

ESTTA Tracking number: **ESTTA924024**

Filing date: **09/24/2018**

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 | 09/24/2018 |
| Attachments | Op- posers_Amended_Resp_2_Applicants_Mot_4_Extension_180924.pdf(306394 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 POPSY’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 AMENDED 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 Brief and Amended 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 POPSY’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 made available by way of a link to the parties to the opposition proceeding in an email that was emailed out by the TTAB that same day. See TTAB Prosecution History item 2. That link for accessing the Notice of Institution of the Opposition proceeding was presumably emailed to the Applicant at the email

address of SerioFinancial@mailovo.com, provided by Applicant to the USPTO with a Change of Owner's Address on April 9, 2018, as discussed in more detail below.

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 POPSY'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 email address listed by the Applicant with the USPTO in that second TEAS Change of Owner Address notification was SerioFinancial@mailovo.com.

8. Eight days later, on April 17, 2018, the USPTO issued a Final Office Action to Applicant. See Exhibit B. That Office Action was sent to the address on the Office Action, SerioFinancial@mailovo.com. That is the email address provided by the Applicant eight days earlier.

9. Applicant must have received the Final Office Action that was emailed to SerioFinancial@mailovo.com because, on that same day, Applicant filed a response and therein amended its application to cure the defects that gave rise to the rejections. See Exhibit C.

10. 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.

11. 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.

12. 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.

13. 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.

14. The Notice of Institution was sent to the same email address provided by Applicant in its second TEAS Change of Owner's Address and the same email address to which the USPTO sent the Final Office Action.

15. 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 email address. I have just been able to retrieve the documents from the USPTO website." The Applicant's motion for extension includes an email address of seriofinancial@yahoo.com.

16. 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.

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

18. 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.

19. Applicant fails to explain why the email address that he gave to the USPTO when it filed its April 9, 2018 change of owner's address notification is "an erroneous email address." Applicant does not explain why it received the Final Office Action at that email address, yet it is an "erroneous email address." Applicant does not explain why it has not filed a third change of owner's address notification with the new email address.

20. 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.

21. 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 4, 2018 instead of filing a motion for extension.

22. 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.

23. Applicant clearly knows how to notify the USPTO and the TTAB of its changes of address, having done so more than once.

24. 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.

25. 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 24, 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. 91242728 |
| | § | |
| SERIO SOUTHERN SPIRITS, LLC | § | |
| | § | |
| Applicant | § | |

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Opposer's Amended 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 24, 2018 addressed to:

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

Date: September 24, 2018

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

Attorney for Opposer

Exhibit "A"
Change Of Correspondence Address

The table below presents the data as entered.

| Input Field | Entered |
|--|---|
| SERIAL NUMBER | 87205803 |
| LAW OFFICE ASSIGNED | LAW OFFICE 101 |
| MARK SECTION | |
| MARK | POPSY'S BAYOU TEA (stylized and/or with design, see https://tmng-al.uspto.gov/resting2/api/img/87205803/large) |
| CORRESPONDENCE SECTION (current) | |
| ORIGINAL ADDRESS | PHILIP SERIO SERIO SOUTHERN SPIRITS, LLC 6969 FERN LOOP #206 SHREVEPORT Louisiana 71105 US 318-221-0889 318-221-0887 popsysbayoutea@yahoo.com |
| NEW CORRESPONDENCE ADDRESS | |
| NEW ADDRESS | PHILIP SERIO SERIO SOUTHERN SPIRITS, LLC Suite 703 7607 Fern Ave SHREVEPORT Louisiana United States 71105 SerioFinancial@mailovo.com |
| AUTHORIZED TO COMMUNICATE VIA E-MAIL | YES |
| INDIVIDUAL ATTORNEY DOCKET/REFERENCE NUMBER | |
| SIGNATURE SECTION | |
| SIGNATURE | /Phillip Serio/ |
| SIGNATORY NAME | Phillip Serio |
| SIGNATORY DATE | 04/09/2018 |
| SIGNATORY POSITION | Principal |
| AUTHORIZED SIGNATORY | YES |
| FILING INFORMATION SECTION | |
| SUBMIT DATE | Mon Apr 09 16:43:18 EDT 2018 |
| TEAS STAMP | USPTO/CCA-XX.XX.XX.XX-201 80409164318027335-8720580 3-5105062a028a4afd2323c49 f50707f8514284cebb430e144 f62967c5c87366af28-N/A-N/ A-20180409164149725988 |

