

ESTTA Tracking number: **ESTTA609311**

Filing date: **06/11/2014**

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	Windy Hill Spirits, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	118 16th Avenue South Nashville, TN 37203 UNITED STATES		

Attorney information	Robert L. Brewer and Martha B. Allard Bass, Berry & Sims PLC 150 3rd Avenue South Suite 2800 Nashville, TN 37201 UNITED STATES trademarks@bassberry.com Phone:615-742-7760		
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Applicant Information

Application No	86179996	Publication date	06/03/2014
Opposition Filing Date	06/11/2014	Opposition Period Ends	07/03/2014
Applicant	American Barrels, LLC 11991 Rosemount Drive Fort Myers, FL 33913 UNITED STATES		

Goods/Services Affected by Opposition


Class 033. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Bourbon whisky

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. Application No.	85937554	Application Date	05/20/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	DON'T TREAD ON ME		

Design Mark	
Description of Mark	The mark consists of an image of a coiled, hissing snake centered over the words "DON'T TREAD". The words "ON ME" are centered under the words "DON'T TREAD".
Goods/Services	Class 033. First use: First Use: 0 First Use In Commerce: 0 Alcoholic beverages, namely, moonshine

Related Proceedings	TTAB Opposition No. 91216036
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Attachments	85937554#TMSN.jpeg(bytes) Notice of Opposition.pdf(250046 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	/Martha B. Allard/
Name	Robert L. Brewer and Martha B. Allard
Date	06/11/2014

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

In the matter of Application Serial No.: 86/179,996
by AMERICAN BARRELS, LLC
For the Mark: Snake Design

Filed: January 30, 2014

Published in the Official Gazette
on June 3, 2014

WINDY HILL SPIRITS, INC.,

Opposer,

v.

AMERICAN BARRELS, LLC,

Applicant.

Opposition No. _____

Box TTAB FEE
Assistant Commissioner for Trademarks
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, Virginia 22313-1451

NOTICE OF OPPOSITION

Windy Hill Spirits, Inc. ("Windy Hill" or "Opposer"), by and through its undersigned attorneys, believes that it will be damaged by the registration of the mark shown in Application Serial No. 86/179,996 in International Class 33 (the "Application"), hereby opposes the same, and requests that registration be refused.

In support of its opposition, Opposer asserts the following:

1. Opposer is a Delaware corporation, having its principal place of business at 118 16th Avenue South, Nashville, Tennessee 37203.

2. Windy Hill distills and sells moonshine, which it offers for sale under various marks, including its DON'T TREAD ON ME mark, which incorporates a snake design.

3. Opposer filed an application to register its DON'T TREAD ON ME and Snake Design Mark for use with "alcoholic beverages, namely, moonshine." The application was filed on May 20, 2013, and assigned Ser. No. 85/937,554 (the "Windy Hill Snake Design Mark" or "Opposer's Snake Design Mark"). Although the application to register the Windy Hill Snake Design Mark was filed based on intent to use, the mark is in use in interstate commerce and has been in use in interstate commerce for approximately one (1) year.

4. Upon information and belief, American Barrels, LLC ("Applicant") is a Florida limited liability company having its principal place of business at 11991 Rosemount Drive, Fort Myers, Florida 33913.

5. Applicant filed an application to register its snake design mark on January 30, 2014 for use with "bourbon whisky," in International Class 33 ("Applicant's Snake Design Mark"). Applicant's Mark was published for opposition in the *Official Gazette* of the U.S. Patent and Trademark Office on June 3, 2014.

6. Upon information and belief, Applicant has not yet adopted and is not using the Applicant's Snake Design Mark with bourbon whisky.

7. The filing date of Opposer's application to register its Snake Design Mark is prior to the filing date of Applicant's application to register its Snake Design Mark.

8. The dates of first use anywhere and in interstate commerce of the Windy Hill Snake Design Mark are earlier than Applicant's date of first use because Applicant's Snake Design Mark, upon information and belief, is not in use.

9. Opposer has spent substantial sums of money advertising and promoting the goods offered under its Snake Design Mark.

10. Applicant's Snake Design Mark is confusingly similar to Opposer's Snake Design Mark, such that when the Mark is eventually used in connection with Applicant's goods, it will so nearly resemble Opposer's Mark as to be likely to cause confusion, to cause mistake, or to deceive. Consumers will likely falsely believe that the goods of the Applicant offered under the Applicant's Mark are sponsored, endorsed, or approved by Opposer, or are in some way affiliated, connected or associated with Opposer.

13. The goods described in the Applicant's application to register the Snake Design Mark are highly related if not legally identical to the goods offered by Opposer under its Snake Design Mark and set out in Opposer's application to register its Snake Design Mark.

14. Any defect, objection or fault found with Applicant's goods, if offered under the Snake Design Mark, would injure the valuable reputation and goodwill that Opposer has built up and established under its Snake Design Mark.

15. If Applicant is granted the registration herein opposed, it would thereby obtain at least a *prima facie* exclusive right to use its Mark, which would be a source of damage and injury to Opposer due to the similarity between Applicant's Snake Design Mark and Opposer's Snake Design Mark.

WHEREFORE, Opposer believes that it will be damaged by the registration of Applicant's Snake Design Mark, requests that this Opposition be sustained, and that registration to Applicant be refused.

Please charge any fees due in connection with this Opposition to Deposit Account No. 502483-1211 and charge our internal client-matter number 119609-800.

Respectfully submitted,

Date: June 11, 2014

By: Martha Allard

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Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of June, 2014, a true and complete copy of the foregoing Notice of Opposition was served on counsel of record by mailing the same via First Class Mail, postage prepaid, in an envelope addressed to:

Erin E. Houck-Toll
Henderson, Franklin, Starnes & Holt, P.A.
1715 Monroe Street
Fort Myers, FL 33901-3081



Marian Moore - Paralegal

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