

ESTTA Tracking number: **ESTTA1041053**

Filing date: **03/10/2020**

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

Proceeding	91253795
Party	Defendant Log Still Distilling, LLC
Correspondence Address	AUSTIN PADGETT, ESQ. TROUTMAN SANDERS LLP 600 PEACHTREE STREET NE, SUITE 3000 ATLANTA, GA 30308 trademarks@troutman.com, austin.padgett@troutman.com, kristina.woodruff@troutman.com, jennifer.hennelly@troutman.com no phone number provided
Submission	Answer and Counterclaim
Filer's Name	Austin Padgett
Filer's email	trademarks@troutman.com, austin.padgett@troutman.com
Signature	/Austin Padgett/
Date	03/10/2020
Attachments	Answer and Counterclaim.pdf(292603 bytes)

Registration Subject to the filing

Registration No.	376057	Registration date	03/12/1940
Registrant	HEAVEN HILL DISTILLERIES, INC. P.O. BOX 729 BARDSTOWN, KY 40004 UNITED STATES		

Goods/Services Subject to the filing

Class 033. First Use: 1836/00/00 First Use In Commerce: 1836/00/00
All goods and services in the class are requested, namely: WHISKEY

Grounds for Cancellation

Abandonment	Trademark Act Section 14(3)
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Heaven Hill Distilleries, Inc.,)	
)	
Opposer,)	Opposition No. 91253795
)	
v.)	
)	
Log Still Distilling, LLC,)	Application: DANT & HEAD
)	Ser. No.: 88468304
Applicant.)	

ANSWER TO NOTICE OF OPPOSITION

Applicant Log Still Distilling (“Log Still”) hereby answers the Notice of Opposition filed in the above-styled action (the “Notice”) by Heaven Hill Distilleries, Inc. (“Opposer”). Responding to the unnumbered opening paragraph, Log Still denies the allegations set forth in the opening paragraph.

1. Admitted.
2. Log Still is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 2, and therefore, denies the same, as well as the authenticity and veracity of the documents attached to the Notice as Exhibit A.
3. Log Still is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 3.
4. Log Still is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 4. Without admitting to any of the facts asserted, Log Still further denies the allegations in Paragraph 4 based on the allegation in paragraph 2 of the Notice that the first use of Reg. No. 320981 is expressed by Opposer as 1901 and, as such, the allegations in Paragraph 4 are inherently inconsistent with the allegations in Paragraph 2 of the Notice.

5. Log Still is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 5.
6. Log Still is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 6.
7. Denied.
8. Applicant admits that it filed Application Serial No. 88468304 for DANT & HEAD in connection with “Bourbon; Bourbon whisky; Gin; Vodka; Whiskey; Whiskey; Whiskey spirits; Alcoholic beverages, namely, flavor-infused whiskey; Spirits; Distilled spirits; Alcoholic beverages except beers” in Class 33 on June 11, 2019. Applicant denies the balance of Paragraph 8.
9. Applicant admits that its founder and president is named J.W. Dant and is related to another J.W. Dant. Applicant denies the balance of Paragraph 9.
10. Denied.
11. Applicant denies the assertions made in Paragraph 11 and specifically notes that the mark “Dant” has not been asserted by Opposer as a mark that it owns or has any rights to in this proceeding.
12. Log Still is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 12.
13. Log Still is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 13.
14. Applicant admits that Application Serial No. 88468304 was published in the *Trademark Official Gazette* on October 8, 2019. Applicant denies any remaining balance of Paragraph 14.

15. Log Still is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 15.
16. Denied.
17. In response to Paragraph 17, Log Still hereby incorporates its responses to paragraphs 1 – 16 and realleges the same as if originally set forth herein.
18. Denied.
19. Denied.
20. Denied.
21. Denied.
22. Denied.
23. Denied.
24. Denied.
25. Denied.
26. Denied.

Responding to the unnumbered concluding paragraph, Log Still denies that the relief requested by the Opposer is warranted in the instant case.

