

ESTTA Tracking number: **ESTTA782577**

Filing date: **11/14/2016**

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	HIJOS DE RIVERA, S.A.
Granted to Date of previous extension	11/13/2016
Address	Poligono Ind. de la Grela-Bens Gambrinus, 2-10 La Coruna (Galicia), 15008 SPAIN
Attorney information	Jeffrey H. Handelsman Greenblum & Bernstein, P.L.C. 1950 Roland Clarke Place Reston, VA 20191 UNITED STATES eteas@gbpatent.com Phone:703-716-1191

Applicant Information

Application No	86656066	Publication date	05/17/2016
Opposition Filing Date	11/14/2016	Opposition Period Ends	11/13/2016
Applicant	Frank Brunckhorst Co., LLC 24 Rock Street Brooklyn, NY 11206 UNITED STATES		

Goods/Services Affected by Opposition


Class 043. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Bar services; Restaurant and catering services

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.	2198556	Application Date	11/21/1997
Registration Date	10/20/1998	Foreign Priority Date	NONE
Word Mark	1906		
Design Mark			
Description of	NONE		

Mark			
Goods/Services	Class 032. First use: First Use: 1993/05/00 First Use In Commerce: 1997/11/10 BEER		
U.S. Registration No.	3222794	Application Date	05/31/2006
Registration Date	03/27/2007	Foreign Priority Date	NONE
Word Mark	1906		
Design Mark			
Description of Mark	The mark consists of quadrilateral shaped background with a stitching around the perimeter; a star in the center in the background, encompassed by two circles, and the numbers 1906 in the foreground.		
Goods/Services	Class 032. First use: First Use: 0 First Use In Commerce: 0 Beer; [Concentrates, syrups or powders used in the preparation of soft drinks; Fruit drinks; Fruit juices; Malt syrup for beverages; Mineral water; Non-alcoholic beverages containing fruit juices; Non-alcoholic cocktail mixes; Non-alcoholic fruit extracts used in the preparation of beverages; Non-alcoholic malt beverage; Sparkling water; Syrups for beverages; Syrups for making fruit drinks, soft drinks and cocktail mixes]		

Attachments	78897420#TMSN.png(bytes) opp.pdf(163463 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	/Jeffrey H. Handelsman/
Name	Jeffrey H. Handelsman
Date	11/14/2016

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

Hijos de Rivera, S.A.)	
)	Opposition No. _____
Opposer,)	
)	Application Serial
v.)	No. 86/656,066
)	
Frank Brunckhorst Co., LLC)	Published in the Trademark
)	Official Gazette on
Applicant.)	May 17, 2016

NOTICE OF OPPOSITION

Opposer, Hijos de Rivera, S.A. (“Hijos de Rivera” or “Opposer”), having an address at Polígono Industrial de la Grela-Bens, Gambrinus, 2-10, La Coruña (Galicia) SPAIN 15008, believes that it will be damaged by registration of the mark shown in U.S. Trademark Application Serial No. 86/656,066, “1905” (the “Opposed Application”), and hereby opposes the same, pursuant to 15 U.S.C. § 1063 and 37 CFR § 2.104.

As grounds for the Opposition, it is alleged, upon information and belief that:

1. Hijos de Rivera provides various goods under the mark “1906” (“Hijos de Rivera’s Mark” or “Opposer’s Mark”) since a time prior to the filing date of the Opposed Application.
2. Hijos de Rivera is the owner of the valid and subsisting United States Trademark Reg. No. 2,198,556 for the mark “1906” in connection with “*Beer*” in International Class 32.
3. The U.S. Patent and Trademark Office (USPTO) issued the aforementioned registration for Opposer’s Mark on October 20, 1998.
4. Opposer’s Mark is incontestable, with a declaration pursuant to 15 U.S.C. § 1065 being filed and accepted by the USPTO.

5. Hijos de Rivera is also the owner of the valid and subsisting United States Trademark Reg. No. 3,222,794 for the mark “1906” and Design in connection with “*Beer*” in International Class 32.

6. The U.S. Patent and Trademark Office (USPTO) issued the aforementioned registration on March 27, 2007.

7. By the application herein opposed, Applicant seeks to register the mark “1905” (“Applicant’s Mark”) for the following goods and services: “*Cheese; Processed meat*”, in International Class 29 and “*Bar services; Restaurant and catering services*”, in International Class 43.

8. Applicant’s Mark was published in the *Official Gazette* on May 17, 2016.

COUNT ONE
Likelihood of Confusion, 15 U.S.C. § 1052(d)

9. Hijos de Rivera repeats and realleges each and every allegation set forth in each of the preceding paragraphs.

10. Hijos de Rivera has priority rights in its “1906” mark in the United States.

11. Applicant filed the Opposed Application on June 9, 2015, based on an intent-to-use the mark.

12. Hijos de Rivera’s Mark was registered in the United States on October 20, 1998, which is prior to the Applicant’s filing date.

13. Applicant had constructive knowledge of Hijos de Rivera’s Mark before filing the Opposed Application.

14. Hijos de Rivera’s Mark is inherently distinctive and represents the valuable goodwill associated with Hijos de Rivera’s goods.

15. Applicant’s Mark is confusingly similar to Hijos de Rivera’s Mark and is likely, when applied to the goods and services of the Applicant, to cause confusion, to cause mistake and/or to deceive under 15 U.S.C. § 1052(d).

16. Consumers encountering Applicant’s Mark and associated goods and services are likely to believe that such goods and services originate from or are authorized or sponsored by Hijos de Rivera.

17. The goods and services provided in connection with Applicant’s Mark are highly similar and travel in the same channels of trade as those used in

connection with Hijos de Rivera's Mark.

18. Upon information and belief, if the Opposed Application is registered, it would diminish the value and dilute the distinctiveness of Hijos de Rivera's Mark.

19. Allowance of Applicant's application and registration of Applicant's Mark would restrict and impair Hijos de Rivera's right to develop and expand its use of the Hijos de Rivera Mark, and would otherwise cause injury and damage to Hijos de Rivera, as well as its goodwill and reputation.

WHEREFORE, Opposer prays that Application Serial No. 86/656,066 be refused registration and that this Opposition be sustained in favor of Opposer.

Opposer appoints Greenblum & Bernstein, P.L.C., 1950 Roland Clarke Place, Reston, Virginia 20191-1411 to act as attorneys for Opposer herein, with full power to transact all relevant business with the U.S. Patent and Trademark Office and in the United States Courts and to receive all official communications in connection with this opposition.

Opposer submits with the electronic filing herewith payment of the \$300.00 filing fee. If any additional fees are due, the Office and Board are authorized to charge Greenblum & Bernstein, P.L.C.'s Deposit Account No. 19-0089.

Respectfully submitted,

Dated: November 14, 2016

By: Jeffrey H. Handelsman/
Neil F. Greenblum
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Attorneys for Opposer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Notice of Opposition was served on Applicant's counsel of record, via First Class Mail, postage prepaid, as follows:

Glenn T. Henneberger, Esq.
Hoffman & Baron, LLP
6900 Jericho Tpke Ste 200
Syosset, NY 11791-4499

Date: November 14, 2016

/Jeffrey H. Handelsman/
Jeffrey H. Handelsman
Attorney for Opposer