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ESTTA Tracking number: **ESTTA798613**

Filing date: **02/01/2017**

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	Selective Wine Estates, Inc.
Granted to Date of previous extension	03/29/2017
Address	9 Tanglewood Drive East Hanover, NJ 07936 UNITED STATES

Correspondence information	Selective Wine Estates, Inc. 9 Tanglewood Drive East Hanover, NJ 07936 UNITED STATES emelzer@blkgg.com Phone:973-325-8347

Applicant Information

Application No	87080017	Publication date	11/29/2016
Opposition Filing Date	02/01/2017	Opposition Period Ends	03/29/2017
Applicants	Joseph Christiano 568 East Elizabeth Ave. Linden, NJ 07036 UNITED STATES Maria Christiano 568 East Elizabeth Ave. Linden, NJ 07036 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: Flavored liquors

Grounds for Opposition

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

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	4068715	Application Date	03/24/2011
Registration Date	12/06/2011	Foreign Priority Date	NONE
Word Mark	MOMMY'S		

Design Mark	MOMMY'S
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 2006/03/03 First Use In Commerce: 2006/03/03 Wines

U.S. Registration No.	3218976	Application Date	12/26/2005
Registration Date	03/13/2007	Foreign Priority Date	NONE
Word Mark	MOMMY'S TIME OUT		
Design Mark	MOMMY'S TIME OUT		
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2006/03/03 First Use In Commerce: 2006/03/03 Wines		

U.S. Registration No.	4412311	Application Date	02/25/2013
Registration Date	10/01/2013	Foreign Priority Date	NONE
Word Mark	MOMMY'S TIME OUT DELICIOUS RED		
Design Mark	MOMMY'S TIME OUT DELICIOUS RED		

Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 2013/06/04 First Use In Commerce: 2013/06/04 Wines

U.S. Registration No.	4534393	Application Date	12/10/2012
Registration Date	05/20/2014	Foreign Priority Date	NONE
Word Mark	MOMMY'S TIME OUT DELICIOUS PINK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2012/12/18 First Use In Commerce: 2012/12/18 Wines		

Attachments	85275430#TMSN.png(bytes) 78780713#TMSN.png(bytes) 85859012#TMSN.png(bytes) 85798855#TMSN.png(bytes) 20170201104429774.pdf(221347 bytes)

Signature	/Eric H. Melzer/
Name	Selective Wine Estates, Inc.
Date	02/01/2017

Berkowitz Lichtstein

BERKOWITZ, LICHTSTEIN, KURITSKY, GIASULLO & GROSS, LLC • COUNSELORS AT LAW

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File#:

February 1, 2017

Via ETTAS ONLY
United States Patent & Trademark Office
Trademark Trial and Appeals Board

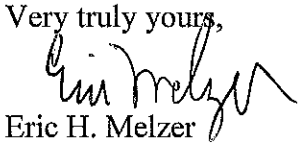
Re: Selective Wine Estates, Inc. v. Maria Christiano and Joseph Christiano

Dear Sir or Madam:

Enclosed please find the above captioned opposition. Please assign an Opposition Number to the above matter.

Thanking you for your attention to this matter, I remain.

Very truly yours,



Eric H. Melzer

Encl.

cc: Joseph E. Sutton, Esq.

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

SELECTIVE WINE ESTATES, INC.	X	Opposition No.:_____
	X	
Opposer,	X	NOTICE OF OPPOSITION
	X	
v.	X	MOMMY WATER
	X	Appl. Serial No.: 87/080,017
MARIA CHRISTIANO and JOSEPH CHRISTIANO,	X	Filing Date: June 22, 2016
	X	
Applicants.	X	

NOTICE OF OPPOSITION

Selective Wine Estates, Inc. ("Opposer") believes that it will be damaged by registration of the mark MOMMY WATER ("Applicants' Mark") for use in connection with the goods identified in Application Serial No. 87/080,017 (the "Application"). Accordingly, Opposer hereby opposes the Application. The grounds for this opposition is as follows:

Parties

1. Opposer is a New Jersey corporation with an address at 9 Tanglewood Avenue, East Hanover, New Jersey 07936.
2. Upon information and belief, Joseph Christiano and Maria Christiano (collectively, "Applicant") are individuals residing at 568 East Elizabeth Ave, Linden, New Jersey 07036, and are the owners of the Application.

