

ESTTA Tracking number: **ESTTA20985**

Filing date: **12/09/2004**

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

Proceeding	91162746
Party	Defendant Hansen Beverage Company Hansen Beverage Company 1010 Railroad Street Corona, CA 92882
Correspondence Address	STEVEN J. NATAUPSKY KNOBBE, MARTENS, OLSON & BEAR LLP 2040 MAIN STREET, 14TH FLOOR IRVINE, CA 92614
Submission	Answer
Filer's Name	Danielle Klausner
Filer's e-mail	efiling@kmob.com
Signature	/Danielle Klausner/
Date	12/09/2004
Attachments	hanbev018manswer.pdf (14 pages)

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

Monster Cable Products, Inc.,

Opposer,

v.

Hansen Beverage Company,

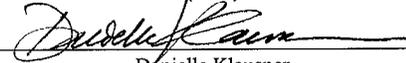
Applicant.

Opposition No. 91162746
Serial No. 78/253,933

I hereby certify that this correspondence and all marked attachments are being transmitted by electronic mail to the United States Patent and Trademark Office at <http://www.uspto.gov> on

December 9, 2004

(Date)



Danielle Klausner

**APPLICANT'S ANSWER TO NOTICE OF
OPPOSITION AND AFFIRMATIVE DEFENSES**

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Sir or Madam:

Applicant, Hansen Beverage Company ("Hansen"), a Delaware corporation, having its principal place of business at 1010 Railroad Street, Corona, CA 92882, hereby answers the Notice of Opposition filed by Monster Cable Products, Inc. against U.S. Trademark Application Serial No. 78/253,933.

1. Answering Paragraph 1 of the Notice of Opposition, Applicant lacks sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

2. Answering Paragraph 2 of the Notice of Opposition, Applicant lacks sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

3. Answering Paragraph 3 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 2,184,002 and that the Registration was granted on August 25, 1998. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 3 and accordingly denies the allegations.

4. Answering Paragraph 4 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 2,197,793 and that the Registration was granted on October 20, 1998. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 4 and accordingly denies the allegations.

5. Answering Paragraph 5 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 1,690,903 and that the Registration was granted on June 2, 1992. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 5 and accordingly denies the allegations.

6. Answering Paragraph 6 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 1,342,164 and that the Registration was granted on June 18, 1985. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 6 and accordingly denies the allegations.

7. Answering Paragraph 7 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 1,340,229 and that the Registration was granted on June 11, 1985. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 7 and accordingly denies the allegations.

8. Answering Paragraph 8 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 1,384,076 and that the

Registration was granted on February 25, 1986. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 8 and accordingly denies the allegations.

9. Answering Paragraph 9 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 1,144,700 and that the Registration was granted on December 30, 1980. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 9 and accordingly denies the allegations.

10. Answering Paragraph 10 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 1,336,372 and that the Registration was granted on May 21, 1985. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 10 and accordingly denies the allegations.

11. Answering Paragraph 11 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 1,844,244 and that the Registration was granted on July 12, 1994. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 11 and accordingly denies the allegations.

12. Answering Paragraph 12 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 1,738,114 and that the Registration was granted on December 8, 1992. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 12 and accordingly denies the allegations.

13. Answering Paragraph 13 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 1,537,306 and that the Registration was granted on May 2, 1989. Applicant lacks sufficient knowledge or information

to form a belief as to the remainder of the allegations contained in Paragraph 13 and accordingly denies the allegations.

14. Answering Paragraph 14 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 1,665,277 and that the Registration was granted on November 19, 1991. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 14 and accordingly denies the allegations.

15. Answering Paragraph 15 of the Notice of Opposition, Applicant admits that Registration No. 1,824,258 was granted on March 1, 1994. In view of the fact that Registration No. 1,824,258 was cancelled by the Trademark Office on October 17, 2001, Applicant denies the remainder of the allegations contained in Paragraph 15.

16. Answering Paragraph 16 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 1,759,527 and that the Registration was granted on March 23, 1993. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 16 and accordingly denies the allegations.

17. Answering Paragraph 17 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 1,428,215 and that the Registration was granted on February 10, 1987. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 17 and accordingly denies the allegations.

