

ESTTA Tracking number: **ESTTA482300**

Filing date: **07/09/2012**

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	Fertitta Hospitality, LLC
Granted to Date of previous extension	07/08/2012
Address	1510 West Loop South Houston, TX 77027 UNITED STATES

Attorney information	William D. Raman Wong, Cabello, Lutsch, Rutherford & Brucculeri, LLP P.O. Box 685108 Austin, TX 78768-5108 UNITED STATES wctrademarkaustin@counselip.com, braman@counselip.com Phone:(512) 473-2550
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Applicant Information

Application No	85180567	Publication date	01/10/2012
Opposition Filing Date	07/09/2012	Opposition Period Ends	07/08/2012
Applicant	FERTITTA ENTERTAINMENT LLC 1505 SOUTH PAVILION CENTER DRIVE LAS VEGAS, NV 89135 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 009. All goods and services in the class are opposed, namely: Computer software and computer software downloadable from a computer network for use in the provision of entertainment services, namely, on-line computer games, on-line card games, on-line roulette games and on-line casino games; downloadable electronic publications in the nature of magazines concerning on-line computer games, on-line card games, on-line roulette games and on-line casino games; electronic publications in the nature of magazines provided by electronic mail concerning on-line computer games, on-line card games, on-line roulette games and on-line casino games; communication servers; computer hardware; educational software featuring instruction for playing card games; computer software for playing poker games; computer game and video game cassettes, cartridges, discs and software programs; interactive computer systems consisting of software and controllers for playing on-line computer games, on-line card games, on-line roulette games and on-line casino games; interactive electronic apparatus, namely, controllers for use over a computer network in relation to on-demand gaming, amusement and entertainment services; electrical and scientific apparatus, namely, prerecorded video discs and pre-recorded digital versatile discs featuring video content or television shows featuring poker games, information regarding the game of poker and instructional information regarding card games and the game of poker; video game discs; decorative refrigerator magnets;</p>
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and slot machines
<p>Class 025. All goods and services in the class are opposed, namely: wearing apparel, namely, shirts, t-shirts, polo shirts, golf shirts, tank tops, vests, blouses, sweaters, parkas, turtlenecks, pullovers, skirts, shorts, jeans, slacks, pants, nightshirts and night gowns, pajamas, robes, rompers, socks, coveralls, mittens, gloves, undergarments, jerseys, leotards, hosiery, booties, slippers, scarves, belts, neckties, suspenders, headbands, hats, caps, visors, blazers, rain ponchos, jackets, wind resistant jackets, warm-up suits, jogging suits, sweatshirts, sweat pants, beach wear, namely, bathing suits, beach sandals and beach coveralls; footwear, namely, shoes, boots, sandals, sneakers and athletic shoes</p>
<p>Class 028. All goods and services in the class are opposed, namely: Games, namely, card games, board games, roulette wheels, parlor game versions of casino games; coin-operated video games and games of chance; playing cards; card games; dice and dice games; roulette wheels; parlor game versions of lottery games, bingo game playing equipment, keno cards; gaming equipment, namely, casino chips; darts, dart boards, electronic dart games and dart boards; articles and apparatus for playing pool and snooker, namely, cues and tables; gaming equipment kits consisting of playing cards, poker chips, table felt, gaming tables, octagon-shaped pub tables, automatic card shufflers, blind and dealer buttons, card makers and rule books sold therewith; lottery cards and tickets; disposable tickets for playing games of chance; equipment for playing card games, namely, cards and chips; game tables and table covers for playing games, namely, table covers used to adapt existing tables to tables for playing poker</p>
<p>Class 035. All goods and services in the class are opposed, namely: Retail store services featuring a variety of goods, namely, gaming merchandise, souvenirs, mugs, glasswear, gift items, clothing, clothing accessories, consumer electronics, housewares, paper products, sporting goods, books and magazines, food and beverages</p>
<p>Class 038. All goods and services in the class are opposed, namely: Electronic transmission of text, graphics, and data; communication services, namely, providing online chat rooms for real-time interaction between online computer users concerning online contests and games of chance; communication services, namely, providing access to an online computer database for real-time tracking of and searching for network use and online computer users and transferring users to the online location(s) of another user or other users or other online locations; communication services, namely, providing online chat rooms for real-time interaction between online computer users for arranging and playing online contests and games of chance; instant messaging services</p>
<p>Class 043. All goods and services in the class are opposed, namely: restaurant, bar and cocktail lounge services</p>

