

ESTTA Tracking number: **ESTTA939049**

Filing date: **12/04/2018**

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

Proceeding	91242728
Party	Defendant Serio Southern Spirits, LLC
Correspondence Address	PHILIP B SERIO SERIO SOUTHERN SPIRITS LLC 7607 FERN AVE STE 703 SHREVEPORT, LA 71105 UNITED STATES seriofinancial@yahoo.com no phone number provided
Submission	Answer
Filer's Name	Philip Serio
Filer's email	seriofinancial@yahoo.com
Signature	/Philip Serio/
Date	12/04/2018
Attachments	Popsys Bayou Tea USPTO.pdf(2289011 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, 91242728

For the mark Popsy's "Bayou Tea"

Published in the official Gazette on: May 29, 2018

Response to Notice of Opposition

Notice has been received by Serio Southern Spirits, LLC of the opposition by Louisiana Spirits, LLC to the registration of Popsy's Bayou Tea. Popsy's is the brand name and has no conflict of registration. The descriptive name Bayou Tea is a category listing at the Department of Treasury-Alcohol and Tobacco Tax and Trade Bureau (TTB) since the product has no specific category. The product was approved by the TTB on March 19, 2015 under the brand name Popsy's using the fanciful descriptive name of Bayou Tea. A Basic Permit was issued on August 10, 2015 with Permit Numbers LA-P-21025 and LA-I-21016 with the Authorized Trade Names "Bayou Tea" and "Popsy's Bayou Tea." The Brand name is listed as Popsy's and the fanciful name is Bayou Tea as recorded at the TTB on March 19, 2015.

The label depicts the frontal, ferocious, facial image of an alligator floating on top of black bayou waters with a yellow and orange daybreak image showing through barren trees in the background. The logo Popsy's is in white and outlined in green and the liquor category Bayou Tea is painted on a brown wooden driftwood plank with white lettering. The plank is highlighted in the background with yellow by the apparent rising sun. The label is distinctive to itself and colorful with no similarity to any current label in the market. It is a multi-colored label that is strategically different and makes the product stand out on its own. It is designed to be legible from a bar to a bar shelf.

Comparison of the respective logos show dramatically different images with no illusion of similarity. The logos also describe two distinctively different products in two completely separate product categories. One product is a blended cocktail and the other is a rum. (See Appendix #1)

The TTB permitted the product registration as Bayou Tea and Popsy's Bayou Tea. It is described as a blended liquor drink and is not categorized as a particular individual liquor. It does not fit into a specific category of a single liquor because of its composition. Popsy's Bayou Tea is not categorized as Rum. The TTB recognizes Popsy's as a pre-blended cocktail. The product is typically shelved at retail with ready to pour products such as pre mixed cocktails, pre-mixed margaritas and long island tea products.

Bayou Tea was denied as an exclusive registration by this board due to pre-existing market conflicts that are also unregistered. Images were provided by the USPTO of different businesses across the country that use the term Bayou Tea in their individual marketing of various drinks. These are for alcoholic and non-alcoholic

beverages. However it is still the descriptive term for the TTB registration of Popsy's product. That registration is as RTD (Ready to Drink) Bayou Tea in the recognized cocktails class at the TTB. Documents in Appendix #2 were provided by the USPTO showing examples of Bayou Tea usage in the market currently and why the exclusive registration was denied. (See Appendix #2)

Currently, a search of gator usage in commerce will show numerous companies, brands, schools and medical offices all use alligators as mascots or corporate images to enhance their public awareness.

In southern states, bayou is a common name for many businesses. In Louisiana alone, there are over 1100 business registrations with the Secretary of State of companies with Bayou in their registered name. The word Gator is utilized over 1000 times and Alligator is noted over 2000 times in Louisiana Secretary of State registrations. (The Louisiana Secretary of State Website listing includes active and inactive registrations.) The state of Louisiana uses the term bayou on every roadway statewide to recognize the respective bayou that is flowing under bridges throughout the state. Louisiana was purchased by the US in 1803 creating a long term precedent for use of the word bayou in the United States. Across the south, all states on the Gulf of Mexico and including some Atlantic coast states all have similar registrations at their respective Secretary of State offices utilizing the words bayou, gator and alligator. (Appendix #3)

The response to this opposition is being filed electronically with the United States Patent and Trademark Office Trade Mark Trial and Appeal Board.

