

ESTTA Tracking number: **ESTTA483704**

Filing date: **07/16/2012**

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	Sazerac Company, Inc.
Granted to Date of previous extension	07/18/2012
Address	3850 N. Causeway Blvd. Metairie, LA 70002 UNITED STATES

Attorney information	Bryan Boyle Cooley LLP 777 6th Street, NW Washington, CA 20001 UNITED STATES bryan.boyle@cooley.com, trademarks@cooley.com Phone:6508435000
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**Applicant Information**

Application No	85456434	Publication date	03/20/2012
Opposition Filing Date	07/16/2012	Opposition Period Ends	07/18/2012
Applicant	Phillips Products Company, LLC 1607 South 12th Street Princeton, MN 55371 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 033. All goods and services in the class are opposed, namely: Alcoholic beverages except beers
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
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**Mark Cited by Opposer as Basis for Opposition**

U.S. Registration No.	3714292	Application Date	11/20/2008
Registration Date	11/24/2009	Foreign Priority Date	NONE
Word Mark	TASTES LIKE HEAVEN. BURNS LIKE HELL.		

Design Mark	TASTES LIKE HEAVEN. BURNS LIKE HELL.
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 2007/04/00 First Use In Commerce: 2007/04/00 Whiskey

Attachments	77618276#TMSN.gif ( 1 page )( bytes ) Notice of Opposition (HOT AS HELL).pdf ( 5 pages )(128338 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	/Bryan Boyle/
Name	Bryan Boyle
Date	07/16/2012

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

In the matter of Application Serial No. 85/456,434  
For the Trademark HOT AS HELL  
Published in the Official Gazette on March 20, 2012

SAZERAC COMPANY, INC.	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No.
	)	
PHILLIPS PRODUCTS COMPANY, LLC	)	
	)	
	)	
Applicant.	)	
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**NOTICE OF OPPOSITION**

Opposer Sazerac Company, Inc. (“Sazerac”), a Louisiana corporation having its principal place of business at 3850 N. Causeway Blvd., Metairie, Louisiana 70002, will be damaged by the issuance of a registration for the mark HOT AS HELL (hereafter “Applicant’s Mark”), as applied for in Application Serial No. 85/456,434 filed on October 26, 2011 by Applicant Phillips Products Company, LLC, a Minnesota limited liability company (“Applicant”). Sazerac, having previously been granted an extension of time to oppose Applicant’s Mark, hereby opposes same.

As grounds for opposition, Sazerac alleges:

1. Sazerac is a company that markets and sells a number of different types and brands of alcoholic beverages and distilled spirits, including without limitation vodkas, whiskeys, tequilas, liqueurs, and wines. Sazerac has marketed and sold alcoholic beverages and distilled spirits in the United States for over a century.

2. Sazerac has consistently and continually used the trademark TASTES LIKE HEAVEN BURNS LIKE HELL on and in connection with its FIREBALL whisky product line. Sazerac has used the TASTES LIKE HEAVEN BURNS LIKE HELL marks in interstate commerce for over five years, since April 2007. By virtue of its marketing and by virtue of the excellence of the underlying distilled spirit product, the public has come to know, rely on, and recognize the TASTES LIKE HEAVEN BURNS LIKE HELL mark as a source identifier for Sazerac's alcoholic beverages and distilled spirits sold under its FIREBALL brand.

3. Sazerac owns the following United States trademark registration:

TASTES LIKE HEAVEN. BURNS LIKE HELL. (Reg. No. 3714292), issued November 24, 2009 for whiskey,

(hereafter, the "TASTES LIKE HEAVEN BURNS LIKE HELL" Mark).

4. Sazerac has used the TASTES LIKE HEAVEN BURNS LIKE HELL Mark in commerce prior to Applicant's filing date of October 26, 2011.

5. Upon information and belief, Sazerac alleges that on October 26, 2011, Applicant filed an application to register the mark HOT AS HELL upon an intent-to-use basis. Applicant seeks registration for alcoholic beverages except beers in international class 033.

6. Applicant's HOT AS HELL mark creates a likelihood of consumer confusion when compared to Sazerac's TASTES LIKE HEAVEN BURNS LIKE HELL Mark because the two marks are confusingly similar in sight, sound, meaning, and commercial impression.

7. Both marks connote a spicy alcoholic shooter drink, often referred to as a "shot."

8. Applicant's Mark is intended for use in connection with products that overlap with and are related to Sazerac's alcoholic beverage products.

9. Applicant's targeted customer base overlaps with the purchasers and consumers of Sazerac's distilled spirits and other alcoholic beverages.

10. As Applicant's goods description contains no restrictions or limitations as to Applicant's channels of trade, Sazerac may assume that Applicant's Mark, like Sazerac's TASTES LIKE HEAVEN BURNS LIKE HELL Mark, will be used in all accepted channels of trade. Therefore, in addition to overlapping customer and consumer bases, Applicant's intended channels of trade for its distilled spirits and other alcoholic beverage products overlap with channels of trade used by Sazerac in marketing, selling, and otherwise distributing its alcoholic beverage products marketed and sold under its TASTES LIKE HEAVEN BURNS LIKE HELL Mark.

11. If Applicant is permitted to register the mark HOT AS HELL for alcoholic beverages, confusion resulting in damage and injury to Sazerac would likely occur. Persons familiar with Sazerac's TASTES LIKE HEAVEN BURNS LIKE HELL Mark would likely perceive Applicant's products as associated with, affiliated with, or sponsored by Sazerac. Such confusion would inevitably result in damage to Sazerac.

12. Sazerac's customers and the relevant public are likely to misapprehend Applicant's Mark as a Sazerac mark rather than a mark of Applicant and/or believe in error that goods offered under the Applicant's HOT AS HELL mark are offered by, in association with, or under license from Sazerac.

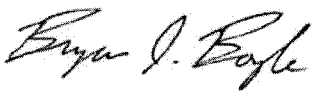
13. Any defect, objection to, or fault found with Applicant's beverages marketed under its HOT AS HELL mark would necessarily reflect on and seriously injure the reputation that Sazerac has established for its alcoholic beverage products.

14. Registration of Applicant's Mark would give Applicant *prima facie* evidence of the validity and ownership of Applicant's Mark and of Applicant's exclusive right to use its HOT AS HELL mark, all to the detriment of Sazerac.

15. Wherefore, Sazerac prays that this Opposition be sustained and that Application Serial No. 85/456,434 be denied and refused registration.

COOLEY LLP

Dated: July 16, 2012

By:   
Bryan J. Boyle, Esq.  
Todd S. Bontemps, Esq.  
Attorneys for Opposer  
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Suite 1100  
Washington, DC 2001  
(650) 843-5000

**CERTIFICATE OF SERVICE**

I hereby certify that I mailed the foregoing **NOTICE OF OPPOSITION** regarding Phillips Products Company, LLC to Applicant and listed Attorneys of Record for Applicant, by depositing a true and correct copy of the same with the United States Postal Service, first class mail, postage prepaid, in envelopes addressed to:

Paulette R. Carey  
Buchman Law Firm, LLP  
510 Thornall ST STE 200  
Edison, New Jersey 08837-2204

and

Phillips Products Company, LLC  
1607 South 12th Street  
Princeton, Minnesota 55371

Date: July 16, 2012

  
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Maria Weiland