

ESTTA Tracking number: **ESTTA1059195**

Filing date: **06/01/2020**

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	G&W DISTILLING INC.
Granted to Date of previous extension	05/31/2020
Address	#8-7167 VANTAGE WAY DELTA, BC CANADA, BC V4G1K7 CANADA
Party who filed Extension of time to oppose	G&W TRADEMARKS INC.
Relationship to party who filed Extension of time to oppose	The relevant business interests were assigned from G&W TRADEMARKS INC. to G&W DISTILLING INC. G&W TRADEMARKS INC. and G&W DISTILLING INC. are companies in privity.

Correspondence information	Thomas E. Zutic DLA PIPER LLP (US) 500 EIGHTH STREET NW WASHINGTON, DC 20004 UNITED STATES dctrademarks@dlapiper.com, gregory.esau@dlapiper.com 202799400
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Applicant Information

Application No	87918417	Publication date	12/03/2019
Opposition Filing Date	06/01/2020	Opposition Period Ends	05/31/2020
Applicant	Jason Paul Cascio Suite E 600 E. Boonville New Harmony Road Evansville, IN 47725 UNITED STATES		

Goods/Services Affected by Opposition

Class 033. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Sake

Grounds for Opposition

The mark is merely descriptive	Trademark Act Section 2(e)(1)
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The mark is deceptively misdescriptive	Trademark Act Section 2(e)(1)
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Attachments	Notice of Opposition - App. No. 87918417 - SODA SAKE.pdf(270250 bytes)
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Signature	/Thomas E. Zutic/
Name	Thomas E. Zutic
Date	06/01/2020

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

In the Matter of Trademark
Application Serial No. 87918417
Mark: SODA SAKE
Filed: May 11, 2018
Published: December 3, 2019

G&W Distilling Inc.,)	
)	
Opposer,)	
)	
v.)	Opposition No.
)	
Jason Paul Cascio,)	
)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Opposer G&W Distilling Inc., (“Opposer” or “G&W”) believes that it is and will be damaged by the registration of United States Trademark Application Serial No. 87918417 (“Application”), as filed with the United States Patent and Trademark Office (“USPTO”) on May 11, 2018 by Jason Paul Cascio (“Applicant”), for the mark SODA SAKE (the “Mark”), in connection with “sake” in International Class 33 (collectively, the “Goods”). Attached hereto as **Exhibit A** and made a part of the record are true and correct copies of the TSDR and TESS print-outs from the USPTO website for the Application. G&W hereby opposes said Application under the provisions of Section 13 of the Trademark Act of 1946 (hereinafter “Lanham Act”), 15 U.S.C. § 1063.

As grounds for the Opposition, G&W alleges the following:

1. Opposer is a well-known craft distillery and a leader in the innovative “ready to drink” beverage space.

2. Upon information and belief, Applicant seeks to operate in the same industry and sell competitive products, namely, consumer alcoholic beverages.

3. As a potential direct competitor of Applicant and seller of similar products as those of Applicant, Opposer may at times use the words “SODA” and/or “SAKE” in its marketing materials and in relation to certain consumer offerings.

4. Upon information and believe, Registration of the Mark will hinder and interfere with Opposer’s business.

5. As such, registration of the Mark will cause injury and damage to Opposer, and therefore, Opposer has standing to oppose registration of the Mark.

Mere Descriptiveness

6. G&W re-alleges the allegations contained in Paragraphs 1 through 5 of this Notice of Opposition

7. The Application already includes a disclaimer of the term “Sake,” which was submitted to the USPTO as part of the Application on May 11, 2018. Specifically, the disclaimer reads: “no claim is made to the exclusive right to use SAKE apart from the mark as shown.”

8. A mark is merely descriptive if it describes an ingredient, quality, characteristic, function, feature, purpose, or use of an applicant’s goods.

9. If the individual components of a mark retain their descriptive meaning in relation to the goods and/or services, the combination results in a composite mark that is itself descriptive and not registrable.

10. In this case, the Mark creates no unique unitary commercial impression that is incongruous, or otherwise non-descriptive in relation to the goods.

11. The Mark is not unitary as it does not create a commercial impression separate and apart from its unregistrable components, which are not so integrated or merged-together that they cannot be regarded as separable.

12. The word “soda” describes a carbonated beverage.

13. The word “sake” describes a fermented rice beverage.

14. The individual terms “SODA” and “SAKE” do not render the Mark registerable, and as such, the Mark fails the relevant tests for registerability.

