

ESTTA Tracking number: **ESTTA947790**

Filing date: **01/16/2019**

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	Mark Anthony International SRL
Granted to Date of previous extension	02/06/2019
Address	Rendezvous Main Road, Worthing Christ Church, BB15006 BARBADOS

Attorney information	David H. Bernstein, Esq. Debevoise & Plimpton LLP 919 Third Avenue New York, NY 10022 UNITED STATES dhbernstein@debevoise.com, jikagan@debevoise.com, trademarks@debevoise.com 212-909-6696
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**Applicant Information**

Application No	86580123	Publication date	10/09/2018
Opposition Filing Date	01/16/2019	Opposition Period Ends	02/06/2019
Applicant	Henderson Leisure Properties, Incorporated Mikes Pizza and Pasta 803 Spartanburg Highway Hendersonville, NC 28792 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 032. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Beer, ale, lager, stout and porter; Brewed malt-based beers; Non-alcoholic beer
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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	2501401	Application Date	11/09/1999
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No.			
Registration Date	10/30/2001	Foreign Priority Date	NONE
Word Mark	MIKE' S		
Design Mark	<b>MIKE'S</b>		
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1996/03/00 First Use In Commerce: 1999/03/00 Lemon-flavored brewed malt-based alcoholic beverages in the nature of beer Class 033. First use: First Use: 1996/03/00 First Use In Commerce: 1999/03/00 Lemon-flavored alcoholic malt coolers, alcoholic beverages produced from a brewed malt base with natural lemon flavors		

U.S. Registration No.	3125866	Application Date	12/27/2004
Registration Date	08/08/2006	Foreign Priority Date	NONE
Word Mark	MIKE'S		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2005/06/00 First Use In Commerce: 2005/06/00 Flavored brewed malt-based alcoholic beverages in the nature of a beer Class 033. First use: First Use: 2005/06/00 First Use In Commerce: 2005/06/00 Alcoholic flavored malt coolers		


U.S. Registration No.	3399734	Application Date	12/16/2005
Registration Date	03/18/2008	Foreign Priority Date	NONE
Word Mark	MIKE'S LITE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 018. First use: First Use: 2004/10/20 First Use In Commerce: 2004/10/20 [ Bags, namely, backpacks ]</p> <p>Class 025. First use: First Use: 2004/01/05 First Use In Commerce: 2004/01/05 [ Clothing, namely, shirts, t-shirts ]</p> <p>Class 032. First use: First Use: 2004/01/05 First Use In Commerce: 2004/01/05 Flavored brewed malt-based alcoholic beverages in the nature of a beer</p> <p>Class 033. First use: First Use: 2004/01/05 First Use In Commerce: 2004/01/05 Flavored alcoholic malt coolers</p>		

U.S. Registration No.	2996113	Application Date	11/18/2003
Registration Date	09/13/2005	Foreign Priority Date	NONE
Word Mark	MIKE'S LITE		
Design Mark			
Description of Mark	The mark consists of the words MIKE'S LITE superimposed over a stylized lemon design.		
Goods/Services	<p>Class 025. First use: First Use: 2004/06/01 First Use In Commerce: 2004/06/01 [ clothing, namely, shirts, t-shirts, jackets, sweatshirts and caps ]</p> <p>Class 032. First use: First Use: 2004/01/14 First Use In Commerce: 2004/01/14 lemon-flavored brewed malt-based alcoholic beverages in the nature of beer</p> <p>Class 033. First use: First Use: 2004/01/14 First Use In Commerce: 2004/01/14 lemon-flavored alcoholic malt coolers, alcoholic beverages produced from a</p>		

	brewed malt base with natural lemon flavor		
U.S. Registration No.	2577759	Application Date	10/31/2000
Registration Date	06/11/2002	Foreign Priority Date	NONE
Word Mark	MIKE'S HARD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1996/03/00 First Use In Commerce: 1996/03/00 lemon-flavored brewed malt-based alcoholic beverages in the nature of beer Class 033. First use: First Use: 1996/03/00 First Use In Commerce: 1996/03/00 lemon-flavored alcoholic malt coolers, alcoholic beverages produced from a brewed malt base with natural lemon flavors		

