

ESTTA Tracking number: **ESTTA713152**

Filing date: **12/07/2015**

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	Tropic Rum, LLC
Granted to Date of previous extension	12/05/2015
Address	16278 Pacific Coast Highway Huntington Beach, CA 92649 UNITED STATES

Attorney information	Albert Justin Lum Lum Law Group 1005 E. Colorado Blvd., Suite 207 Pasadena, CA 91106 UNITED STATES ajlum@lumlawgroup.com, jvien@lumlawgroup.com Phone:6267958886
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Applicant Information

Application No	86213938	Publication date	10/06/2015
Opposition Filing Date	12/07/2015	Opposition Period Ends	12/05/2015
Applicant	Garland, Chris B 5268 E Appian Way Long Beach, CA 90803 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. First Use: 2012/01/28 First Use In Commerce: 2012/01/28 All goods and services in the class are opposed, namely: Arranging and conducting swap meets in the field of Polynesian Popular Culture and Mid-Century Modern Arts, Crafts, Goods
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	86709596	Application Date	07/30/2015
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	INTERNATIONAL TIKI MARKET PLACE		

Design Mark	<h1>International Tiki Market Place</h1>
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 2012/01/28 First Use In Commerce: 2012/01/28 Arranging and conducting swap meets in the field of Polynesian Popular Culture and Mid-Century Modern Arts, Crafts, Goods

Attachments	86709596#TMSN.png(bytes) Intl Tiki TM - Opposition - 12-7-15.pdf(225900 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	/A. Justin Lum/
Name	Albert Justin Lum
Date	12/07/2015

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

In re Trademark Application Serial no. 86213938
Filed: 03/07/2014
For Mark: "INTERNATIONAL TIKI MARKET PLACE"
Published in the Official Gazette on 10/06/15

TROPIC RUM, LLC,

Opposer,

v.

CHRIS B. GARLAND,

Applicant.

Opposition No.

**OPPOSER TROPIC RUM, LLC'S
NOTICE OF OPPOSITION**

Honorable Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Sir:

Opposer's Notice of Opposition

Opposer, Tropic Rum, LLC ("Opposer"), believes that it will be damaged by registration of the mark "INTERNATIONAL TIKI MARKET PLACE" (the "Opposed Mark"), as shown in Application Serial No. 86213938 (the "Application").

As grounds for opposition, it is alleged that:

1. Opposer is a California limited liability company with its principal place of business located at 16278 Pacific Coast Highway, Huntington Beach, California 92649.

2. Opposer is an entity related to Marisol L.L.C., a Nevada limited liability company with its principal place of business located at 669 Oakmont Ave., #3715, Las Vegas, Nevada 89109.

3. In Trademark Application No. 86709596 for “INTERNATIONAL TIKI MARKET PLACE” (“Opposer’s Mark”) filed by counsel with the United States Patent and Trademark Office (“USPTO”) on July 30, 2015, Marisol L.L.C. was erroneously named as the owner of the trademark.

4. A trademark assignment has been filed with the USPTO wherein Opposer has been assigned the rights to Trademark Application No. 86709596 for “INTERNATIONAL TIKI MARKET PLACE,” as the rightful owner of Opposer’s Mark.

5. On November 18, 2015, the USPTO issued an Office Action regarding Opposer’s Trademark Application No. 86709596, in which it denied registration of Opposer’s Mark, citing a likelihood of confusion with Applicant’s Application for the Opposed Mark, Trademark Application No. 86213938.

6. On information and belief, Applicant Chris B. Garland (“Applicant”) is an individual residing in Los Angeles County, California.

7. Applicant is a former agent and/or employee of Opposer.

8. In 2009, Opposer, doing business as Don the Beachcomber, established the International Tiki Market Place, an international market place event held at the Don the Beachcomber restaurant, where vendors could exhibit and sell their products, for a fee to Opposer.

9. Beginning in mid 2009, Mr. Garland assisted in operation of the International Tiki Market Place.

10. In 2014, Applicant filed the instant Application for the Opposed Mark.

11. Applicant knew or had reason to know of Opposer's Mark when Applicant filed the Application for the Opposed Mark.

12. Opposer is therefore the senior and actual owner of the rights to the "International Tiki Market Place" name and trademark.

