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ESTTA Tracking number: **ESTTA755802**

Filing date: **06/30/2016**

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 | Moonlite Bar-B-Q Inn, Inc. |
| Granted to Date of previous extension | 07/03/2016 |
| Address | 2840 W. Parrish Avenue<br>Owensboro, KY 42301<br>UNITED STATES |

| | |
|---|---|
| Correspondence information | Theodore A. Breiner<br>Attorney<br>BREINER & BREINER, L.L.C.<br>115 North Henry Street<br>Alexandria, VA 22314<br>UNITED STATES<br>tbreiner@bbpatlaw.com Phone:703-684-6885 |

## Applicant Information

| | | | |
|---|---|---|---|
| Application No | 86536406 | Publication date | 01/05/2016 |
| Opposition Filing Date | 06/30/2016 | Opposition Period Ends | 07/03/2016 |
| Applicant | Marble Distilling Company, LLC<br>150 Main Street<br>Carbondale, CO 816239342<br>UNITED STATES | | |

## Goods/Services Affected by Opposition

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| Class 033. First Use: 0 First Use In Commerce: 0<br>All goods and services in the class are opposed, namely: Alcoholic beverages except beers |

## Grounds for Opposition

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| Priority and likelihood of confusion | Trademark Act Section 2(d) |

## Marks Cited by Opposer as Basis for Opposition

| | | | |
|---|---|---|---|
| U.S. Registration No. | 2835914 | Application Date | 06/13/2002 |
| Registration Date | 04/27/2004 | Foreign Priority Date | NONE |
| Word Mark | MOONLITE | | |

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|---|---|
| Design Mark | MOONLITE |
| Description of Mark | NONE |
| Goods/Services | Class 004. First use: First Use: 1991/00/00 First Use In Commerce: 1991/00/00<br>Hickory chips, namely wood chips for smoking, flavoring and grilling foods, and-for use as fuel<br>Class 016. First use: First Use: 1965/00/00 First Use In Commerce: 1965/00/00<br>Printed materials, namely, cookbooks, food and gift magazines, menus, post-cardsfeaturing food services and paper napkins<br>Class 029. First use: First Use: 1975/00/00 First Use In Commerce: 1975/00/00<br>Meats, soups, barbeque dip, processed barbeque beans, potato salad, bean soup mix, fruit preserves, jams and jellies<br>Class 030. First use: First Use: 1975/00/00 First Use In Commerce: 1975/00/00<br>Foods, namely sauces, hot sauces, barbeque sauces, steak and dinner sauce, cooking sauce, salad dressing, relish<br>Class 035. First use: First Use: 1947/00/00 First Use In Commerce: 1947/00/00<br>Wholesale and retail food distributorship services featuring barbeque style foods, on line retail store services featuring barbeque food products and ser-vices,cookbooks, and glassware, gift items, clothing, stuffed animals and souvenirs related to barbeque food services<br>Class 043. First use: First Use: 1947/00/00 First Use In Commerce: 1947/00/00<br>Restaurant services, catering services |

| | | | |
|---|---|---|---|
| U.S. Registration No. | 1763093 | Application Date | 12/16/1991 |
| Registration Date | 04/06/1993 | Foreign Priority Date | NONE |
| Word Mark | MOONLITE | | |
| Design Mark | | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 030. First use: First Use: 1991/11/01 First Use In Commerce: 1991/11/04<br>barbeque sauces and hot sauces | | |

| | | | |
|---|---|---|---|
| U.S. Registration No. | 2658220 | Application Date | 03/16/2001 |
| Registration Date | 12/10/2002 | Foreign Priority Date | NONE |
| Word Mark | MOONLITE | | |