U.S. Registration No.	3215727	Application Date	05/12/2006
Registration Date	03/06/2007	Foreign Priority Date	NONE
Word Mark	MIKE'S HARD		
Design Mark			
Description of Mark	The mark consists of a stylized lemon with the stylized wording "MIKE'S HARD" inside of the stylized lemon.		
Goods/Services	Class 032. First use: First Use: 2005/02/16 First Use In Commerce: 2005/02/16 flavored brewed malt-based alcoholic beverages in the nature of a beer Class 033. First use: First Use: 2005/02/16 First Use In Commerce: 2005/02/16 alcoholic flavored malt coolers		

U.S. Registration No.	4183446	Application Date	02/16/2012
Registration Date	07/31/2012	Foreign Priority Date	NONE
Word Mark	MIKE'S HARDER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2009/01/19 First Use In Commerce: 2009/01/19 Flavored brewed malt-based alcoholic beverages in the nature of beer Class 033. First use: First Use: 2009/01/19 First Use In Commerce: 2009/01/19 Flavored alcoholic malt coolers		

U.S. Registration No.	4791900	Application Date	08/18/2014
Registration Date	08/11/2015	Foreign Priority Date	NONE
Word Mark	MIKE'S HARDER		
Design Mark			
Description of Mark	The mark consists of the word's "MIKE'S HARDER" superimposed over a stylized lemon, beneath which is a lightning bolt. Behind the lemon design at the top of the mark is a spray design made up partially of lightning bolts.		
Goods/Services	Class 032. First use: First Use: 2014/06/00 First Use In Commerce: 2014/06/00		

	Malt based beverage in the nature of beer Class 033. First use: First Use: 2014/06/00 First Use In Commerce: 2014/06/00 Flavored alcoholic malt beverage
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U.S. Registration No.	4237678	Application Date	04/17/2012
Registration Date	11/06/2012	Foreign Priority Date	NONE

Word Mark	MIKE'S HARDER
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Design Mark	
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Description of Mark	The mark consists of the words "MIKE'S HARDER" in a stylized font, within a stylized drawing of a lemon.
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Goods/Services	Class 032. First use: First Use: 2009/01/19 First Use In Commerce: 2009/01/19 Flavored brewed malt-based alcoholic beverages in the nature of beer Class 033. First use: First Use: 2009/01/19 First Use In Commerce: 2009/01/19 Prepared alcoholic cocktails; flavored alcoholic malt coolers
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U.S. Registration No.	3266476	Application Date	10/21/2005
Registration Date	07/17/2007	Foreign Priority Date	NONE


Word Mark	MIKE'S LITE HARD LEMONADE
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Design Mark	
Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 2006/02/16 First Use In Commerce: 2006/02/16 Flavored brewed malt-based alcoholic beverages in the nature of a beer Class 033. First use: First Use: 2006/02/16 First Use In Commerce: 2006/02/16 Alcoholic flavored malt coolers

U.S. Registration No.	2540461	Application Date	07/31/2001
Registration Date	02/19/2002	Foreign Priority Date	NONE
Word Mark	MIKE'S HARD LEMONADE		
Design Mark	<b>MIKE'S HARD LEMONADE</b>		
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1999/03/10 First Use In Commerce: 1999/03/10 lemon-flavored brewed malt beverages in the nature of beer Class 033. First use: First Use: 1999/03/10 First Use In Commerce: 1999/03/10 lemon-flavored alcoholic malt coolers, alcoholic beverages produced from a brewed malt base with natural lemon flavors		

U.S. Registration No.	2593547	Application Date	02/11/2000
Registration Date	07/16/2002	Foreign Priority Date	NONE
Word Mark	MIKE'S HARD LEMONADE		