Exhibit "B"

To: Serio Southern Spirits, LLC (SerioFinancial@mailovo.com)
Subject: U.S. TRADEMARK APPLICATION NO. 87205803 - POPSY'S BAYOU TEA - N/A
Sent: 4/17/2018 8:05:41 AM
Sent As: ECOM101@USPTO.GOV
Attachments:

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

**U.S. APPLICATION
SERIAL NO.** 87205803

MARK: POPSY'S BAYOU
TEA

87205803

CORRESPONDENT

ADDRESS:
PHILIP SERIO
SERIO SOUTHERN
SPIRITS, LLC
7607 Fern Ave
Suite 703
SHREVEPORT, LA
71105

**CLICK HERE TO RESPOND TO THIS
LETTER:**

http://www.uspto.gov/trademarks/teas/response_forms.jsp

[VIEW YOUR APPLICATION FILE](#)

APPLICANT: Serio
Southern Spirits, LLC

**CORRESPONDENT'S
REFERENCE/DOCKET
NO:**

N/A

**CORRESPONDENT E-
MAIL ADDRESS:**

SerioFinancial@mailovo.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW. A RESPONSE TRANSMITTED THROUGH THE TRADEMARK ELECTRONIC APPLICATION SYSTEM (TEAS) MUST BE RECEIVED BEFORE MIDNIGHT EASTERN TIME OF THE LAST DAY OF THE RESPONSE PERIOD.

ISSUE/MAILING DATE: **4/17/2018**

THIS IS A FINAL ACTION.

TEAS PLUS OR TEAS REDUCED FEE (TEAS RF) APPLICANTS – TO MAINTAIN LOWER FEE, ADDITIONAL REQUIREMENTS MUST BE MET, INCLUDING SUBMITTING DOCUMENTS ONLINE: Applicants who filed their application online using the lower-fee TEAS Plus or TEAS RF application form must (1) file certain documents online using TEAS, including responses to Office actions (see TMEP §§819.02(b), 820.02(b) for a complete list of these documents); (2) maintain a valid e-mail correspondence address; and (3) agree to receive correspondence from the USPTO by e-mail throughout the prosecution of the application. *See* 37 C.F.R. §§2.22(b), 2.23(b); TMEP §§819, 820. TEAS Plus or TEAS RF applicants who do not meet these requirements must submit an additional processing fee of \$125 per class of goods and/or services. 37 C.F.R. §§2.6(a)(1)(v), 2.22(c), 2.23(c); TMEP §§819.04, 820.04. However, in certain situations,

TEAS Plus or TEAS RF applicants may respond to an Office action by authorizing an examiner's amendment by telephone or e-mail without incurring this additional fee.

This letter responds to applicant's Petition to Revive filed on April 6, 2018 and Voluntary Amendment filed on April 9, 2018.

This application has been reinstated by the Commissioner for Trademarks. The Office records have been searched again and no similar registered or pending mark has been found that would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d). TMEP §704.02.

Upon reconsideration the duplicate applications refusal is withdrawn and the Sections 1 & 45 specimen refusal is withdrawn. Also, the applicant's disclaimer statement has been entered.

However, the applicant must respond to the following FINAL requirements:

Description Amendment Required – FINAL

In its voluntary amendment, the applicant's proposed description of the mark is inaccurate because applicant's statement "The white field behind the mark represents background and/or transparent area and is not part of the mark" does not present an accurate portrayal of the mark. The color white is actually a feature of the applicant's mark and therefore the statement above is unnecessary and must be deleted from applicant's description of the mark.

Applications for marks not in standard characters must include an accurate and concise description of the entire mark that identifies literal elements as well as any design elements. *See* 37 C.F.R. §2.37; TMEP §§808.02, 808.03(d).

