

ESTTA Tracking number: **ESTTA806768**

Filing date: **03/13/2017**

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	Institut National de l'Origine et de la Qualite
Granted to Date of previous extension	03/15/2017
Address	12 rue Henri Rol-Tanguy TSA 30003 Montreuil-Sous-Bois Cedex, 93555 FRANCE

Attorney information	Peter M. Brody Ropes & Gray LLP 2099 Pennsylvania Avenue, NW Washington, DC 20006-6807 UNITED STATES ustrademarkmail@ropesgray.com Phone:2025084612
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Applicant Information

Application No	87098449	Publication date	11/15/2016
Opposition Filing Date	03/13/2017	Opposition Period Ends	03/15/2017
Applicant	Cold Spring Spirits, LLC 156 Cold Springs Farm Road Warren, VT 05674 UNITED STATES		

Goods/Services Affected by Opposition

Class 033. First Use: 2015/04/15 First Use In Commerce: 2015/04/15 All goods and services in the class are opposed, namely: Brandy

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
The mark is deceptively misdescriptive	Trademark Act Section 2(e)(1)
Dilution by blurring	Trademark Act Sections 2 and 43(c)
Dilution by tarnishment	Trademark Act Sections 2 and 43(c)

Mark Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	The AOC designation of CALVADOS for certain distilled spirits pro-		

	duced in the Normandy region of France, in accordance with methods and limitations set forth in French law.
Goods/Services	Certain distilled spirits produced in the Normandy region of France, in accordance with methods and limitations set forth in French law.

Attachments	20170313_125769_NOO_Pleading.pdf(309970 bytes)
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Signature	/p brody/
Name	Peter M. Brody
Date	03/13/2017

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_____)	
INSTITUT NATIONAL DE L'ORIGINE)	
ET DE LA QUALITÉ,)	Opposition No. _____
)	
Opposer,)	Application Serial No. 87/098,449
)	
v.)	Mark: MALVADOS
)	
COLD SPRING SPIRITS, LLC)	Published in the Official Gazette
)	of November 15, 2016
Applicant.)	
_____)	

NOTICE OF OPPOSITION

Opposer, the Institut National de l'Origine et de la Qualité (hereinafter "INAO"), an entity organized and existing under the laws of the Republic of France and headquartered at 12, rue Henri Rol-Tanguy, TSA 30003, 93555 Montreuil-Sous-Bois, France, hereby opposes the application ("Application") filed on July 9, 2016, by applicant Cold Spring Spirits, LLC ("Applicant") to register the mark "MALVADOS" in International Class 33 based on use of said mark on or in connection with "Brandy" (U.S. Application Serial No. 87/098,449, published for opposition in the Official Gazette of November 15, 2016). Opposer believes that it will be damaged by registration of the subject mark, and as grounds of opposition avers as follows:

1. Opposer INAO is a public body, under the aegis of the Ministry of Agriculture, which was established by decree-law of the French Republic dated July 30, 1935. The INAO's principal functions include defining and recognizing French *appellations d'origine*, or appellations of origin, and the products entitled to bear those appellations, and protecting French appellations of origin from misuse and misappropriation in France and abroad. "Appellation of

origin” refers to a geographical designation (country, region or locality) that designates a product originating therein, the quality and characteristics of which are due exclusively or primarily to the geographic environment, including natural and human factors. Certain products identified and classified according to this system, including certain distilled spirits, may bear an *appellation d’origine contrôlée* (an “AOC”), or controlled appellation of origin. Each AOC is recognized by a decree-law which not only delimits the specific area to which the appellation pertains, but also specifies the agricultural products from which the product may be derived and the agricultural and production methods and techniques that may be used to make the product. Compliance with the appellation of origin and AOC system is monitored by the INAO, in conjunction with other governmental agencies and certain nongovernmental organizations, which are responsible for the protection of specific AOCs. The INAO receives funds listed in the budget of the Ministry of Agriculture, the amount of which generally reflects a portion of the proceeds of a special tax paid by producers of French appellation of origin products, and which is based on the volume of such products produced and sold under this system.

2. “Calvados” is a well-known French AOC for a brandy made from apple cider grown and distilled in a delimited area, namely, the Normandy region of France, in accordance with methods and limitations set forth in French law. The AOC Calvados also is authorized and used to a limited extent for brandy made from pear *poiré* (perry) grown and distilled in the delimited AOC area, in accordance with methods and limitations set forth in French law.