15. The individual terms “SODA” and “SAKE” merely serve to describe a feature of Applicant’s proposed carbonated sake beverage.

16. No imagination is required on the part of the consumer to make the connection between the individual terms “SODA” and “SAKE” and a carbonated sake beverage.

17. Consumers will understand the terms “SODA” and “SAKE” to immediately convey literal factual information about Applicant’s product and/or its ingredients.

18. Applicant’s Mark is not arbitrary, inventive, bizarre, or incongruous, nor does it act as a double entendre.

19. There is nothing vague or unclear about Applicant’s Mark which would make it suggestive.

20. There is no “mental leap,” “mature thought,” or “multi-stage reasoning process” required of consumers when encountering the mark in the relevant context.

21. As such, the Mark is not entitled to registration on the Principal Register because it is merely descriptive under Section 2(e)(1) of the Lanham Act.

No Secondary Meaning

22. G&W re-alleges the allegations contained in Paragraphs 1 through 21 of this Notice of Opposition.

23. No Statement of Use or Allegation of Use has been submitted in connection with the Application

24. Upon information and belief, Opposer alleges that Applicant has made no commercial use of the Mark in connection with the applied-for goods.

25. As no actual use of the Mark has been alleged by Applicant, there can be no claim of acquired distinctiveness or secondary meaning.

Deceptively Misdescriptive

26. G&W re-alleges the allegations contained in Paragraphs 1 through 25 of this Notice of Opposition

27. If, in the alternative, the Mark is not merely descriptive, then it is deceptively mis-descriptive

28. The test for deceptive misdescriptiveness has two parts: (1) whether the mark misdescribes an ingredient, characteristic, quality, function, feature, composition or use of the goods and/or services; and if so, (2) would consumers be likely to believe the misrepresentation.

29. The ordinary meaning of the term “soda” in the context of the marketing of a beverage product is a carbonated beverage.

30. If Applicant's product is not a carbonated beverage, the Mark misdescribes the ingredients, characteristics, features, and composition of Applicant's goods.

31. Consumers are likely to understand the term "soda" in the Mark to mean that Applicant's goods contain carbonation and/or constitute a carbonated beverage.

32. Consumers are likely to believe that the individual terms "SODA" and "SAKE" indicate that the associated product is a carbonated sake beverage.

33. Because the misdescription is material, and likely to affect a consumer's purchasing decision, it is deceptive.

34. Given the foregoing, Opposer would be damaged by issuance of a registration to Applicant.

If Applicant obtains such rights as conferred under the Principal Register of the Lanham Act, it will obtain at least a *prima facie* exclusive right to use its trademark, and G&W will be subjected to great and irreparable damage, and Applicant will enjoy unlawful gain, and advantage, to which it is not entitled under the Lanham Act.

WHEREFORE, G&W believes and avers that it is being, and will continue to be, damaged by the registration of the Application, and respectfully requests that the Application be rejected, that no registration be issued thereon to Applicant, and that the Opposition be sustained in favor of G&W.

G&W hereby appoints Thomas E. Zutic, a member of the Bar of the District of Columbia; John M. Nading, a member of the Bar of the District of Columbia; Ann K. Ford, a member of the Bar of the District of Columbia; Ryan C. Compton, a member of the Bar of the District of Columbia; Eunice R. Chung, a member of the Bar of the District of Columbia; David M. Kramer, a member of the Bar of the District of Columbia; Ashley H. Joyce, a member of the

Bar of the District of Columbia; James K. Stewart, a member of the Bar of the District of Columbia; Devika Persaud, a member of the Bar of the District of Columbia, and all of the law firm of DLA Piper LLP (US), 500 8th Street, N.W., Washington, D.C. 20004, telephone number (202) 799-4000, to transact all business in the USPTO in connection with this Opposition Proceeding and hereby revokes all previous powers of attorney herein.

Please address all correspondence to:

Thomas E. Zutic, Esq.
DLA Piper LLP (US)
500 8th Street, N.W.
Washington, DC 20004
dctrademarks@dlapiper.com

The filing fee for this Opposition, in the amount of \$400.00, is hereby electronically transferred with the submission of the Notice of Opposition.

The undersigned, registered agent for G&W herein, states that he is authorized to prosecute this Opposition, that he has read and signed the foregoing Notice of Opposition and knows the contents thereof, and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that willful false statements may jeopardize the validity of this Opposition and any decision resulting therefrom.