Opposed Application

3. On June 22, 2016, Applicants filed the Application which was assigned Serial Number 87/080,017 to register the Application with standard characters and with a logo, for use in connection with "Flavored Liquors", in International Class 033. The Application is based upon Applicant's intended use of the Mark.

Opposer's Trademark Rights

4. Opposer is the owner of U.S. Registration No. 3,218,976 for the mark MOMMY'S TIME OUT in International Class 033 for use in connection with "Wines." ("Opposer's Registration"). A copy of Opposer's Registration is attached as Exhibit A.
5. Opposer's Registration is valid and subsisting.
6. Opposer's Registration issued on March 13, 2007, and is inconstestible.
7. Opposer first used the Registration on March 3, 2006.
8. Opposer also owns registrations for the marks: (i) MOMMY'S, U.S. Registration No. 4,068,715 (the "715 Registration"), (ii) MOMMY'S TIME OUT DELICIOUS RED, U.S. Registration No. 4,412,311 (the "311 Registration"), and (iii) MOMMY'S TIME OUT DELICIOUS PINK, U.S. Registration No. 4,534,393 (the "393 Registration"). The 715 Registration, the 311 Registration, and the 393 Registration are all in International Class 033 for use in connection with Wines. Copies of the 715 Registration, the 311 Registration and the 393 Registration are attached hereto as Exhibit B, Exhibit C, and Exhibit D respectively.
9. The 715 Registration, 311 Registration and the 393 Registration are valid and subsisting. The 715 Registration issued on December 6, 2011, the 311 Registration issued on October 1, 2013 and the 393 Registration issued on May 20, 2014.
10. Opposer also owns common law rights in the MOMMY'S and MOMMY'S TIME OUT trademark via actual use, and use analogous to trademark use, dating back to March 3, 2006 and the MOMMY'S TIME OUT DELICIOUS RED and MOMMY'S

TIME OUT DELICIOUS PINK, dating back to June 4, 2013 and December 18, 2012, respectively.

COUNT 1- PRIORITY AND LIKELIHOOD OF CONFUSION

11. Opposer re-alleges each of the foregoing allegations as though set forth entirely herein.

12. Applicant's Application Serial No. 87/080,017 to register the mark MOMMY WATER is without Opposer's consent.

13. Applicant has not alleged any use of the mark covered by Application Serial No. 87/080,017 in commerce. As the Applicant has filed the Application on an intent to use basis, Opposer's use and registration of MOMMY'S, MOMMY'S TIME OUT, MOMMY'S TIME OUT DELICIOUS RED, and MOMMY'S TIME OUT DELICIOUS PINK clearly predates the filing date of the Application, as well as any other date on which Applicant may claim priority.

14. Opposer has not abandoned its use of MOMMY'S, MOMMY'S TIME OUT, MOMMY'S TIME OUT DELICIOUS RED, and MOMMY'S TIME OUT DELICIOUS PINK in connection with Opposer's goods or services.

15. Opposer's MOMMY'S mark, MOMMY'S TIME OUT mark and MOMMY'S TIME OUT DELICIOUS RED AND MOMMY'S TIME OUT DELICIOUS PINK, on the one hand, and Applicant's Mark as reflected in Application Serial No. 87/00,017, on the other hand, are nearly identical. Because of the identity of the dominant word MOMMY in the marks at issue and the fact that the goods are very close in description, Applicant's mark is likely under Section 2(d) of the Trademark Act to create confusion or to cause mistake, or to deceive as the origin, sponsorship, or

approval of Applicant's goods and services, and suggest and affiliation or connection between Applicant's goods and services and Opposer's goods and services.

16. The registration of Applicant's mark, as reflected in Application Serial No. 87/080,017, would prevent Opposer from exercising exclusive control over the goodwill and reputation associated with Opposer's MOMMY'S and MOMMY'S TIME OUT marks and Opposer's MOMMY'S TIME OUT DELICIOUS RED and MOMMY'S TIME OUT DELICIOUS PINK marks, and any defect, fault or deficiency in Applicant's goods or services could negatively reflect on Opposer's products. Therefore, a grant of registration would damage and injure Opposer.

17. Opposer will be further damaged by the registration of Applicant's Mark, as reflected in Application Serial No. 87/080,017, because the registration of Applicant's Mark will support statutory rights that may conflict with or supersede Opposer's prior statutory and common law rights.

WHEREFORE, Opposer requests that its opposition be sustained and that Application Serial No. 87/080,017 be denied registration.