By: Philip Serio

Serio Southern Spirits, LLC

7607 Fern Avenue #703

Shreveport, LA 71105

Email: seriofinancial@yahoo.com

Owner

Ph: 318-221-0889

Fax: 318-221-0887

Appendix #1

Popsy's Logo



POPSKY'S
Bayou Tea



A DELIGHTFUL BLEND OF
VODKA, TEQUILA, RUM, GIN
AND TRIPLE SEC
AND NATURAL FLAVORS

ALC 20% BY VOL (40 PROOF) 1.75 L



POPSY'S
Bayou Tea

A DELIGHTFUL BLEND OF
VODKA, TEQUILA, RUM, GIN
AND TRIPLE SEC
AND NATURAL FLAVORS

ALC 20% BY VOL (40 PROOF) 1.75 L

Appendix 2

USPTO data showing why Bayou Tea Trademark was previously denied.



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Rick Rowe's ArkLaTex Made: Popsy's Bayou Tea - KTBS.com ...

www.ktbs.com/story/32002028/rick-rowes-arklatex-made-popsys-bayou-tea
There's a new drink in town. It started as a family tradition, but is now catching on all over the state. Rick Rowe has the story in this morning's Ark, La, Tex. Made.

The Forum News BORN ON THE BAYOU

theforumnews.com/article-permalink-1990.html
Mar 23, 2016 - "The Mardi Gras tent had a sign that read Bayou Tea Party, which many people misunderstood as political," said Seno. "It's not political - it's

Bayou Tea - New Orleans Bar & Grill

www.neworleansbarandgrill.com/food/bayou-tea/
Bayou Tea - We sure love our sweet tea down south! This cocktail is a mix of whiskey, sweet sour & sweet tea! Squeeze a lemon & enjoy!

Popsy's Bayou Tea (@Popsysbayoutea) | Twitter

<https://twitter.com/popsysbayoutea>
The latest Tweets from Popsy's Bayou Tea (@Popsys_bayoutea): The Sator was sneaking up on @LukeEvanOnline at @CentonLink Center last night.

POPSY'S BAYOU TEA Trademark Application of Serio Southern ...

<https://trademarks.justia.com/872-05/popsy-s-bayou-87205471.html>
Oct 20, 2016 - POPSY'S BAYOU TEA is a trademark of Serio Southern Spirits, LLC. Filed in October 17, 2016; the POPSY'S BAYOU TEA covers Liquor and

Blue Bayou Tea

www.adagio.com/signature-blend/
A blend of different berries, chamomile and lemongrass to relax you.

Lose 5lbs in 5 Days With Louisiana's "Bayou" TEA Chic | Facebook

<https://www.facebook.com/Lose-5lbs-in-5-Days-With-Louisiana-Bayou-TEA-Chic-1>
Lose 5lbs In 5 Days With Louisiana's "Bayou" TEA Chic. Baker, 101 likes · 11 talking about this. Total Life Changes. All Natural Products Producing.

Lose 5lbs in 5 Days With Louisiana's "Bayou" TEA Chic | Facebook

https://www.facebook.com/LouisianaTEAChic/Prefeapy_c
Lose 5lbs In 5 Days With Louisiana's "Bayou" TEA Chic. Baker, 88 likes · 8 talking about this. Total Life Changes. All Natural Products Producing.

Policies - Tea Bayou New Orleans Cafe & Tea Bar

www.teabayou.com/policies.html
While Tea Bayou / Tea Squares LLC desires to prevent active accounts from being terminated prematurely, Tea Bayou / Tea Squares LLC has no obligation to

POPSY'S BAYOU TEA - Trademark & Brand Information of Serio ...

