

ESTTA Tracking number: **ESTTA912731**

Filing date: **07/31/2018**

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	Louisiana Spirits, LLC
Granted to Date of previous extension	09/26/2018
Address	P.O. Box 110 Lacassine, LA 70650 UNITED STATES

Attorney information	Patrick K. Steele Steele IP Law, PLLC 12345 Jones Road Suite 200 Houston, TX 77070 UNITED STATES Email: admin@steeleiplaw.com Phone: 8326782349
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Applicant Information

Application No	87205803	Publication date	05/29/2018
Opposition Filing Date	07/31/2018	Opposition Period Ends	09/26/2018
Applicant	Serio Southern Spirits, LLC 7607 Fern Ave Suite 703 Shreveport, LA 71105 UNITED STATES		

Goods/Services Affected by Opposition

Class 033. First Use: 2015/06/26 First Use In Commerce: 2016/01/05
All goods and services in the class are opposed, namely: Liquor and liqueur beverages, namely, alcoholic tea-based beverages

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.	4335730	Application Date	11/08/2011
Registration Date	05/14/2013	Foreign Priority Date	NONE
Word Mark	BAYOU		

Design Mark	<h1>BAYOU</h1>		
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2013/03/08 First Use In Commerce: 2013/03/08 distilled spirits, alcoholic beverages except beers		

U.S. Registration No.	4982405	Application Date	09/26/2015
Registration Date	06/21/2016	Foreign Priority Date	NONE

Word Mark	BAYOU RUM L'ESPRIT DE LA LOUISIANE LACASSINE LOUISIANA		
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Design Mark			
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Description of Mark	The mark consists of an alligator behind a banner with the wording "BAYOU RUM L'ESPRIT DE LA LOUISIANE" in stylized text, and behind a second banner with the wording "LACASSINE LOUISIANA". In between the words "LACASSINE" and "LOUISIANA" is a circle showing a water scene with a man rowing a boat.		
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Goods/Services	Class 033. First use: First Use: 2013/03/08 First Use In Commerce: 2013/03/08 Distilled spirits, alcoholic beverages except beers		
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Attachments	85467378#TMSN.png(bytes) 86769637#TMSN.png(bytes)		
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	LASP_Notice_of_Opposition_180730.pdf(110992 bytes) Exhibit A - U.S. Reg. No. 4335730.pdf(97724 bytes) Exhibit B - U.S. Reg. no. 4982405.pdf(2058992 bytes)
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Signature	/PATRICK K. STEELE #39844/
Name	Patrick K. Steele
Date	07/31/2018

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

In the Matter of Application Serial No. 87/205,803
for the mark POPSY’S BAYOU TEA
Published in the Official Gazette on: May 29, 2018

LOUISIANA SPIRITS, LLC.	§	
	§	
Opposer	§	
	§	
v.	§	Opposition No. _____
	§	
SERIO SOUTHERN SPIRITS, LLC	§	
	§	
Applicant	§	
	§	

NOTICE OF OPPOSITION

Notice is given by Louisiana Spirits, LLC (hereinafter "Opposer"), through its attorney, that it believes that it will be damaged by the registration of the mark shown in U.S. trademark application Serial No. 87/205,803, filed on October 17, 2016, for the mark POPSY’S BAYOU TEA with a design element including the likeness of an alligator (hereinafter “the Application”), for the goods listed in International Class 033. The Application was filed by Applicant Serio Southern Spirits, LLC (hereinafter “Applicant”), and Opposer hereby opposes the same.

As grounds for this Opposition, Opposer hereby states as follows:

1. Opposer is a limited liability company duly organized and existing under the laws of Louisiana, having a principal place of business located at 20909 S. Frontage Road, Lacassine, Louisiana 70650. Opposer operates in the distilled spirits industry as a producer and distiller. Opposer produces and

sells rum in connection with its use of marks that include the word BAYOU and discussed further in paragraphs 3 and 4 below.

2. On information and belief, Applicant is a Louisiana limited liability company with an address at 7607 Fern Ave., Suite 703, Shreveport, LA 71105. Applicant seeks to register the mark POPSY'S BAYOU TEA with a design element including the likeness of an alligator as a trademark for International Class 033 for use in connection with "liquor and liqueur beverages, namely alcoholic tea-based beverages" as evidenced in the Application published for opposition on May 29, 2018. On information and belief, Applicant sells beverages containing rum in connection with its use of the mark made the subject of the Application.

3. Opposer has used the BAYOU word mark in interstate commerce in the United States in connection with distilled spirits and alcoholic beverages, except beers, since March of 2013. Opposer owns U.S. Trademark registration no. 4,335,730 (hereinafter the "BAYOU registration") granted for the word mark BAYOU on May 14, 2013. See Exhibit "A."

4. Opposer has also used the mark BAYOU RUM L'ESPRIT DE LA LOUISIANE plus a design element including the likeness of an alligator in interstate commerce in the United States in connection with distilled spirits and alcoholic beverages, except beers, since March of 2013. Opposer owns U.S. Trademark registration no. 4,982,405 (hereinafter the "BAYOU RUM L'ESPRIT DE LA LOUISIANE plus alligator registration") granted for this mark on June 21, 2016. See Exhibit "B."