Design Mark	
Description of Mark	NONE
Goods/Services	<p>Class 032. First use: First Use: 1996/03/00 First Use In Commerce: 1999/03/00 LEMON-FLAVORED BREWED MALT-BASED ALCOHOLIC BEVERAGES IN THE NATURE OF BEER</p> <p>Class 033. First use: First Use: 1996/03/00 First Use In Commerce: 1999/03/00 LEMON-FLAVORED ALCOHOLIC MALT COOLERS, ALCOHOLIC BEVERAGES PRODUCED FROM A BREWED MALT BASE WITH NATURAL LEMON FLAVOR</p>

U.S. Registration No.	2584297	Application Date	10/13/1999
Registration Date	06/25/2002	Foreign Priority Date	NONE
Word Mark	MIKE'S HARD LEMONADE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 032. First use: First Use: 1996/03/00 First Use In Commerce: 1999/03/00 [ Non-alcoholic lemon-flavored malt coolers, ] lemon flavored malt beer</p> <p>Class 033. First use: First Use: 1996/03/00 First Use In Commerce: 1999/03/00</p>		



	Lemon-flavored alcoholic malt coolers		
U.S. Registration No.	3641073	Application Date	08/13/2008
Registration Date	06/16/2009	Foreign Priority Date	NONE
Word Mark	MIKE'S HARDER LEMONADE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2009/01/19 First Use In Commerce: 2009/01/19 Flavored brewed malt-based alcoholic beverages in the nature of beer Class 033. First use: First Use: 2009/01/19 First Use In Commerce: 2009/01/19 Alcoholic flavored malt coolers		

Attachments	75845716#TMSN.png( bytes ) 78538711#TMSN.png( bytes ) 78775379#TMSN.png( bytes ) 78976284#TMSN.png( bytes ) 76156873#TMSN.png( bytes ) 78882402#TMSN.png( bytes ) 85544850#TMSN.png( bytes ) 86369715#TMSN.png( bytes ) 85599641#TMSN.png( bytes ) 78978337#TMSN.png( bytes ) 76292440#TMSN.png( bytes ) 75916508#TMSN.png( bytes ) 75822207#TMSN.png( bytes ) 77545666#TMSN.png( bytes ) Notice of Opposition - MAI v Henderson Leisure.pdf(51471 bytes )
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Signature	/Jared I. Kagan/
Name	Jared I. Kagan
Date	01/16/2019

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

In the Matter of Trademark Application Serial No. 86/580,123

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MARK ANTHONY INTERNATIONAL SRL,	:	
	:	
Opposer,	:	Opposition No. _____
	:	
v.	:	<b><u>Notice of Opposition</u></b>
	:	
HENDERSON LEISURE PROPERTIES, INC.,	:	
	:	
Applicant.	:	
-----	X	


Mark Anthony International SRL (“MAI”), a society organized under the laws of Barbados with its registered address at “Mark Anthony House”, Rendezvous Main Road, Worthing, Christ Church BB15006, Barbados, believes that it will be damaged by the registration of the mark MAGIC MIKES BEER (Application Ser. No. 86/580,123) by Applicant Henderson Leisure Properties, Inc. (“Applicant”) for use in connection with “Beer, ale, lager, stout and porter; Brewed malt-based beers; Non-alcoholic beer” in International Class 32 (the “Application”), and hereby opposes the Application by and through its attorneys Debevoise & Plimpton LLP.



The grounds for opposition are as follows:




1. MAI is the owner of the enormously popular MIKE’S line of malt beverages and related products, recognized for the use of real, quality fruit ingredients.. MAI’s product line has been an unprecedented success ever since its introduction, first in Canada in 1996, and again in the United States in 1999. MAI owns over fifty-five (55) federally-registered trademarks in connection with its MIKE’S brand, including, among others, MIKE’S, MIKE’S HARD LEMONADE, MIKE’S HARD, MIKE’S HARDER, and MIKE’S LITE, as well as numerous



other word marks and design marks incorporating the name, MIKE’S (collectively the “MIKE’S Marks”). Many of these marks have become incontestable pursuant to Section 15 of the Lanham Act, 15 U.S.C. § 1065.

