

ESTTA Tracking number: **ESTTA913771**

Filing date: **08/06/2018**

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	HERO SPIRIT, LLC		
Entity	Limited Liability Company	Citizenship	Tennessee
Address	411 Great Circle Road Nashville, TN 37228 UNITED STATES		

Attorney information	Timothy L. Capria; Keaton H. Osborne Bradley Arant Boult Cummings LLP 1600 Division Street Suite 700 Nashville, TN 37203 UNITED STATES Email: tcapria@bradley.com, kosborne@bradley.com, nashvilleipdocketing@bradley.com Phone: 6152523811
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Applicant Information

Application No	87603807	Publication date	07/10/2018
Opposition Filing Date	08/06/2018	Opposition Period Ends	08/09/2018
Applicant	H. MULLIGAN COMPANY, LLC 33 Irving Place, 3 FL New York, NY 10003 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; distilled spirits; liquors
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
No bona fide intent to use mark in commerce for identified goods or services	Trademark Act Section 1(b)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	5190621	Application Date	09/20/2016
Registration Date	04/25/2017	Foreign Priority Date	NONE
Word Mark	HEROES		

Design Mark	<h1>HEROES</h1>		
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2009/00/00 First Use In Commerce: 2009/00/00 Alcoholic beverages, except beer		

U.S. Registration No.	3933423	Application Date	11/20/2009
Registration Date	03/22/2011	Foreign Priority Date	NONE
Word Mark	HEROES VODKA		
Design Mark	<h1>HEROES VODKA</h1>		
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2009/11/11 First Use In Commerce: 2009/11/11 Vodka		

U.S. Registration No.	3818293	Application Date	12/21/2009
Registration Date	07/13/2010	Foreign Priority Date	NONE
Word Mark	FOR HEROES. BY HEROES.		
Design Mark	<h1>FOR HEROES. BY HEROES.</h1>		

Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 2009/11/11 First Use In Commerce: 2009/11/11 Spirits

Attachments	87176493#TMSN.png(bytes) 77877136#TMSN.png(bytes) 77898277#TMSN.png(bytes) Exhibit_A_-_5190621.pdf(60906 bytes) Exhibit_B_-_3933423.pdf(442107 bytes) Exhibit_C_-_3818293.pdf(418325 bytes) HERO_SPIRIT_LLC_-_Notice_of_Opposition_to_87603807.pdf(295465 bytes)
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Signature	/Timothy L. Capria/
Name	Timothy L. Capria
Date	08/06/2018

United States of America

United States Patent and Trademark Office

HEROES

Reg. No. 5,190,621

Registered Apr. 25, 2017

Int. Cl.: 33

Trademark

Principal Register

Hero Spirit, LLC (TENNESSEE LIMITED LIABILITY COMPANY)
411 Great Circle Rd
Nashville, TN 37228

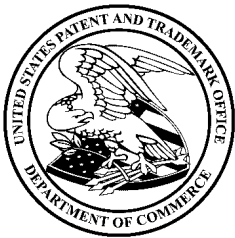
CLASS 33: Alcoholic beverages, except beer

FIRST USE 00-00-2009; IN COMMERCE 00-00-2009

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

OWNER OF U.S. REG. NO. 3933423, 3818293

SER. NO. 87-176,493, FILED 09-20-2016
AMY C KEAN, EXAMINING ATTORNEY



Michelle K. Lee

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.

***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 United States Patent and Trademark Office (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>.

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>.

United States of America

United States Patent and Trademark Office

HEROES VODKA

Reg. No. 3,933,423

TRAVIS MCVEY (UNITED STATES INDIVIDUAL)
312 LIND STREET
MCMINNVILLE, TN 37110

Registered Mar. 22, 2011

Int. Cl.: 33

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

TRADEMARK

FIRST USE 11-11-2009; IN COMMERCE 11-11-2009.

PRINCIPAL REGISTER

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

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

SER. NO. 77-877,136, FILED 11-20-2009.

DAVID HOFFMAN, EXAMINING ATTORNEY



David J. Kyfos

Director of the United States Patent and Trademark Office

United States of America

United States Patent and Trademark Office

FOR HEROES. BY HEROES.

Reg. No. 3,818,293

Registered July 13, 2010

Int. Cl.: 33

TRADEMARK

PRINCIPAL REGISTER

MCVEY, TRAVIS (UNITED STATES INDIVIDUAL)
312 LIND STREET
MCMINNVILLE, TN 37110

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

FIRST USE 11-11-2009; IN COMMERCE 11-11-2009.

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

SER. NO. 77-898,277, FILED 12-21-2009.

DAVID HOFFMAN, EXAMINING ATTORNEY



David J. Kyffers

Director of the United States Patent and Trademark Office

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

In the Matter of Application Serial No. 87/603,807
For the Trademark: WE CAN BE HEROES
Published in the *Official Gazette* on July 10, 2018

HERO SPIRIT, LLC,)	
)	
Opposer,)	
)	
v.)	OPPOSITION NO. _____
)	
H. MULLIGAN COMPANY, LLC)	
)	
Applicant.)	
)	

NOTICE OF OPPOSITION

HERO SPIRIT, LLC (the “Opposer”), a Tennessee limited liability company having a principal place of business at 411 Great Circle Road, Nashville, Tennessee 37228, believes it would be damaged by the registration of the intended word mark WE CAN BE HEROES (Applicant’s Mark) in International Class 033 for “alcoholic beverages except beer; distilled spirits; liquors,” filed by H. MULLIGAN COMPANY, LLC (the “Applicant”) as an intent-to-use basis application having U.S. Application Serial No. 87/603,807 (the “Application”), on September 11, 2017. The Application was published in the *Official Gazette* on July 10, 2018.

