

ESTTA Tracking number: **ESTTA1065538**

Filing date: **07/01/2020**

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	Rocky Mountain Industries, LLC d/b/a RMI
Granted to Date of previous extension	07/01/2020
Address	600 S. MAIN BUTTE, MT 59701 UNITED STATES

Attorney information	CHRISTINA J MOSER BAKERHOSTETLER 127 PUBLIC SQUARE SUITE 2000 KEY TOWER CLEVELAND, OH 44114 UNITED STATES cmoser@bakerlaw.com, nsamad@bakerlaw.com, jdale@bakerlaw.com, bhpdocket@bakerlaw.com, clclocketing@bakerlaw.com 216-861-7818
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Applicant Information

Application No	88666824	Publication date	03/03/2020
Opposition Filing Date	07/01/2020	Opposition Period Ends	07/01/2020
Applicant	SG GAMING, INC. 6601 BERMUDA ROAD LAS VEGAS, NV 89119 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Recorded computer software and firmware for games of chance on any computerized platform, including dedicated gaming consoles, video based slot machines, reel based slot machines, and video lottery terminals; recorded computer gaming software for gambling
Class 028. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Gaming machines, namely, devices which accept a wager; reconfigurable casino gaming machines and operational game software therefor sold as a unit

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
The mark is merely descriptive	Trademark Act Section 2(e)(1)

Mark Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	HOT STREAK KENO		
Goods/Services	video keno game		

Attachments	RMI Notice of Opposition re SG Gaming.pdf(56568 bytes)
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Signature	/Christina J. Moser/
Name	CHRISTINA J MOSER
Date	07/01/2020

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

In The Matter Of Application Serial No. 88/666824
Published In The *Official Gazette*, March 3, 2020

Rocky Mountain Industries, LLC d/b/a RMI)	Opposition No. _____
)	
)	
Opposer,)	
)	
v.)	NOTICE OF OPPOSITION
)	
SG Gaming, Inc.)	
)	
Applicant.)	

Rocky Mountain Industries, LLC d/b/a RMI, a Delaware limited liability company with its principal place of business at 600 S Main, Butte, Montana, 59701 (“RMI” or “Opposer”), believes that it will be damaged by the registration of the mark covered by Application Serial No. 88/666824 (“Application”) filed by SG Gaming, Inc. (“Applicant”) and hereby opposes the registration of said mark. As grounds for the opposition, RMI alleges as follows:

1. Applicant seeks to register the words HOT STREAK as a trademark for “Recorded computer software and firmware for games of chance on any computerized platform, including dedicated gaming consoles, video based slot machines, reel based slot machines, and video lottery terminals; recorded computer gaming software for gambling” in International Class 9 and “Gaming machines, namely, devices which accept a wager; reconfigurable casino gaming machines and operational game software therefor sold as a unit” in International Class 28.
2. The filing date of Applicant’s intent-to-use Application is October 24, 2019.

3. The Application was published March 3, 2020. Due to COVID-19 virus restrictions, RMI was unable to oppose the application within thirty-days from the date of publication.

4. On May 21, 2020, RMI's request to extend time to oppose the Application was granted until July 1, 2020.

5. RMI and its affiliated companies own and operate a network of more than 127 casinos across the state of Montana that serve as local activity hubs as well as entertainment for interstate travelers.

6. In 2017, RMI conceived of a video keno game for its casinos that it called HOT STREAK KENO. Beginning in May 2017, RMI began taking the steps necessary to commercially launch its HOT STREAK KENO video game, including providing the game concept to the Montana Department of Justice Gambling Control Division ("MTDOJGCD") for approval, submitting the HOT STREAK KENO game for regulatory testing and validation with the MTDOJGCD, receiving approval of the HOT STREAK KENO game from MTDOJGCD on September 12, 2019, and pre-launch employee training.

7. Pre-launch marketing and advertising of RMI's HOT STREAK KENO game took place starting September 17, 2019, including social media and print advertising.

8. The HOT STREAK KENO game, pictured below, was made available to end consumers in casino locations beginning September 19, 2019. RMI's game sign features the HOT STREAK name framed by two spiraling tracks that meet at a round, marble-like informational panel, above which the name bursts in a distinctive, three-dimensional letter style that gives an overall impression of movement and action (hereinafter the "HOT STREAK KENO design").



9. The HOT STREAK KENO game commercial launch was further supported by additional advertising including television commercials showing the HOT STREAK KENO name and design that ran in September and October 2019.

10. Because of RMI's use of the HOT STREAK KENO name and design and significant investments of money, time and effort since 2017 in the HOT STREAK KENO game, it possesses a property interest in the use of the HOT STREAK KENO name and design that pre-dates Applicant's October 24, 2019 intent-to-use Application.

11. To the best of RMI's knowledge following a reasonable investigation, Applicant has not commenced use of the Applied-for Mark.

12. RMI would be harmed by Applicant's registration of the Applied-for Mark.

CLAIM I

Likelihood of Confusion

13. RMI hereby incorporates the preceding paragraphs as if fully set forth herein.

14. Applicant's use of the Applied-for Mark for the goods specified in the Application is likely to cause confusion, mistake, or deception with respect to the origin of said

goods, and to confuse, mislead, or deceive members of the public into believing that Applicant's goods are in some way connected to or affiliated with RMI's above-described goods.

15. Any such confusion would result in injury to or have a direct impact on RMI and its use of the HOT STREAK KENO name and/or design. Any defect, objection, or fault found with Applicant's goods marketed under the Applied-for Mark would negatively impact and seriously injure the reputation RMI has established for the goods it provides under the HOT STREAK KENO name and design.

16. If Applicant is granted the registration herein opposed, it would be a source of damage and irreparable injury to RMI due to the likelihood of consumer confusion.

CLAIM II

Unregistrable under 15 U.S.C. §1052(e)(1)

(Alternative Ground)

17. RMI hereby incorporates the preceding paragraphs 1-12 as if fully set forth herein.

18. Applicant intends to use the Applied-for Mark in connection with computerized gambling games and machines.

19. As an alternative ground for relief and without prejudice to any rights RMI possesses, the term HOT STREAK when used in connection with video gambling and games of chance describes a quality, characteristic, function, feature, purpose, or use of the specified goods.

20. Applicant's Applied-for Mark is not eligible for registration on the Principal Register because it is merely descriptive of the identified goods.

21. If Applicant is granted the registration herein opposed, it would be a source of damage and irreparable injury to RMI.

WHEREFORE, RMI prays that this Opposition be granted and Application Serial No. 88/666824 be refused registration.

s/Christina J. Moser/

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Attorneys for Rocky Mountain Industries, LLC
d/b/a RMI

CERTIFICATE OF FILING

I hereby certify that the foregoing Notice of Opposition was filed with the Commissioner for Trademarks, through the Electronic System for Trademark Trials and Appeals on this 1st day of July 2020.

s/Christina J. Moser/
Christina J. Moser, attorney for Opposer