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|---|---|
| Design Mark | MOONLITE |
| Description of Mark | NONE |
| Goods/Services | Class 029. First use: First Use: 1991/11/00 First Use In Commerce: 1991/11/00 Meats and soups |

| | | | |
|---|---|---|---|
| U.S. Registration No. | 3903997 | Application Date | 05/26/2010 |
| Registration Date | 01/11/2011 | Foreign Priority Date | NONE |
| Word Mark | MOONLITE | | |
| Design Mark | MOONLITE | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 030. First use: First Use: 1975/00/00 First Use In Commerce: 1975/00/00 pies and cakes | | |

| | | | |
|---|---|---|---|
| U.S. Registration No. | 2822257 | Application Date | 06/13/2002 |
| Registration Date | 03/16/2004 | Foreign Priority Date | NONE |
| Word Mark | NONE | | |

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|---|---|
| Design Mark | |
| Description of Mark | NONE |
| Goods/Services | Class 016. First use: First Use: 1965/00/00 First Use In Commerce: 1965/00/00<br>printed materials, namely, cookbooks, food and gift magazines, menus, post-cardsand napkins<br>Class 029. First use: First Use: 1975/00/00 First Use In Commerce: 1975/00/00<br>foods, namely meats, soups, barbeque dip, processed barbeque beans, egg white stabilizer, potato salad, bean soup mix, fruit preserves, jams and jellies<br>Class 030. First use: First Use: 1975/00/00 First Use In Commerce: 1975/00/00<br>foods, namely sauces, hot sauces, barbeque sauces, salsa, corn bread mix, tablesyrup, salad dressing, relish, food gift boxes and baskets featuring sauces, hot sauces, barbeque sauces, bean soup mix, soups, relish, table syrup, meats<br>Class 035. First use: First Use: 1963/00/00 First Use In Commerce: 1963/00/00<br>wholesale and retail food distributorship services featuring barbeque style foods, online retail store services featuring barbeque food products, cookbooks, glass-ware, gift items, clothing, stuffed animals and souvenirs<br>Class 043. First use: First Use: 1963/00/00 First Use In Commerce: 1963/00/00<br>restaurant services, catering services |

| | | | |
|---|---|---|---|
| U.S. Registration No. | 2507094 | Application Date | 03/16/2001 |
| Registration Date | 11/13/2001 | Foreign Priority Date | NONE |
| Word Mark | NONE | | |

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|---|---|
| Design Mark | |
| Description of Mark | NONE |
| Goods/Services | Class 029. First use: First Use: 1991/11/00 First Use In Commerce: 1991/11/00<br>Meats and soups |

| | | | |
|---|---|---|---|
| U.S. Registration No. | 2658221 | Application Date | 03/16/2001 |
| Registration Date | 12/10/2002 | Foreign Priority Date | NONE |
| Word Mark | MOONLITE BAR-B-Q INN | | |
| Design Mark | | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 029. First use: First Use: 1991/11/00 First Use In Commerce: 1991/11/00<br>Meats and soups | | |

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|---|---|---|---|
| U.S. Registration No. | 1729663 | Application Date | 12/16/1991 |

| | | | |
|---|---|---|---|
| Registration Date | 11/03/1992 | Foreign Priority Date | NONE |
| Word Mark | MOONLITE BAR-B-Q INN INN | | |
| Design Mark | | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 030. First use: First Use: 1991/11/01 First Use In Commerce: 1991/11/04<br>barbeque sauces and hot sauces | | |

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|---|---|---|---|
| U.S. Application No. | 86636794 | Application Date | 05/20/2015 |
| Registration Date | NONE | Foreign Priority Date | NONE |
| Word Mark | MOONLITE | | |
| Design Mark | MOONLITE | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 033. First use: First Use: 0 First Use In Commerce: 0<br>Wines | | |

| | | | |
|---|---|---|---|
| U.S. Application No. | 86636842 | Application Date | 05/20/2015 |
| Registration Date | NONE | Foreign Priority Date | NONE |
| Word Mark | NONE | | |