18. Answering Paragraph 18 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 1,351,414 and that the Registration was granted on July 30, 1985. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 18 and accordingly denies the allegations.

19. Answering Paragraph 19 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 1,812,892 and that the Registration was granted on December 21, 1993. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 19 and accordingly denies the allegations.

20. Answering Paragraph 20 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 1,414,284 and that the Registration was granted on October 21, 1986. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 20 and accordingly denies the allegations.

21. Answering Paragraph 21 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 2,220,851 and that the Registration was granted on January 26, 1999. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 21 and accordingly denies the allegations.

22. Answering Paragraph 22 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 2,185,607 and that the Registration was granted on September 1, 1998. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 22 and accordingly denies the allegations.

23. Answering Paragraph 23 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 2,215,211 and that the Registration was granted on December 29, 1998. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 23 and accordingly denies the allegations.

24. Answering Paragraph 24 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 2,211,670 and that the

Registration was granted on December 15, 1998. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 24 and accordingly denies the allegations.

25. Answering Paragraph 25 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 2,153,562 and that the Registration was granted on April 28, 1998. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 25 and accordingly denies the allegations.

26. Answering Paragraph 26 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 2,227,322 and that the Registration was granted on March 2, 1999. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 26 and accordingly denies the allegations.

27. Answering Paragraph 27 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 2,183,518 and that the Registration was granted on August 25, 1998. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 27 and accordingly denies the allegations.

28. Answering Paragraph 28 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 2,330,194 and that the Registration was granted on March 14, 2000. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 28 and accordingly denies the allegations.

29. Answering Paragraph 29 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 2,213,346 and that the Registration was granted on December 22, 1998. Applicant lacks sufficient knowledge or

information to form a belief as to the remainder of the allegations contained in Paragraph 29 and accordingly denies the allegations.

30. Answering Paragraph 30 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 2,083,506 and that the Registration was granted on July 29, 1997. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 30 and accordingly denies the allegations.

31. Answering Paragraph 31 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 2,055,050 and that the Registration was granted on April 22, 1997. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 31 and accordingly denies the allegations.

32. Answering Paragraph 32 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 2,381,247 and that the Registration was granted on August 29, 2000. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 32 and accordingly denies the allegations.

33. Answering Paragraph 33 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 2,381,246 and that the Registration was granted on August 29, 2000. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 33 and accordingly denies the allegations.

34. Answering Paragraph 34 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 2,537,106 and that the Registration was granted on February 5, 2002. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 34 and accordingly denies the allegations.

35. Answering Paragraph 35 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 2,724,015 and that the Registration was granted on June 10, 2003. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 35 and accordingly denies the allegations.

36. Answering Paragraph 36 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 2,617,707 and that the Registration was granted on September 10, 2002. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 36 and accordingly denies the allegations.

37. Answering Paragraph 37 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 2,617,706 and that the Registration was granted on September 10, 2002. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 37 and accordingly denies the allegations.

38. Answering Paragraph 38 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 2,627,042 and that the Registration was granted on October 1, 2002. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 38 and accordingly denies the allegations.

39. Answering Paragraph 39 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 2,575,745 and that the Registration was granted on June 4, 2002. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 39 and accordingly denies the allegations.

40. Answering Paragraph 40 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 2,774,858 and that the

Registration was granted on October 21, 2003. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 40 and accordingly denies the allegations.

41. Answering Paragraph 41 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 2,812,869 and that the Registration was granted on February 10, 2004. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 41 and accordingly denies the allegations.

42. Answering Paragraph 42 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 2,569,988 and that the Registration was granted on May 14, 2002. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 42 and accordingly denies the allegations.

43. Answering Paragraph 43 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 2,561,769 and that the Registration was granted on April 16, 2002. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 43 and accordingly denies the allegations.

44. Answering Paragraph 44 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 2,623,566 and that the Registration was granted on September 24, 2002. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 44 and accordingly denies the allegations.

45. Answering Paragraph 45 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 2,431,919 and that the Registration was granted on February 27, 2001. Applicant lacks sufficient knowledge or

information to form a belief as to the remainder of the allegations contained in Paragraph 45 and accordingly denies the allegations.

