

ESTTA Tracking number: **ESTTA546365**

Filing date: **07/02/2013**

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	YARD HOUSE USA, INC.
Granted to Date of previous extension	07/03/2013
Address	1000 Darden Center Drive IP Law Orlando, FL 32837 UNITED STATES

Attorney information	Cynthia R. Parks Parks IP Law LLC 730 Peachtree Street, NE, Suite 600 Atlanta, GA 30308 UNITED STATES cparks@parksiplaw.com, ayates@parksiplaw.com, tmdocketing@parksiplaw.com Phone:678-365-4444
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Applicant Information

Application No	85738140	Publication date	03/05/2013
Opposition Filing Date	07/02/2013	Opposition Period Ends	07/03/2013
Applicant	K. Hansotia & Co., Inc. 3705 N.W. 115 Avenue, Bay #5 Miami, FL 33178 UNITED STATES		

Goods/Services Affected by Opposition

Class 034. All goods and services in the class are opposed, namely: Cigars

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2441608	Application Date	07/28/1999
Registration Date	04/03/2001	Foreign Priority Date	NONE
Word Mark	YARD HOUSE		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 042. First use: First Use: 1996/12/07 First Use In Commerce: 1996/12/07 restaurant and bar services

U.S. Registration No.	2620238	Application Date	02/08/2001
Registration Date	09/17/2002	Foreign Priority Date	NONE
Word Mark	YARD HOUSE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1996/12/06 First Use In Commerce: 1996/12/06 Restaurant services		

U.S. Registration No.	3499458	Application Date	11/18/2004
Registration Date	09/09/2008	Foreign Priority Date	NONE
Word Mark	YARD HOUSE BAR Å GRILL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 2008/06/15 First Use In Commerce: 2008/06/15 Restaurant services		

U.S. Registration No.	3425708	Application Date	06/11/2007
Registration Date	05/13/2008	Foreign Priority Date	NONE
Word Mark	YARD HOUSE GREAT FOOD Å CLASSIC ROCK WORLD'S LARGEST SELECTION OF DRAFT BEER		
Design Mark			
Description of Mark	The mark consists of the words "YARD HOUSE" in an oval design surrounded by the words "GREAT FOOD CLASSIC ROCK WORLD'S LARGEST SELECTION OF DRAFT BEER" in a larger oval encircling the smaller oval within it.		
Goods/Services	Class 043. First use: First Use: 1998/07/00 First Use In Commerce: 1998/07/00 Restaurant and bar services		

U.S. Registration No.	3425709	Application Date	06/11/2007
Registration Date	05/13/2008	Foreign Priority Date	NONE
Word Mark	YARD HOUSE TO YOUR HOUSE		
Design Mark			
Description of Mark	The mark consists of the words "YARD HOUSE TO YOUR HOUSE" within an oval.		
Goods/Services	Class 043. First use: First Use: 2004/01/00 First Use In Commerce: 2004/01/00		

	Restaurant and bar services
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Related Proceedings	None
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Attachments	YARDHOUSE Notice of Opposition.pdf(261686 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	/Anne E. Yates/
Name	Anne E. Yates
Date	07/02/2013

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

YARD HOUSE USA, INC.,)	
)	
Opposer,)	Application Serial No. 85/738140
)	
v.)	Mark: YARDHOUSE
)	
K. HANSOTIA & CO., INC.,)	Opposition No. _____
)	
Applicant.)	
_____)	

NOTICE OF OPPOSITION

Yard House USA, Inc. (“Opposer”), for its Notice of Opposition against Application Serial No. 85/738140 for the mark YARDHOUSE (“Application”) filed by K. Hansotia & Co., Inc. (“Applicant”), believes that it will be damaged by and thus opposes the issuance of the mark shown in the Application.




The grounds for opposition are as follows:

1. Opposer is a Delaware corporation with a principal place of business at 1000 Darden Center Drive, Orlando, Florida USA 32837.
2. Opposer, itself and through its related companies, predecessors, and their licensees and related companies (collectively, “Yard House”) have been offering restaurant and bar services and related products and services under or in connection with the mark YARDHOUSE in interstate commerce in the United States since at least as early as December 7, 1996.
3. Prior to the date Applicant filed its Application with the U.S. Patent and Trademark Office (“PTO”), Yard House has continuously advertised, marketed, and offered

restaurant and bar services and related products and services under or in connection with the YARD HOUSE mark.

4. Currently, there are forty-five (45) Yard House restaurants operating in sixteen (16) states, and seven (7) new Yard House restaurants are scheduled to open this year or next year in six (6) states, including two (2) new states.

5. Opposer is the owner of the mark YARD HOUSE in connection with restaurant and bar services and owns the following federal service mark registrations, some of which have achieved incontestable status (hereinafter, collectively, the “YARD HOUSE Marks” or “Marks”):

Mark	Reg. No.	Int'l Class	Services
YARD HOUSE	2,441,608	42	Restaurant and bar services
YARD HOUSE & Design 	2,620,238	42	Restaurant services
YARD HOUSE BAR · GRILL	3,499,458	43	Restaurant services
YARD HOUSE GREAT FOOD · CLASSIC ROCK WORLD'S LARGEST SELECTION OF DRAFT BEER & Design 	3,425,708	43	Restaurant and bar services
YARD HOUSE TO YOUR HOUSE & Design 	3,425,709	43	Restaurant and bar services

6. By virtue of widespread sales and continuous and extensive advertising and promotion of the various goods and services identified by Opposer's YARD HOUSE Marks, and the maintenance of high quality standards relating thereto, Opposer's YARD HOUSE Marks are well known by the general public and in the relevant industries, are recognized and relied upon as identifying Opposer's goods and services and as distinguishing them from the goods and services of others.

