

ESTTA Tracking number: **ESTTA565463**

Filing date: **10/16/2013**

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	Majestic Distilling Company, Inc.
Granted to Date of previous extension	10/16/2013
Address	2200 Monumental Road Baltimore, MD 21227 UNITED STATES

Attorney information	Kathryn D. Duvall Cooley LLP 1299 PENNSYLVANIA AVE NW STE 700 Washington, DC 20004 UNITED STATES trademarks@cooley.com , kduvall@cooley.com Phone:650-843-5361
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**Applicant Information**

Application No	85789494	Publication date	06/18/2013
Opposition Filing Date	10/16/2013	Opposition Period Ends	10/16/2013
Applicant	Branded Spirits (USA), Ltd 2443 Fillmore Street, #425 San Francisco, CA 94115 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 033. All goods and services in the class are opposed, namely: Spirits distilled from grapes grown and processed in the Cognac region of France
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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. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	MAJESTIC DISTILLING		
Goods/Services	Alcoholic beverages, except beer		

U.S. Application/	NONE	Application Date	NONE
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Registration No.			
Registration Date	NONE		
Word Mark	MAJESTIC		
Goods/Services	Alcoholic beverages, except beer		

U.S. Registration No.	1887392	Application Date	04/14/1994
Registration Date	04/04/1995	Foreign Priority Date	NONE
Word Mark	MAJESTIC VALLEY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 1990/08/16 First Use In Commerce: 1990/08/16 brandy		

U.S. Registration No.	1890103	Application Date	04/14/1994
Registration Date	04/18/1995	Foreign Priority Date	NONE
Word Mark	MAJESTIC ROYALE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 1984/11/01 First Use In Commerce: 1984/11/01 gin, vodka and [ rum ]		

Attachments	Majestic v Branded Spirits _NOO re MAJESTE COGNAC_2013-10-16.pdf(197400 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	10/16/2013

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

In the matter of application Serial No. 85/789,494  
For the Trademark MAJESTE COGNAC And Design

MAJESTIC DISTILLING COMPANY, INC.,	)	
	)	
Opposer,	)	
	)	Opposition No.
v.	)	
	)	
BRANDED SPIRITS (USA) LTD.,	)	
	)	
Applicant.	)	
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**NOTICE OF OPPOSITION**

Opposer Majestic Distilling Company, Inc. (“Majestic Co.”), a Maryland corporation having its principal place of business at 2200 Monumental Road, Baltimore, Maryland 21227, will be damaged by the issuance of a registration for the mark MAJESTE COGNAC And Design (“Applicant’s Mark”), as applied for in Application Serial No. 85/789,494 filed on November 28, 2012 by Applicant Branded Spirits (USA), Ltd., a California corporation having its principle place of business at 2443 Fillmore St., #425, San Francisco, California 94115 (“Applicant”). Majestic Co., having previously been granted an extension of time to oppose Applicant’s Mark, hereby opposes same.

As grounds for opposition, Majestic Co. alleges:

1. Majestic Co. markets and sells a number of different types and brands of alcoholic beverages and distilled spirits, including whiskey, vodka, gin, rum, brandy, and tequila. Majestic Co. has marketed and sold alcoholic beverages and distilled spirits in the United States since at

least as early as 1943.

2. Majestic Co. has consistently and continually marketed and sold distilled spirits under the marks MAJESTIC and MAJESTIC DISTILLING since the company was first formed in 1943, and owns common law rights in these marks in connection with alcoholic beverages. Majestic Co. owns over 20 active registrations in International Class 033 in connection with alcoholic beverages and has marketed and sold these alcoholic beverages under the company name and in association with the MAJESTIC and MAJESTIC DISTILLING marks since at least as early as 1966. Majestic Co. also owns the following MAJESTIC trademark registrations in the United States:

MAJESTIC VALLEY, U.S. Reg. No. 1,887,392, issued April 4, 1995 for “brandy”; and

MAJESTIC ROYALE, U.S. Reg. No. 1,890,103, issued April 18, 1995 for “gin, vodka, [rum].”