13. Applicant is not affiliated or connected with Opposer, and has not been endorsed or sponsored by Opposer.

14. Applicant has never sought or obtained Opposer's permission to use the Opposed Mark, nor has Opposer approved any of the goods offered by Applicant under the Opposed Mark.

COUNT I

15. Opposer repeats and re-alleges the allegations contained in paragraphs 1 – 14 of the Notice of Opposition as if fully set forth herein.

16. The goods covered by the Application are closely related to the goods offered and services rendered in connection with Opposer's Mark.

17. The Opposed Mark so resembles Opposer's Mark as to be likely, when used in connection with Applicant's goods, to cause confusion, to cause mistake, and to deceive the trade and public, who are likely to believe that Applicant's goods have their origin with Opposer and/or that such goods are approved, endorsed or sponsored by Opposer, or associated in some way with Opposer.

18. Opposer would thereby be injured by the granting to Applicant of a certificate of registration for the Opposed Mark.

19. A likelihood of confusion is further enhanced by the fact that Opposer and Applicant will likely market their goods and services in the same or similar channels of trade.

20. A likelihood of confusion is further enhanced by the fact that the USPTO itself has barred registration of Opposer's Mark based on a likelihood of confusion.

COUNT II

21. Applicant repeats and re-alleges its responses contained in paragraphs 1-20 of this Notice of Opposition as if fully set forth herein.

22. Upon information and belief, contrary to Applicant's sworn statements in the Application that Applicant's first use date was January 28, 2012, and that there has been continuous use from January 28, 2012 to March 7, 2014, the Application filing date, that date of first use was the date of first use of Opposer's Mark, by Opposer.

23. Applicant did not use the Mark in commerce with respect to any of the identified goods in the Application as of the filing date of the Application.

24. Rather, to the extent Applicant presented the Mark in commerce at any time from the date of Opposer's first use, Applicant, as an agent and/or employee of Opposer, on behalf of Opposer, and for the benefit of Opposer, presented the Mark in commerce.

25. The USPTO relied on Applicant's false statements and passed the Application for publication.

26. The USPTO would not have published the Application but for Applicant's false statements.

27. Applicant's false statement(s) in procuring an allowance of the trademark constitutes fraud, thereby invalidating the Application in its entirety.

28. Accordingly, the Application should be declared void ab initio.

Prayer of Relief

WHEREFORE, Opposer believes that it will be damaged by registration of Applicant's trademark application, and requests that the opposition be sustained, and said registration be denied. Opposer further respectfully requests that its own application for Opposer's Mark be issued a Notice of Allowance by the USPTO forthwith.

Dated this 7th of December, 2015.

Respectfully,

s/A. Justin Lum/

A. Justin Lum

LUM LAW GROUP
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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this Notice of Opposition is being transmitted electronically to the Commissioner for Trademarks – <http://estta.uspto.gov>

Dated: 12/7/15

By: s/A. Justin Lum/
A. Justin Lum

CERTIFICATE OF SERVICE

I am a citizen of the United States of America and I am employed in Pasadena, California. I am over the age of 18 and not a party to the within action. My business address is 1005 E. Colorado Blvd., Suite 207, Pasadena, California 91106. On the below execution date, I served the within NOTICE OF OPPOSITION to the parties or their counsel shown below:

Darren S. Rimer Rimer & Mathewson LLP 30021 Tomas, Suite 300 Rancho Santa Margarita, CALIFORNIA UNITED STATES 92688	Julie A. Greenberg Dinsmore & Shohl LLP 2701 Troy Center Drive, Suite 330 Troy, MI 38084 UNITED STATES docket@patlaw.com, debra.nichols@dinsmore.com 248-647-6000
Garland, Chris B 5268 E Appian Way Long Beach CALIFORNIA 90803	

X (BY MAIL) I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid at Pasadena, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

____ (BY PERSONAL DELIVERY) I caused such envelope to be delivered by hand to a representative of the addressee.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on December 7, 2015 at Pasadena, California.

s/Jeffrey Vien/
Jeffrey Vien