7. As a consequence, Opposer has established extremely valuable goodwill and exclusive rights in the YARD HOUSE Marks.

8. Applicant filed Application Serial No. 85/738140 to register YARDHOUSE in connection with cigars on September 25, 2012 ("Applicant's Mark").

9. Application Serial No. 85/738140 was filed on an intent-to-use basis, and Applicant has not yet filed a use allegation with the PTO.

10. Upon information and belief, Applicant is a Florida corporation with a correspondence address of 3705 N.W. 115 Avenue, Bay #5, Miami, Florida USA 33178.

11. Application No. 85/738140 was published in the PTO's *Official Gazette* on March 5, 2013. Opposer has extended time to oppose the Application through and including July 3, 2013. Thus, this Notice of Opposition is timely filed.

Count 1: Likelihood of Confusion

12. Opposer repeats and realleges all allegations found in paragraphs numbered 1 through 11 above.

13. Yard House has continuously and exclusively used the YARD HOUSE Marks in connection with restaurant and bar services and related products and services originating from

Yard House since at least as early as 1996 – long prior to Applicant’s filing date with the PTO and constructive and/or actual first use date in United States commerce for Applicant’s Mark.

14. Opposer’s rights in the YARD HOUSE Marks are superior to Applicant’s rights in Applicant’s Mark.

15. Applicant’s YARDHOUSE Mark is identical to Opposer’s YARD HOUSE Marks in sound, meaning, and commercial impression.

16. Applicant’s YARDHOUSE Mark is virtually identical to Opposer’s YARD HOUSE Marks in appearance.

17. Applicant’s intended use of its YARDHOUSE mark set forth in the Application, for “cigars,” is related to the products and services offered under and in connection with Opposer’s YARD HOUSE Marks.

18. Opposer has nationwide rights in the YARD HOUSE Marks by virtue of the incontestable federal registrations for the Marks.

19. The Yard House restaurant system is currently comprised of forty-five (45) restaurants in sixteen (16) states (Arizona, California, Colorado, Florida, Georgia, Hawaii, Illinois, Kansas, Massachusetts, North Carolina, Nevada, New York, Ohio, Texas, Virginia, and Washington).

20. Opposer plans to open seven (7) new Yard House restaurants this year or next year in six (6) states, including two (2) new states (Idaho and Oregon).

21. In addition to its <www.YardHouse.com> website, which is available to Internet viewers in the U.S. and internationally, Applicant advertises, markets, and offers its restaurant and bar services and related products and services in at least the states identified in Paragraph 19 above.

22. Because of the substantial similarity of the marks and the relatedness of the products and services through overlapping audiences, the use and registration of Applicant's Mark is likely to cause confusion, mistake, or deception in the minds of the purchasing public and to cause the purchasing public to assume that the products identified by Applicant's Mark are provided by Opposer or that such products originate with or are in some way connected to Opposer, which they are not, in violation of Section 2(d) of the Trademark Act, 15 U.S.C. §§ 1052(d) and 1125(a).

Count 2: Dilution

23. Opposer repeats and realleges all allegations found in paragraphs numbered 1 through 21 above.

24. The YARD HOUSE Marks were first used in commerce over sixteen (16) years ago, and through considerable efforts, the YARD HOUSE Marks are famous and easily recognized.

25. Opposer's YARD HOUSE Marks are not only famous, but also so distinctive that the public in general would associate the Marks with Opposer even when the public encounters the Marks apart from the Opposer's restaurant and bar services and related products and services.

26. Applicant's use of the virtually identical YARDHOUSE mark will lead to dilution of a famous mark under section 43(c) of the Trademark Act, 15 U.S.C. § 1125(c).

27. By reason of the foregoing, the use and registration of Applicant's Mark will be injurious to Opposer in violation of Section 13 of the Trademark Act, 15 U.S.C. § 1063(a).

WHEREFORE, Opposer believes that it will be damaged by registration of Applicant's Mark and prays that said Application No. 85/738140 be refused, and that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

This 2nd day of July, 2013.

Respectfully submitted,

PARKS IP LAW LLC

By:



Cynthia R. Parks

Anne E. Yates

Attorneys for Yard House USA, Inc.

730 Peachtree Street, NE
Suite 600
Atlanta, Georgia USA 30308
(678) 365-4444- telephone
(678) 365-4450- facsimile

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

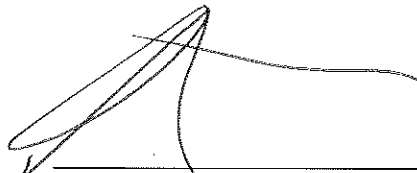
YARD HOUSE USA, INC.,)	
)	
Opposer,)	Application Serial No. 85/738140
)	
v.)	Mark: YARDHOUSE
)	
K. HANSOTIA & CO., INC.,)	Opposition No. _____
)	
Applicant.)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Opposition was sent by first-class mail, postage prepaid, to counsel of record for Applicant, as follows:

Pablo Meles
Duane Morris LLP
5100 Town Center Circle, Suite 650
Boca Raton, Florida 33486

This 2nd day of July, 2013.



Anne E. Yates