNESSEE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 016. First use: First Use: 1972/00/00 First Use In Commerce: 1972/00/00 Writing Pads, Note Pads, Notebook Paper, and Window and Bumper Stickers</p> <p>Class 018. First use: First Use: 1962/00/00 First Use In Commerce: 1962/00/00 [ Garment Bags for Travel ]</p> <p>Class 021. First use: First Use: 1962/00/00 First Use In Commerce: 1962/00/00 Ceramic Mugs, [ Plastic Cups, Pewter Cups and Goblets ]</p> <p>Class 025. First use: First Use: 1936/00/00 First Use In Commerce: 1936/00/00 [ Jackets,] T-Shirts, and Caps</p>		

Attachments	6732800-20110824-FinalNoticeOfOppos1.pdf ( 9 pages )(23833 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	/msg/
Name	Mark S. Graham
Date	08/24/2011

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

In re applications of )  
 )  
B and B Partners )  
 )  
Serial No. 85/181,825 )  
Date Filed: November 20, 2010 )  
Mark: TENNESSEE VODKA OLD VOL )  
 )  
Serial No. 85/181,827 )  
Date Filed: November 20, 2010 )  
Mark: TENNESSEE VODKA VOLUNTEER SPIRIT )  
 )  
Both published in the )  
OFFICIAL GAZETTE (Trademarks) on )  
April 26, 2011 )  
 )  
Attorney Docket No. 67328.00 )

NOTICE OF OPPOSITION

TRADEMARK TRIAL AND APPEAL BOARD  
U.S. Patent and Trademark Office  
2900 Crystal Drive  
Arlington, VA 22202-3513

Sir:

Opposer, the University of Tennessee (hereinafter referred to at times as “UT”), believes it will be damaged by registration of the marks of Application Serial Nos. 85/181,825 and 85/181,827 filed by the named Applicant therein, B and B Partners, and hereby opposes the same. As grounds for this opposition, it is alleged as follows:

1. On information and belief, the Applicant B and B Partners is a partnership of the

State of Tennessee composed of Tammy L. Brown and Stanley P. Brown, III as general partners thereof, with an address at 4504 Ellistown Road, Knoxville, Tennessee 37924.

2. Opposer is a public, non-profit, educational corporation of the State of Tennessee having a business address at 719 Andy Holt Tower, Knoxville, Tennessee 37996.

3. On November 20, 2010, Applicant filed Application Serial No. 85/181,825, seeking registration of the mark TENNESSEE VODKA OLD VOL, and Application Serial No. 85/181,827, seeking registration of the mark TENNESSEE VODKA VOLUNTEER SPIRIT, in the USPTO under Section 1(b) of the Trademark Act (the TENNESSEE VODKA OLD VOL mark and the TENNESSEE VODKA VOLUNTEER SPIRIT marks collectively referred to at times herein as the “Opposed Marks”). The opposed applications seek to register the Opposed Marks for “vodka” in International Class 033 (hereinafter “Applicant’s Goods”). The applications were published for opposition in the *Official Gazette* on April 26, 2011. On May 25, 2011, Requests for Extension of Time to file a Notice of Opposition were filed in the TTAB on behalf of UT seeking an extension of the deadline to file a Notice of Opposition against both opposed applications up to and including August 24, 2011. On May 26, 2011, the Trademark Trial and Appeal Board granted the extension requests.

4. For many years prior to the filing dates of the opposed applications and since long before any alleged commencement of use of the Opposed Marks anywhere or in commerce, UT and/or its licensees and/or affiliates have supplied, offered, sold, and/or provided and continue to supply, offer, sell and/or provide to the general public in interstate commerce a wide variety of goods and services under numerous marks and names including the words and phrases TENNESSEE, UNIVERSITY OF TENNESSEE, VOL, VOLS, VOLUNTEER, VOLUNTEERS,

and VOLUNTEER SPIRIT, alone and together with each other and/or other words, letters, colors, graphics, symbols, and/or designs (hereinafter referred to at times as the “UT Marks”).