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
The mark is primarily merely a surname	Trademark Act section 2(e)(4)

Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	85315323	Application Date	05/09/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	FERTITTA		

Design Mark	<h1>FERTITTA</h1>		
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2006/12/12 First Use In Commerce: 2006/12/12 Olive oil		

U.S. Application No.	85319256	Application Date	05/12/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	FERTITTA		
Design Mark	<h1>FERTITTA</h1>		
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 2011/05/11 First Use In Commerce: 2011/05/11 Restaurant and bar services; spa services, namely, providing temporary accommodations and meals to clients of a health or beauty spa; and resort lodging services; excluding casino services		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	FERTITTA		
Goods/Services	Dining, entertainment and hospitality services		

Related Proceedings	Applicant is concurrently filing a Notice of Opposition against Serial No. 85/180,560 for the Mark FERTITTA GAMING
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Attachments	85315323#TMSN.jpeg (1 page)(bytes) 85319256#TMSN.jpeg (1 page)(bytes) Executed Notice of Opposition.pdf (11 pages)(556231 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	/William D. Raman/
Name	William D. Raman
Date	07/09/2012

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

In the Matter of Application
Serial Nos. 85/180,567

Published in the Official Gazette
on January 10, 2012

Fertitta Hospitality, LLC,	§	
	§	
Opposer,	§	
	§	
v.	§	Opposition No. ***
	§	
Fertitta Entertainment, LLC,	§	
	§	
Applicant.	§	

Marks: FERTITTA ENTERTAINMENT

NOTICE OF OPPOSITION

BOX TTAB

FEE

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

Madam:

Fertitta Hospitality, LLC (“Opposer” or “FHLLC”), a Texas limited liability company having an address of 1510 West Loop South, Houston, Texas 77027, believes that it will be damaged by registration by Fertitta Entertainment, LLC of the mark FERTITTA ENTERTAINMENT in Application Serial Nos. 85/180,567 in International Classes 09, 25, 28, 35, 38, and 43, and hereby opposes the same.

As grounds of opposition, it is alleged that:

1. Applicant seeks to register the mark FERTITTA ENTERTAINMENT as a mark for the following goods and services in the following classes:

IC 009: Computer software and computer software downloadable from a computer network for use in the provision of entertainment services, namely, on-line computer games, on-line card games, on-line roulette games and on-line casino games; downloadable electronic publications in the nature of magazines concerning on-line computer games, on-line card games, on-line roulette games and on-line casino games; electronic publications in the nature of magazines provided by electronic mail concerning on-line computer games, on-line card games, on-line roulette games and on-line casino games; communication servers; computer hardware; educational software featuring instruction for playing card games; computer software for playing poker games; computer game and video game cassettes, cartridges, discs and software programs; interactive computer systems consisting of software and controllers for playing on-line computer games, on-line card games, on-line roulette games and on-line casino games; interactive electronic apparatus, namely, controllers for use over a computer network in relation to on-demand gaming, amusement and entertainment services; electrical and scientific apparatus, namely, prerecorded video discs and pre-recorded digital versatile discs featuring video content or television shows featuring poker games, information regarding the game of poker and instructional information regarding card games and the game of poker; video game discs; decorative refrigerator magnets; and slot machines

IC 025: Wearing apparel, namely, shirts, t-shirts, polo shirts, golf shirts, tank tops, vests, blouses, sweaters, parkas, turtlenecks, pullovers, skirts, shorts, jeans, slacks, pants, nightshirts and night gowns, pajamas, robes, rompers, socks, coveralls, mittens, gloves, undergarments, jerseys, leotards, hosiery, booties, slippers, scarves, belts, neckties, suspenders, headbands, hats, caps, visors, blazers, rain ponchos, jackets, wind resistant jackets, warm-up suits, jogging suits, sweatshirts, sweat pants, beach wear, namely, bathing suits, beach sandals and beach coveralls; footwear, namely, shoes, boots, sandals, sneakers and athletic shoes

