

ESTTA Tracking number: **ESTTA684140**

Filing date: **07/16/2015**

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	FITA PRETA, VINHOS, S.A.		
Entity	Corporation	Citizenship	PORTUGAL
Address	TAPADA DA AJUDA, N.º 84 1D, ISA, INOVISA LISBOA, EST 1349-017 PORTUGAL		

Correspondence information	Matthew A. Becker Attorney at Law The Law Office of Matthew A. Becker, PC 1003 Isabella Avenue Coronado, CA 92118 UNITED STATES matt@beckerlawfirm.com Phone:619-522-6760
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Applicant Information

Application No	86322225	Publication date	06/16/2015
Opposition Filing Date	07/16/2015	Opposition Period Ends	07/16/2015
Applicant	Blank, Adam 4262 Bristlecone Dr Marietta, GA 30064 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: Alcoholic cocktail mixes; Distilled Spirits; Whiskey; Wines
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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.	4030300	Application Date	09/18/2009
Registration Date	09/27/2011	Foreign Priority Date	NONE
Word Mark	SEXY		

Design Mark	
Description of Mark	The mark consists of the wording "SEXY", inside a magenta colored rectangular background with blue single line border. The wording "SEXY" is in white color and near the middle of the rectangular background area.
Goods/Services	Class 033. First use: First Use: 2005/09/03 First Use In Commerce: 2007/01/03 Wines and sparkling wines

U.S. Registration No.	3872904	Application Date	07/10/2008
Registration Date	11/09/2010	Foreign Priority Date	01/11/2008

Word Mark	SEXY
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Design Mark	
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Description of Mark	The mark consists of the wording "2005 SEXY TINTO RED WINE VINHO REGIONAL ALENTEJANO PORTUGAL", inside a magenta colored rectangular background with blue single line border. The wording "2005" is at the top, the wording "SEXY" is in the middle with the wording "TINTO RED WINE" immediately below it, and the wording "VINHO REGIONAL" is at the bottom with "ALENTEJANO" immediately below it, and "PORTUGAL" is at the very bottom. The wordings "2005" and "SEXY" are in the white color. The wordings "TINTO RED WINE", "VINHO REGIONAL ALENTEJANO", and "PORTUGAL" are in the color gray.
Goods/Services	Class 033. First use: First Use: 0 First Use In Commerce: 0 Alcoholic beverages except beers

Attachments	77830097#TMSN.png(bytes) 79060415#TMSN.png(bytes) Notice of Opposition.pdf(14751 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/Matthew A. Becker
Name	Matthew A. Becker
Date	07/16/2015

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

IN THE MATTER OF APPLICATION:

Serial No.: : **86322225**
For the Mark : WHISKEY SEXY
Applicant: : Blank, Adam
Filed: : June 27, 2014
Published in the
Official Gazette : June 16, 2015

Atty. Docket No. FPV 517.05

FITA PRETA VINHOS, LDA LLC

Opposer,

vs.

ADAM BLANK

Applicant.

Opposition No.:

NOTICE OF OPPOSITION

NOTICE OF OPPOSITION

FITA PRETA VINHOS, LDA, LLC, a Limited Liability Company, located in Lisboa, Portugal, (hereinafter “OPPOSER”), believes that it will be damaged by the registration of application Serial No. **86322225**, filed on June 27, 2014, by Adam Blank, an individual, (hereinafter “APPLICANT” or “BLANK”) for the alleged mark WHISKEY SEXY for use with “Alcoholic cocktail mixes; Distilled Spirits; Whiskey; Wines,” in international class 033.

The specific grounds for this opposition are as follows.

1. OPPOSER is engaged in the manufacture, marketing, distribution and sale of wines and sparkling wines and related items identical (or highly similar) to APPLICANT’S purported description of goods.

2. OPPOSER began using the designation “SEXY” trademark registration 4,030,300, in United States interstate commerce with wines and sparkling wines, well prior to the filing of APPLICANT’S trademark application and continues such use today.

3. OPPOSER first became aware of APPLICANT’S trademark filing upon searching the records with the United States Patent and Trademark Office.

4. APPLICANT’S alleged mark “WHISKEY SEXY” is an imitation or colorable imitation of OPPOSER’S mark “SEXY” trademark registration 4,030,300 and 3,872,904. In fact, APPLICANT’S alleged mark only adds the word “WHISKEY” to OPPOSER’S mark.

5. APPLICANT’S alleged mark “WHISKEY SEXY” is nearly identical and/or confusingly similar to OPPOSER’S mark “SEXY.”

6. OPPOSER’S mark “SEXY” is a strong mark and is inherently distinctive, or in the alternative, has become distinctive through the acquisition of secondary meaning during a period of more than 5 years in commerce.

7. APPLICANT’S alleged mark “WHISKEY SEXY” is likely, when used on or in connection with APPLICANT’S goods, to cause confusion, or to cause mistake, or to deceive due to its being confusingly similar to OPPOSER’S mark “SEXY” and its use in connection with goods that are identical to, or similar to, the goods sold by OPPOSER under its “SEXY” mark and on goods which travel in the same channels of trade as goods sold under OPPOSER’S “SEXY” mark.

8. OPPOSER has priority of use in commerce of its “SEXY” mark.

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9. APPLICANT is not entitled to registration of the mark-in-opposition because it does not have the exclusive right to use the designation "WHISKEY SEXY."

10. APPLICANT'S mark is not registerable under Section 2(d) of the Lanham Act in view of OPPOSER'S prior, continuous, ongoing and current use of its mark in commerce.

11. OPPOSER will be damaged by issuance of registration to APPLICANT in that OPPOSER will thereby be denied its rightful use of the designation "SEXY," as well as the ownership of any pending and future trademark applications which include such terms.

12. In view of the forgoing, OPPOSER would be damaged by the registration of APPLICANT'S claimed mark within the meaning of 15 U.S.C. § 1063.

WHEREFORE, OPPOSER prays that this Notice of Opposition be sustained and that the registration sought by APPLICANT be denied.

DATED this 16th day of July, 2015.

Respectfully submitted,

/s/ Matthew A. Becker

MATTHEW A. BECKER
Attorney for Opposer
California State Bar No. 190,748

The Law Office of Matthew A. Becker
A Professional Law Corporation
1003 Isabella Avenue
Coronado, CA 92118
Telephone: 619-522-6760
Facsimile: 619-522-6763
Email: matt@beckerlawfirm.com

PROOF OF SERVICE BY MAIL

I hereby declare:

I am over the age of 18 years and am not a party to this action. I am employed in San Diego, County. My business address is 1003 Isabella Avenue, Coronado, CA 92118.

On the date first written below, I served a true and correct copy of the attached document entitled:

NOTICE OF OPPOSITION

by causing it to be placed in a sealed envelope and deposited in the United States mail, first class postage fully prepaid and addressed to the following:

Raj Abhyanker
Raj Abhyanker, P.C.
1580 W. El Camino Real, Suite 8
Mountain View, CA 94040-2462

Dated: July 16, 2015

/s/ Matthew A. Becker

Matthew A. Becker