

ESTTA Tracking number: **ESTTA497332**

Filing date: **09/29/2012**

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	PhyllisSchlafly
Granted to Date of previous extension	09/29/2012
Address	7800 Bonhomme Avenue St. Louis, MO 63105 UNITED STATES

Attorney information	Andrew Schlafly 939 Old Chester Rd. Far Hills, NJ 07931 UNITED STATES aschlafly@aol.com Phone:9087198608
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Applicant Information

Application No	85482562	Publication date	07/31/2012
Opposition Filing Date	09/29/2012	Opposition Period Ends	09/29/2012
Applicant	THE SAINT LOUIS BREWERY, LLC 2100 LOCUST STREET ST. LOUIS, MO 63103 UNITED STATES		

Goods/Services Affected by Opposition

Class 032. First Use: 1998/01/15 First Use In Commerce: 1998/01/15 All goods and services in the class are opposed, namely: Beer, ale and lager; Beer, ale and porter; Beer, ale, lager, stout and porter; Beers; Black beer; Brewed malt-based alcoholic beverage in the nature of a beer; Coffee-flavored beer

Grounds for Opposition

The mark is primarily merely a surname	Trademark Act section 2(e)(4)
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Attachments	Opposition by Phyllis Schlafly.pdf (5 pages)(16245 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	/Andrew Schlafly/
Name	Andrew Schlafly
Date	09/29/2012

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

In the matter of trademark application Serial No. 85482562
For the mark SCHLAFLY
Published in the Official Gazette on July 31, 2012

Phyllis Schlafly,)
)
Petitioner)
)
v.)
)
The Saint Louis Brewery, LLC,)
)
Applicant)

NOTICE OF OPPOSITION

Phyllis Schlafly, an individual who works at 7800 Bonhomme Avenue, St. Louis, Missouri 63105, believes that she will be damaged by the registration of the mark shown in the above-identified application, and hereby opposes same. She obtained a 30-day extension until September 29, 2012, in order to file this opposition.

The grounds for this Notice of Opposition are as follows:

Standing

1. The applied-for mark is for “SCHLAFLY”, which is the surname of Petitioner Phyllis Schlafly.

Grounds for Opposition

2. The applied-for mark falls within the prohibition set forth in 15 U.S.C. § 1052(e)(4) with respect to surnames, because the mark “is primarily merely a surname.”

3. The word “Schlafly”, standing alone, has no usage or meaning other than as a surname.

4. The ordinary or principal significance of the word “Schlafly” is that of a surname, frequently associated with me.

5. In connection with its usage as a surname, it has the connotation of conservative values, which to millions of Americans (such as Baptists and Mormons) means abstinence from alcohol.

6. An average consumer in Saint Louis and elsewhere would think that “Schlafly” is a surname associated with me, and thus the registration of this name as a trademark by Applicant should be denied. *See In re Braun, Camerawerk* (1960, TMT App Bd) 124 USPQ 184.

7. The dominant characteristic of the word “Schlafly” is as a surname, which excludes it from being registered as a trademark. *See Kimberly Clark Corp. v Marzall* (1950, DC Dist Col) 94 F Supp 254, 88 USPQ 277, *aff'd* (1952, App DC) 90 US App DC 409, 196 F2d 772, 93 USPQ 191.

8. The word “Schlafly” is not a word recognized by the English dictionary, and has the “look and feel” of a surname. *In re United Distillers plc* (2000, TMT App Bd) 56 USPQ2d 1220.

9. A founder of Applicant has the surname “Schlafly”, which constitutes sufficient evidence that mark was primarily merely a surname which cannot be registered as a trademark. *See In re Winegard Co.* (1969, TMT App Bd) 162 USPQ 261.

10. Consumers nationwide associate the word “Schlafly” more with me than with Applicant.

11. A search of news stories nationwide demonstrate that the name “Schlafly” is primarily used in connection with my activities.

Prior Use

12. Applicant represented in its application that its first use of the mark was on January 15, 1998.

13. I have used my surname “Schlafly” in commerce since August 1967, with the first edition of the *Phyllis Schlafly Report*, a monthly newsletter that been in interstate commerce continuously ever since then.

14. I have used my surname “Schlafly” in daily radio commentaries aired nationwide since 1983.

15. I have sold numerous books in interstate commerce using my surname since at least 1964, and have a book listed on the *New York Times* Bestseller list this month.

16. Accordingly, my use of the surname “Schlafly” in commerce long predates Applicant’s stated first use of this name.

Ownership and History of Applicant

17. The Applicant has not obtained my consent to obtain a trademark on my surname.

18. The Applicant does not limit its use of the applied-for mark to any particular geographic region, and does not disclaim rights concerning other goods and services.

Injury

19. The consumption of alcohol is considered immoral by millions of Americans, including many of the subscribers to my above-referenced monthly newsletter and consumers of my radio shows, books, and other products, including Baptists and Mormons.

20. Trademark registration of my surname for the sale or advertisement of alcoholic beverages, as Applicant seeks, could be harmful to my conservative activities.

21. Registration of this mark would falsely suggest a connection between me and alcoholic beverages sold by Applicant in the minds of some of my consumers who believe that the consumption of alcohol is immoral.

22. I have been asked by current and potential consumers of my products whether I am connected with Applicant's sale of alcoholic beverages, which indicates that there are a significant number of potential consumers who incorrectly assume that I am connected with Applicant's product, when in fact I am not.

23. A false association in consumers' minds between profit-making from alcohol and my surname could have an adverse impact on my activities if a trademark in my surname were granted to Applicant.

WHEREFORE, Phyllis Schlafly respectfully requests that this application for the registration of the mark "SCHLAFLY" be DENIED.

Respectfully submitted,

Date: September 29, 2012

/s/ Andrew Schlafly
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Attorney for Phyllis Schlafly