<https://www.trademarkia.com/> Trademark Category: Wines and Spirits Products



4312 BIG TREE WAY, GREENSBORO, NC 27409
 (336) 315-5351
 INFO@NEWORLEANSBARANDGRILL.COM

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Bayou Tea

We sure love our sweet tea down south! This cocktail is a mix of whiskey, sweet sour & sweet tea! Squeeze a lemon & enjoy!

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Catering For Your Party



[CLICK HERE FOR MORE INFO](#)

What Our Customers Say

We took advantage of a coupon offer to give your guys a try, and we were pleasantly impressed! The food was amazing!! The service, spectacular! We will definitely be back soon! Kudos to our server, Bryan H, who was very attentive and has an inviting, warm personality.

Krystal Nelson, via Facebook

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214 photos for BB's Cafe

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Kenya M.

74 29

Maw maw's bayou tea is everything!

2 days ago

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New Orleans Bar & Grill Photos & Videos

1 photo for New Orleans Bar & Grill

Add photos



Brocke A.

197 47 Eats '17

Shrimp creole and Bayou tea

Uploaded 11/1/16

Was this photo...?

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Parker's Home Cookin' Restaurant

5 reviews

Kathryn B. said "Parker's is good Southern comfort food. It's local and Christian-owned, and they treat you like family here. The food is..." read more

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 Mel G.
 Level 4 Contributor
 15 reviews
 17 restaurant reviews
 8 helpful votes

★★★★★ Reviewed January 4, 2015 Winnipeg

Went here for my birthday with my family. We got there right when it opened to be sure to get a table as previous reviews made us worried. Glad we got there early as there weren't any tables left by 6. Love love love the drink menus and we loved all that we ordered. The moonshine cherries were intense. Food was phenomenal. Blackened catfish was beyond where we thought it could be. Desserts were taken out as we were stuffed, but very enjoyable later that evening. Very small restaurant, so get there early or with just you and a date (they have quite a few two-tops). Casual attire. So worth the drive across town.

[Thank Mel G.](#)

[Ask Mel G. about Bayou Grill & Bakery.](#)


 OKC_Thunder_Fan
 Edmond, Oklahoma
 Level 4 Contributor
 17 reviews
 6 restaurant reviews
 25 helpful votes

"Try the meatloaf!"
★★★★★ Reviewed December 3, 2014

We really like to eat at Bayou Grill. Their food is great. The service is a little slow, but the servers are really friendly. They bring out the food as it is ready, so sometimes one person will have their food before the others. The Cajun meatloaf is delicious and my husband loves the catfish. Try the **Spicy Tea** if you are feeling brave. It's iced tea with bourbon and a moonshine cherry. Interestingly, delicious! Fabulous desserts, too!

Visited June 2014

★★★★★ Value **★★★★★** Service
★★★★★ Atmosphere **★★★★★** Food

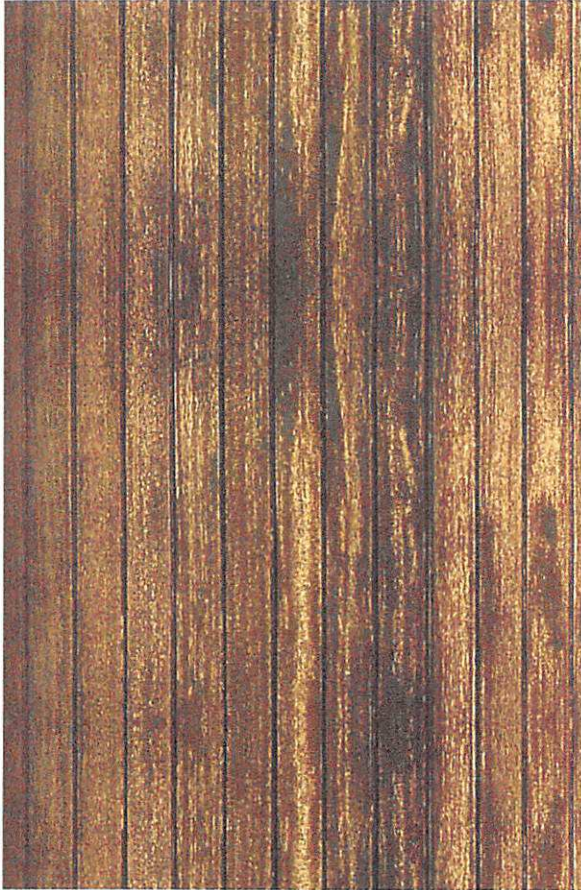
[Thank OKC_Thunder_Fan](#)