46. Answering Paragraph 46 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 2,610,730 and that the Registration was granted on August 20, 2002. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 46 and accordingly denies the allegations.

47. Answering Paragraph 47 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 2,809,051 and that the Registration was granted on January 27, 2004. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 47 and accordingly denies the allegations.

48. Answering Paragraph 48 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 2,728,729 and that the Registration was granted on June 24, 2003. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 48 and accordingly denies the allegations.

49. Answering Paragraph 49 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 2,634,360 and that the Registration was granted on October 15, 2002. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 49 and accordingly denies the allegations.

50. Answering Paragraph 50 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 2,639,223 and that the Registration was granted on October 22, 2002. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 50 and accordingly denies the allegations.

51. Answering Paragraph 51 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 2,606,971 and that the Registration was granted on August 13, 2002. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 51 and accordingly denies the allegations.

52. Answering Paragraph 52 of the Notice of Opposition, Applicant admits that Opposer purports to be the owner of U.S. Trademark Registration No. 2,584,318 and that the Registration was granted on June 25, 2002. Applicant lacks sufficient knowledge or information to form a belief as to the remainder of the allegations contained in Paragraph 52 and accordingly denies the allegations.

53. Answering the first sentence of Paragraph 53 of the Notice of Opposition, Applicant lacks sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations. Applicant denies the allegations set forth in the second and third sentences of Paragraph 53 of the Notice of Opposition.

54. Answering Paragraph 54 of the Notice of Opposition, Applicant lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 54 and accordingly denies the allegations.

55. Answering Paragraph 55, Applicant denies the allegations contained therein.

AFFIRMATIVE DEFENSES

Applicant alleges the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

Due to the dramatic differences between the parties' trademarks, goods and services, there is no likelihood of confusion, deception or mistake between Opposer's alleged trademarks and Applicant's trademark.

SECOND AFFIRMATIVE DEFENSE

Due to the dramatic differences between the parties' trademarks, goods and services, Applicant's use of Applicant's trademark has not, does not and will not interfere with Opposer's use of its alleged trademarks.

THIRD AFFIRMATIVE DEFENSE

Due to the dramatic differences between the parties' trademarks, goods and services, Opposer will not be damaged by Applicant's use or registration of Applicant's trademark.

FOURTH AFFIRMATIVE DEFENSE

Due to the dramatic differences between the parties' trademarks, goods and services, Applicant's use of Applicant's trademark will not dilute the distinctive quality of Opposer's alleged trademarks.

FIFTH AFFIRMATIVE DEFENSE

Opposer's marks are not famous within the meaning of Section 43(c) of the Trademark Act.

SIXTH AFFIRMATIVE DEFENSE

In view of the fact that Registration No. 1,824,258 was cancelled by the Trademark Office on October 17, 2001, Opposer cannot rely on Registration No. 1,824,258 in this Opposition Proceeding.

SEVENTH AFFIRMATIVE DEFENSE

In view of the use by third parties of numerous trademarks including the word "monster," no likelihood of confusion exists between Opposer's purported marks and Applicant's mark.

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed in its entirety, and that a registration issue to Applicant for its mark MONSTER ENERGY.

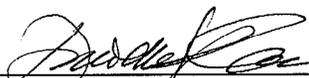
Please charge Deposit Account No. 11-1410 for any fees that may be required.

Please direct all correspondence with respect to this Opposition to the undersigned at the address listed below.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 12-9-04

By: 

Steven J. Nataupsky
Michael K. Friedland
Danielle Klausner
2040 Main Street
Fourteenth Floor
Irvine, CA 92614
(949) 760-0404
Attorneys for Applicant,
Hansen Beverage Company

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **APPLICANT'S ANSWER TO NOTICE OF OPPOSITION AND AFFIRMATIVE DEFENSES** upon Opposer's counsel by depositing one copy thereof in the United States Mail, first-class postage prepaid, on December 9, 2004, addressed as follows:

LARIVIERE, GRUBMAN & PAYNE, LLP
Matthew A. Powelson
19 Upper Ragsdale Drive, Suite 200
P.O. Box 3140
Monterey, CA 93942-3140



Danielle Klausner

FLG-2673.DOC
111904