(collectively, the “MAJESTIC Marks”)

3. By virtue of their efforts and by virtue of the excellence of their products, the public has come to know, rely on, and recognize the MAJESTIC Marks as a source identifier for Majestic Co.’s vodka, gin, rum, brandy, tequila and whiskey products. Majestic Co. has gained valuable reputation and goodwill through the use and recognition of its MAJESTIC Marks over the past 70 years.

4. Upon information and belief, Majestic Co. alleges that on November 28, 2012 Applicant filed an Application to register the mark MAJESTE COGNAC on in-use basis (Section 1(a)) in connection with “alcoholic beverages, namely Cognac.” Applicant subsequently amended its application to claim intent-to-use (Section 1(b)). Applicant also subsequently amended its description of goods after publication, and presently seeks registration in connection with “[s]pirits distilled from grapes grown and processed in the Cognac region of

France.”

5. Upon information and belief, Applicant has disclaimed any right to use of the term COGNAC apart from the mark in its entirety.

6. Upon information and belief, the English translation of “majeste” as used in Applicant’s mark is “majestic.”

7. Applicant’s Mark is likely to be confused with and mistaken for Majestic Co.’s MAJESTIC Marks because the first and dominant component of the Applicant’s mark is the foreign equivalent of Majestic Co.’s MAJESTIC Marks. Moreover, Applicant’s “COGNAC” component is merely descriptive of the product itself and has been disclaimed. Thus, Applicant’s Mark is nearly identical to Majestic Co.’s MAJESTIC Marks in sight and sound and is identical in meaning and commercial connotation.

8. If Applicants’ Mark is allowed to register, a likelihood of confusion will be created for consumers of alcoholic beverages. Applicants’ Mark is intended for use in connection with alcoholic beverage products that are related to Majestic Co.’s MAJESTIC products.

9. Applicants’ targeted customer base is identical to the consumers of Majestic Co.’s products marketed and sold under the MAJESTIC Marks.

10. As Applicant’s goods description contains no restrictions or limitations as to channels of trade, Majestic Co. may assume that Applicant’s mark, like Majestic Co.’s own MAJESTIC Marks, will be used and displayed in all accepted channels of trade. Therefore, in addition to overlapping consumer bases, Applicant’s channels of trade for its alcoholic beverages overlap with the channels of trade used by Majestic Co. in marketing, selling, and otherwise distributing its MAJESTIC vodka, gin, whiskey, brandy, tequila and rum products.

11. If Applicant is permitted to register Applicant’s Mark for the goods specified in the

Application herein opposed, confusion resulting in damage and injury to Majestic Co. would likely occur. Consumers familiar with Majestic Co.'s marks would likely perceive Applicant's alcoholic beverages as associated or affiliated with or sponsored by Majestic Co. Such confusion would inevitably result in damage to Majestic Co.

12. Customers of Majestic Co.'s products and the relevant public are likely to misapprehend Applicant's Mark as a Majestic Co. mark rather than a Branded Spirits mark and/or believe in error that alcoholic beverages offered under the MAJESTE COGNAC Mark are offered by or in association with or under license from Majestic Co.

13. Any defect, objection to, or fault found with Applicant's goods marketed under the MAJESTE COGNAC Mark would necessarily reflect on and injure the reputation that Majestic Co. has established for its alcoholic beverages and distilled spirits 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 Applicant's Mark, all to the detriment of Majestic Co.

15. Wherefore, Majestic Co. prays that this Opposition be sustained and that Application Serial No. 85/789,494 be denied and refused registration.

COOLEY LLP

Date: October 16, 2013


By: Kathryn Duvall  
Kathryn D. Duvall, Esq.  
Todd S. Bontemps, Esq.  
Attorneys for Opposer  
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**CERTIFICATE OF SERVICE**

I hereby certify that on October 16, 2013, I mailed the foregoing NOTICE OF OPPOSITION regarding Majestic Distilling Company, Inc. v. Branded Spirits (USA), Ltd. to Counsel for 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:

Mattaniah Eytan  
Michael Skhlovsky  
Law Offices of Mattaniah Eytan  
21 Tamal Vista Blvd Ste 219  
Corte Madera, California 94925-1147

Date: October 16, 2013

  
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Kathryn D. Duvall