[Ask OKC_Thunder_Fan about Bayou Grill & Bakery.](#)

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Travelers who viewed Bayou Grill & Bakery also viewed

- **Bigheads**
★★★★★ 22 Reviews
 Edmond, OK
- **Brent's Cajun Seafood And Oyster Bar**
★★★★★ 10 Reviews
 Edmond, OK
- **Rocky Mountain Grill**
★★★★★ 16 Reviews
 Edmond, OK
- **Fish City Grill**
★★★★★ 35 Reviews
 Edmond, OK



Bubbles

Lamarca Prosecco 187 ml Split \$9

Mimosas Glass \$5

SIGNATURE DRINKS

The Sha Drop: Tito's Handmade Vodka, Tuzita Triple Sec, a splash of fresh lemon juice, a splash of all natural rta mix & a sugared rim. **\$9**

The Pink Slipper Martini: Elderflower Liqueur, Deep Eddy Ruby Red & Champagne. **\$9**

Swamp Cooler: Sovietki Citron Vodka, cranberry juice, lemonade & a splash of fresh lemon juice. **\$7.50**

Ultimate Margarita: Hornitos Reposado, Patrón Citrónage, all natural rta mix, a splash of fresh lime juice & a salted rim. **\$10**

Death Valley Paloma: Patrón Reposado, grapefruit juice, a splash of club soda & a salted rim. **\$11**

Can Can: Tito's Handmade Vodka with a splash of Elderflower Liqueur & topped off with champagne. **\$9.50**

Bayou Tea: Deep Eddy Sweet Tea Vodka & Community Iced Tea. **\$7**

Tropical Storm: Smirnoff Pineapple Vodka, Grand Marnier & cranberry juice. **\$7.50**

Shoal Creek Breeze: Smirnoff Pineapple Vodka & cranberry juice. **\$6** / Add a float of DeKuyper Peachtree Schnapps or DeKuyper Razzmatazz for **\$1.50**.

COFFEE DRINKS

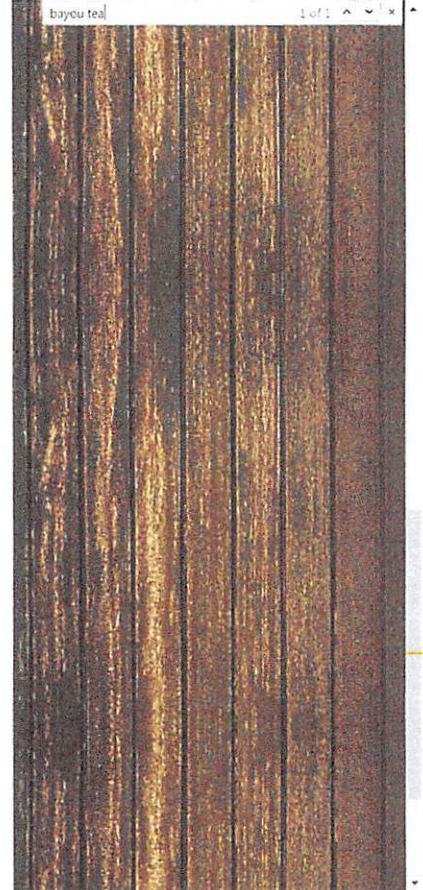
All of our coffee drinks are made with Community Coffee. Add Whipped Cream to any of our Coffee Drinks for 50 cents.

