

ESTTA Tracking number: **ESTTA566169**

Filing date: **10/21/2013**

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	Luxco, Inc.
Granted to Date of previous extension	10/30/2013
Address	1010 Clark Street St. Louis, MO 63102 UNITED STATES

Attorney information	Michael R. Annis Husch Blackwell LLP 190 Carondelet Plaza, Suite 600 St. Louis, MO 63105 UNITED STATES mike.annis@huschblackwell.com, alan.nemes@huschblackwell.com, andy.gilfoil@huschblackwell.com Phone:314-480-1500
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Applicant Information

Application No	85848239	Publication date	07/02/2013
Opposition Filing Date	10/21/2013	Opposition Period Ends	10/30/2013
Applicant	J&M Concepts, LLC 814 Church Street, 5th Floor Nashville, TN 37203 UNITED STATES		

Goods/Services Affected by Opposition

Class 033. First Use: 2013/02/12 First Use In Commerce: 2013/02/12 All goods and services in the class are opposed, namely: Distilled Spirits
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Applicant Information

Application No	85873192	Publication date	07/02/2013
Opposition Filing Date	10/21/2013	Opposition Period Ends	
Applicant	J&M Concepts, LLC 814 Church Street, 5th Floor Nashville, TN 37203 UNITED STATES		

Goods/Services Affected by Opposition

Class 033. All goods and services in the class are opposed, namely: Distilled Spirits
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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.	727786	Application Date	04/11/1961
Registration Date	02/20/1962	Foreign Priority Date	NONE
Word Mark	REBEL YELL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U049 (International Class 033). First use: First Use: 1937/08/00 First Use In Commerce: 1937/08/00 Straight Bourbon Whiskey		

U.S. Registration No.	3632812	Application Date	05/05/2008
Registration Date	06/02/2009	Foreign Priority Date	NONE
Word Mark	REBEL RESERVE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2008/09/29 First Use In Commerce: 2008/09/29 liquors and distilled spirits		

U.S. Application No.	77758725	Application Date	06/12/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	FOUR REBELS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: Vodka		

U.S. Application No.	77758705	Application Date	06/12/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	4 REBELS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: Vodka		

Attachments	EPROGRA~1omtoolOMTOOL~1WebAPIOMTOOL~1FILETR~175eea18e-fc30-4208-b65c-0ea15f7b5352.PDF(217132 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	/s/ Michael R. Annis
Name	Michael R. Annis
Date	10/21/2013

CERTIFICATE OF MAILING VIA ELECTRONIC TRANSMISSION

I hereby certify that this correspondence is being filed with the United States Patent and Trademark Office via the Electronic System for Trademark Trials and Appeals on October 21, 2013.

/s/ Andrew Gilfoil

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

Mark: AMERICA’S REBEL SPIRIT
U.S. Application Serial No. 85/848,239

Mark: TENNESSEE’S REBEL SPIRIT
U.S. Application Serial No. 85/873,192

LUXCO, INC.,)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	
J & M CONCEPTS, LLC.,)	U.S. App. No. 85/848,239
)	U.S. App. No. 85/873,192
Applicant.)	

**CONSOLIDATED NOTICE OF OPPOSITION
TO APPLICATION SERIAL NOS. 85/848,239 AND 85/87,192**

LUXCO, Inc. (“LUXCO” or “Opposer”), a corporation organized and existing under the laws of the State of Missouri, having its principal place of business at Luxco, Inc., 1010 Clark Street, St. Louis, Missouri, believes it will be damaged by registration of the mark AMERICA’S REBEL SPIRIT claimed in Applicant’s Application Serial Nos. 85/848239 and 85/873,192.

As grounds for its opposition, it is alleged that:

1. Applicant J&M Concepts, LLC (“Applicant”), in U.S. Application Serial No. 85/848,239 (the “239 Application”), applied for registration of the trademark AMERICA’S REBEL SPIRIT on February 12, 2013, for “Distilled Spirits” in International Class 33 under

Section 1(a) of the Lanham Act (the “AMERICA’S REBEL SPIRIT Mark”). The '239 Application was published for opposition in the Official Gazette on July 2, 2013. An appropriate extension of time to submit this Notice of Opposition was timely filed with the Board.

2. Applicant, in U.S. Application Serial No. 85/873,192 (the “‘192 Application”), applied for registration of the trademark TENNESSEE’S REBEL SPIRIT on March 11, 2013, for “Distilled Spirits” in International Class 33 under Section 1(b) of the Lanham Act (the “TENNESSEE’S REBEL SPIRIT Mark”). The '192 Application was published for opposition in the Official Gazette on July 2, 2013. An appropriate extension of time to submit this Notice of Opposition was timely filed with the Board.

3. The AMERICA’S REBEL SPIRIT Mark and the TENNESSEE’S REBEL SPIRIT Mark will sometimes collectively be referred to herein as the “REBEL SPIRIT Marks.”

