

ESTTA Tracking number: **ESTTA1334841**
Filing date: **01/18/2024**

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	Cielo e Terra, S.p.A.		
Entity	Corporation	Incorporated or registered in	Italy
Address	VIA 4 NOVEMBRE 39 MONTORSO, 36050 ITALY		

Attorney information	JAMES J. BITETTO TUTUNJIAN & BITETTO, P.C. 401 BROADHOLLOW ROAD, SUITE 402 MELVILLE, NY 11747 UNITED STATES Primary email: trademarks@tb-iplaw.com Secondary email(s): susan@tb-iplaw.com, docketing@tb-iplaw.com 6318440080		
Docket no.	0903-0053		

Applicant information

Application no.	97796051	Publication date	12/19/2023
Opposition filing date	01/18/2024	Opposition period ends	01/18/2024
Applicants	Cuellar Villarreal, Baudelio JosÃ© PASEO DEL CAMPESTRE 352 COLONIA CAMPESTRE LA ROSITA TORREÃN COAHUILA, 27250 MEXICO Lopata Israel, Leivi Jack CONSTITUYENTES 345 501 COLONIA DANIEL GARZA CIUDAD DE MEXICO, 11830 MEXICO		

Goods/services affected by opposition

Class 033. First Use: None First Use In Commerce: None
All goods and services in the class are opposed, namely: Alcoholic beverages, except beers

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. registration no.	2384406	Application date	10/17/1994
Register	Principal		
Registration date	09/12/2000	Foreign priority date	NONE
Word mark	CIELO		
Design mark			
Description of mark	NONE		
Goods/services	Class 033. First use: First Use: 1908 First Use In Commerce: 1978 wines		

Attachments	0903-0053-0T1 - Notice of Opposition.pdf(196036 bytes)
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Signature	/Susan Paik/
Name	Susan Paik
Date	01/18/2024

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

CIELO E TERRA, S.p.A.,

Opposer,
v.

Opposition No.: [TBD]
Serial No.: 97/796,051
Mark: ALMA DEL CIELO (Design mark)

Cuellar Villarreal, Baudelio José
Lopata Israel, Leivi Jack

Applicant(s).

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

Notice of Opposition

CIELO E TERRA, S.p.A. (“Opposer”), a Corporation organized and existing under the laws of Italy, and having a principal place of business at **Via 4 Novembre 39, Montorso, ITALY 36050**, believes that it will be damaged by, and hereby opposes, the grant of the application of Cuellar Villarreal, Baudelio José, Individual(s) at Paseo del Campestre 352 Colonia Campestre La Rosita Torreón Coahuila MEXICO 27250; and Lopata Israel, Leivi Jack, Individual(s) at Constituyentes 345 501 Colonia Daniel Garza Ciudad de Mexico MEXICO 11830, (the “Applicants”) to register the mark “ALMA DEL CIELO” (Design mark) shown in the application Serial Number 97/796,051 filed February 15, 2023 for “Alcoholic beverages, except beers” in International Class 033.

Pursuant to 15 U.S.C. Section 1052, by and through its attorneys, Opposer hereby opposes the same.

1. By the application Serial No. 97/796,051 herein opposed, Applicant is seeking to obtain registration on the Principal Register of “ALMA DEL CIELO” (Design mark) (hereinafter “Applicant’s ‘051 mark”) for goods in class 033, and particularly, for “Alcoholic

beverages, except beers” in International Class 033. Applicants’ mark is a Design Mark and was published as follows:



2. Applicant’s application Serial No. 97/796,051 for “ALMA DEL CIELO” (Design mark) is a 1(b) basis application filed on February 15, 2023 and such mark was published for opposition on December 19, 2023. This Notice of Opposition is timely filed.

3. Opposer is the owner of at least the following federal trademark registration:
- a. **No. 2,384,406 (hereinafter “CIELO ‘406 Registration”)**, registered on the Principal Register on September 12, 2000 for the trademark “CIELO” for “Wines” in International Class 033.

4. Opposer’s CIELO ‘406 Registration listed above has not been cancelled, is valid, and is currently in full force and effect.

5. The Opposer has been continuously and prominently using its “CIELO” word trademark in connection with the goods listed in its registration and has been actively promoting and expanding its use of the mark.

6. As a result of the prior prominent, longtime and widespread use in commerce by the Opposer of the aforesaid “CIELO” word trademark in connection with its respective goods, the mark has acquired extensive goodwill, has developed a high degree of distinctiveness, is an asset of the Opposer, and is well known and recognized as identifying at least the listed goods and/or services which have their origin with or have been authorized by the Opposer. In

addition, Opposer's "CIELO" word trademark has reached the good reputation it enjoys, long prior to the filing date of Applicant's '051 mark.

7. Opposer has priority with respect to the mark at issue in this Opposition. Opposer adopted and commenced use of its "CIELO" word mark as a trademark long before Applicant filed its application for its '051 mark. In particular, at least the mark in Opposer's CIELO '406 Registration was first used in commerce over 45 years ago, at least as early as 1978.

8. Applicant's mark "ALMA DEL CIELO" (Design mark) is confusingly and deceptively similar to Opposer's previously used and duly registered "CIELO" word mark at least in sight, sound and/or commercial impression.

9. In particular, the term "CIELO" in Applicant's "ALMA DEL CIELO" (Design mark) is identical to the sole term "CIELO" in Opposer's CIELO '406 Registration.

10. Applicant's goods are in Class 033 and comprise, *inter alia*, "alcoholic beverages, except beers", which encompass the goods of "Wines" in Class 033 provided in connection with Opposer's "CIELO" word trademark, and such goods would thus travel and/or be promoted through the same channels of trade, marketing and/or advertising to be provided to and/or used by, the same class of purchasers/clients.

11. Due to the similarities between Applicant's mark and Opposer's previously used and duly registered "CIELO" word trademark, and in view of their identical Class 033 and highly similar/identical/overlapping goods therein, Applicant's mark "ALMA DEL CIELO" (Design mark) is likely to cause confusion, mistake or deception as to the source of origin of Applicant's goods in that the public, the trade and others are likely to believe that Applicant's goods are: (a) the same goods as Opposer's and/or (b) endorsed, provided, sponsored, approved, licensed by, affiliated with or in some other way legitimately related and/or connected to Opposer and/or its goods, licensed products and/or services.

12. Thus, the use and registration of the Applicant’s ‘051 mark for “ALMA DEL CIELO” (Design mark) for goods in Class 033 is likely to cause confusion or to cause mistake or deception in the trade and among purchasers/users and potential purchasers/users with Opposer’s previously used and duly registered “CIELO” word trademark, causing damage to Opposer.

13. The use and registration of the Applicant’s ‘051 mark for the “ALMA DEL CIELO” (Design mark) mark is likely to dilute the distinctive quality of Opposer’s “CIELO” word trademark, again causing damage to Opposer.

14. Registration of the mark shown in the Application Serial No. 97/796,051 will result in damage to Opposer under at least the provisions of Section 2(d) of United States Trademark Act, 15 U.S.C. 1052(d), pursuant to the allegations stated above.

WHEREFORE, Opposer respectfully requests that the Opposition be sustained and Application Serial Number 97/796,051 be refused registration.

Accompanying this Notice of Opposition is the required fee of \$600.00.

Dated: January 18, 2024

Respectfully submitted,
CIELO E TERRA, S.p.A.

By its attorneys,

/Susan Paik/

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