Therefore, applicant must provide a more accurate description of the applied-for mark. The following is suggested:

The mark consists of a green and yellow alligator with black outlining, white teeth, and orange and white eyes, shown on top of black water, with black tree limbs, hanging black moss, and a yellow and orange sun image as contained in a rectangular background. The wording "POPSY'S" is in the color white with black and green outlining and it appears in front of the tree and moss designs, and below "POPSY'S" is the wording "BAYOU TEA" in the color white and shown within a light brown and black-outlined wooden plank.

This requirement is made FINAL.

Identification of Goods – Clarification Required – Class 033 - FINAL

In its voluntary amendment, the applicant's proposed wording "Bayou tea" in the identification of goods is indefinite and must be clarified because it remains indefinite and unclear. *See* 37 C.F.R. §2.32(a)(6); TMEP §1402.01. Applicant must amend this wording to specify the common commercial or generic name of the goods. *See* TMEP §1402.01. If the goods have no common commercial or generic name, applicant must describe the product, its main purpose, and its intended uses. *See id.*

Applicant may substitute the following wording, if accurate:

"Liquor and liqueur beverages, namely, [*insert clarification of "Bayou Tea," e.g., alcoholic tea-based beverages*], in **International Class 033.**"

For assistance with identifying and classifying goods and services in trademark applications, please see the USPTO's online searchable [U.S. Acceptable Identification of Goods and Services Manual](#). *See* TMEP §1402.04.

Applicant may amend the identification to clarify or limit the goods and/or services, but not to broaden or expand the goods and/or services beyond those in the original application or as acceptably amended. *See* 37 C.F.R. §2.71(a); TMEP §1402.06. Generally, any deleted goods and/or services may not later be reinserted. *See* TMEP §1402.07(e).

This requirement is made FINAL.

Proper Response to Final Office Action

Applicant must respond within six months of the date of issuance of this final Office action or the application will be abandoned. 15 U.S.C. §1062(b); 37 C.F.R. §2.65(a). Applicant may respond by providing one or both of the following:

- (1) A response that fully satisfies all outstanding requirements and/or resolves all outstanding refusals.
- (2) An appeal to the Trademark Trial and Appeal Board, with the appeal fee of \$100 per class.

37 C.F.R. §2.64(a); TMEP §714.04; *see* 37 C.F.R. §2.6(a)(18); TBMP ch. 1200.

In certain rare circumstances, an applicant may respond by filing a petition to the Director pursuant to 37 C.F.R. §2.63(b)(2) to review procedural issues. 37 C.F.R. §2.64(a); TMEP §714.04; *see* 37 C.F.R. §2.146(b); TBMP §1201.05; TMEP §1704 (explaining petitionable matters). The

petition fee is \$100. 37 C.F.R. §2.6(a)(15).

Applicant is encouraged to telephone or e-mail the assigned trademark examining attorney to resolve the issues raised in this Office action.

/Andrew Rhim/
Examining Attorney
Law Office 101
Phone (571) 272-9711
Fax (571) 273-9101
andrew.rhim@uspto.gov

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/ mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

To: Serio Southern Spirits, LLC (SerioFinancial@mailovo.com)
Subject: U.S. TRADEMARK APPLICATION NO. 87205803 - POPSY'S BAYOU TEA - N/A
Sent: 4/17/2018 8:05:42 AM
Sent As: ECOM101@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

**IMPORTANT NOTICE REGARDING YOUR
U.S. TRADEMARK APPLICATION**

USPTO OFFICE ACTION (OFFICIAL LETTER) HAS ISSUED
ON **4/17/2018** FOR U.S. APPLICATION SERIAL NO. 87205803

Your trademark application has been reviewed. The trademark examining attorney assigned by the USPTO to your application has written an official letter to which you must respond. Please follow these steps:

(1) **READ THE LETTER** by clicking on this [link](#) or going to <http://tsdr.uspto.gov/>, entering your U.S. application serial number, and clicking on "Documents."

The Office action may not be immediately viewable, to allow for necessary system updates of the application, but will be available within 24 hours of this e-mail notification.

(2) **RESPOND WITHIN 6 MONTHS** (*or sooner if specified in the Office action*), calculated from **4/17/2018**, using the Trademark Electronic Application System (TEAS) response form located at http://www.uspto.gov/trademarks/teas/response_forms.jsp. A response transmitted through TEAS must be received before midnight **Eastern Time** of the last day of the response period.