4. LUXCO is the owner of the mark REBEL YELL in connection with straight bourbon whiskey and the mark REBEL RESERVE in connection with liquors and distilled spirits. LUXCO is also the owner of the below-noted United States Trademark registrations with the identified dates of first use in commerce:

MARKS	U.S. REG./SER. NO.	GOODS DESCRIPTION	DATE FIRST USED IN COMMERCE
REBEL YELL	Reg. No. 727,786	Straight Bourbon Whiskey	August 1, 1937
REBEL RESERVE	Ser. No. 77,465,392	Liquors and Distilled Spirits	September 29, 2008

5. In addition, Luxco also owns certain common law rights in the REBEL YELL and REBEL RESERVE trademarks.

6. Luxco is also the owner by assignment of the marks FOUR REBELS and 4 REBELS in connection with vodka, and the United States applications noted below:

MARKS	U.S. REG./SER. NO.	GOODS DESCRIPTION
FOUR REBELS	Ser. No. 77/758,725	Vodka
4 REBELS	Ser. No. 77,758,705	Vodka

7. In addition, Luxco also owns certain common law rights in the 4 REBELS and FOUR REBELS trademarks.

8. Luxco's aforementioned common law rights and the above-noted registrations and applications are collectively referred herein as the "REBEL Marks."

9. LUXCO's REBEL Marks are inherently distinctive and uniquely associated with LUXCO in connection with LUXCO's goods offered under the REBEL Marks by reason of the continuous use and promotion by LUXCO and/or its predecessors-in-interest.

10. LUXCO or its predecessors-in-interest have used the mark REBEL YELL in connection with straight bourbon whiskey since as early as August 1, 1937, long before Applicant's filing of either the '192 or '239 Applications. Similarly, LUXCO has used the mark REBEL RESERVE in connection with liquors and distilled spirits since at least as early as September 29, 2008, long before Applicant submitted either the '192 or '239 Applications.

11. LUXCO, its licensees and/or its predecessors-in-interest have promoted, caused to be promoted, and are now promoting and causing to be promoted the REBEL Marks in interstate commerce within the United States for identifying these goods.

12. Through this use, LUXCO has established valuable goodwill in the REBEL Marks, and the relevant public has come to recognize the REBEL Marks as an indication of the products that emanate from LUXCO or its designated licensees.

13. LUXCO, its predecessors and its licensees have spent substantial sums of money to widely and extensively advertise and promote the goods it sells and offers under the REBEL Marks.

14. Notwithstanding LUXCO'S prior rights in the REBEL Marks, on March 11, 2013, Applicant filed the '192 Application in the United States Patent and Trademark Office for registration of the mark TENNESSEE'S REBEL SPIRIT for "Distilled Spirits" in International Class 33.

15. On information and belief, Applicant knew or had reason to know of LUXCO'S prior rights in the REBEL Marks when filing the '192 Application.

16. Notwithstanding LUXCO'S prior rights in the REBEL Marks, on February 12, 2013, Applicant filed the '239 Application in the United States Patent and Trademark Office for registration of the mark AMERICA'S REBEL SPIRIT for "Distilled Spirits" in International Class 33.

17. On information and belief, Applicant knew or had reason to know of LUXCO'S prior rights in the REBEL Marks when filing the '239 Application.

18. The applications for REBEL SPIRIT Marks herein opposed so resembles LUXCO's REBEL Marks as to be likely, if used in conjunction with Applicant's goods, to cause confusion, mistake or deceive customers, and Applicant's Marks under the '192 and '239 Applications are confusingly and deceptively similar to LUXCO's REBEL Marks when used in connection with Applicant's goods.

19. Similarly, Applicant's goods are or will be targeted, offered, and sold to the same class of prospective buyers as those for LUXCO's goods, and Applicant's and LUXCO's goods are so commercially related that Applicant's REBEL SPIRIT Marks under the '192 and '239

Applications and LUXCO's REBEL Marks, when used in conjunction with their respective goods, are confusingly similar.

20. Applicant's suggested intent to use its TENNESSEE'S REBEL SPIRIT under the '192 Application, which so resembles LUXCO's REBEL Marks, is likely to cause confusion, mistake or deception of purchasers as to the source of Applicant's goods and will inevitably falsely suggest a trade connection between LUXCO and Applicant.

21. Registration of the opposed REBEL SPIRIT Marks will support and assist Applicant in the confusing and misleading use of the REBEL SPIRIT Marks and will cause LUXCO to lose control over the good and valuable reputation derived from the REBEL Marks, causing irreparable harm and injury to LUXCO.

22. Upon information and belief, Applicant did not have a *bona fide* intent to use the TENNESSEE'S REBEL SPIRIT Mark in commerce on the specified goods when it filed its intent-to-use application for the mark covering the good therein.

WHEREFORE, Opposer LUXCO, Inc. prays that Application Serial Nos. 85/848,239 and 85/873,192 be refused and that no registration issue thereon to Applicant, and, further that this Opposition be sustained in favor of LUXCO.

DATED: October 21, 2013.

LUXCO, INC.

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a copy of the foregoing CONSOLIDATED NOTICE OF OPPOSITION was served by First Class Mail, postage prepaid on this 21st day of October, 2013, upon:

Scott M. Hervey
Weintraub, Tobin, Chediak, Coleman, and Grodin
9665 Wilshire Blvd, Floor 9
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and

J&M Concepts, LLC
814 Church Street, 5th Floor
Nashville, Tennessee 37203

/Andrew Gilfoil/