Opposer hereby opposes registration of Applicant’s Mark based on the following grounds:

1. Opposer believes that it would be damaged, and avers that it actually would be damaged, by the registration on the Principal Register of Applicant’s intended word mark WE CAN BE HEROES, which is the subject of Application Serial No. 87/603,807.

2. Applicant seeks to register Applicant's Mark in International Class 033 for "alcoholic beverages except beer; distilled spirits; liquors," as evidenced by the publication of the Application in the *Official Gazette*, and Applicant's Mark shown therein, on July 10, 2018.

3. Applicant's Application was published on July 10, 2018, and the time for filing a Notice of Opposition is set to expire on August 9, 2018. Accordingly, this Notice of Opposition is timely filed.

4. Opposer has a registered trademark for the mark HEROES (U.S. Reg. No. 5,190,621) in connection with "Alcoholic beverages, except beer" in International Class 033. A true and accurate copy of the registration displaying U.S. Reg. No. 5,190,621 is attached hereto as **Exhibit A**.

5. Opposer has a registered trademark for the mark HEROES VODKA (U.S. Reg. No. 3,933,423) in connection with "Vodka" in International Class 033. U.S. Reg. No. 3,933,423 is incontestable. A true and accurate copy of the registration displaying U.S. Reg. No. 3,933,423 is attached hereto as **Exhibit B**.

6. Opposer has a registered trademark for the mark FOR HEROES. BY HEROES. (U.S. Reg. No. 3,818,293) in connection with "Spirits" in International Class 033. U.S. Reg. No. 3,818,293 is incontestable. A true and accurate copy of the registration displaying U.S. Reg. No. 3,818,293 is attached hereto as **Exhibit C**.

7. U.S. Reg. Nos. 5,190,621, 3,933,423, 3,818,293, and the marks subject thereof, shall be referred to as "Opposer's Marks."

8. Opposer's Marks have priority over Applicant's Mark, as Opposer's Marks have earlier priority filing dates and use dates than Applicant's Application, and Opposer has superior rights over Applicant.

9. Applicant has filed the intent-to-use based Application for a federal trademark registration with no geographical or other restrictions. If Applicant's Mark is allowed to register and Applicant begins to use the mark in interstate commerce, there is a strong likelihood of confusion with Opposer's goods and goods of Opposer's Marks.

10. First, Applicant's Mark would be confusingly similar to Opposer's Marks.

11. The sight, sound, meaning, and commercial impression of these marks are confusingly similar.

12. For example, Opposer's Marks all comprise or consist of, the word, "heroes." Meanwhile, "heroes" is the dominate portion of Applicant's Mark.

13. By way of example, "heroes" is also the last word Applicant's Mark and Opposer's FOR HEROES. BY HEROES. mark.

14. Next, the goods to be associated with Applicant's Mark— alcoholic beverages except beer; distilled spirits; liquors — are very closely related, if not legally identical, with Opposer's goods associated with Opposer's Marks. Thus, the concurrent use of the subject marks in connection with the intended goods is likely to cause consumer confusion.

15. Consumers would likely encounter Applicant's intended goods and Opposer's goods through similar trade channels under similar conditions, contributing further to consumer confusion.

16. Given these similarities, Opposer will be damaged by registration and use of Applicant's Mark at least in part because Applicant's Mark and the associated intended goods, as listed in the Application, are likely to cause confusion, mistake, and deception with Opposer, with Opposer's Marks, and with goods offered by Opposer. Therefore, registration of Applicant's Mark on the Principal Register and the presumptions that would arise thereby would be inconsistent with

Opposer's rights. Applicant's Application should therefore be refused pursuant to 15 U.S.C. § 1052(d).

17. The registration of Applicant's Mark is inconsistent with Opposer's prior rights in Opposer's Marks, is inconsistent with Opposer's statutory grant of exclusivity of use of Opposer's Marks, and would destroy Opposer's investment and goodwill in Opposer's Marks.

18. Applicant has no bona fide intent to use Applicant's Mark in commerce in connection with providing the applied-for goods in International Class 033. The Application should therefore be refused pursuant to 15 U.S.C. § 1051(b).

19. The fee in the amount of \$400.00 is being submitted simultaneously herewith in accordance with 37 C.F.R. § 2.6(a)(17). The Commissioner is authorized to debit the deposit account of Bradley Arant Boult Cummings LLP (Deposit Account No. 504293) for any deficiency in the required fee.

20. Opposer reserves the right to amend this Notice of Opposition upon further investigation and discovery.

WHEREFORE, Opposer respectfully requests that Application Serial No. 87/603,807 be refused registration and that this Notice of Opposition be sustained in favor of Opposer.

Respectfully submitted,

BRADLEY ARANT BOULT CUMMINGS LLP

By: /Timothy L. Capria/
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 kosborne@bradley.com

Attorneys for Opposer

AUTHORIZATION TO CHARGE
DEPOSIT ACCOUNT

If, after processing the enclosed correspondence, any charges, fees, or sums due remain unpaid in connection with this correspondence, I hereby authorize the Commissioner of Patents and Trademarks to charge all such remaining fees, charges, and other sums due to Deposit Account Number 504293.

/Timothy L. Capria/

Timothy L. Capria, Attorney for Opposer