Dated: February 1, 2017

Respectfully submitted,

BERKOWITZ, LICHTSTEIN, KURITSKY, GIASULLO & GROSS, LLC

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Roseland, New Jersey 07666
www.blkgg.com
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ATTORNEYS FOR OPPOSER

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of February 2017, the foregoing Notice was served by mailing same by Email and by US First Class mail, on the following correspondent for the Application as set forth in the records of the United States Patent and Trademark Office:

To: Joseph E. Sutton, Esq.
Law Offices of Ezra Sutton, PA
900 U.S. Highway 9
Suite 201
Woodbridge, New Jersey 07095
Trademarks@ezrasutton.com
jsutton@ezrasutton.com

Eric H. Melzer, Esq.

EXHIBIT A

U.S. REGISTRATION NUMBER 3,218.976

Int. Cl.: 33

Prior U.S. Cls.: 47 and 49

United States Patent and Trademark Office

Reg. No. 3,218,976

Registered Mar. 13, 2007

TRADEMARK
PRINCIPAL REGISTER

MOMMY'S TIME OUT

SELECTIVE WINE ESTATES, INC. (NEW JERSEY CORPORATION)
9 TANGLEWOOD DRIVE
EAST HANOVER, NJ 07936

FOR: WINES, IN CLASS 33 (U.S. CLS. 47 AND 49).

FIRST USE 3-3-2006; IN COMMERCE 3-3-2006.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 78-780,713, FILED 12-26-2005.

SHANNON TWOHIG, EXAMINING ATTORNEY

EXHIBIT B

U.S. REGISTRATION NUMBER 4,068,715

United States of America
United States Patent and Trademark Office

MOMMY'S

Reg. No. 4,068,715

Registered Dec. 6, 2011

Int. Cl.: 33

TRADEMARK

PRINCIPAL REGISTER

SELECTIVE WINE ESTATES, INC. (NEW JERSEY CORPORATION)
9 TANGLEWOOD DRIVE
EAST HANOVER, NJ 07936

FOR: WINES, IN CLASS 33 (U.S. CLS. 47 AND 49).

FIRST USE 3-3-2006; IN COMMERCE 3-3-2006.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 3,218,976.

SN 85-275,430, FILED 3-24-2011.

DEIRDRE ROBERTSON, EXAMINING ATTORNEY

David J. Kappos

Director of the United States Patent and Trademark Office

EXHIBIT C

U.S. REGISTRATION NUMBER 4,412,311

United States of America
United States Patent and Trademark Office

MOMMY'S TIME OUT DELICIOUS RED

Reg. No. 4,412,311

Registered Oct. 1, 2013

Int. Cl.: 33

TRADEMARK

PRINCIPAL REGISTER

SELECTIVE WINE ESTATES, INC. (NEW JERSEY CORPORATION)
9 TANGLEWOOD DR.
EAST HANOVER, NJ 07936

FOR: WINES, IN CLASS 33 (U.S. CLS. 47 AND 49).

FIRST USE 6-4-2013; IN COMMERCE 6-4-2013.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 3,218,976 AND 4,293,751.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "DELICIOUS RED", APART FROM THE MARK AS SHOWN.

SN 85-859,012, FILED 2-25-2013.

DAVID I, EXAMINING ATTORNEY

UNITED STATES PATENT AND TRADEMARK OFFICE · DEPARTMENT OF COMMERCE

Deputy Director of the United States Patent and Trademark Office

EXHIBIT D

U.S. REGISTRATION NUMBER 4,534,393

United States of America
United States Patent and Trademark Office

MOMMY'S TIME OUT DELICIOUS PINK

Reg. No. 4,534,393

Registered May 20, 2014

Int. Cl.: 33

TRADEMARK

PRINCIPAL REGISTER

SELECTIVE WINE ESTATES, INC (NEW JERSEY CORPORATION)
9 TANGLEWOOD DR.
EAST HANOVER, NJ 07936

FOR: WINES, IN CLASS 33 (U.S. CLS. 47 AND 49).

FIRST USE 12-18-2012; IN COMMERCE 12-18-2012.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 3,218,976 AND 4,293,751.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "DELICIOUS PINK", APART FROM THE MARK AS SHOWN.

SN 85-798,855, FILED 12-10-2012.

DAVID I, EXAMINING ATTORNEY

Michelle K. Lee

Deputy Director of the United States Patent and Trademark Office