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PATENT & TRADEMARK OFFICE

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ALFRED W. BREINER
(1928-2002)
THEODORE A. BREINER
MARY J. BREINER

PATENTS, TRADEMARKS
& COPYRIGHTS

July 9, 2014

Honorable Commissioner of Trademarks
United States Patent and Trademark Office
P.O. Box 145
Alexandria, VA 22313-1451

ATTENTION: Trademark Trial and Appeal Board

Re: Trademark Opposition
Applicant: Garry Embry and Rebecca Embry
Mark: THE MOONLIGHT MILE
Serial No. 86/097,277

Dear Madam:

Attached are an original and a duplicate copy of a Notice of Opposition to registration of the mark THE MOONLIGHT MILE, Application Serial No. 86/097,277.

Please direct all correspondence in this opposition to -

Theodore A. Breiner
BREINER & BREINER, L.L.C.
115 North Henry Street
Alexandria, VA 22314-2903
Telephone 703-684-6885
Facsimile 703-684-8206

A check in the amount of $300.00 to cover the Trademark Office fee for filing this opposition is attached. The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 02-3690.

Very truly yours,

THEODORE A. BREINER

TAB/evd
Attachments - Notice of Opposition (Org+Duplicate)
- $300.00 Check

TTAB

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Before the Trademark Trial and Appeal Board

In re Application of

Garry Embry and Rebecca Embry

U.S. Serial No. 86/097,277

Filed: October 21, 2013

Mark: THE MOONLIGHT MILE

Published in the Trademark
Official Gazette March 11, 2014

MOONLITE BAR-B-Q INN, INC.,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No._____
	)	
GARRY EMBRY AND REBECCA EMBRY,	)	
	)	
Applicant.	)	

07/11/2014 SGNIM1 00000004 86097277
01 FC:6402 300.00 OP

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NOTICE OF OPPOSITION

Attention: Trademark Trial and Appeal Board
Commissioner For Trademarks
Alexandria, Virginia 22313-1451

Dear Madam:

Opposer, Moonlite Bar-B-Q Inn, Inc., a corporation of Kentucky, having a place of business at 2840 W. Parrish Avenue, Owensboro, Kentucky 42301, believes that it will be damaged by registration of the mark of Application Serial No. 86/097,277, and hereby opposes the same.

07-09-2014
U.S. Patent and Trademark Office #72

As grounds of opposition, it is alleged that:

1. The above trademark application Serial No. 86/097,277 for registration of the mark THE MOONLIGHT MILE for restaurant and bar services, including restaurant carryout services and restaurant and cafe services, published for opposition on March 11, 2014, in International Class 43, in the Official Gazette of the United States Patent and Trademark Office, was filed on October 21, 2013 as an intent-to-use application by Garry Embry and Rebecca Embry (hereafter "applicant").

2. On information and belief, applicant has not used the trademark THE MOONLIGHT MILE for any services.

3. Opposer offers goods and services relating to, inter alia, restaurant services, catering services, food carry-out services, and food products under, among others, the trademarks MOONLITE; MOONLITE BAR-B-Q INN, and the Moon Design (collectively "MOONLITE"). Opposer has registered the following trademarks in the United States Patent and Trademark Office:

MARK	Registration No.
MOONLITE	2,835,914
MOONLITE	3,903,997
Full Moon Design	2,822,257
MOONLITE BAR-B-Q INN and Design	2,658,221
Full Moon Design	2,507,094

MOONLITE	2,658,220
MOONLITE BAR-B-Q INN and Design	1,729,663
MOONLITE	1,763,093

Each of opposer's registrations is valid and subsisting.

4. The trademarks set forth in paragraph 3 are now used in commerce by opposer and have been extensively used by opposer as trademarks for opposer's goods and services. Opposer has used the MOONLITE trademark prior to applicant's adoption and any use of the mark sought to be registered herein.

5. Opposer's trademarks set forth in paragraph 3, now, and for a long time past, have been used by opposer on or in connection with opposer's goods and services in United States commerce, and these trademarks have become associated in the minds of the purchasing public with opposer as a source of origin of opposer's goods and services.

6. Opposer's trademarks set forth in paragraph 3 constitute a family of trademarks having the recognizable common characteristics, including in referencing the name "Moonlite" and the "Moon" and a "Full Moon" in relation to its goods and services, and the public has come to associate these common characteristics with opposer.

7. The services in connection with which applicant seeks registration of its mark here opposed are so closely related to opposer's services and goods that use or

registration by applicant of the mark shown in the above-identified application is likely to cause the public to conclude that applicant's services originate with, are authorized or sponsored by, or have some connection with opposer, and will cause confusion, or will cause mistake, or will deceive.

8. Use and registration by applicant of the mark sought to be registered for applicant's services, as set forth in its application for registration, will tend to cause confusion, or cause mistake or will deceive purchasers erroneously into the belief that applicant's service are the services of opposer, or are authorized and/or sponsored by or are otherwise connected with the business of opposer, and would appropriate to applicant substantial amounts of goodwill which opposer has established for opposer's trademarks and will substantially damage opposer in the conduct of opposer's business.

9. Opposer has no control over the nature and quality of applicant's services which are offered by applicant under the mark it seeks to register, and possible dissatisfaction with applicant's services, by purchasers or users thereof, would damage opposer's goodwill and reputation.

10. If registration of the mark sought here to be registered by applicant is granted to applicant, the effect would be to create for applicant statutory rights under the Trademark Act and such registration would tend to restrict and

interfere with, and damage opposer in the unhampered conduct of opposer's business.

11. If applicant were granted a registration for its trademark, it would thereby obtain at least prima facie exclusive right to use of that mark notwithstanding opposer's long and continuous effort in establishing goodwill in its trademarks, including in the trademarks set forth in paragraph 3 hereof. Such a registration in the name of applicant will be a source of damage and injury to opposer.

WHEREFORE, opposer prays that this opposition be sustained and that the application hereby opposed be refused, and for such other and further relief that may be deemed proper.

Respectfully submitted,

MOONLITE BAR-B-Q INN, INC.

By _____

Theodore A. Breiner
Registration No. 32,103
BREINER & BREINER, L.L.C.
115 North Henry Street
Alexandria, Virginia 22314-2903
Telephone 703-684-6885

Attorneys for Opposer

July 9, 2014

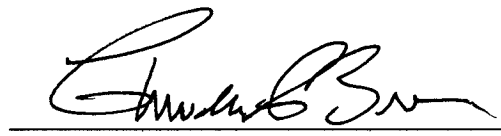
CERTIFICATE OF SERVICE

It is hereby certified that on this 9th day of July 2014, a true copy of the foregoing paper entitled -

NOTICE OF OPPOSITION

was served by First Class Mail, postage prepaid, on applicant's correspondent's address of record as follows:

John J. Driscoll
EATON & VAN WINKLE
3 Park Avenue
New York, New York 10016-5902



Theodore A. Breiner

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Before the Trademark Trial and Appeal Board

In re Application of

Garry Embry and Rebecca Embry

U.S. Serial No. 86/097,277

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By _____

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Telephone 703-684-6885

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July 9, 2014

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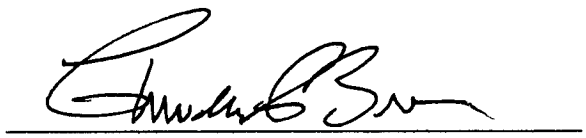

Theodore A. Breiner