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

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

Proceeding	91242944
Party	Plaintiff Louisiana Spirits, LLC
Correspondence Address	PATRICK K STEELE STEELE IP LAW PLLC 12345 JONES RD STE 200 HOUSTON, TX 77070 UNITED STATES tmdocketing@steeleiplaw.com, admin@steeleiplaw.com 836-678-2349
Submission	Other Motions/Papers
Filer's Name	Patrick K. Steele
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Signature	/Patrick K. Steele, #39844/
Date	09/24/2018
Attachments	Opposers_Resp_2_Applicants_Mot_4_Extension_180924.pdf(2276205 bytes)

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

In the Matter of Application Serial No. 87/206,097
for the mark POPY'S BAYOU TEA GATOR GONNA GETCHA!
Published in the Official Gazette on: June 12, 2018

LOUISIANA SPIRITS, LLC	§	
	§	
Opposer	§	
	§	
v.	§	Opposition No. 91242944
	§	
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 Brief and 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 GATOR GONNA GETCHA! plus a design element on August 10, 2018. See TTAB Prosecution History item 1.

2. The email including a link to enable the parties to the opposition to access the Notice of Institution of the Opposition proceeding no. 91242944 was emailed out by the TTAB that same day. See TTAB Prosecution History item 2.

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 GATOR GONNA GETCHA! with a design element including an image of an alligator on October 17, 2016. That application was assigned serial number 87206097 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 and gives the Applicant's email address at popsysbayoutea@yahoo.com.
7. Applicant filed a third TEAS Change of Owner Address on April 23, 2018. That document is attached as Exhibit B. Applicant therein changed the email address to SerioFinacial@mailovo.com.
8. Opposer filed its Notice of Opposition on August 10, 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 three months and eighteen 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 August 10, 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 link enabling access to 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 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 email address. I have just been able to retrieve the documents from the USPTO website.” [emphasis provided.] The Applicant's motion for extension includes an email address of seriofinancial@yahoo.com.

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 email 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 email address that he gave to the USPTO upon filing the application is "an erroneous email address." Applicant does not explain why it has not filed a fourth change of address notification with the new email address.

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 4, 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.

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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. 87/206,097
for the mark POPSY'S BAYOU TEA GATOR GONNA GETCHA!
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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 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 20, 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	87206097
LAW OFFICE ASSIGNED	LAW OFFICE 101
MARK SECTION	
MARK	GATOR GONNA GETCHA! (see, https://tmng-al.uspto.gov/resting2/api/img/87206097/large)
NEW CORRESPONDENCE ADDRESS	
NEW ADDRESS	PHILIP SERIO SERIO SOUTHERN SPIRITS, LLC Suite 703 7607 Fern Ave SHREVEPORT Louisiana United States 71105 SerioFinancial@yahoo.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
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 18:02:01 EDT 2018
TEAS STAMP	USPTO/PRA-XX.XX.XX.XX-201 80409180201128723-8720609 7-5105c51de0aaad14e6c85c6 6a352d44a5f40ed74f4e0d86a 923fb9e9eae6281dc-N/A-N/A -20180409175722355497

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>.

Exhibit "B"

Change Of Correspondence Address

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	87206097
LAW OFFICE ASSIGNED	LAW OFFICE 101
MARK SECTION	
MARK	GATOR GONNA GETCHA! (see, https://tmng-al.uspto.gov/resting2/api/img/87206097/large)
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	04/23/2018
SIGNATORY POSITION	Principal
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Mon Apr 23 17:13:26 EDT 2018
TEAS STAMP	USPTO/RFR-XX.XX.XX.XX-201 80423171326855163-8720609 7-51022a59be7526539a87f87 b3518a5398fadca16bb1fe778 dc52d1e4ec79408a5b-N/A-N/ A-20180423170816812128

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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TRADEMARK REGISTRATION**

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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>.