

ESTTA Tracking number: **ESTTA509570**

Filing date: **12/06/2012**

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	Firefly Distilling Company, LLC		
Entity	Limited Liability Company	Citizenship	Delaware
Address	6775 Bears Bluff Road Wadmalaw Island, SC 29487 UNITED STATES		

Attorney information	Kathryn D. Duvall Cooley LLP 777 6th St., NW Suite 1100 Washington, DC 20001 UNITED STATES trademarks@cooley.com , kduvall@cooley.com Phone:650-843-5000		
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### Applicant Information

Application No	85100146	Publication date	11/06/2012
Opposition Filing Date	12/06/2012	Opposition Period Ends	12/06/2012
Applicant	Soque River Enterprise, LLC P.O. Box 2407 Clarksville, GA 30523 UNITED STATES		

### Goods/Services Affected by Opposition

Class 033. All goods and services in the class are opposed, namely: Distilled spirits, namely, vodka and scotch
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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.	3665660	Application Date	04/28/2008
Registration Date	08/11/2009	Foreign Priority Date	NONE
Word Mark	FIREFLY SWEET TEA HAND CRAFTED SWEET TEA FLAVORED VODKA		

Design Mark			
Description of Mark	The mark comprises the word "FIREFLY" with a design of a circle, a Palmetto tree on a landscape, a crescent moon, a horizon with foliage, and images of fire flies.		
Goods/Services	Class 033. First use: First Use: 2008/04/14 First Use In Commerce: 2008/04/14 Liquor		


U.S. Registration No.	3656525	Application Date	02/25/2008
Registration Date	07/21/2009	Foreign Priority Date	NONE
Word Mark	FIREFL		
Design Mark			
Description of Mark	The mark consists of the wording "FIREFLY" with a design of a firefly comprising the letter "Y".		
Goods/Services	Class 033. First use: First Use: 2006/05/01 First Use In Commerce: 2006/05/01 Liquor		

U.S. Application No.	85019459	Application Date	04/21/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	FIREFLY SKINNY TEA		

Design Mark			
Description of Mark	The mark consists of the wording "FIREFLY SKINNY TEA" with a design of a firefly comprising the letter "Y" in firefly. The design of several small star shapes trails the tail of the firefly suggesting a trail of light.		
Goods/Services	Class 033. First use: Low-calorie, low-sugar, tea-flavored vodka		

U.S. Application No.	85019483	Application Date	04/21/2010
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	FIREFLY TEASERS
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Design Mark			
Description of Mark	The mark consists of the wording "FIREFLY TEASERS" with a design of a firefly comprising the letter "Y". The design of several small star shapes trails the tail of the firefly suggesting a trail of light.		
Goods/Services	Class 033. First use: Distilled Spirits		

Attachments	77459747#TMSN.jpeg ( 1 page )( bytes ) 77405013#TMSN.jpeg ( 1 page )( bytes ) 85019459#TMSN.jpeg ( 1 page )( bytes ) 85019483#TMSN.jpeg ( 1 page )( bytes ) Firefly NOO re FLY_Soque River_12_06_2012.pdf ( 5 pages )(359228 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	/KDD/
Name	Kathryn D. Duvall
Date	12/06/2012

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

In the matter of application Serial No. 85/100,146  
For the Trademark FLY  
Published in the Official Gazette on November 6, 2012

FIREFLY DISTILLING COMPANY, LLC.	)	
	)	
Opposer,	)	
	)	
v.	)	
	)	
SOQUE RIVER ENTERPRISE, LLC	)	Opposition No.
	)	
Applicant.	)	
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**NOTICE OF OPPOSITION**

Opposer Firefly Distilling Company, LLC (“Opposer” or “Firefly Distilling”), a Delaware limited liability company having its principal place of business at 6775 Bears Bluff Road, Wadmalaw Island, South Carolina, 29487 will be damaged by the issuance of registration for the mark FLY (“Applicant’s Mark”), as applied for in Application Serial No. 85/100,146 for “distilled spirits, namely vodka and scotch,” filed on August 4, 2010 by Applicant Soque River Enterprise, LLC (“Applicant”), a Georgia Limited Liability Company with a mailing address at P.O. Box 2407, Clarksville, Georgia, 30523. Firefly Distilling hereby opposes same.

As grounds for opposition, Firefly Distilling alleges:

1. Firefly Distilling distills, markets and distributes a variety of vodka products under the brand name FIREFLY, including among others FIREFLY VODKA, FIREFLY SWEET TEA VODKA, FIREFLY RASPBERRY SWEET TEA VODKA, and FIREFLY PEACH TEA VODKA.