Creek Coffee: Community Coffee with Bateys Original Irish Cream or Bateys Caramel Irish Cream. **\$6.50**

Lady Godiva: Godiva Chocolate Vodka, Community Coffee and Bateys Original Irish Cream. **\$8.50**

Irish Canal Coffee: Community Coffee with Bateys Original Irish Cream and Jameson Irish Whiskey. **\$8.50**

Peppermint Coffee: Community Coffee with Rumpke Menze Peppermint Imported Schnapps and Bateys Original Irish Cream. **\$8.50**



Appendix 3

Louisiana Secretary of State Business Listings for Bayou, Gator and Alligator. Each category has thousands of listings.



(<https://www.sos.la.gov/Pages/default.aspx>)

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Name	Type	City	Detail
BAYOU CO.	Business Corporation	NEW ORLEANS	Details
FROM THE BAYOU, INC.	Business Corporation	DES ALLEMANDS	Details
BAYOU PARTNERSHIP	Partnership	SHREVEPORT	Details
BAYOU CALIFORNIA, L.L.C.	Limited Liability Company	NEW ORLEANS	Details
BAYOU CO, LLC	Limited Liability Company	PIERRE PART	Details
BAYOU PARTNERSHIP LLC	Limited Liability Company	NEW ORLEANS	Details
IN THE BAYOU LLC	Limited Liability Company	COVINGTON	Details
BAYOU CORPORATION	Previous Name	CHICAGO	Details
BAYOU	Service Mark	DES MOINES	Details
BAYOU	Trademark	CHURCH POINT	Details
BAYOU	Trademark	ST. MARTINVILLE	Details
BAYOU	Trademark	ST. MARTINVILLE	Details
BAYOU	Trademark	IOWA	Details
BAYOU, THE	Service Mark	BATON ROUGE	Details
BAYOU 1210	Trade Name	DENHAM SPRINGS	Details
BAYOU ABATEMENT, INC.	Business Corporation	BATON ROUGE	Details
BAYOU ABATEMENT AND CONSTRUCTION, INC.	Business Corporation	CROWLEY	Details
BAYOU ABSTRACTS, LLC	Limited Liability Company	MARRERO	Details
BAYOU AC, LLC	Limited Liability Company	BELL CITY LA 70630	Details
BAYOU ACADIAN L.L.C.	Limited Liability Company	BATON ROUGE	Details
BAYOU ACADIANA PAGEANTS	Service Mark	THIBODAU	Details
BAYOU ACCENTS, L.L.C.	Limited Liability Company	BARATARIA	Details
BAYOU ACCEPTANCE CORPORATION	Business Corporation (Non-Louisiana)	DOVER	Details
BAYOU ACCOUNTING & PAYROLL SERVICES LLC	Limited Liability Company	MONROE	Details
BAYOU ACCOUNTING SERVICES LLC	Limited Liability Company	DENHAM SPRINGS	Details

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GATOR, INC.	Business Corporation	METAIRIE	Details
GATOR LLC	Limited Liability Company	BATON ROUGE	Details
GATOR	Service Mark	NEW ORLEANS	Details
GATOR	Service Mark	PINEVILLE	Details
GATOR ADVENTURES, LLC	Limited Liability Company	LAFITTE	Details
GATOR AGGREGATES AND CONSTRUCTION, LLC	Limited Liability Company	JENNINGS	Details
GATOR AIRBOATS, INC.	Business Corporation	ABBEVILLE	Details
GATOR'S AUDIO CONNECTION, INC.	Business Corporation	HOUMA	Details
GATOR AUTO SALES LLC	Limited Liability Company	BATON ROUGE	Details
GATOR AVIATION, LLC	Limited Liability Company	BELLE CHASSE	Details
GATOR BACK, INC.	Business Corporation	COVINGTON	Details
GATOR BACK BOARDS LLC	Limited Liability Company	NEW ORLEANS	Details
GATOR BACKHOE & DOZER SERVICE, INC.	Business Corporation	GIBSON	Details
GATOR BAIT, LLC	Limited Liability Company	GRETNA	Details
GATOR BAIT, INC.	Business Corporation	SHREVEPORT	Details
GATOR BAIT COMPANY, INC.	Business Corporation	SHREVEPORT	Details
GATOR BAIT PRODUCTIONS, L.L.C.	Limited Liability Company	NEW ORLEANS	Details
GATOR BAIT TAVERN, L.L.C.	Limited Liability Company	MARRERO	Details
GATOR BASEBALL	Non-Profit Corporation	LAFAYETTE	Details
GATOR BASKETS, LLC	Limited Liability Company	RACELAND	Details
GATOR BASS CLUB	Service Mark	LAKE CHARLES	Details
GATOR BAY CAR WASH L.L.C.	Limited Liability Company	FERRIDAY	Details
GATOR BAYOU, L.L.C.	Limited Liability Company	GROSSE TETE	Details
GATOR BAYOU PUBLISHING, INC.	Business Corporation	LAKE CHARLES	Details
GATOR BAYOU RACEWAY, L.L.C.	Limited Liability Company	BOSSIER CITY	Details