AFFIRMATIVE AND OTHER DEFENSES

In further answer to the Notice, Applicant alleges and asserts the following separate defenses, without assuming any burden of proof or persuasion that would otherwise rest with Opposer:

1. Opposer's claims fail to the extent that they are precluded by a prior judgment.
2. Opposer's claims fail to the extent that they seek to block Applicant from the registration of a personal name or family name.

3. Opposer fails to state a cause of action upon which relief may be granted.
4. Opposer has unclean hands.
5. Applicant expressly reserves the right to amend this Answer to assert any defense or claim that is later discovered to be applicable to these proceedings.

COUNTERCLAIM

Log Still hereby files this counterclaim to petition for the cancellation of Registration No. 0376057 (the “Registration”) owned by Opposer. Log Still is seeking to register its own mark, but Opposer has opposed Log Still’s application and cites the subject Registration. Log Still shows the Board as follows:

1. Log Still is a Kentucky limited liability company with an address of 225 Dee Head Road, New Haven, Kentucky 40051.
2. On the face of its Registration entry in the TESS system, Registrant describes itself as a Kentucky corporation with the addresses of Loretto Road P.O. Box 729, Bardstown, Kentucky 40004. *See Counterclaim Exhibit A* (true and accurate copy of registration information and online TESS entries).
3. Log Still is the owner of U.S. Trademark Application Serial No. 88468304 (the “Application”).
4. Opposer, citing the Registration as a basis for opposition under Section 2(d) of the Trademark Act, has opposed Log Still’s Application.
5. Upon information and belief, Opposer is not using the mark that is subject of the Registration in connection with the goods and services listed in the Registration and has no intent to resume use of the mark in connection with the services listed in the Registration.

6. Log Still has searched for Registrant's products and has found no use of such mark in interstate commerce. Further, Log Still has found no use of such mark for at least the past three years.

7. Upon information and belief, Opposer has abandoned the Registration pursuant to 15 U.S.C. § 1127, and the Registration is further subject to cancellation in its entirety.

8. For the reasons set forth above, Log Still believes that it is or will be damaged by the continued registration of the Registration and that the Registration should be cancelled.

9. In the alternative, where the Registration is not cancelled in its entirety, Log Still requests that the Registration be partially cancelled and modified to remove all goods and services in which Opposer has abandoned use or never used the marks.

10. Log Still has standing to bring the instant action pursuant to 15 U.S.C. § 1063(a).

11. Log Still has paid the fee for the counterclaim. If any additional fees are deemed to be payable, please charge our Deposit Account No. 20-1507.

WHEREFORE, Log Still prays that said Registration No. 0376057 be canceled as described above and that this counterclaim be sustained in favor of Log Still.

[valediction and signature on following page]

This 10th day of March 2020.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "A. Padgett". The signature is fluid and cursive, with a large initial "A" and a stylized "P".

TROUTMAN SANDERS LLP
Austin Padgett (Ohio Bar No. 85368)
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Log Still Distilling, LLC,)	Application: DANT & HEAD
)	Ser. No.: 88468304
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent by email to Attorney for Opposer of record.

This 10th day of March 2020.

Respectfully submitted,



TROUTMAN SANDERS LLP
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Word Mark J.W. DANT

Goods and Services IC 033. US 049. G & S: WHISKEY. FIRST USE: 18360000. FIRST USE IN COMMERCE: 18360000

Mark Drawing Code (5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Serial Number 71422736

Filing Date August 18, 1939

Current Basis 1A

Original Filing Basis 1A

Registration Number **0376057**

Registration Date March 12, 1940

Owner (REGISTRANT) DANT DISTILLERY COMPANY, INC., THE CORPORATION KENTUCKY DANT KENTUCKY
(LAST LISTED OWNER) HEAVEN HILL DISTILLERIES, INC. CORPORATION BY CHANGE OF NAME, BY ASSIGNMENT KENTUCKY P.O. BOX 729 BARDSTOWN KENTUCKY 40004

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record MATTHEW A. WILLIAMS

Prior Registrations 0320981

Type of Mark TRADEMARK

Register PRINCIPAL

Affidavit Text SECT 12C. SECT 15. SECTION 8(10-YR) 20091123.

Renewal 4TH RENEWAL 20091123

**Live/Dead
Indicator**

LIVE

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