2. Firefly Distilling owns United States trademark Registration No. No. 3,665,660 for its FIREFLY label covering “liquor.”

3. Firefly Distilling owns United States trademark Registration No. No. 3,656,525 for its FIREFLY mark covering “liquor.”

4. Firefly Distilling owns United States trademark application Serial No. 85/019,459 for its FIREFLY SKINNY TEA mark covering “Low-calorie, low-sugar, tea-flavored vodka.”

5. Firefly Distilling owns United States trademark application Serial No. 85/019,483 for its FIREFLY TEASERS mark covering “distilled spirits.”

6. Firefly Distilling also owns and uses the FIREFLY trademark at common law used in connection with all of its vodka products (referred to collectively with the marks set forth in Paragraphs 2 through 5 above as the “FIREFLY Marks”).

7. Firefly Distilling and its predecessor-in-interest have consistently and continually used the FIREFLY Marks on and in connection with vodka products. By virtue of its prior use of the FIREFLY Marks and its U.S. registration, Firefly Distilling has the exclusive right to use the FIREFLY Marks in commerce in connection with vodka.

8. Firefly Distilling and its predecessor-in-interest have consistently and continually marketed, sold, or otherwise distributed vodka products under the FIREFLY Marks since at least as early as April 14, 2008. By virtue of its use, marketing, and the excellence of the underlying products, the public has come to know, rely on, and recognize the FIREFLY Marks as a source identifier for Firefly Distilling’s vodka products.

9. Upon information and belief, on August 4, 2010 Applicant filed an Application (Serial No. 85/100,146) to register the mark FLY on an intent to use basis (Section 1(b)) for “distilled spirits, namely vodka and scotch.”

10. Applicant's Mark is likely to be confused with and mistaken for Firefly Distilling's FIREFLY products due to the visual and phonetic similarity of the two words. FIREFLY and FLY contain the identical and dominant component FLY.

11. Applicant's Mark is intended for use in connection with products that overlap with and are related to Firefly Distilling's vodka products.

12. The targeted customers of Applicant's FLY alcoholic beverage products are identical with the customers of Firefly Distilling's vodka products.

13. As Applicant's goods description contains no restrictions or limitations as to Applicant's channels of trade, Firefly Distilling may assume that Applicant's Mark, like Firefly Distilling's own FIREFLY Marks, will be used in all accepted channels of trade. Therefore, in addition to identical consumer bases, Applicant's intended channels of trade for its alcoholic beverage products overlap with the channels of trade used by Firefly Distilling in marketing, selling or otherwise distributing its FIREFLY products. Firefly Distilling's vodka products and Applicant's FLY products will employ identical retail outlets, for example liquor stores, restaurants, bars, hotels, and online ordering.

14. If Applicant is permitted to register Applicant's Mark for the goods specified in the Application herein, confusion resulting in damage and injury to Firefly Distilling would likely occur. Persons familiar with Firefly Distilling's FIREFLY Marks would likely perceive Applicant's alcoholic beverages as associated or affiliated with, or sponsored by, Firefly Distilling. Such confusion would inevitably result in damage to Firefly Distilling.

15. Firefly Distilling's customers and the relevant public are likely to misapprehend Applicant's Mark as a Firefly Distilling mark rather than a mark associated with Soque River

Enterprise, LLC and/or believe in error that goods offered under Applicant's Mark are offered by or in association with or under license from Firefly Distilling.

16. Any defect, objection to or fault found with Applicant's goods marketed under the FLY mark would necessarily reflect on and seriously injure the reputation that Firefly Distilling has established for its alcoholic beverages and distilled spirits.

17. 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 Applicant's Mark, all to the detriment of Firefly Distilling.

18. Wherefore, Firefly Distilling prays that this Opposition be sustained and that Application Serial No. 85/100,146 be denied and refused registration.

COOLEY LLP

Date: December 6, 2012

By: Kathryn D. Duvall  
Kathryn D. Duvall  
Todd S. Bontemps  
Attorneys for Opposer  
Cooley LLP  
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Suite 1100  
Washington, DC 20001  
(650) 843-5000

## CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2012, I mailed the foregoing NOTICE OF OPPOSITION regarding Firefly Distilling Company, LLC v. Soque River Enterprise, LLC to Correspondent for Applicant as well as Applicant by depositing a true and correct copy of the same with the United States Postal Service, first class mail, postage prepaid, in an envelope addressed to:

William L. Warren  
Sutherland Asbill & Brennan LLP  
999 Peachtree St., NE Ste. 2300  
Atlanta, GA 30309-3996

and

Soque River Enterprise, LLC  
P.O. Box 2407  
Clarksville, GA 30523

Date: December 6, 2012



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Kathryn D. Duvall