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ALLIGATOR, LTD.	Business Corporation	NEW ORLEANS	Details
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ALLIGATOR ADVENTURES LLC	Limited Liability Company	MARRERO	Details
ALLIGATOR ADVENTURES	Service Mark	NEW ORLEANS	Details
ALLIGATOR ALLEY, INCORPORATED	Business Corporation	BATON ROUGE	Details
ALLIGATOR ALLEY, INC.	Business Corporation	DENHAM SPRINGS	Details
ALLIGATOR ALLEY, INC. OF NEVADA	Business Corporation (Non-Louisiana)	LAS VEGAS	Details
ALLIGATOR ALLEY INVESTMENTS, LLC	Limited Liability Company (Non-Louisiana)	MISSION	Details
ALLIGATOR ALLEY INVESTMENTS, LLC	Limited Liability Company (Non-Louisiana)	AUSTIN	Details
ALLIGATOR ALLEY, LOGO: GRAPHIC OF AN ALLIGATOR FORMING AN A FOR THE WORD ALLIGATOR. GRAPHIC LETTERS SPELLING OUT THE REST OF THE WORD ALLIGATOR AND ALLEY.	Trade Name	DENHAM SPRINGS	Details
ALLIGATOR ANCHOR HANDLING CREWS, INC.	Business Corporation	BELLE CHASSE	Details
ALLIGATOR ANDEE FISHING & HUNTING CLUB, LLC	Limited Liability Company	HOUMA	Details
ALLIGATOR AUTO PARTS	Trade Name	MARRERO	Details
ALLIGATOR BAR, INC.	Business Corporation	PRAIRIEVILLE	Details
ALLIGATOR BAYOU	Trade Name	PRAIRIEVILLE	Details
ALLIGATOR BAYOU ADVENTURES, L.L.C.	Limited Liability Company	NEW ORLEANS	Details
ALLIGATOR BAYOU ADVENTURES	Service Mark	NEW ORLEANS	Details
ALLIGATOR BAYOU BOOKS	Trade Name/Trademark	PRAIRIEVILLE	Details
ALLIGATOR BAYOU BRAKE, INC.	Business Corporation	LAKE PROVIDENCE	Details
ALLIGATOR BAYOU GRAMERCY HUNTING CLUB PROPERTIES, L.L.C.	Limited Liability Company	LA PLACE	Details
ALLIGATOR BAYOU HUNTING AND FISHING CLUB, INC.	Business Corporation	ST. FRANCISVILLE	Details

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<p>"ALLIGATOR BAYOU" LOUISIANA BARBECUE SAUCE LOGO CONSISTS OF ALLIGATOR WEARING AN APRON COOKING ON GRILL</p>	<p>Trademark</p>	<p>GONZALES</p>	<p>Details</p>
<p>ALLIGATOR BAYOU PROPERTIES, L.L.C.</p>	<p>Limited Liability Company</p>	<p>BALDWIN</p>	<p>Details</p>
<p>ALLIGATOR BAYOU SWAMP TOURS</p>	<p>Trade Name</p>	<p>PRAIRIEVILLE</p>	<p>Details</p>
<p>ALLIGATOR BAYOU SWAMP TOURS</p>	<p>Trade Name/Trademark</p>	<p>PRAIRIEVILLE</p>	<p>Details</p>

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