5. The UT Marks have been prominently and extensively used and promoted by UT and/or its licensees and/or affiliates in commerce nationwide for many decades, and since long before the filing date of the opposed applications and any alleged earlier commencement of use by Applicant of the Opposed Marks anywhere or in commerce for Applicant’s Goods, for and in connection with substantially all of the services, goods, and activities of UT (and those of UT’s licensees) for or in connection with which the UT Marks are and have been used including, but not limited to, collegiate, graduate, and professional-level educational services, research and development services, intercollegiate and other sporting, academic, entertainment, and other exhibitions, performances, and activities associated with the university, clothing, shirts, pants, outerwear, footwear, headwear, ties, sweaters, vests, bandanas, jewelry, glassware, watches, prints, posters, decals, magnets, stationery, license plates, flags, key chains, video recordings, audio recordings, and a wide range of other related goods and services (the aforementioned collectively referred to as the “UT Goods and Services”). The UT Marks have further been used, shown, and displayed on and in regional, national and international television and radio broadcasts in connection with the UT Goods and Services and seen and/or heard by many millions of people around the world in association with such goods and services since long before the filing date of the opposed applications and any alleged earlier commencement of use by Applicant of the Opposed Marks anywhere or in commerce for any of Applicant’s Goods. As a result of use by UT and its licensee’s and affiliate’s extensive use and promotion of the UT Marks, UT is now and for some time has been the owner of strong and valuable exclusive

common law rights and goodwill in the UT Marks for and in connection with the UT Goods and Services, which rights and goodwill arose and subsisted long before filing of the opposed applications or any earlier use of the Opposed Marks for Applicant's Goods.

6. In addition to its common-law rights, UT is the owner of all right, title, and interest in and to various federal trademark and service mark registrations for certain of the UT Marks, including, but not limited to, the marks shown in the table of U.S. Trademark and Service Mark registrations ("hereinafter the "UT Registrations") below:

<b>Mark</b>	<b>Reg. #</b>	<b>Issue Date</b>	<b>Date of First Use</b>	<b>Goods &amp; Services</b>
<b>VOLUNTEERS</b>	1,390,743	April 22, 1986	1936 1962 1935	Class 16 – window stickers Class 21 – mugs Class 25 – knit shirts
<b>VOLS</b>	1,335,456	May 14, 1985	1965 1962 1936	Class 16 – pens, window and bumper stickers Class 21 – shot glasses Class 25 – sweat shirts
<b>TENNESSEE</b>	1,368,639	November 5, 1985	1961 1936 1962 1965 1936	Class 6 – key chains Class 16 – window and paper stickers Class 20 – seat cushions Class 21 – drinking glasses, ceramic mugs Class 25 – sweat shirts, sweat pants, caps, jackets, knit shirts, t-shirts, v-neck

			1962	shirts, and shorts Class 28 – stuffed toys
UNIVERSITY OF TENNESSEE	1,334,260	May 7, 1985	1972	Class 16 – writing pads, note pads, notebook paper, and window and bumper stickers
			1962	Class 21 – ceramic mugs
			1936	Class 25 –t-shirts and caps

Each of the above UT Registrations is valid and subsisting, unrevoked and uncanceled. Each of the UT Registrations is incontestable pursuant to 15 U.S.C. § 1065. Each of the marks of the above UT Registrations is hereby included in the above-defined “UT Marks” and all of the aforementioned goods and services of the UT Registrations are included in the UT Goods and Services.

7. UT and its licensees and affiliates have expended considerable time, effort, and expense in using, promoting, advertising, popularizing, and making known the UT Marks for and in connection with the UT Goods and Services, with the result that UT has established extensive and valuable exclusive rights and goodwill in the UT Marks as symbols of a source or origin of the UT Goods and Services.

8. The UT Marks are distinctive, well known, and famous in commerce in and among the states of the United States and on a nationwide basis, and each is and all are and have been widely known and famous in commerce in the United States since long before the filing dates of the opposed applications and since long before any alleged first use anywhere or in



commerce of the Opposed Marks for any of Applicant's Goods.