2. MAI is the owner of the following marks, among others, that are registered on the Principal Register:

<b>Registration Number</b>	<b>Mark</b>	<b>Goods</b>	<b>First Used in Commerce</b>	<b>Registration Date</b>
2,501,401	MIKE’S	Lemon-flavored brewed malt-based alcoholic beverages in the nature of beer; lemon-flavored alcoholic malt coolers, alcoholic beverages produced from a brewed malt based with natural lemon flavors	March 1999	October 30, 2001
3,125,866		Flavored brewed malt-based alcoholic beverages in the nature of a beer; alcoholic flavored malt coolers	June 2005	August 8, 2006
3,399,734	MIKE’S LITE	Flavored brewed malt-based alcoholic beverages in the nature of a beer; flavored alcoholic malt coolers	January 2004	March 18, 2008

Registration Number	Mark	Goods	First Used in Commerce	Registration Date
2,996,113		Lemon-flavored brewed malt-based alcoholic beverages in the nature of beer; lemon-flavored alcoholic malt coolers, alcoholic beverages produced from a brewed malt base with natural lemon flavor	January 2004	September 13, 2005
2,577,759	MIKE'S HARD	Lemon-flavored brewed malt-based alcoholic beverages in the nature of beer; lemon-flavored alcoholic malt coolers, alcoholic beverages produced from a brewed malt base with natural lemon flavors	March 1996	June 11, 2002
3,215,727		Flavored brewed malt-based alcoholic beverages in the nature of a beer; alcoholic flavored malt coolers	February 2005	March 6, 2007
4,183,446	MIKE'S HARDER	Flavored brewed malt-based alcoholic beverages in the nature of beer; flavored alcoholic malt coolers	January 2009	July 31, 2012

Registration Number	Mark	Goods	First Used in Commerce	Registration Date
4,791,900		Malt based beverage in the nature of beer; flavored alcoholic malt beverage	June 2014	August 11, 2015
4,237,678		Flavored brewed malt-based alcoholic beverages in the nature of beer; prepared alcoholic cocktails; flavored alcoholic malt coolers	January 19, 2009	November 6, 2012
3,266,476		Flavored brewed malt-based alcoholic beverages in the nature of a beer; alcoholic flavored malt coolers	February 16, 2006	July 17, 2007
2,540,461	MIKE'S HARD LEMONADE	Lemon-flavored brewed malt beverages in the nature of beer; lemon-flavored alcoholic malt coolers, alcoholic beverages produced from a brewed malt base with natural lemon flavors	March 10, 1999	February 19, 2002

Registration Number	Mark	Goods	First Used in Commerce	Registration Date
2,593,547		Lemon-flavored brewed malt-based alcoholic beverages in the nature of beer; lemon-flavored alcoholic malt coolers, alcoholic beverages produced from a brewed malt base with natural lemon flavor	March 1999	July 16, 2002
2,584,297		Lemon flavored malt beer; lemon-flavored alcoholic malt coolers	March 1999	June 25, 2002
3,641,073	MIKE'S HARDER LEMONADE	Flavored brewed malt-based alcoholic beverages in the nature of beer; alcoholic flavored malt coolers	January 2009	June 16, 2009

3. MAI continuously has used the MIKE'S Marks in commerce throughout the United since 1999.

4. MAI's products bearing the MIKE'S Marks (the "MAI Products") are sold nationwide in the United States. In 2018 alone, over 12 million MAI Products were sold nationwide.

5. MAI Products are sold to over 6,000 wholesalers, distributors, retailers, big-box stores, supermarkets, grocery stores, convenience stores, pharmacies, gas stations, restaurants, and liquor stores throughout the United States.

6. As a result of MAI's federally-registered MIKE'S Marks and MAI's widespread and continuous use of the MIKE'S Marks in the United States in connection with malt-based alcoholic beverages in the nature of beer and to identify its goods, MAI owns valid and subsisting federal statutory and common law rights to the MIKE'S Marks. MAI is not aware of any trademarks registered and/or in use in the United States—other than its own—for beer or malt-based beverages that include the word MIKE'S.