Do NOT hit "Reply" to this e-mail notification, or otherwise e-mail your response because the USPTO does NOT accept e-mails as responses to Office actions.

(3) **QUESTIONS** about the contents of the Office action itself should be directed to the trademark examining attorney who reviewed your application, identified below.

/Andrew Rhim/
Examining Attorney
Law Office 101
Phone (571) 272-9711
Fax (571) 273-9101
andrew.rhim@uspto.gov

WARNING

Failure to file the required response by the applicable response deadline will result in the ABANDONMENT of your application. For more information regarding abandonment, see <http://www.uspto.gov/trademarks/basics/abandon.jsp>.

PRIVATE COMPANY SOLICITATIONS REGARDING YOUR APPLICATION: Private companies **not** associated with the USPTO are using information provided in trademark applications to mail or e-mail trademark-related solicitations. These companies often use names that closely resemble the USPTO and their solicitations may look like an official government document. Many solicitations require that you pay "fees."

Please carefully review all correspondence you receive regarding this application to make sure that you are responding to an official document from the USPTO rather than a private company solicitation. All official USPTO correspondence will be mailed only from the "United States

Patent and Trademark Office” in Alexandria, VA; or sent by e-mail from the domain “@uspto.gov.” For more information on how to handle private company solicitations, see http://www.uspto.gov/trademarks/solicitation_warnings.jsp.

Exhibit "C"

Under the Paperwork Reduction Act of 1995 no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PTO Form 1960 (Rev 10/2011)

OMB No. 0651-0050 (Exp 09/20/2020)

Request for Reconsideration after Final Action

The table below presents the data as entered.

| Input Field | Entered |
|--|--|
| SERIAL NUMBER | 87205803 |
| LAW OFFICE ASSIGNED | LAW OFFICE 101 |
| MARK SECTION (current) | |
| MARK FILE NAME | https://tmng-al.uspto.gov/resting2/api/img/87205803/large |
| LITERAL ELEMENT | POPSY'S BAYOU TEA |
| STANDARD CHARACTERS | NO |
| USPTO-GENERATED IMAGE | NO |
| COLOR(S) CLAIMED (If applicable) | The color(s) orange, yellow, green, white, light brown and black is/are claimed as a feature of the mark. |
| DESCRIPTION OF THE MARK (and Color Location, if applicable) | The mark consists of a green and yellow alligator with black outlining, white teeth, and orange and white eyes, shown on top of black and white water, with black tree limbs, hanging black moss, and a yellow and orange sun image as contained in a rectangular background. The wording "POPSY'S" is in the color white with black and green outlining and it appears in front of the tree and moss designs, and below "POPSY'S " is the wording "BAYOU TEA" in the color white and shown within a light brown and black-outlined wooden plank. The white field behind the mark represents background and/or transparent area and is not part of the mark. |
| MARK SECTION (proposed) | |
| MARK FILE NAME | \\TICRS\EXPORT17\IMAGEOUT 17\872\058\87205803\xml20 \RFR0002.JPG |
| LITERAL ELEMENT | POPSY'S BAYOU TEA |
| STANDARD CHARACTERS | NO |
| USPTO-GENERATED IMAGE | NO |
| COLOR MARK | YES |
| COLOR(S) CLAIMED (If applicable) | The color(s) green, yellow, black, orange, white, light brown is/are claimed as a feature of the mark. |
| DESCRIPTION OF THE MARK (and Color Location, if applicable) | The mark consists of a green and yellow alligator with black outlining, white teeth, and orange and white eyes, shown on top of black water, with black tree limbs, hanging black moss, and a yellow and orange sun image as contained in a rectangular background. The wording "POPSY'S" is in the color white with black and green outlining and it appears in front of the tree and moss designs, and below "POPSY'S" is the wording "BAYOU TEA" in the color white and shown within a light brown and black-outlined wooden plank. |
| PIXEL COUNT ACCEPTABLE | YES |
| PIXEL COUNT | 651 x 944 |
| GOODS AND/OR SERVICES SECTION (current) | |
| INTERNATIONAL CLASS | 033 |
| DESCRIPTION | Liquor and liqueur beverages, namely, Bayou Tea |