Dated: June 1, 2020

Respectfully submitted,

DLA PIPER LLP (US)

By: /Thomas E. Zutic/
Thomas E. Zutic
500 8th Street, NW
Washington, D.C. 20004
Tel. 202-799-4000
Fax 202-799-5000
thomas.zutic@dlapiper.com

Attorney for Opposer
G&W Distilling Inc.

EXHIBIT A

For assistance with TSDR, email teas@uspto.gov and include your serial number, the document you are looking for, and a screenshot of any error messages you have received.

STATUS **DOCUMENTS**

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Mark: SODA SAKE

Soda Sake

US Serial Number: 87918417

Application Filing Date: May 11, 2018

Filed as TEAS Plus: Yes

Currently TEAS Plus: Yes

Register: Principal

Mark Type: Trademark

TM5 Common Status

Descriptor:



LIVE/APPLICATION/Published for Opposition

A pending trademark application has been examined by the USPTO and has been published in a way that provides an opportunity for the registration.

Status: A request for an extension of time to file an opposition has been filed with the Trademark Trial and Appeal Board. See TTABVUE on the Trademark Trial and Appeal Board web page.

Status Date: Dec. 30, 2019

Publication Date: Dec. 03, 2019

Mark Information

Mark Literal Elements: SODA SAKE

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Disclaimer: "SAKE"

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [..] indicate deleted goods/services;
- Double parenthesis ((..)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Sake

International Class(es): 033 - Primary Class

U.S Class(es): 047, 049

Class Status: ACTIVE

Basis: 1(b)

[Privacy - Terms](#)

Basis Information (Case Level)

Filed Use: No	Currently Use: No
Filed ITU: Yes	Currently ITU: Yes
Filed 44D: No	Currently 44E: No
Filed 44E: No	Currently 66A: No
Filed 66A: No	Currently No Basis: No
Filed No Basis: No	

Current Owner(s) Information

Owner Name: Jason Paul Cascio	
Owner Address: Suite E 600 E. Boonville New Harmony Road Evansville, INDIANA UNITED STATES 47725	
Legal Entity Type: INDIVIDUAL	Citizenship: UNITED STATES

Attorney/Correspondence Information

Attorney of Record - None

Correspondent

Correspondent JASON PAUL CASCIO
Name/Address: 600 E. BOONVILLE NEW HARMONY ROAD
 SUITE E
 EVANSVILLE, INDIANA UNITED STATES 47725

Phone: 270-724-1673

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Dec. 30, 2019	EXTENSION OF TIME TO OPPOSE RECEIVED	
Dec. 03, 2019	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Dec. 03, 2019	PUBLISHED FOR OPPOSITION	
Nov. 13, 2019	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Oct. 25, 2019	ASSIGNED TO LIE	68123
Oct. 21, 2019	APPROVED FOR PUB - PRINCIPAL REGISTER	
Oct. 19, 2019	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Oct. 18, 2019	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Oct. 18, 2019	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Apr. 26, 2019	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Apr. 26, 2019	NON-FINAL ACTION E-MAILED	6325
Apr. 26, 2019	NON-FINAL ACTION WRITTEN	72617

Apr. 04, 2019	NOTICE OF REVIVAL - E-MAILED	
Apr. 04, 2019	PETITION TO REVIVE-GRANTED	88889
Apr. 04, 2019	TEAS PETITION TO REVIVE RECEIVED	
Apr. 02, 2019	ABANDONMENT NOTICE E-MAILED - FAILURE TO RESPOND	
Apr. 02, 2019	ABANDONMENT - FAILURE TO RESPOND OR LATE RESPONSE	
Sep. 04, 2018	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Sep. 04, 2018	NON-FINAL ACTION E-MAILED	6325
Sep. 04, 2018	NON-FINAL ACTION WRITTEN	72617
Sep. 04, 2018	ASSIGNED TO EXAMINER	72617
May 20, 2018	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
May 15, 2018	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: SNAPP, TINA LOUISE

Law Office Assigned: LAW OFFICE 116

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Oct. 30, 2019

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Soda Sake

Word Mark	SODA SAKE
Goods and Services	IC 033. US 047 049. G & S: Sake
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	87918417
Filing Date	May 11, 2018
Current Basis	1B
Original Filing Basis	1B
Published for Opposition	December 3, 2019
Owner	(APPLICANT) Jason Paul Cascio INDIVIDUAL UNITED STATES Suite E 600 E. Boonville New Harmony Road Evansville INDIANA 47725
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SAKE" APART FROM THE MARK AS SHOWN
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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