

ESTTA Tracking number: **ESTTA457019**

Filing date: **02/16/2012**

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	Freixenet, S.A.		
Entity	Corporation	Citizenship	Spain
Address	Joan Sala, 2 08770 Sant Sadurni D'anoia Barcelona, SPAIN		

Attorney information	Robert W. Sacoff Pattishall, McAuliffe, Newbury, Hilliard & Geraldson LLP 311 South Wacker Drive, Suite 5000 Chicago, IL 60606 UNITED STATES rsacoff@pattishall.com, sappel@pattishall.com, tbn@pattishall.com Phone:(312) 554-8000
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Applicant Information

Application No	85107237	Publication date	01/17/2012
Opposition Filing Date	02/16/2012	Opposition Period Ends	02/16/2012
International Registration No.	NONE	International Registration Date	NONE
Applicant	Salentein Argentina B.V. Edificio Philips Vedia 3892, 3' piso, oficinas derechas C1430DAL Buenos Aires, ARGENTINA		

Goods/Services Affected by Opposition

Class 033. All goods and services in the class are opposed, namely: WINES
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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.	3304470	Application Date	03/24/2006
Registration Date	10/02/2007	Foreign Priority Date	NONE
Word Mark	TAPEÃ#A		

Design Mark	<h1>TAPEÑA</h1>
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 2006/09/00 First Use In Commerce: 2006/09/00 Wines

U.S. Registration No.	3557866	Application Date	02/29/2008
Registration Date	01/06/2009	Foreign Priority Date	11/05/2007
Word Mark	TAPEÑA#A		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: Still wines		

Attachments	78845893#TMSN.jpeg (1 page)(bytes) 79053511#TMSN.jpeg (1 page)(bytes) Notice of Opposition.pdf (13 pages)(323624 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	/Seth I. Appel/
Name	Seth I. Appel
Date	02/16/2012

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

In the Matter of Application Serial No. 85/107237: LA TAPERA

Published in the Official Gazette of January 17, 2012, in International Class 33

FREIXENET, S.A.,)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	
SALENTEIN ARGENTINA B.V.,)	
)	
Applicant.)	
)	

NOTICE OF OPPOSITION

Opposer Freixenet, S.A. ("Opposer"), a Spanish corporation located in Barcelona, Spain, believes that it will be damaged by registration of the mark shown in Application Serial No. 85/107237 and hereby opposes the same.

As grounds for opposition, Opposer alleges:

1. Opposer is engaged in the production and sale of wines. Opposer has sold wines under its TAPENÑA mark in U.S. commerce since at least as early as 2006.
2. Opposer has sold substantial dollar and unit volumes of wines under its TAPENÑA mark in U.S. commerce, and has expended substantial sums of money advertising and promoting such products and such trademark.
3. Opposer is the owner of U.S. Trademark Registration No. 3,304,470 of TAPENÑA for "wines" in International Class 33, issued on October 2, 2007, based on an application filed on March 24, 2006. This registration is valid and subsisting, and has a priority date that precedes the filing of Application Serial No. 85/107237, filed August 13, 2010, and precedes Applicant's

use, if any, of the mark shown in that application. A true and correct copy of a printout from the electronic database of the United States Patent and Trademark Office showing the current status and title of Opposer's Registration 3,304,470 is attached hereto as Exhibit A.

4. Opposer is also the owner of U.S. Trademark Registration No. 3,557,866 of TAPENÑA & Design for "still wines" in International Class 33, issued on January 6, 2009, based on an application filed February 29, 2008. This registration is also valid and subsisting, and has a priority date that precedes the filing of Application Serial No. 85/107237 and precedes Applicant's use, if any, of the mark shown in that application. A true and correct copy of a printout from the electronic database of the United States Patent and Trademark Office showing the current status and title of Opposer's Registration 3,557,866 is attached hereto as Exhibit B.