IC 028: Games, namely, card games, board games, roulette wheels, parlor game versions of casino games; coin-operated video games and games of chance; playing cards; card games; dice and dice games; roulette wheels; parlor game versions of lottery games, bingo game playing equipment, keno cards; gaming equipment, namely, casino chips; darts, dart boards, electronic dart games and dart boards; articles and apparatus for playing pool and snooker, namely, cues and tables; gaming equipment kits consisting of playing cards, poker chips, table felt, gaming tables, octagon-shaped pub tables, automatic card shufflers, blind and dealer buttons, card makers and rule books sold therewith; lottery cards and tickets; disposable tickets for playing games of chance; equipment for playing card games,

namely, cards and chips; game tables and table covers for playing games, namely, table covers used to adapt existing tables to tables for playing poker

IC 035: Retail store services featuring a variety of goods, namely, gaming merchandise, souvenirs, mugs, glasswear, gift items, clothing, clothing accessories, consumer electronics, housewares, paper products, sporting goods, books and magazines, food and beverages

IC 038: Electronic transmission of text, graphics, and data; communication services, namely, providing online chat rooms for real-time interaction between online computer users concerning online contests and games of chance; communication services, namely, providing access to an online computer database for real-time tracking of and searching for network use and online computer users and transferring users to the online location(s) of another user or other users or other online locations; communication services, namely, providing online chat rooms for real-time interaction between online computer users for arranging and playing online contests and games of chance; instant messaging services

IC 043: Restaurant, bar and cocktail lounge services

2. The application to register the mark for such goods and services was filed on an intent-to-use basis. The application was published for opposition on January 10, 2012. The time for filing an opposition has been extended until July 8, 2012, which falls on a Sunday, making the present Notice of Opposition due on Monday, July 9.
3. Opposer and its predecessors-in-interest (collectively hereafter referred to as "Opposer") have used the name FERTITTA as a trade name or trademark, or as part of a trade name or trademark for various goods and services for many years. For example, Opposer has used the mark FERTITTA as a trademark for olive oil products since at least as early as 2006 (Application SN 85/315,323). Additionally, Opposer has used FERTITTA as a mark for restaurant, bar, spa, and resort lodging services, including use on the Internet promoting such services, since at least as early as May 11, 2011 (Application SN 85/319,256). Still further, Opposer has featured the tagline "A FERTITTA

ENTERTAINMENT COMPANY” on a restaurant menu and on a promotional brochure for the dining, entertainment, hospitality, and gaming services of a related company. (See, Exhibits A and B). Moreover, Opposer’s Chairman and CEO, Tilman Fertitta, has received extensive publicity and recognition in connection with his association with Opposer, with Landry’s, Inc., and with various other predecessor entities owned or controlled by Mr. Fertitta that include his surname within their name. These entities include, for example, Fertitta Hospitality, Inc. and Fertitta Holdings, LLC. Opposer has operated dining, hospitality, entertainment and gaming services under business names that include the name “Fertitta” for many years. As a result, on information and belief, Opposer has developed and enjoys significant goodwill and common law rights under the name and mark FERTITTA.

4. On information and belief, Opposer’s use of “FERTITTA” as a name or mark in connection with its goods and services predates trademark use by Applicant of “FERTITTA” for any of the goods and services listed in the present application.
5. To the extent that Opposer’s use of the mark FERTITTA has caused the mark to become distinctive of Opposer’s goods and services, Applicant’s mark, FERTITTA ENTERTAINMENT, when used for the goods and services identified in the application, especially restaurant, bar and cocktail lounge services, so resembles Opposer’s mark, FERTITTA, as to be likely to cause confusion, mistake, or deception.
6. The name “Fertitta” is primarily merely a surname. Applicant has not alleged or proven any use of the name Fertitta in connection with the goods and services recited in the subject application, nor any use of the designation “Fertitta Entertainment.” The

designations "Fertitta" and "Fertitta Entertainment" are not distinctive of Applicant's goods and services identified in the present application and are not entitled to registration by Applicant in connection with such goods and services.

