

ESTTA Tracking number: **ESTTA1059228**

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	Sens3s, LLC
Granted to Date of previous extension	05/31/2020
Address	P.O. BOX 171 OCCIDENTAL, CA 95465 UNITED STATES

Attorney information	LUISA BONACHEA SENS3S, LLC P.O. BOX 171 OCCIDENTAL, CA 95465 UNITED STATES luisa@reidylawgroup.com, dan@reidylawgroup.com, tara@reidylawgroup.com 7079633030
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**Applicant Information**

Application No	88317066	Publication date	12/03/2019
Opposition Filing Date	06/01/2020	Opposition Period Ends	05/31/2020
Applicant	Genius IP LLC 1113 Electric Ave, Suite #4 Los Angeles, CA 90291 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: Non-alcoholic beverages, namely, carbonated beverages, and non-alcoholic water-based beverages; bottled water; juice, namely, fruit juice; carbonated beverages namely, sparkling waters and seltzers
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**Applicant Information**

Application No	88317056	Publication date	12/03/2019
Opposition Filing Date	06/01/2020	Opposition Period Ends	
Applicant	Genius IP LLC 1113 Electric Ave, Suite #4 Los Angeles, CA 90291 UNITED STATES		

## Goods/Services Affected by Opposition


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## Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
Other	Unlawful Use Doctrine

## Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	5676061	Application Date	07/12/2017
Registration Date	02/12/2019	Foreign Priority Date	NONE
Word Mark	DAY ONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2018/08/14 First Use In Commerce: 2018/08/14 wine		

Attachments	87525920#TMSN.png( bytes ) Day One Notice of Opposition 6-1-20.pdf(223174 bytes )
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Signature	/Luisa M. Bonachea/
Name	Luisa M. Bonachea, Esq.
Date	06/01/2020



1 production, promotion and sale of wine since as early as August 2018, prior to the filing date of the  
2 Applications.

3 5. Opposer owns U.S. Registration No. 5676061 for DAY ONE in International Class 033  
4 for “wine,” filed on July 12, 2017 with a first use date of August 14, 2018 (the “Registration”). Ex. A.

5 6. Applicant seeks to register the marks DAY ONE and DAY 1, both for “non-alcoholic  
6 beverages, namely, carbonated beverages, and non-alcoholic water-based beverages; bottled water;  
7 juice, namely, fruit juice; carbonated beverages namely, sparkling waters and seltzers” in International  
8 Class 032. The Applications were filed on February 26, 2019 based on an intent-to-use the mark in  
9 commerce under Section 1(b) of the Trademark Act.  
10

11 7. The Applications were published for opposition on December 3, 2019.

12 8. Opposer’s first use date and filing date of Opposer’s Registration precede the filing date  
13 of the Applications.  
14

15 9. Opposer has priority in the DAY ONE Mark for beverages.

16 10. Applicant’s use of the marks DAY ONE or DAY 1 in connection with any beverages is  
17 without the consent or permission of Opposer.  
18

19 11. Applicant’s use of the marks DAY ONE or DAY 1 so resembles Opposer’s DAY ONE  
20 Mark as to be likely, when used in connection with beverages, to cause confusion, mistake or to  
21 deceive.  
22

23 12. If Applicant is granted registration, it would interfere with Opposer’s exclusive right to  
24 use its DAY ONE Mark and cause damage to Opposer.

25 **CLAIM FOR RELIEF**

26 **COUNT I: LIKELIHOOD OF CONFUSION**

27 13. Opposer incorporates the foregoing paragraphs as though fully set forth herein.

28 14. Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d), prohibits registration on the

1 Principal Register of a mark that consists of or comprises a mark which so resembles a mark  
2 previously used in the United States by another and not abandoned, as to be likely, when used on or in  
3 connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive.