| | |
|--|--|
| FILING BASIS | Section 1(a) |
| FIRST USE ANYWHERE DATE | At least as early as 06/26/2015 |
| FIRST USE IN COMMERCE DATE | At least as early as 01/05/2016 |
| GOODS AND/OR SERVICES SECTION (proposed) | |
| INTERNATIONAL CLASS | 033 |
| TRACKED TEXT DESCRIPTION | |
| Liquor and liqueur beverages, namely, Bayou Tea ; Liquor and liqueur beverages, namely, alcoholic tea-based beverages | |
| FINAL DESCRIPTION | |
| Liquor and liqueur beverages, namely, alcoholic tea-based beverages | |
| FILING BASIS | Section 1(a) |
| FIRST USE ANYWHERE DATE | At least as early as 06/26/2015 |
| FIRST USE IN COMMERCE DATE | At least as early as 01/05/2016 |
| SIGNATURE SECTION | |
| RESPONSE SIGNATURE | /Phillip Serio/ |
| SIGNATORY'S NAME | Phillip Serio |
| SIGNATORY'S POSITION | Principal |
| DATE SIGNED | 04/17/2018 |
| AUTHORIZED SIGNATORY | YES |
| CONCURRENT APPEAL NOTICE FILED | NO |
| FILING INFORMATION SECTION | |
| SUBMIT DATE | Tue Apr 17 16:36:24 EDT 2018 |
| TEAS STAMP | USPTO/RFR-XX.XX.XX.XX-201 80417163624655010-8720580 3-510a45da28dd27d4637f5ae a99de7d4927128d390bc9fed3 4da69f54ec7aab54fe8-N/A-N /A-20180417163044951329 |

Under the Paperwork Reduction Act of 1995 no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PTO Form 1960 (Rev 10/2011)

OMB No. 0651-0050 (Exp 09/20/2020)

Request for Reconsideration after Final Action

To the Commissioner for Trademarks:

Application serial no. **87205803** POPSYS BAYOU TEA (Stylized and/or with Design, see <https://tmng-al.uspto.gov/resting2/api/img/87205803/large>) has been amended as follows:

MARK

Applicant proposes to amend the mark as follows:

Current: POPSYS BAYOU TEA (Stylized and/or with Design, see <https://tmng-al.uspto.gov/resting2/api/img/87205803/large>)

Proposed: POPSYS BAYOU TEA (Stylized and/or with Design, see [mark](#))

The color(s) green, yellow, black, orange, white, light brown is/are claimed as a feature of the mark.

The mark consists of a green and yellow alligator with black outlining, white teeth, and orange and white eyes, shown on top of black water, with

black tree limbs, hanging black moss, and a yellow and orange sun image as contained in a rectangular background. The wording "POPSY'S" is in the color white with black and green outlining and it appears in front of the tree and moss designs, and below "POPSY'S" is the wording "BAYOU TEA" in the color white and shown within a light brown and black-outlined wooden plank.

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 033 for Liquor and liqueur beverages, namely, Bayou Tea

Original Filing Basis:

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 06/26/2015 and first used in commerce at least as early as 01/05/2016 , and is now in use in such commerce.

Proposed:

Tracked Text Description: ~~Liquor and liqueur beverages, namely, Bayou Tea;~~ [Liquor and liqueur beverages, namely, alcoholic tea-based beverages](#)

Class 033 for Liquor and liqueur beverages, namely, alcoholic tea-based beverages

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 06/26/2015 and first used in commerce at least as early as 01/05/2016 , and is now in use in such commerce.

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Phillip Serio/ Date: 04/17/2018

Signatory's Name: Phillip Serio

Signatory's Position: Principal

The signatory has confirmed that he/she is not represented by either an authorized attorney or Canadian attorney/agent, and that he/she is either: (1) the owner/holder ; or (2) a person(s) with legal authority to bind the owner/holder; and if an authorized U.S. attorney or Canadian attorney/agent previously represented him/her in this matter, either he/she has filed a signed revocation of power of attorney with the USPTO or the USPTO has granted the request of his/her prior representative to withdraw.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 87205803

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