

ESTTA Tracking number: **ESTTA1104804**

Filing date: **12/29/2020**

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

Proceeding	91239589
Party	Defendant Bowmaker's Whiskey Company
Correspondence Address	THEODORE A BREINER BREINER & BREINER LLC 115 NORTH HENRY STREET ALEXANDRIA, VA 22314-2903 UNITED STATES Primary Email: Docketclerk@bbpatlaw.com Secondary Email(s): tbreiner@bbpatlaw.com, Elisedelatorre@bbpatlaw.com 703-684-6885
Submission	Other Motions/Submissions
Filer's Name	THEODORE A. BREINER
Filer's email	tbreiner@bbpatlaw.com, Elisedelatorre@bbpatlaw.com, Docketclerk@bbpatlaw.com
Signature	/Theodore A. Breiner/
Date	12/29/2020
Attachments	Applicants Reservation of Objections To Opposers Testimony 12-29-20.pdf(39862 bytes )

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

MAKER'S MARK DISTILLERY, INC.,	)	
	)	
Opposer,	)	
	)	Opposition No. 91239589
v.	)	
	)	
	)	USSN 87/383,989
BOWMAKER'S WHISKEY COMPANY,	)	Mark: BOWMAKER'S WHISKEY
	)	
Applicant.	)	

APPLICANT'S RESERVATION OF OBJECTIONS TO OPPOSER'S TESTIMONY

Applicant Bowmaker's Whiskey Company ("Applicant") hereby reserves the right to object to Opposer Maker's Mark Distillery, Inc.'s ("Opposer") testimony depending on how it is relied upon by Opposer in the case. For example, Opposer reserves the right to object to Opposer's Exhibit Nos. 13-29 in its fourth and fifth notices of reliance on the grounds of lack of foundation and/or hearsay if Opposer intends to rely on statements in the exhibits for the truth of the matter asserted. Similarly, Applicant reserves the right to object to the testimony of Mr. Wagner (TTABVUE 35) and Ms. Phillips (TTABVUE 31) and the exhibits in their declarations to the extent the testimony lacks foundation and/or constitutes hearsay and/or otherwise violates a Federal Rule of Evidence.

Applicant relies on the Trademark Trial and Appeal Board's standards for considering evidence as set forth in *Luxco, Inc. v. Consejo Regulador del Tequila, A.C.*, 121 USPQ2d 1477, 1479 (TTAB 2017) as follows:

[T]he Board is capable of weighing the relevance and strength or weakness of the objected-to testimony and evidence, including any inherent limitations. . . . [W]e find no basis on which to strike any testimony or other evidence. As necessary and appropriate, we will point out any limitations in the evidence or otherwise note that the evidence cannot be relied upon in the manner sought. We have considered all of the testimony and evidence introduced into the record. In doing so, we have kept in mind the various objections raised by the parties and we have accorded whatever probative value the subject testimony and evidence merit.

Applicant will make any objections in its brief. TBMP Section 707.02(c).

Respectfully submitted,

BOWMAKER'S WHISKEY COMPANY

By /Theodore A. Breiner/  
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 Applicant  
Bowmaker's Whiskey Company

December 29, 2020

CERTIFICATE OF SERVICE

It is hereby certified that on this 29th day of December 2020, a true copy of  
the foregoing paper entitled –

APPLICANT’S RESERVATION OF OBJECTIONS TO OPPOSER’S TESTIMONY

was served by email on -

Michael D. Adams  
MAYER BROWN LLP  
P.O. BOX 2828  
Chicago, Illinois 60690-2828  
michaeladams@mayerbrown.com  
rasmus@mayerbrown.com  
gbarcelona@mayerbrown.com

/Theodore A. Breiner/  
THEODORE A. BREINER