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|---|---|
| Design Mark | |
| Description of Mark | The mark consists of a moon with facialfeatures. |
| Goods/Services | Class 033. First use: First Use: 0 First Use In Commerce: 0<br>Wines |

| | |
|---|---|
| Attachments | 76422976#TMSN.png( bytes )<br>76226512#TMSN.png( bytes )<br>85048422#TMSN.png( bytes )<br>76420648#TMSN.png( bytes )<br>76226513#TMSN.png( bytes )<br>76226514#TMSN.png( bytes )<br>74230465#TMSN.png( bytes )<br>86636794#TMSN.png( bytes )<br>86636842#TMSN.png( bytes )<br>Notice of Opposition 6-30-16.pdf(351444 bytes ) |

## 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 | /Theodore A. Breiner/ |
| Name | THEODORE A. BREINER |
| Date | 06/30/2016 |

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

In re Application of

Marble Distilling Company, LLC

U.S. Serial No. 86/536,406

Filed: February 16, 2015

Mark: MOONLIGHT EXPRESSO and Design

Published in the Trademark
Official Gazette January 5, 2016

| | | |
|---|---|---|
| MOONLITE BAR-B-Q INN, INC., Opposer, | ) | |
| v. | ) | Opposition No._____ |
| MARBLE DISTILLING COMPANY, LLC, Applicant. | ) | |

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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. 86/536,406, and hereby opposes the same.

As grounds of opposition, it is alleged that:

1. The above trademark application Serial No. 86/536,406 for registration of the mark MOONLIGHT EXPRESSO and Design for alcoholic beverages except beers, published for opposition on January 5, 2016, in International Class 33, in the Official Gazette of the United States Patent and Trademark Office, was filed on February 16, 2015 as an intent-to-use application.

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

| MARK | Registration No. |
|---|---|
| MOONLITE | 2,835,914 |
| MOONLITE | 1,763,093 |
| MOONLITE | 2,658,220 |
| MOONLITE | 3,903,997 |
| Moon Design | 2,822,257 |
| Moon Design | 2,507,094 |
| MOONLITE BAR-B-Q INN and Design | 2,658,221 |
| MOONLITE BAR-B-Q INN and Design | 1,729,663 |

| | |
|---|---|
| MOONLITE | 86/636,794 |
| Moon Design | 86/636,842 |

Each of opposer's registrations is valid and subsisting.

3. The registered trademarks set forth in paragraph 2 are now used in commerce by opposer and have been extensively used by opposer as trademarks for opposer's goods and/or services. Opposer has used the MOONLITE trademark prior to applicant's adoption and use of the mark sought to be registered herein.

4. Opposer's registered trademarks set forth in paragraph 2, now, and for a long time past, have been used by opposer on or in connection with opposer's goods and/or 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/or services.

5. Opposer's trademarks set forth in paragraph 2 constitute a family of trademarks having the recognizable common characteristics, including in referencing the name "Moonlite" and the "Moon" and a "Moon Design" in relation to its goods and services, and the public has come to associate these common characteristics with opposer.

6. The goods in connection with which applicant seeks registration of its mark here opposed are so closely related to opposer's goods and services 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 goods originate with, are authorized or sponsored by, or have some connection with opposer, and will cause confusion, or will cause mistake, or will deceive.

7. Use and registration by applicant of the mark sought to be registered for applicant's goods, 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 goods are the goods 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.

8. Use and registration of the mark sought to be registered for applicant's goods will preclude opposer from use and registration of its MOONLITE trademark for beer, wine and/or other alcoholic beverages and it will dilute Moonlite's rights in the MOONLITE trademark.

9. Opposer has no control over the nature and quality of applicant's goods which are offered by applicant under the mark it seeks to register, and possible dissatisfaction with applicant's goods, 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 2 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

June 30, 2016

CERTIFICATE OF SERVICE

It is hereby certified that on this 30th day of June 2016, 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:

Dan J. Kazanas
KAZANAS LC
321 W Port Plaza Drive, Suite 201
Saint Louis, Missouri 63146

Theodore A. Breiner