

ESTTA Tracking number: **ESTTA882597**

Filing date: **03/12/2018**

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	Pommery
Granted to Date of previous extension	03/14/2018
Address	5 Place du General Gouraud Reims, F-51100, 00000 FRANCE

Attorney information	Jacqueline Lesser Baker & Hostetler LLP 2929 Arch Street, Cira Centre12th Floor Philadelphia, PA 19104 UNITED STATES Email: JLesser@bakerlaw.com, llabella@bakerlaw.com, bhipdocket@bakerlaw.com Phone: 215-568-3100
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### Applicant Information

Application No	87467541	Publication date	11/14/2017
Opposition Filing Date	03/12/2018	Opposition Period Ends	03/14/2018
Applicant	J.F. McCANN SPIRITS LLC 3166 Mayflower Rd Plymouth Meeting, PA 19462 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: Alcoholic beverages, except beer

### 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.	2376083	Application Date	11/13/1998
Registration Date	08/08/2000	Foreign Priority Date	NONE
Word Mark	POP		

Design Mark	<b>POP</b>		
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 1999/06/00 First Use In Commerce: 1999/11/15 Wines, champagne wines		


U.S. Registration No.	2982898	Application Date	09/30/2003
Registration Date	08/09/2005	Foreign Priority Date	NONE


Word Mark	POMMERY CHAMPAGNE POP		
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Design Mark			
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Description of Mark	The mark consists of blue bottle, the bottle further including a dressing consisting of a silver closure capsule on which are printed in blue the mentions POMMERY; a blue neck label on which the mentions POMMERY and a crest design are printed in silver and the phrase EXTRA DRY in blue; and a label which includes various text and designs, including a crest design, the words CHAMPAGNE and POMMERY in silver, and the word POP in blue.		
Goods/Services	Class 033. First use: First Use: 0 First Use In Commerce: 0 Wine of French origin, namely, Champagne		

U.S. Registration No.	3158971	Application Date	01/26/2005
Registration Date	10/17/2006	Foreign Priority Date	07/28/2004

Word Mark	POP POMMERY EXTRA DRY CHAMPAGNE PINK ROSE
Design Mark	
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 0 First Use In Commerce: 0 Wines with the protected appellation of origin Champagne, and sparkling wines

U.S. Registration No.	3767727	Application Date	08/11/2009
Registration Date	03/30/2010	Foreign Priority Date	02/16/2009
Word Mark	POP EARTH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 0 First Use In Commerce: 0 Alcoholic beverages except beers; wines especially protected appellation of origin wines from Champagne		

Attachments	75588226#TMSN.png( bytes ) 78307414#TMSN.png( bytes ) 79012156#TMSN.png( bytes ) 79072759#TMSN.png( bytes ) Notice_of_Opposition-McCann_s_Pop.pdf(102379 bytes ) Exhibit_A_for_Certificates_of_Registration_for_Opposer_s_POP.pdf(70281 bytes )
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Signature	/Jacqueline Lesser/
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Name	Jacqueline Lesser
Date	03/12/2018

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

Pommery,  <p style="text-align:right">Opposer,</p> <p style="text-align:center">v.</p> J.F. McCann Spirits LLC  <p style="text-align:right">Applicant.</p>	In Re:  Serial No.: 87467541 Filed: June 2, 2017 Published: November 14, 2017 Mark: POP'S  Opposition No.:
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**NOTICE OF OPPOSITION**

Opposer, Pommery (“Pommery” or “Opposer”), a corporation organized under the laws of France with a principal place of business at 5 Place du Général Gouraud F-51100 Reims, 51100, France, believes it will be damaged by Applicant’s alleged mark POP’S, which is the subject of U.S. Trademark Application Serial No. 87467541, filed by J.F. McCann Spirits LLC (“Applicant”), a company formed and established in the Commonwealth of Pennsylvania, with a principal place of business at 3166 Mayflower Rd., Plymouth Meeting, PA 19462, United States of America, and hereby opposes the same.