7. If Applicant is granted the registration herein opposed, it would thereby obtain at least a prima facie exclusive right to the use of the designation FERTITTA ENTERTAINMENT for the goods and services identified in its application. Such registration would be a source of damage and injury to Opposer.

Wherefore, Opposer prays that this Opposition be sustained and that the mark of Application Serial No. 85/180,567 be refused registration.

If the requisite filing fee associated with filing the present Notice of Opposition is inadvertently omitted, or the amount is insufficient, or should any additional fees under 37 C.F.R. § 2.6 be required for any reason relating to the present Notice of Opposition, or should an overpayment be included herein, the Commissioner for Trademarks is authorized to deduct or credit said fees from or to Wong Cabello Deposit Account No. 501922/0346-0009.

Please direct all communications concerning the referenced opposition proceeding to the following:

William D. Raman
WONG, CABELLO, LUTSCH,
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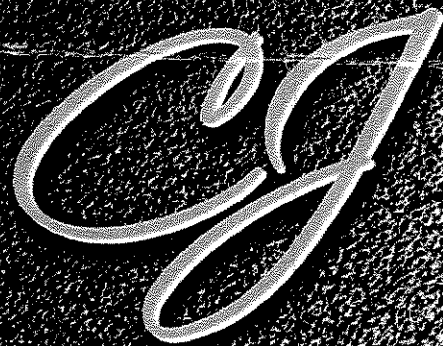
Respectfully submitted,

By: William D. Raman
William D. Raman
Attorney for Opposer

WONG, CABELLO, LUTSCH,
RUTHERFORD & BRUCCULERI, L.L.P.
P.O. Box 685108
Austin, Texas 78768-5108
(512) 473-2550

Dated: 7/9/2012

Exhibit A



CLAIM JUMPER®

VEGETARIAN SELECTIONS

Please specify VEGETARIAN when ordering from this menu.

These menu selections contain no meat, fish, poultry, shellfish or product derived from these sources, but may contain dairy or eggs. Please be aware that non-vegetarian products are prepared in our restaurant and, therefore, cross contamination may occur.

APPETIZERS

Fire-Roasted Artichoke (Seasonal) Balsamic-marinated artichoke steamed and grilled tender to perfection. Served with garlic aioli 8.99

California Quesadilla Grilled corn tortillas filled with jack and cheddar cheese, green onions, pico de gallo and black beans. Served with salsa and fresh avocado 10.99

Oven Roasted Tomato Flatbread* Baked in a stone-hearth with creamy alfredo sauce, mozzarella, smoked gouda cheese, herb-roasted tomatoes and fresh spinach 5.99

Three Cheese Potatoes Cheddar, jack and aged parmesan cheese, creamy mashed potatoes, onions, dill and cilantro lightly breaded and fried crisp with salsa ranch 6.99

Lemon Pepper Zucchini Lightly fried and piled high then topped with lemon pepper parmesan and served with ranch dipping sauce 7.99

ENTRÉES

Bow Tie Pasta Bow tie pasta, spinach tortellini and oven roasted tomatoes tossed in creamy alfredo sauce 11.99

Giant Stuffed Baker Giant baked potato stuffed with roasted vegetables, melted jack and cheddar cheese and fresh salsa 9.99

ENTRÉE SALADS

Chinese Salad Crunchy noodles, almonds, sesame seeds, green onions, carrots and cilantro tossed with sweet and spicy peanut dressing 11.99

BBQ Salad With corn, black beans, carrots, tomato, green onions, cilantro and crisp corn tortilla strips. Tossed with homemade ranch dressing and topped with sweet BBQ sauce 11.99

Chopped Cobb Salad Bleu cheese crumbles, avocado, diced egg, tomatoes, black beans and corn with homemade bleu cheese dressing 12.99

PIZZAS*

Margherita Pizza Fresh Roma tomatoes, basil, mozzarella and goat cheese 9.99

Three Cheese Pizza A creamy blend of gouda, mozzarella and parmesan 9.99

Oven Roasted Tomato Flatbread & Salad

Baked in a stone-hearth with creamy alfredo sauce, mozzarella, smoked gouda, herb-roasted tomatoes and fresh spinach. Served with Small Green or Caesar Salad 7.99

Small Pizza & Starter Salad Choice of one of our smaller versions of Margherita or Three Cheese Pizza with choice of Starter Salad 12.49

*Our Oven Roasted Tomato Flatbread and all pizza selections are not provided at the following locations: Buena Park, Fountain Valley and La Mesa.