3. Although Calvados was first granted legal status as a regulated appellation of origin in 1942, it has been used as a geographical indication for these brandy products for

centuries. The French laws governing the AOC Calvados have been amended from time to time to clarify or modify the particular requirements applicable to the designations.

4. By these laws, France has restricted the use of this AOC to certain distilled spirits produced in a specified area, in accordance with the conditions set forth in the AOC laws. Use of this AOC constitutes an assurance to consumers by the INAO, the French regulatory authority specifically charged with safeguarding the integrity of these important French designations, that the products bearing this designation have been produced in accordance with these strict standards.

5. The use of Calvados as an AOC is thus controlled by a certifier and limited to products meeting the certifier's standards of regional origin.

6. Products qualifying for the AOC Calvados have been legally and continuously sold in the United States for a period beginning many years before the filing date of the Application, which is the constructive date of first use of the subject mark in commerce by Applicant.

7. The AOC Calvados is understood by consumers and others in the United States to denote a specific regional place of origin. The AOC Calvados is symbolic of the good will and consumer recognition built up through the efforts and investments of the INAO in the appellation of origin system and its AOCs, and through the promotion and sales of high-quality products by those certified by the INAO to use those AOCs.

8. "Calvados" is also recognized under United States treaty law and distilled-spirits labeling regulations as a geographical designation that shall not apply to distilled spirits products other than those produced in the region indicated by that name, in accordance with laws and

regulations of France and the European Union. *See* Agreement of 1994 Between the European Community and the United States Relating To The Issue Of Recognition Of Distilled Spirits and Spirit Drinks; United States Alcohol and Tobacco Tax and Trade Bureau Ruling 94-5 (citing and applying 27 C.F.R. § 5.22(k)(3)).

9. The AOC Calvados is a certification mark of regional origin within the meaning of Section 45 of the Lanham Act, 15 U.S.C. § 1127.

10. The AOC Calvados is, and for many years prior to the filing of the subject application, has been, a famous mark within the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

11. The Application identifies the goods on or in connection with which Applicant is using the subject mark as “Brandy.”

12. The identification of goods set forth in the Application contains no geographical limitation, and specifically, does not restrict the goods to brandies originating in the specific area of France delimited by the laws establishing the AOC Calvados and grown and produced in accordance with all other conditions set forth in those laws.

13. On information and belief, goods on which Applicant seeks to use the subject mark consist of brandy made from apple cider. However, none of the goods in connection with which Applicant seeks to use the subject mark originate in the area of France delimited by the laws establishing the AOC Calvados and none are entitled to bear the AOC Calvados. Indeed, on information and belief, none of the goods identified in the Application originate anywhere in France, but rather originate in Vermont.

14. The subject mark consists of or comprises a mark that so resembles the protected AOC Calvados as to be likely, when applied to the goods identified in the Application, to cause confusion, or to cause mistake, or to deceive as to the source, sponsorship or affiliation of Applicant's goods. Accordingly, registration of Applicant's mark should be refused under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

15. The subject mark, when used on or in connection with the goods identified in the Application, is deceptively misdescriptive of such goods in violation of Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1). Specifically, the mark falsely suggests that the goods consist of, contain, or have the same or similar qualities and characteristics as AOC Calvados products.

16. Finally, the subject mark when used on or in connection with the goods identified in the Application, would cause dilution of the AOC Calvados by blurring and by tarnishment within the meaning of Sections 13(a) and 43(c) of the Trademark Act of 1946, 15 U.S.C. §§ 1063, 1125(c).

17. The forms of damage that Opposer believes it or persons it represents are likely to suffer as a result of the registration of the subject mark include, but are not limited to, damage to the reputation of, and goodwill attached to, the AOC Calvados, damage to the rights and interests of Opposer, and damage to the rights and interests of those certified to use the AOC Calvados.

WHEREFORE, Opposer prays that Application Serial No. 87/098,449 be rejected, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

Opposer hereby appoints Ropes & Gray to act as its attorneys with full power to prosecute this opposition, to transact all relevant business with the Patent and Trademark Office and to receive all official communications with respect to this opposition.

Respectfully submitted,

/Peter M. Brody/

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Attorneys for the Institut National
de l'Origine et de la Qualité

Dated: March 13, 2017

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INSTITUT NATIONAL DE L'ORIGINE)	
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Applicant.)	
_____)	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of March, 2017, a true and correct copy of this Notice of Opposition was served upon Applicant by first class mail, postage prepaid to:

Jessica L. Rothstein
Goodwin Procter LLP
620 Eighth Avenue
New York, NY 10018



Ronald M. Duvernay
ROPES & GRAY LLP