5. In addition to the rights arising from its two U.S. registrations, Opposer has established common law rights in its TAPENÑA mark. These common law rights also predate the filing of Application Serial No. 85/107237 and predate Applicant's use, if any, of the mark shown in that application.

6. Upon information and belief, neither Applicant nor any predecessor or related company of Applicant can claim rights to the mark shown in Application Serial No. 85/107237 that predate Opposer's trademark rights as alleged herein.

7. Applicant's use and/or intended use of LA TAPERERA, and its filing of Application Serial No. 85/107237, are without Opposer's consent.

8. The mark shown in Application Serial No. 85/107237, LA TAPERERA, so resembles Opposer's TAPENÑA mark as to be likely, when used on or in connection with the goods identified in the application, to cause confusion, or to cause mistake, or to deceive.

9. Accordingly, the Board should refuse registration under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

WHEREFORE, Opposer prays that this opposition be sustained; that Application Serial No. 85/107237 be rejected; and that no registration be issued to Applicant.

Opposer submits herewith the requisite filing fee of \$300.00. Please debit any deficiency from or credit any overpayment to Account No. 16-0650. Please address all correspondence to Robert W. Sacoff, Pattishall, McAuliffe, Newbury, Hilliard & Geraldson LLP, 311 South Wacker Drive, Suite 5000, Chicago, Illinois 60606.

Respectfully submitted,

PATTISHALL, McAULIFFE, NEWBURY,
HILLIARD & GERALDSON LLP

Dated: February 16, 2012

By: /Robert W. Sacoff/
Robert W. Sacoff
Seth I. Appel
311 South Wacker Drive, Suite 5000
Chicago, Illinois 60606
(312) 554-8000

Attorneys for Opposer

EXHIBIT A

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2012-02-16 16:27:26 ET

Serial Number: 78845893 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 3304470

Mark

TAPENÑA

(words only): TAPENÑA

Standard Character claim: Yes

Current Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Date of Status: 2007-10-02

Filing Date: 2006-03-24

Transformed into a National Application: No

Registration Date: 2007-10-02

Register: Principal

Law Office Assigned: LAW OFFICE 110

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: 2007-08-27

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

1. Freixenet, S.A.

Address:

Freixenet, S.A.
Joan Sala, 2
08770 Sant Sadurni D'anoia, Barcelona
Spain

Legal Entity Type: Corporation**State or Country of Incorporation:** Spain

GOODS AND/OR SERVICES

International Class: 033**Class Status:** Active

Wines

Basis: 1(a)**First Use Date:** 2006-09-00**First Use in Commerce Date:** 2006-09-00

ADDITIONAL INFORMATION

(NOT AVAILABLE)

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.

2010-10-19 - Attorney Revoked And/Or Appointed

2010-10-19 - TEAS Revoke/Appoint Attorney Received

2007-10-02 - Registered - Principal Register

2007-09-19 - TEAS Change Of Correspondence Received

2007-08-27 - Law Office Registration Review Completed

2007-08-27 - Assigned To LIE

2007-07-17 - Allowed for Registration - Principal Register (SOU accepted)

2007-07-16 - Statement Of Use Processing Complete

2007-04-13 - Use Amendment Filed
2007-04-13 - TEAS Statement of Use Received
2007-02-06 - NOA Mailed - SOU Required From Applicant
2006-11-14 - Published for opposition
2006-10-25 - Notice of publication
2006-09-23 - Law Office Publication Review Completed
2006-09-15 - Assigned To LIE
2006-09-01 - Approved For Pub - Principal Register
2006-08-30 - Assigned To Examiner
2006-03-29 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Robert W. Sacoff

Correspondent

Robert W. Sacoff
Pattishall, McAuliffe, Newbury, Hilliard
311 S. Wacker Drive, Suite 5000
Chicago IL 60606
Phone Number: 312 554-8000
Fax Number: 312 554-8015