As grounds of opposition, it is alleged that:

1. Opposer, Pommery, is a well-known producer of French champagne and sparkling wines that are offered for sale in the United States and throughout the world.
2. Since at least as early as 2000, and long prior to Applicant’s claimed dates of first use of the mark covered by the application herein opposed, Pommery has offered for sale in U.S. commerce champagne and sparkling wine under its trademark POP.

3. Pommery’s POP mark is protected in the United States under the following registrations (collectively, “the POP Marks”):

POP	Reg. No. 2376083	Wines, champagne wines	Registered on August 8, 2000
POMMERY CHAMPAGNE POP	Reg. No 2982898	Wine of French origin, namely, Champagne	Registered on August 9, 2005
POP POMMERY EXTRA DRY CHAMPAGNE PINK ROSE	Reg. No. 3158971	Wines with the protected appellation of origin Champagne, and sparkling wines	Registered on October 17, 2006
POP EARTH	Reg. No. 3767727	Alcoholic beverages except beers; wines especially protected appellation of origin wines from Champagne	Registered on March 30, 2010

4. Attached as Exhibit A is a printout from the electronic records of the United States Patent and Office of the certificates of registration for Opposer’s POP. Said registrations are valid, subsisting and in force. Registrations Nos. 3158971; 2982898 and 2376083 are incontestable in accordance with 15 U.S.C. §1065 and 1115(b).

5. Since at least as early as 2000, and long prior to any alleged use by Applicant, Pommery has advertised, promoted and offered for sale wines and sparkling wines under the POP Marks. Accordingly, Opposer’s POP Marks have become well-known and well-established in connection with Opposer’s business, and the products offered thereunder.

6. Consumers and the general public have come to rely upon and recognize the POP Marks as exclusive marks of Pommery. Pommery’s POP Marks are inherently

distinctive and have come to represent and symbolize the valuable good will of Opposer. The application herein opposed, for the mark POP'S, was filed on June 2, 2017 for "alcoholic beverages, except beer," based on an intent to use.

7. Pommery has used its POP Marks in the United States since at least as early as 2000, well prior to the date of Applicant's trademark application for the POP'S designation.

8. Applicant's designation POP'S is likely to be confused with Opposer's trademark POP, since Applicant's mark uses Opposer's well-known trademark POP. Applicant's designation of POP'S as a trademark will be likely to be viewed as one of Opposer's line of products sold under the POP Marks.

9. The goods associated with the Applicant's POP'S designation and Opposer's POP Marks, are both alcoholic beverages, classified in International Class 33. The goods are substantially identical, overlapping and will likely travel in the same trading channels. Indeed, Pommery's and Applicant's target customers are identical, insofar as they are both consumers of wines and other alcoholic beverages.

10. Pommery is likely to be damaged by the registration for POP'S sought by Applicant because such registration will give Applicant statutory rights in violation and derogation of Pommery's prior and superior rights.

11. Applicant's application for POP'S should be refused registration pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), on the grounds that Applicant's designation POP'S so closely resembles Pommery's trademark POP and the POP Marks that, when used in connection with Applicant's goods, is likely to cause confusion, to cause mistake, or to deceive, with consequent injury to Opposer, the trade, and the general public.

WHEREFORE, Pommery prays that this Opposition be sustained and that Application Serial No. 87467541 be refused in its entirety.

Respectfully submitted,

Date: March 12, 2018

BAKER & HOSTETLER LLP

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# EXHIBIT A

Int. Cl.: 33

Prior U.S. Cls.: 47 and 49

United States Patent and Trademark Office

Reg. No. 3,158,971

Registered Oct. 17, 2006

TRADEMARK  
PRINCIPAL REGISTER



POMMERY S.A. (FRANCE SOCIÉTÉ ANONYME)  
5 PLACE DU GÉNÉRAL GOURAUD  
F-51100 REIMS  
FRANCE

THE COLOR(S) SILVER, BLUE, PINK, AND  
WHITE IS/ARE CLAIMED AS A FEATURE OF  
THE MARK.

FOR: WINES WITH THE PROTECTED APPELLA-  
TION OF ORIGIN CHAMPAGNE, AND SPARK-  
LING WINES, IN CLASS 33 (U.S. CLS. 47 AND 49).