4 15. The goods identified in the Application are virtually identical, substantially similar or  
5 highly related to the goods offered under Opposer's DAY ONE Mark and said goods are purchased by  
6 the same group of consumers and likely to emanate from a single source under a single mark. *See e.g.,*  
7 *Joel Gott Wines, LLC v. Rehoboth Von Gott, Inc.*, 107 USPQ2d 1424 (TTAB 2013) (wine and water  
8 related goods); *see also Monarch Wine Co., Inc., v. Hood River Distillers, Inc.*, 196 USPQ 855 (TTAB  
9 1977); *In re AGE Bodegas Unidas, S.A.*, 192 USPQ 326 (TTAB 1976); *Myers v. Hood River Distillers,*  
10 *Inc.*, 331 F.2d 606, 141 USPQ 499 (CCPA 1964).

11  
12  
13 16. Applicant's DAY ONE and DAY 1 marks are virtually identical to Opposer's DAY  
14 ONE mark.

15 17. Consumers will likely be confused as to the source of goods based on the similarity of  
16 marks and relatedness of goods.

17  
18 18. Applicant's use of DAY ONE or DAY 1 for non-alcoholic beverages, water, juice or  
19 carbonated beverages is likely to create the erroneous impression that Applicant's goods originate from  
20 or are otherwise associated with Opposer, that Opposer is responsible for Applicant's goods or that  
21 Applicant's use is endorsed by or is in some way connected to Opposer, all to Opposer's injury and  
22 harm.

23  
24 19. Registration of Applicant's DAY ONE or DAY 1 mark in connection with non-  
25 alcoholic beverages, water, juice or carbonated beverages in International Class 032 is likely to cause  
26 confusion, cause mistake or to deceive the public into false belief that the goods offered by Applicant  
27 under the DAY ONE or DAY 1 mark come from or are otherwise sponsored or connected with  
28 Opposer in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

COUNT II: UNLAWFUL USE

20. Opposer incorporates the foregoing paragraphs as though fully set forth herein.

21. To qualify for a federal trademark registration, the use of a mark in commerce must be “lawful.” *In re Morgan Brown*, 119 USPQ2d 1350 (TTAB 2016); *see also The John W. Carson Found. v. Toilets.com, Inc.*, 94 USPQ2d 1942, 1947-48 (TTAB 2010); *In re Midwest Tennis & Track Co.*, 29 USPQ2d 1386, 1386 (TTAB 1993); *In re Stellar Int’l, Inc.*, 159 USPQ 48, 50 (TTAB 1968). The goods to which the mark is applied must comply with all applicable federal laws. *See In re Brown*, 119 USPQ2d at 1351.

22. Applicant’s goods consist of or include items that violate federal law; therefore, Applicant’s marks, as used in connection with such goods, is not lawful use in commerce.

23. Registration of Applicant’s DAY ONE and DAY 1 marks in connection with the goods for which they are used will result in damage to Opposer and create a cloud on the lawful right of Opposer to adopt and use the DAY ONE Mark.

WHEREFORE, Opposer prays that the Application Serial Nos. 88317056 and 88317066 be rejected, that no registrations be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

June 1, 2020 By: /luisa bonachea /  
Luisa M. Bonachea  
Attorney for Opposer

REIDY LAW GROUP  
1230 Spring Street  
St. Helena, CA 94574

**CERTIFICATE OF SERVICE**

I declare that I am over the age of eighteen, employed at Reidy Law Group and not a party to the above-referenced action. I hereby certify that a true and correct copy of the foregoing Notice of Opposition was served, via e-mail to Sean Clancy at Emerge Law Group, 621 SW Morrison St., Suite 900, Portland, OR 97205, sean@emergelawgroup.com.

June 1, 2020

By: *Tara Doran Muccitelli*  
Tara Doran Muccitelli

REIDY LAW GROUP  
1230 Spring Street  
St. Helena, CA 94574

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# EXHIBIT A



# United States of America

United States Patent and Trademark Office

## DAY ONE

**Reg. No. 5,676,061**

**Registered Feb. 12, 2019**

**Int. Cl.: 33**

**Trademark**

**Principal Register**

Sens3s, LLC (CALIFORNIA LIMITED LIABILITY COMPANY)

P.o. Box 171

Occidental, CALIFORNIA 95465

CLASS 33: wine

FIRST USE 8-14-2018; IN COMMERCE 8-14-2018

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR

SER. NO. 87-525,920, FILED 07-12-2017



*Andrei Iancu*

Director of the United States  
Patent and Trademark Office