GLUTEN-FREE

Please specify GLUTEN-FREE when ordering from this menu.

These menu items have been modified to be gluten-free. Please be aware that Claim Jumper Restaurant is not a gluten-free establishment and, therefore, cross contamination may occur.

SALADS

California Citrus Chicken Salad Char-grilled chicken with mandarin oranges, green apples, avocado, dried cranberries, red onions, glazed pecans, bleu cheese crumbles and green onions. Tossed with our signature citrus vinaigrette dressing 12.49

• No bleu cheese crumbles

BBQ Chicken Salad Char-grilled chicken with corn, black beans, carrots, tomato, green onions, cilantro and crisp corn tortilla strips. Tossed with homemade ranch dressing and topped with sweet BBQ sauce 11.99

ENTRÉES

Rotisserie Chicken Our original recipe since 1977. A half chicken seasoned, slow cooked over open flames and roasted to perfection 14.99

Norwegian Salmon** Our salmon is flame grilled and brushed with garlic herb butter. Served with roasted vegetables and mashed potatoes 20.99
Available blackened or BBQ glazed 21.99

Giant Stuffed Baker Giant baked potato stuffed with charbroiled or blackened chicken and roasted vegetables topped with melted cheddar and jack cheese 11.99

• Decline alfredo sauce

California Chicken Quesadilla Grilled corn tortillas filled with chicken, jack and cheddar cheese, green onions, pico de gallo and black beans. Served with salsa and fresh avocado 11.99

BBQ Baby Back Pork Ribs Our original tender ribs basted with our smoky mesquite BBQ sauce then flame-broiled Full Rack 23.99 Half Rack 18.99

Ribs & Chicken Half-rack of Baby Back Pork Ribs paired with Rotisserie Chicken 24.99

GRILLED STEAKS & LOBSTER

Hand-cut, all of our steaks are carefully aged from 28 to 35 days. All steaks are seasoned and flame-broiled, then brushed with garlic-herb butter. All Grilled Steaks are served with a Small Green or Small Caesar Salad, and the choice of one side.

Rare - Red Cool Center
Medium Rare - Red Warm Center
Medium - Pink Warm Center
Medium Well - Slightly Pink, Warm Center
Well Done - No Pink Throughout

Chopped Steak** 12 oz Certified Angus Beef® ground steak topped with grilled onions, cheddar cheese and diced tomatoes 14.99

Top Sirloin** 9 oz Certified Angus Beef® top sirloin 16.99

Claim Jumper K-Bob** Marinated Certified Angus Beef® top sirloin with mushrooms, onions, bell peppers, pasilla peppers and grilled potatoes.
Served over rice pilaf 15.99
Substitute Chicken or Grilled Shrimp • Decline Rice Pilaf

Filet Mignon** 7 oz center-cut USDA Choice 24.99

Ribeye Steak** Hand-cut, boneless USDA Choice
12 oz 23.99 16 oz 28.99

New York Strip** 12 oz center-cut USDA Choice 25.99

Porterhouse Steak** Two steaks in one! Our famous 20 oz USDA Choice bone-in NY strip and filet 28.99

Top Sirloin and Lobster Tail** 7 oz Certified Angus Beef® top sirloin. Served with a premium 8 oz lobster tail 36.99

Filet Mignon and Lobster Tail** 7 oz center-cut USDA Choice® filet. Served with a premium 8 oz lobster tail 44.99

Claim Jumper is a 100% trans-fat free restaurant.

If you have any food allergies or special dietary restrictions, please notify your server and we will try our best to accommodate you. Our Meat and Seafood can be cooked to order. Consuming raw or undercooked meat, poultry or seafood may increase your risk of foodborne illness, especially if you have certain medical conditions. Nutritional information available in the Saloon Guide.

Exhibit B



Landry's

INC.

Dining. Entertainment.
Hospitality. Gaming.