EXHIBIT B

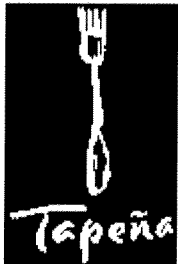
Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2012-02-16 16:27:53 ET

Serial Number: 79053511 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 3557866

Mark



(words only): TAPENÑA

Standard Character claim: No

Current Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Date of Status: 2009-01-06

Filing Date: 2008-02-29

Transformed into a National Application: No

Registration Date: 2009-01-06

Register: Principal

Law Office Assigned: LAW OFFICE 116

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: 2009-01-06

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

1. Freixenet, S.A.

Address:

Freixenet, S.A.
Joan Sala, 2 E-08770 SANT SADURNI D'ANOIA (Barcelona)
Spain

Legal Entity Type: Sociedad Anónima

State or Country Where Organized: Spain

GOODS AND/OR SERVICES

International Class: 033

Class Status: Active

Still wines

Basis: 66(a)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

Color(s) Claimed: Color is not claimed as a feature of the mark.

Translation: The word "TAPENÑA" has no meaning in a foreign language.

Design Search Code(s):

11.01.03 - Forks

26.11.21 - Rectangles that are completely or partially shaded

Prior Registration Number(s):

3304470

MADRID PROTOCOL INFORMATION

International Registration Number: 0963401

International Registration Date: 2008-02-29

Priority Claimed: Yes

Date of Section 67 Priority Claim: 2007-11-05

International Registration Status: Request For Extension Of Protection Processed

Date of International Registration Status: 2008-06-12

International Registration Renewal Date: 2018-02-28

Notification of Designation Date: 2008-06-12

Date of Automatic Protection: 2009-12-12

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.

2010-10-19 - Attorney Revoked And/Or Appointed

2010-10-19 - TEAS Revoke/Appoint Attorney Received

2009-05-15 - Final Decision Transaction Processed By IB

2009-04-17 - Final Disposition Notice Sent To IB

2009-04-17 - Final Disposition Processed

2009-04-07 - Final Disposition Notice Created, To Be Sent To IB

2009-01-06 - Registered - Principal Register

2008-10-21 - Published for opposition

2008-10-01 - Notice of publication

2008-09-13 - Law Office Publication Review Completed

2008-09-11 - Approved for Pub - Principal Register (Initial exam)

2008-09-10 - Teas/Email Correspondence Entered

2008-09-10 - Communication received from applicant

2008-09-10 - Assigned To LIE

2008-09-03 - TEAS Response to Office Action Received

2008-07-31 - Attorney Revoked And/Or Appointed

2008-07-31 - TEAS Revoke/Appoint Attorney Received

2008-07-11 - Refusal Processed By IB

2008-06-19 - Non-Final Action Mailed - Refusal Sent To IB

2008-06-19 - Refusal Processed By MPU

2008-06-19 - Non-Final Action (Ib Refusal) Prepared For Review

2008-06-18 - Non-Final Action Written

2008-06-13 - Assigned To Examiner

2008-06-13 - New Application Entered In Tram

2008-06-12 - Sn Assigned For Sect 66a Appl From IB

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Robert W. Sacoff

Correspondent

Robert W. Sacoff

Pattishall, McAuliffe, Newbury, Hilliard

311 S. Wacker Drive, Suite 5000

Chicago IL 60606

Phone Number: 312 554-8000

Fax Number: 312 554-8015

CERTIFICATE OF SERVICE

I, Seth I. Appel, an attorney for Opposer, hereby certify that a copy of the foregoing **NOTICE OF OPPOSITION** was served upon Applicant, at Applicant's correspondence address of record, to Jennifer L. Dean, Esq., Drinker Biddle & Reath LLP, 1500 K Street NW, Suite 1100, Washington D.C. 20005, by first-class mail, on this 16th day of February, 2012, postage prepaid.

/Seth I. Appel/

Seth I. Appel