

ESTTA Tracking number: **ESTTA923123**

Filing date: **09/19/2018**

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

Proceeding	91242728
Party	Plaintiff Louisiana Spirits, LLC
Correspondence Address	PATRICK K STEELE STEELE IP LAW PLLC 12345 JONES RD STE 200 HOUSTON, TX 77070 UNITED STATES admin@steeleiplaw.com 832-678-2349
Submission	Other Motions/Papers
Filer's Name	Patrick k. steele
Filer's email	tmcketing@steeleiplaw.com, psteele@steeleiplaw.com
Signature	/Patrick K. Steele, #39844/
Date	09/19/2018
Attachments	Opposers_Resp_2_Applicants_Mot_4_Extension_180919_.pdf(99507 bytes)

**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. 91242728
	§	
SERIO SOUTHERN SPIRITS, LLC	§	
	§	
Applicant	§	
	§	

**OPPOSER'S BRIEF AND RESPONSE TO APPLICANT'S
MOTION FOR EXTENSION OF TIME TO FILE ANSWER**

Opposer Louisiana Spirits, LLC (hereinafter referred to as "Opposer") files this Response to the Motion for Extension of Time to File Answer filed by Applicant Serio Southern Spirits, LLC (hereinafter referred to as "Applicant"). Opposer respectfully opposes the extension of time to file the Answer to Opposer's Notice of Opposition sought by Applicant, and in support thereof, Opposer shows:

1. Opposer filed its Notice of Opposition to the registration of the mark POPY'S BAYOU TEA plus a design element on July 31, 2018. See TTAB Prosecution History item 1.
2. The Notice of Institution of the Opposition proceeding no. 91242728 was mailed out by the TTAB that same day. See TTAB Prosecution History item 2. That Notice of Institution of the Opposition proceeding was mailed to the Applicant at 7607 Fern Ave Suite 703, Shreveport, Louisiana 71105.

3. Opposer submits that the Applicant's pending motion for extension of time to file answer appears to have been filed with the TTAB on September 4, 2018.
4. Applicant originally filed its application to register the trademark POPY'S BAYOU TEA with a design element including an image of an alligator on October 17, 2016. That application was assigned serial number 87205803 by the USPTO.
5. Applicant filed a first TEAS Change of Owner Address on July 14, 2017.
6. Applicant filed a second TEAS Change of Owner Address on April 9, 2018. That document is attached as Exhibit A.
7. The new address listed by the Applicant with the USPTO is 7607 Fern Ave, Suite 703, Shreveport, Louisiana 71105.
8. Opposer filed its Notice of Opposition on July 31, 2018. See TTAB Prosecution History document no. 1. Opposer included a Certificate of Service showing that the true and correct copy of the Notice of Opposition was being served on the Applicant at 7607 Fern Ave, Suite 703, Shreveport, Louisiana 71105, the same address to which Applicant changed its address in its filing just two months and 21 days prior thereto.
9. Trademark Rule 2.105(a) states: When an opposition in proper form (see §§ 2.101 and 2.104) has been filed with the correct fee(s), and the opposition has been determined to be timely and complete, the Trademark Trial and Appeal Board shall prepare a notice of institution, which shall identify the proceeding as an opposition, number of the proceeding, and the application(s) involved; and the notice shall designate a time, not less than thirty days from the mailing date of the notice, within which an answer must be filed. The notice, which will include a web link or web address to access the electronic proceeding record, constitutes service of the notice of opposition to the applicant.

10. Trademark Rule 2.105(c)(3) states: The Board shall forward a copy of the notice to applicant . . . If the opposed application is not being prosecuted by an attorney, and no domestic representative has been appointed, the Board will send the notice described in this section directly to applicant, at the email or correspondence address of record for the applicant, unless applicant designates in writing another correspondence address.

11. The USPTO TTAB sent out its Notice of Institution on July 31, 2018. Page 2 of that Notice includes the following instruction:

DUTY TO MAINTAIN ACCURATE CORRESPONDENCE INFORMATION
Throughout this proceeding, the parties, and their attorneys or representatives, must notify the Board of any correction or update of physical address and email address, and should use the ESTTA change of address form. See Trademark Rule 2.18(b); TBMP § 117.

12. The Notice of Institution was sent to the same address provided by Applicant in its second TEAS Change of Owner's Address and the same address to which Opposer sent a copy of the Notice of Opposition.

13. Applicant filed its motion to extend the deadline for filing its Answer to the Notice of Opposition on September 4, 2018. Applicant, in its motion for extension, argues that “[t]he documents that were distributed to the USPTO were sent to an erroneous address. I have just been able to retrieve the documents from the USPTO website.” The Applicant's motion for extension includes an address of 7607 Fern Ave Suite 703, Shreveport, Louisiana 71105. This address is identical to the address given by Applicant to the USPTO in its second TEAS Change of Owner's Address filing, and the address is identical to the address to which the TTAB sent the Notice of

Institution, and the address is identical to the address to which Opposer sent a copy of the Notice of Opposition.

14. Applicant failed to serve written notice of the filing of the motion for extension of time as required by Trademark rule 2.119, as noted in the USPTO TTAB statement by the presiding paralegal specialist on September 4, 2018.

15. Notwithstanding Applicant's failure to comply with Trademark rule 2.119, the TTAB opposition proceeding stands suspended.

16. Applicant's statement that "[t]he documents that were distributed to the USPTO were sent to an erroneous address. I have just been able to retrieve the documents from the USPTO website." The statement of Applicant above is the only basis for his motion for extension of time to file an answer.

17. Applicant fails to explain why the address that he gave to the USPTO upon filing the application is "an erroneous address." Applicant does not allege that the address given by the Applicant upon filing of the application that currently stands opposed is no longer in use by the Applicant.

18. Applicant's deadline for filing an Answer to the Opposer's Notice of Opposition was 40 days from July 31, 2018, or September 9, 2018. Since September 9, 2018 was a Sunday, the deadline is extended to September 10, 2018.

19. Applicant did not timely file an Answer. Instead, Applicant filed a motion for extension of the deadline, and Applicant provides no basis or explanation in its motion for extension as to why an extension is either necessary or warranted. Presumably, Applicant could have filed an Answer on September 5, 2018 instead of filing a motion for extension.

20. Opposer submits that Applicant is improperly imposing unnecessary costs and delays on Opposer in an attempt to avoid addressing the issues relating to the likelihood of confusion as those issues were set forth in Opposer's Notice of Opposition.
21. Applicant clearly knows how to notify the USPTO and the TTAB of its changes of address, having done so more than once.
22. Applicant, by its gamesmanship, is wasting the time and attention of the professionals in the TTAB that have many other important matters requiring their attention.
23. Opposer moves the Board to deny Applicant's motion to extend the deadline for filing an Answer to the Notice of Opposition, and to find that by its failure to timely file an Answer, Applicant has abandoned the application. In the alternative, Opposer moves the Board to set a new deadline by which Applicant must file its Answer.

This Response 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
12345 Jones Rd., Suite 200
Houston, Texas 77070
Email: psteele@steeleiplaw.com
Attorney for Opposer
Ph: 832-678-2349
Fax: 832-678-2354

Date: September 19, 2018

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SERIO SOUTHERN SPIRITS, LLC	§	
	§	
Applicant	§	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Opposer's Brief and Response to Applicant's Motion to Extend Deadline for Filing of Answer, 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. Priority Mail/Signature Required on September 19, 2018 addressed to:

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

Date: September 19, 2018

By: /Patrick K. Steele, #39844/
Patrick K. Steele

Attorney for Opposer