PRIORITY DATE OF 7-28-2004 IS CLAIMED.

OWNER OF INTERNATIONAL REGISTRATION  
0853478 DATED 1-26-2005, EXPIRES 1-26-2015.

OWNER OF U.S. REG. NOS. 2,376,083 AND  
2,982,898.

NO CLAIM IS MADE TO THE EXCLUSIVE  
RIGHT TO USE "PINK ROSE", "CHAMPAGNE",  
AND "EXTRA DRY", APART FROM THE MARK AS  
SHOWN.

THE MARK CONSISTS OF A PINK BOTTLE, THE  
BOTTLE FURTHER INCLUDING A DRESSING  
CONSISTING OF A SILVER CLOSURE CAPSULE  
ON WHICH IS PRINTED IN PINK THE WORD  
POMMERY; A BLUE NECK LABEL ON WHICH THE  
WORD POMMERY AND A CREST ARE PRINTED  
IN SILVER AND THE PHRASE EXTRA DRY IN  
BLUE; AND A WHITE LABEL WHICH INCLUDES  
THE WORDS CHAMPAGNE AND POMMERY IN  
SILVER, AND PINK, POP, AND ROSE IN PINK. THE  
DOTTED OUTLINE OF THE BOTTLE IS INTENDED  
TO SHOW THE POSITION OF THE COLOR MARK  
AND IS NOT A PART OF THE MARK.

SER. NO. 79-012,156, FILED 1-26-2005.

ROBERT C. CLARK JR., EXAMINING ATTORNEY

Int. Cl.: 33

Prior U.S. Cls.: 47 and 49

United States Patent and Trademark Office

Reg. No. 2,982,898

Registered Aug. 9, 2005

TRADEMARK  
PRINCIPAL REGISTER



POMMERY S.A. (FRANCE CORPORATION)  
5 PLACE DU GENERAL GOURAUD  
REIMS, FRANCE 51100

FOR: WINE OF FRENCH ORIGIN, NAMELY,  
CHAMPAGNE, IN CLASS 33 (U.S. CLS. 47 AND 49).

PRIORITY CLAIMED UNDER SEC. 44(D) ON  
FRANCE APPLICATION NO. 033218097, FILED 3-  
31-2003, REG. NO. 033218097, DATED 3-31-2003, EX-  
PIRES 3-31-2013.

OWNER OF U.S. REG. NOS. 628,396, 1,280,898,  
AND 2,233,264.

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

THE MARK CONSISTS OF BLUE BOTTLE, THE  
BOTTLE FURTHER INCLUDING A DRESSING  
CONSISTING OF A SILVER CLOSURE CAPSULE  
ON WHICH ARE PRINTED IN BLUE THE MEN-  
TIONS POMMERY; A BLUE NECK LABEL ON  
WHICH THE MENTIONS POMMERY AND A  
CREST DESIGN ARE PRINTED IN SILVER AND  
THE PHRASE EXTRA DRY IN BLUE; AND A  
LABEL WHICH INCLUDES VARIOUS TEXT AND  
DESIGNS, INCLUDING A CREST DESIGN, THE  
WORDS CHAMPAGNE AND POMMERY IN SIL-  
VER, AND THE WORD POP IN BLUE.

SER. NO. 78-307,414, FILED 9-30-2003.

KATHRYN COWARD, EXAMINING ATTORNEY

Int. Cl.: 33

Prior U.S. Cls.: 47 and 49

Reg. No. 2,376,083

**United States Patent and Trademark Office**

Registered Aug. 8, 2000

**TRADEMARK  
PRINCIPAL REGISTER**

**POP**

CHAMPAGNE POMMERY & GRENO (FRANCE  
JOINT STOCK COMPANY)  
5, PLACE DU GENERAL GOURAUD  
51100 REIMS, FRANCE

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

FIRST USE 6-0-1999; IN COMMERCE 11-15-1999.

SN 75-588,226, FILED 11-13-1998.

ANGELA BISHOP WILSON, EXAMINING ATTOR-  
NEY