

ESTTA Tracking number: **ESTTA439435**

Filing date: **11/04/2011**

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	Red Robin International, Inc.		
Entity	Corporation	Citizenship	Nevada
Address	6312 S. Fiddlers Green Cir. #200N Greenwood Village, CO 80111 UNITED STATES		

Attorney information	Kevin S. Costanza Seed IP Law Group LLP 701 Fifth Avenue, Suite 5400 Seattle, WA 98104 UNITED STATES kevinc@Seedlp.com, litcal@Seedlp.com Phone:206-622-4900		
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### Applicant Information

Application No	85364172	Publication date	10/11/2011
Opposition Filing Date	11/04/2011	Opposition Period Ends	11/10/2011
Applicant	Gaylord Entertainment Company One Gaylord Drive Nashville, TN 37214 UNITED STATES		

### Goods/Services Affected by Opposition

Class 043. First Use: 2011/07/15 First Use In Commerce: 2011/07/15  
All goods and services in the class are opposed, namely: Restaurant services

### 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.	3800456	Application Date	12/08/2008
Registration Date	06/08/2010	Foreign Priority Date	NONE
Word Mark	YUMMM		

Design Mark	<b>YUMMMM</b>
Description of Mark	NONE
Goods/Services	Class 043. First use: First Use: 2004/05/17 First Use In Commerce: 2004/05/17 Restaurant services

U.S. Registration No.	3720771	Application Date	09/04/2008
Registration Date	12/08/2009	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark	<b>NON-VISUAL MARK</b>		
Description of Mark	The mark consists of a quartet of male voices singing "YUMMMM," as a whole-note chord consisting of G2, D3, B3, and D4.		
Goods/Services	Class 043. First use: First Use: 2004/06/00 First Use In Commerce: 2004/06/00 restaurant services		

Attachments	77628562#TMSN.jpeg ( 1 page )( bytes ) 77562482#TMSN.jpeg ( 1 page )( bytes ) Notice of Opposition.pdf ( 4 pages )(168471 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	/Kevin S. Costanza/
Name	Kevin S. Costanza
Date	11/04/2011



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

RED ROBIN INTERNATIONAL, INC.,	)	
	)	
Opposer,	)	Opposition No. _____
	)	
v.	)	Serial No. 85/364172
	)	
GAYLORD ENTERTAINMENT	)	
COMPANY,	)	
	)	Attorney Docket No. 790017.848
Applicant.	)	

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**NOTICE OF OPPOSITION**

Opposer Red Robin International, Inc. (“Opposer”), which has a place of business at 6312 South Fiddlers Green Circle, Suite 200N, Greenwood Village, Colorado, believes it will be damaged by registration of the mark YUM Y’ALL, shown in United States Trademark Application Serial No. 85/364172 in International Class 43 (“the ’172 Application”), filed by Applicant Gaylord Entertainment Company. (“Applicant”) on July 6, 2011 and published for opposition on October 11, 2011.

The grounds for this opposition are as follows:

1. Since 1969, Opposer has been in the business of providing restaurant and bar services and selling restaurant-related goods including food and promotional items.
2. On or before May 2004, well prior to the July 6, 2011 filing date of Applicant’s intent-to-use application, Opposer adopted and, since then, has continuously used the mark YUMMM as a trademark in interstate commerce in the United States.
3. Opposer is the owner of U.S. Trademark Registration No. 3,800,456 for the word mark YUMMM for restaurant services in International Class 43, which issued June 8, 2010.

Opposer is also the owner of the U.S. Trademark Registration No. 3,720,771 for the sound mark “YUMMM” for restaurant services, which issued December 8, 2009.

4. Since commencing use of the word and sound versions of the mark YUMMM (“Opposer’s Mark”) Opposer has generated and continues to generate substantial revenue from the provision of services in connection with the mark in the United States. Additionally, Opposer has expended and Opposer continues to expend substantial sums of money, time, and effort in advertising, promoting and popularizing Opposer’s Mark in the United States.

5. As a result of the use of the Opposer’s Mark as alleged above, and the advertising and promotion of services offered in connection with Opposer’s Mark, Opposer’s Mark has become well known in the United States and is recognized as identifying Opposer’s high-quality services. Thus, Opposer’s Mark and the associated goodwill are valuable assets of Opposer.

6. Applicant’s applied-for mark consists of the word mark “YUM Y’ALL”. The term “YUM” is the dominant portion of Applicant’s applied-for mark, modified by the descriptive wording “y’all”. Thus, the dominant portion of Applicant’s “YUM Y’ALL” mark is substantially identical to Opposer’s YUMMM mark.

7. In the ’172 Application, Applicant has applied to register the mark “YUM Y’ALL” for “G & S: Restaurant services” in International Class 43.

8. Applicant’s services are identical to Opposer’s services.

9. Applicant’s described services are so closely related to Opposer’s services that confusion is likely to result if the parties’ respective goods and/or services are marketed and sold under the same or confusingly similar marks.

10. Applicant’s “YUM Y’ALL” mark as used for the described services is confusingly and deceptively similar to Opposer’s YUMMM Mark for Opposer’s above-described services, such that the trade and purchasing public will be confused by and deceived into believing that Applicant’s goods originate with Opposer, or are otherwise authorized by, sponsored by, licensed by, affiliated with, or associated with Opposer.

11. To the extent there is any likelihood of confusion between Applicant's applied-for mark and Opposer's Mark, Opposer is the senior user and entitled to stop use and registration by Applicant.

12. By reason of the foregoing, Opposer would be greatly damaged by the registration of Applicant's YUM Y'ALL mark.

WHEREFORE, Opposer prays that this Opposition be sustained, Applicant's application denied and the mark refused registration.

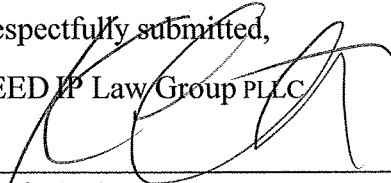
Correspondence Address

Please direct all communications to:

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[Litcal@SeedIP.com](mailto:Litcal@SeedIP.com)  
SEED IP Law Group PLLC  
701 Fifth Avenue, Suite 5400  
Seattle, Washington 98104

DATED this 4<sup>th</sup> day of November, 2011.

Respectfully submitted,  
SEED IP Law Group PLLC



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Attorneys for Opposer  
RED ROBIN INTERNATIONAL, INC.

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CERTIFICATE OF SERVICE

I hereby certify that on this 1<sup>st</sup> day of November, 2011, the foregoing **NOTICE OF OPPOSITION** was served upon Applicant's attorney of record by depositing same with the U.S. Postal Service, first-class postage prepaid, addressed as follows:

Gaylord Entertainment Company  
One Gaylord Drive  
Nashville, TN 37214



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Anne Calico