

ESTTA Tracking number: **ESTTA1018269**

Filing date: **11/26/2019**

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	Oliv Pit, LLC.		
Entity	Corporation	Citizenship	Florida
Address	6006 SW 18th Street Suite 6B Boca Raton, FL 33433 UNITED STATES		

Attorney information	Brian J. Holland Law Office of Brian Holland, P.A. 110 E. Broward Blvd. Suite 1700 Fort Lauderdale, FL 33301 UNITED STATES Holland@BrianHollandLaw.com 9543153872		
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Applicant Information

Application No	88579786	Publication date	10/29/2019
Opposition Filing Date	11/26/2019	Opposition Period Ends	11/28/2019
Applicant	Joseph Manzella 8024 E. Lone Mountain Rd Scottsdale, AZ 85266 UNITED STATES		

Goods/Services Affected by Opposition

Class 043. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Restaurant services, namely, providing of food and beverages for consumption on and off the premises; Bar and restaurant services
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	88695977	Application Date	11/18/2019
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	OLIV PIT ATHENIAN GRILLE		

Design Mark	 <p>The logo features the words "OLIV PIT" in a large, bold, green, sans-serif font. Below it, the words "ATHENIAN GRILLE" are written in a smaller, green, sans-serif font. A small green dot is positioned inside the letter "O" of "OLIV", making it resemble an olive.</p>
Description of Mark	<p>The mark consists of the phrase "OLIV PIT" in green directly above the phrase "ATHENIAN GRILLE" also in green lettering. There is a green dot within the "O" in "Olive" which gives the appearance that the "O" is itself an olive.</p>
Goods/Services	<p>Class 043. First use: First Use: 2017/11/14 First Use In Commerce: 2017/11/14 Bar services; Catering services; Restaurant services</p>

Attachments	<p>88695977#TMSN.png(bytes) Notice of Opposition to 88579786.pdf(227992 bytes)</p>
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Signature	/Brian J. Holland/
Name	Brian J. Holland
Date	11/26/2019



LAW OFFICE OF
BRIAN HOLLAND, P.A.

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Brian J. Holland, Esq.

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November 22, 2019

Via ESTTA

U.S. Patent and Trademark Office

Re: Serial No.: 88579786
Mark: OLIVE PIT GRILL

NOTICE OF OPPOSITION

1. The following is a Notice of Opposition filed by Oliv Pit, LLC., by and through undersigned counsel, to the publication of “OLIVE PIT GRILL” which was published in the October 29, 2019 issue of the Trademark Official Gazette under serial number 88579786.
2. Registration of this mark should be refused pursuant to Trademark Action Section 2(d), 15 U.S.C. § 1052(d), on the grounds that the mark is likely to be confused with the mark in U.S. Serial No. 88695977. For the following reasons, Oliv Pit, LLC. respectfully requests that the Examining Attorney assigned to Serial No. 88579786 refuse the mark to be registered on the Principal Register.
3. While the mark for Oliv Pit, LLC. is, admittedly, not yet fully registered with the USPTO, we believe that the marks should be examined as if this process has been completed. The basis for this position is that Oliv Pit, LLC’s mark has been used in commerce since 2017, but the marked which is being opposed in this letter, 88579786, was filed under a Section 1(b) basis and has not yet entered the stream of commerce.

4. Likelihood of confusion between two marks at the USPTO is determined by a review of the relevant facts under the du Pont test. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973). However, “[n]ot all of the [du Pont] factors are relevant to every case, and only factors of significance to the particular mark need be considered.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1366, 101 USPQ2d 1713, 1719 (Fed. Cir. 2012) (quoting *In re Mighty Leaf Tea*, 601 F.3d 1342, 1346, 94 USPQ2d 1257, 1259 (Fed. Cir. 2010)).
5. The USPTO may focus its analysis “on dispositive factors, such as similarity of the marks and relatedness of the goods [and/or services].” *In re i.am.symbolic, llc*, 866 F.3d at 1322, 123 USPQ2d at 1747 (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)); *see* TMEP §1207.01.

COMPARISON OF THE MARKS

6. Marks are to be compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1321, 110 USPQ2d 1157, 1160 (Fed. Cir. 2014) (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 1371, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005)); TMEP §1207.01(b)-(b)(v). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014) (citing *In re 1st USA Realty Prof’ls, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007)); *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988)); TMEP §1207.01(b).
7. A comparison of the two marks shows that they are nearly identical. “OLIVE PIT GRILL”, which is being opposed in this Notice, is strikingly similar to “OLIV PIT ATHENIAN

GRILLE.” The published mark is highly similar to Oliv Pit, LLC’s mark in sound, appearance, and overall commercial impression.

8. There is no correct pronunciation of a mark because it is impossible to predict how the public will pronounce a particular mark. *See Embarcadero Techs., Inc. v. RStudio, Inc.*, 105 USPQ2d 1825, 1835 (TTAB 2013) (quoting *In re Viterra Inc.*, 671 F.3d 1358, 1367, 101 USPQ2d 1905, 1912 (Fed. Cir. 2012); *In re The Belgrade Shoe Co.*, 411 F.2d 1352, 1353, 162 USPQ 227, 227 (C.C.P.A. 1969)); TMEP §1207.01(b)(iv). The marks in question could clearly be pronounced the same or highly similarly; such similarity in sound alone may be sufficient to support a finding that the marks are confusingly similar. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *see In re 1st USA Realty Prof’ls, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007); TMEP §1207.01(b)(iv).
9. To the extent that the published mark contains an “e” at the end of “OLIV” and may slightly alter pronunciation, slight differences in the sound of similar marks will not avoid a likelihood of confusion. *In re Energy Telecomm. & Elec. Ass’n*, 222 USPQ 350, 351 (TTAB 1983); *see In re Viterra Inc.*, 671 F.3d 1358, 1367, 101 USPQ2d 1905, 1912 (Fed. Cir. 2012).

COMPARISON OF THE SERVICES

10. The compared goods and/or services need not be identical or even competitive to find a likelihood of confusion. *See On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000); TMEP §1207.01(a)(i). They need only be “related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that [the goods and/or services] emanate

from the same source.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)); TMEP §1207.01(a)(i).

11. The services for which “OLIVE PIT GRILL” wishes to be protected are exactly the same as the services which “OLIV PIT ATHENIAN GRILLE” currently provide to the general public.
12. Where the goods and/or services of two marks are identical or virtually identical, the degree of similarity between the marks required to support a finding of likelihood of confusion is not as great as in the case of diverse goods and/or services. *See In re Bay State Brewing Co.*, 117 USPQ2d 1958, 1960 (TTAB 2016) (citing *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1368, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012)); *United Global Media Grp., Inc. v. Tseng*, 112 USPQ2d 1039, 1049 (TTAB 2014) (quoting *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 877, 23 USPQ2d 1698, 1701 (Fed. Cir. 1992)); TMEP §1207.01(b).
13. Therefore, registration should be refused to Serial No. 88579786 pursuant to Trademark Act Section 2(d).

Sincerely,

Brian J. Holland, Esq.