5. Opposer's prior use of the BAYOU mark in connection with International Class 033, constitute *prima facie* evidence of Opposer's ownership of the BAYOU mark and Opposer's exclusive right to use the BAYOU mark in commerce and in connection with the goods specified in the BAYOU registration, including, but not limited to, those in International Class 033, specified in Applicants' Application Serial No. 87/205,803. Similarly, Opposer's prior use of the BAYOU RUM L'ESPRIT DE LA LOUISIANE plus design including the likeness of an alligator mark in commerce and in connection with the goods specified in the BAYOU RUM L'ESPRIT DE LA LOUISIANE plus alligator registration, including, but not limited to, those in International Class 033, specified in Applicants' Application Serial No. 87/205,803.

6. Opposer has developed extremely valuable goodwill in its BAYOU mark and also in its mark BAYOU RUM L'ESPRIT DE LA LOUISIANE plus alligator by virtue of its longevity of usage in commerce, expenditure of substantial sums in promotional activities, and the impeccable quality and excellence of its products sold in connection with its use of the two marks. With extensive use by Opposer of its BAYOU word mark, consumers familiar with distilled spirits have come to know and recognize the BAYOU mark in connection with quality distilled spirits and related beverages ("Opposer's Goods"). With extensive use by Opposer of its BAYOU RUM L'ESPRIT DE LA LOUISIANE plus a design element including the likeness of an alligator mark, consumers familiar with distilled spirits have come to know and recognize the

BAYOU RUM L'ESPRIT DE LA LOUISIANE plus a design element including the likeness of an alligator mark in connection with quality distilled spirits and related beverages ("Opposer's Goods").

7. Based on Opposer's prior use of the BAYOU mark continually since at least as early as 2013 in International Class 033, there is no issue as to priority and Opposer's right in and to the BAYOU mark are superior to that of Applicant. Similarly, based on Opposer's prior use of the BAYOU RUM L'ESPRIT DE LA LOUISIANE plus a design element including the likeness of an alligator mark continually since at least as early as 2013 in International Class 033, there is no issue as to priority and Opposer's right in and to the BAYOU RUM L'ESPRIT DE LA LOUISIANE plus a design element including the likeness of an alligator mark are superior to that of Applicant.

8. Due to Opposer's longstanding and continuous use of the BAYOU mark in connection with Opposer's Goods, the BAYOU mark has become well known as designating Opposer's Goods. Similarly, due to Opposer's longstanding and continuous use of the BAYOU RUM L'ESPRIT DE LA LOUISIANE plus a design element including the likeness of an alligator mark in connection with Opposer's goods, the BAYOU RUM L'ESPRIT DE LA LOUISIANE plus a design element including the likeness of an alligator mark have become well known as designating Opposer's goods.

9. Applicant's mark, POPSY'S BAYOU TEA plus a design element including the likeness of an alligator, is confusingly similar to Opposer's BAYOU word mark and also to Opposer's BAYOU RUM L'ESPRIT DE LA

LOUISIANE plus a design element including the likeness of an alligator mark because of the overlap of the dominant word BAYOU, as well as the overlap of the image of an alligator, as well as the identical nature of the goods (distilled spirits) associated therewith. When the Applicant's mark POPSY'S BAYOU TEA plus a design element including the likeness of an alligator is applied to goods traveling in the same or similar channels of trade as those sold by Opposer, it so resembles Opposer's BAYOU mark and it so resembles Opposer's BAYOU RUM L'ESPRIT DE LA LOUISIANE plus a design element including the likeness of an alligator mark that it is likely to be confused therewith and mistaken, therefore, and will lead to deception or mistakes as to the origin of Applicant's goods bearing the POPSY'S BAYOU TEA plus a design element including the likeness of an alligator mark. Consumers familiar with either or both of Opposer's BAYOU mark and/or Opposer's BAYOU RUM L'ESPRIT DE LA LOUISIANE plus a design element including the likeness of an alligator mark, and also familiar with Opposer's reputation in the distilled spirits industry, would be likely to buy Applicant's products under the mistaken belief that the products are created and sold by the Opposer.

10. Opposer will be damaged by registration of the POPSY'S BAYOU TEA plus a design element including the likeness of an alligator mark by Applicant because such registration would grant to Applicant *prima facie* evidence of the exclusive right to use the mark in conjunction with Applicant's products and such use would be likely to cause confusion or mistake or to deceive as to the affiliation, connection, or association of Applicant with

Opposer (where none exists), and/or as to the origin, sponsorship, and approval of Applicant's products and other commercial activities by Opposer (where none exists).

11. Such confusion would cause further irreparable harm to Opposer in that any possible defects or fault found with Applicant's goods or other commercial activities could erroneously be attributed to Opposer, thereby harming Opposer's reputation and damaging its substantial goodwill in its BAYOU mark and/or in its BAYOU RUM L'ESPRIT DE LA LOUISIANE plus a design element including the likeness of an alligator mark.