7. The MIKE'S Marks are central to the brand's recognition by consumers and to the widespread success of the MIKE'S family of products. The MAI Products are promoted on MAI's official website, as well as on social media platforms: Twitter and Instagram. The MAI Products also have received widespread media coverage on numerous other media platforms, namely, Forbes, Marketing Matters, EventBrite, Thrillist, Elite Daily, CBS New York, AdWeek, Eventful, NBC Los Angeles Online, among others. The MIKE'S Marks also are used on a wide variety of products enjoyed by fans of MIKE'S beverages, including backpacks, all-purpose carry bags, duffel bags, gym bags, beach bags, fanny packs, and shirts.

8. Applicant has an address at 803 Spartanburg Highway, Hendersonville, North Carolina, 28792. Applicant seeks to register the mark MAGIC MIKES BEER for “[b]eer, ale, lager, stout and porter; [b]rewed malt-based beers; [and] [n]on-alcoholic beer” in International Class 32. Applicant filed the Application on March 29, 2015 based on intent to use.

9. By letter to Applicant dated September 14, 2015, MAI objected to the Application.

10. In a response dated October 17, 2015, Michael Kurimsky, on behalf of Applicant, stated that Applicant “abandoned the ‘Magic Mikes’ project.” Applicant, however, has failed to expressly abandon the Application.

11. The registration by Applicant of MAGIC MIKES BEER would damage the MIKE’S Marks.

12. The MIKE’S Marks have priority over the MAGIC MIKES BEER Mark because the use and registration dates of the MIKE’S Marks predate the Applicant’s filing date and/or any other date on which Applicant may rely for purposes of priority. On information and belief, Applicant has not used the MAGIC MIKES BEER Mark in commerce.

13. Applicant’s proposed MAGIC MIKES BEER Mark is confusingly similar to the MIKE’S Marks. Applicant has appropriated the entirety of the MIKE’S mark in the MAGIC MIKES BEER Mark, with the exception of an apostrophe.

14. Consumers are likely to be confused into believing that Applicant’s MAGIC MIKES BEER Mark comes from, or is affiliated with, or is offered with the approval or sponsorship of, MAI. The likelihood of confusion is further exacerbated because MAI uses its MIKE’S Marks for malt-based alcoholic beverages, one of the goods for which Applicant also seeks to register MAGIC MIKES BEER. The other goods identified in the Application (beer, ale, lager, stout, porter, and non-alcoholic beer) are directly related to MAI’s goods. Consumers seeing the MAGIC MIKES BEER Mark on such beverages would inevitably believe that the products are offerings from the makers of MIKE’S products or are otherwise affiliated with the MIKE’S family of products, given the close similarity between the marks (both use MIKE) and the goods (malt-based alcoholic beverages and beer).



15. Registration should be refused pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), on the grounds that Applicant's proposed mark consists of or comprises a mark which so resembles MAI's previously used and registered MIKE'S Marks as to be likely, when used in connection with the alleged goods of Applicant, to cause confusion, or to cause mistake, or to deceive, with consequent injury to MAI and the public.

16. Registration should also be refused pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b), on the grounds that Applicant lacks a *bona fide* intention to use Applicant's proposed mark given that Applicant declared that it had abandoned the MAGIC MIKES project at least as early as 2015.

[Remainder of page intentionally left blank]

WHEREFORE, MAI believes it will be damaged by the registration of the Application and respectfully requests that this Opposition be sustained, registration of said mark be denied, and that the Trademark Trial and Appeal Board grant such other and further relief as it deems just and appropriate.

All communications should be addressed to Mark Anthony International SRL's counsel, Debevoise & Plimpton LLP, at the address stated below.

Dated: January 16, 2019  
New York, New York

Respectfully submitted  
DEBEVOISE & PLIMPTON LLP

*/s/ Jared I. Kagan*  
David H. Bernstein  
Jared I. Kagan  
919 Third Avenue  
New York, New York 10022  
(212) 909-6696  
dhbernstein@debevoise.com  
jikagan@debevoise.com

*Attorneys for Mark Anthony International SRL*