9. In addition to Applicant's constructive knowledge of use and registration of the UT Marks of the UT Registrations, Applicant, on information and belief, had actual knowledge or reason to know of UT's prior use of its well-known and famous UT Marks for and in connection with at least some of the UT Goods and Services prior to the date of filing of the opposed applications in the USPTO, or any other date on which Applicant may seek to rely herein.

10. UT has and for some time has had both actual and constructive use priority anywhere and everywhere in the United States in commerce of the UT Marks with respect to the Opposed Marks of the opposed applications as a result of the significantly earlier filing dates of the UT Registrations and the significantly earlier actual and continuous regional and nationwide prior use of the UT Marks in commerce for and in connection with the UT Goods and Services since a date or dates long before the filing date of the opposed applications and prior to any alleged earlier commencement of use of the Opposed Marks by Applicant in U.S. commerce or any other alleged date of priority on which Applicant may seek to rely herein.

11. The Opposed Marks sought to be registered in the opposed applications so resemble the UT Marks as to be likely, when used on, for, or in connection with Applicant's Goods, to cause confusion, or to cause mistake, or to deceive. Purchasers and prospective purchasers and users as well as the public at large are all likely to mistakenly believe that Applicant's Goods offered or sold under the Opposed Marks of the opposed application are produced, sponsored, endorsed, or approved by or connected with the source of the UT Goods and Services sold, marketed or provided under the UT Marks, and/or that the source of

Applicant's Goods is in some way affiliated, connected, or associated with the source of the UT Goods and/or Services sold, marketed or provided under the UT Marks, all to the detriment of and damage to UT and its goodwill connected with the UT Marks. Registration of the Opposed Marks to Applicant for the goods/services of the opposed applications should, therefore, be refused under at least 15 U.S.C. §§ 1052(d) and 1063.

12. Registration of the Opposed Marks of the opposed applications would be a further source of damage to UT inasmuch as use of the Opposed Marks for Applicant's Goods dilutes and/or is likely to dilute the strength, fame, and distinctive quality of the UT Marks to the detriment and damage of UT. Registration of the Opposed Marks should, therefore, be refused at least under 15 U.S.C. §§ 1052, 1063, and 1125 in view of UT's prior use of and other priority rights in the UT Marks for and in connection with the UT Goods and Services.

13. Registration of the Opposed Marks would be a still further source of damage to UT because it would, among other things, confer upon Applicant various statutory presumptions to which it is not entitled in view of the long prior use, prior registration, and other priority rights in and with respect to the UT Marks and UT's superior rights therein under the federal Trademark Act, Title 15 of the United States Code.

WHEREFORE, the University of Tennessee urges and prays that registration of the Opposed Marks of Application Serial Nos. 85/181,825 and 85/181,827 therein for the goods therein specified be refused.

A fee in the amount of \$600.00 as required by the Commissioner for Trademarks is filed herewith. The commissioner is authorized to draw on the Deposit Account of Luedeka, Neely & Graham, Account No. 12-2355, if the filing fee is insufficient or if the payment is inadvertently

omitted.

Respectfully submitted,

Date: August 24, 2011

s/Mark S. Graham

Mark S. Graham, Esq., Reg. No. 32,355

Wade R. Orr, Esq., Reg. No. 59,390

LUEDEKA, NEELY & GRAHAM, P.C.

Attorneys for Opposer

P.O. Box 1871

Knoxville, TN 37901

(865) 546-4305

**CERTIFICATE OF SERVICE**

This is to certify that a true and exact copy of the foregoing NOTICE OF OPPOSITION is being served on Applicant at its correspondence address of record by first class mail, postage prepaid:

Tammy L. Brown  
Stanley P. Brown, III  
4504 Ellistown Rd.  
Knoxville, TN 37924

Date: August 24, 2011

s/Mark S. Graham

Mark S. Graham