12. Opposer will be damaged by registration of the POPSY'S BAYOU TEA plus a design element including the likeness of an alligator mark by Applicant because such registration would grant to Applicant *prima facie* evidence of the exclusive right to use the BAYOU mark and/or exclusive right to use a mark including the word BAYOU along with a design element including the likeness of an alligator in conjunction with Applicant's goods and such use would cause irreparable harm to the Opposer.

WHEREFORE, Opposer, Louisiana Spirits LLC respectfully requests that the Board deny registration of Applicant, Serio Southern Spirits, LLC's, POPSY'S BAYOU TEA plus design element including the likeness of an alligator mark, U.S. Trademark Serial No. 87/205,803, for International Class 033 for "liquor and liqueur beverages, namely alcoholic tea-based beverages" and award Opposer all other relief to which it is justly entitled.

This Notice of Opposition is being filed electronically with the United States Patent and Trademark Office Trademark Trial and Appeal Board.

By: /Patrick K. Steele, #39844/
Patrick K. Steele
STEELE-IP LAW, PLLC
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Houston, Texas 77070
Email: psteele@steeleiplaw.com
Attorney for Opposer
Ph: 832-678-2349
Fax: 832-678-2354

Date: July 30, 2018

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

In the Matter of Application Serial No. 87/205,803
for the mark POPY'S BAYOU TEA
Published in the Official Gazette on: May 29, 2018

LOUISIANA SPIRITS, LLC.	§	
	§	
Opposer	§	
	§	
v.	§	Opposition No. _____
	§	
SERIO SOUTHERN SPIRITS, LLC	§	
	§	
Applicant	§	
	§	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Notice of Opposition, duly signed by the attorney for Opposer, has been served upon Applicant, and Applicant's owner of record, by mailing a copy by U.S. Certified Mail-Return Receipt Requested on July 30, 2018 addressed to:

Philip Serio
Serio Southern Spirits, LLC
7607 Fern Ave, Suite 703
Shreveport, LA 71105

Date: July 30, 2018

By: /Patrick K. Steele, #39844/
Patrick K. Steele
Attorney for Opposer

United States of America
United States Patent and Trademark Office

BAYOU

Reg. No. 4,335,730

LOUISIANA SPIRITS LLC (LOUISIANA LIMITED LIABILITY COMPANY)
P.O. BOX 110

Registered May 14, 2013

LACASSINE, LA 70650

Int. Cl.: 33

FOR: DISTILLED SPIRITS, ALCOHOLIC BEVERAGES EXCEPT BEERS, IN CLASS 33 (U.S. CLS. 47 AND 49).

TRADEMARK

FIRST USE 3-8-2013; IN COMMERCE 3-8-2013.

PRINCIPAL REGISTER

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

SN 85-467,378, FILED 11-8-2011.

ERNEST SHOSHO, EXAMINING ATTORNEY



Sean Street Lee

Acting Director of the United States Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

Requirements in the First Ten Years*

What and When to File:

First Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. *See* 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

Second Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.*
See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*

What and When to File:

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

**The United States Patent and Trademark Office (USPTO) will NOT send you any future notice or
reminder of these filing requirements.**

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the USPTO. The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See* 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See* 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

United States of America

United States Patent and Trademark Office



Reg. No. 4,982,405

LOUISIANA SPIRITS, LLC (LOUISIANA LIMITED LIABILITY COMPANY)
20909 SOUTH I-10 FRONTAGE ROAD
LACASSINE, LA 70650

Registered June 21, 2016

Int. Cl.: 33

FOR: DISTILLED SPIRITS, ALCOHOLIC BEVERAGES EXCEPT BEERS, IN CLASS 33 (U.S. CLS. 47 AND 49).

TRADEMARK

FIRST USE 3-8-2013; IN COMMERCE 3-8-2013.

PRINCIPAL REGISTER

OWNER OF U.S. REG. NO. 4,335,730.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "RUM", "LOUISIANE" AND "LACASSINE LOUISIANA", APART FROM THE MARK AS SHOWN.

THE MARK CONSISTS OF AN ALLIGATOR BEHIND A BANNER WITH THE WORDING "BAYOU RUM L'ESPRIT DE LA LOUISIANE" IN STYLIZED TEXT, AND BEHIND A SECOND BANNER WITH THE WORDING "LACASSINE LOUISIANA". IN BETWEEN THE WORDS "LACASSINE" AND "LOUISIANA" IS A CIRCLE SHOWING A WATER SCENE WITH A MAN ROWING A BOAT.

THE ENGLISH TRANSLATION OF "L'ESPRIT DE LA LOUISIANE" IN THE MARK IS "THE SPIRIT OF LOUISIANA".

SER. NO. 86-769,637, FILED 9-26-2015.

MIAH ROSENBERG, EXAMINING ATTORNEY



Michelle K. Lee

Director of the United States
Patent and Trademark Office

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NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at <http://www.uspto.gov>.