

ESTTA Tracking number: **ESTTA955935**

Filing date: **02/22/2019**

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	Patron Spirits International AG
Granted to Date of previous extension	02/27/2019
Address	Quaistrasse 11 Schaffhausen, 8200 SWITZERLAND

Attorney information	JOHN P. MURTAUGH PEARNE & GORDON LLP 1801 EAST 9TH STREET, SUITE 1200 CLEVELAND, OH 44114-3018 UNITED STATES tmdocket@pearne.com, jmurtaugh@pearne.com 216-579-1700
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**Applicant Information**

Application No	87952902	Publication date	10/30/2018
Opposition Filing Date	02/22/2019	Opposition Period Ends	02/27/2019
Applicant	Fornari Beverage and Botanical Co. 1104 Crest Lane Western Springs, IL 60558 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
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)
Dilution by tarnishment	Trademark Act Sections 2 and 43(c)


**Marks Cited by Opposer as Basis for Opposition**


U.S. Registration No.	2727996	Application Date	11/07/2001
Registration Date	06/17/2003	Foreign Priority	NONE

		Date	
Word Mark	PYRAT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 1996/07/31 First Use In Commerce: 1996/07/31 DISTILLED SPIRITS		

U.S. Registration No.	2058075	Application Date	05/09/1995
Registration Date	04/29/1997	Foreign Priority Date	NONE
Word Mark	PYRAT RUM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 1996/07/00 First Use In Commerce: 1996/07/00 rum		

U.S. Registration No.	4616271	Application Date	10/09/2013
Registration Date	10/07/2014	Foreign Priority Date	NONE
Word Mark	PYRAT CASK 1623		

Design Mark	
Description of Mark	The mark consists of the words "CASK 1623" in an octagon below the word "PYRAT", and a Buddha in a circle above the word "PYRAT", all surrounded by a double border octagon.
Goods/Services	Class 033. First use: First Use: 1996/07/31 First Use In Commerce: 1996/07/31 Alcoholic beverages except beers; Distilled Spirits; Rum

U.S. Registration No.	4680600	Application Date	10/09/2013
Registration Date	02/03/2015	Foreign Priority Date	NONE
Word Mark	PYRAT XO RESERVE		
Design Mark			
Description of Mark	The mark consists of the word "PYRAT" with the words "XO RESERVE" in an octagon below it and a Buddha in a circle to the left side, all surrounded by a double border.		
Goods/Services	Class 033. First use: First Use: 1996/07/31 First Use In Commerce: 1996/07/31 Alcoholic beverages except beers; Distilled Spirits; Rum		

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Signature	/johnpmurtaugh/
Name	JOHN P. MURTAUGH
Date	02/22/2019

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

PATRON SPIRITS	)		
INTERNATIONAL AG	)	Mark	: PIRATE DOG
Opposer	)		
	)	Serial No.	: 87/952,902
v.	)		
	)		
FORNARI BEVERAGE	)		
AND BOTANICAL CO.	)	Opposition No.:	_____
Applicant	)		

NOTICE OF OPPOSITION

1. PATRON SPIRITS INTERNATIONAL AG, a corporation of Switzerland, having an address at QUAISTRASSE 11, SCHAFFHAUSEN, 8200, SWITZERLAND, (Opposer), believes that it will be damaged by registration of the mark shown in U.S. Application No. 87/952,902 for the mark PIRATE DOG and hereby opposes the same. The grounds for opposition are as follows.

2. U.S. Application No. 87/952,902 was filed by FORNARI BEVERAGE AND BOTANICAL CO., a corporation of Illinois, having an address at 1104 Crest Lane, Western Springs, Illinois 60558 (Applicant), on June 7, 2018 for the mark PIRATE DOG on an intent-to-use basis. The mark was published for opposition on October 30, 2018 for "Beer" in Class 32. Accordingly, the earliest date of claimed rights is June 7, 2018.

3. Opposer is the owner of the following marks ("Opposer's marks"):

A. U.S. Registration No. 2727996, filed on November 7, 2001, and registered on June 17, 2003, for PYRAT, for "distilled spirits" in Class 33, claiming a date of first use in US commerce of July 31, 1996.

B. U.S. Registration No. 2058075, filed on May 9, 1995, and registered on April 29, 1997, for PYRAT RUM, for "rum" in Class 33, claiming a date of first use in US commerce of July, 1996.

C. U.S. Registration No. 4616271, filed October 9, 2013, and registered on October 7, 2014, for PYRAT CASK 1623 and Design, for “Alcoholic beverages except beers; Distilled Spirits; Rum” in Class 33, claiming a date of first use in US commerce of July 31, 1996.

D. U.S. Registration No. 4680600, filed on October 9, 2013, and registered on February 3, 2015, for PYRAT XO RESERVE and Design, for “Alcoholic beverages except beers; Distilled Spirits; Rum” in Class 33, claiming a date of first use in US commerce of July 31, 1996.

4. Opposer has used its marks in US commerce with respect to the registered goods on a regular and continuous basis since its first use and accordingly has common law rights corresponding to its registration rights.

5. As can be seen from the above, Opposer has priority over Applicant by reason of Opposer’s rights going back years before Applicant’s earliest date of June 7, 2018.

6. Opposer’s marks are similar to Applicant’s mark in that all of Opposer’s marks start with PYRAT, which is pronounced PIRATE, which is the same as the first word PIRATE of Applicant’s mark.

7. Opposer’s alcoholic beverages except beers, distilled spirits and rum are related to Applicant’s beer; they are all alcoholic beverages, travel in the same channels of trade, are marketed to the same class of customers and frequently originate from a single source.

8. As a result of Opposer’s extensive promotional and marketing efforts and the resulting sales of its products under its marks in the United States, Opposer’s marks have achieved a high degree of consumer awareness and attributed fame such that Opposer’s marks are viewed by relevant purchasers as famous marks.

9. Opposer’s marks became famous before Applicant’s filing date or any other possible date on which Applicant may rely.

10. Applicant’s mark is likely to cause dilution by blurring or by tarnishment of the distinctiveness of Opposer’s famous marks.

11. In view of the similarity of the marks and the relatedness of the goods, Applicant's mark so resembles Opposer's marks that, when applied to Applicant's goods, Applicant's mark is likely to cause confusion, to cause mistake and/or to deceive the trade and the public. Also, any poor performance by Applicant towards Applicant's customers in terms of quality of goods will impact Opposer's reputation in a negative manner.

12. Registration of Applicant's mark will result in damage to Opposer.

Wherefore, Opposer prays that Application No. 87/952,902 be refused, that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

Respectfully submitted,

PATRON SPIRITS  
INTERNATIONAL AG

Date: Feb. 22, 2019

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