

ESTTA Tracking number: **ESTTA103432**

Filing date: **10/10/2006**

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 parties oppose registration of the indicated application.

Opposers Information

Name	Americans for Drug Free Youth, Inc. ("AFDFY")		
Entity	Corporation	Citizenship	New York
Address	P.O. Box 195 Tioga Center, NY 13845 UNITED STATES		

Name	Progressive Intellectual Property Law Association ("PIPLA")		
Entity	Association	Citizenship	Ohio
Address	2121 Euclid Avenue LB234 Cleveland, OH 44115-2214 UNITED STATES		

Attorney information	Michael H. Davis Michael H. Davis, Esq. 50 Avenue A Suite 3A New York, NY 10009-7364 UNITED STATES michael.davis@law.csuohio.edu Phone:216-687-2228		
----------------------	--	--	--

Applicant Information

Application No	78829207	Publication date	10/10/2006
Opposition Filing Date	10/10/2006	Opposition Period Ends	11/09/2006
Applicant	Kirby, James T. PO Box 130 Palomar Mountain, CA 92060 UNITED STATES		

Goods/Services Affected by Opposition

Class 032. All goods and sevicees in the class are opposed, namely: carbonated and non-carbonated soft drinks and energy drinks
--

Attachments	OppositionGrounds4.pdf (3 pages)(82442 bytes) Exhibit A.pdf (3 pages)(209402 bytes) Exhibit B.pdf (1 page)(215867 bytes) Exhibit C.pdf (2 pages)(619903 bytes)
-------------	---

Signature	/Michael H. Davis/
Name	Michael H. Davis

Date	10/10/2006
------	------------

PARTIES AND STANDING

1. On March 3, 2006, James T. Kirby ("Applicant") filed an intent to use application to register the word mark "Cocaine" on the Principal Register as a goods mark for "carbonated and non-carbonated soft drinks and energy drinks" (as amended) in International Class 32. The application was assigned Serial No. 78829207 and was published for opposition in the Official Gazette of the United States Patent and Trademark Office on October 10, 2006.
2. Upon information and belief, Applicant is an individual with an address of: P.O. Box 130, Palomar Mountain, CA 92060.
3. Co-Opposer, AFDFY, is a corporation consisting of Americans engaged in the fight against drugs. AFDFY is committed to providing knowledge and tools aimed at protecting the youth of America from the temptation of drug use and the death and destruction that follow drug use.
4. AFDFY has a legitimate personal interest in the opposition of the mark because its goal of preventing the temptation of drug use by American youth would be upset by the registration of a mark for a consumable product using the name of an illegal drug that is available to all ages. Most importantly, many others share the same belief of harm from the proposed trademark. New Yorkers were "outraged" by this proposed mark, according to an article in the New York Times, "Lawmakers Scold Maker of 'Cocaine' Drink," published on October 3, 2006, attached hereto and hereinafter referred to as "Exhibit A"; the name has provoked "controversy" according to a story published by KVBC/DT, "'Cocaine in a Can' Energy Drink Promises a Better 'High,'" published on September 19, 2006, attached hereto and hereinafter referred to as "Exhibit B"; the New York Post reported that the mark was chosen because it is both "provocative" and "helps people get wasted," in a story "Latest Buzz is in a Can," published on September 19, 2006, attached hereto and hereinafter referred to as "Exhibit C."
5. AFDFY possesses a reasonable belief that registration of the mark Cocaine will damage the organization and its interests because the mark glorifies and normalizes the illegal drug cocaine, in direct opposition with its battle against drug use. Most importantly, many others share the same belief of harm from the proposed trademark. See Exhibits A, B, and C.
6. Co-Opposer, Progressive Intellectual Property Law Association, ("PIPLA") is a membership organization that consists of lawyers, law students, professionals and lay people interested in protecting and supporting the public interest in intellectual property concerns.*

* This opposition has been prepared, under the direction of law professor Michael Davis, by five Cleveland State University Law College members of PIPLA: Michael Wendolowski, Matthew Delaney, Irina Vinogradsky, Jessica Fajfar, and Angela Simmons, and has been supported financially by RAMA, the Russian American Medical Association.

7. PIPLA has a legitimate personal interest in opposing the registration of the mark Cocaine because it frustrates and offends the purpose of the association. PIPLA has a strong interest in protecting the public against abuse of trademark law and is offended by the registration of the mark Cocaine for an energy drink marketed or available to both children and adults alike. The registration of the mark Cocaine for a consumable product ignores the prohibition of registering a mark that consists of immoral or scandalous matter.
8. PIPLA has a reasonable belief that the registration of the mark Cocaine will damage the organization and its interests; and that the registration of a mark such as "Cocaine" in the context of the present application would be immoral and scandalous to a large segment, if not the majority, of the American public. Most importantly, many others share the same belief of harm from the proposed trademark. See Exhibits A, B, and C.
9. PIPLA possesses a reasonable belief that it will be damaged, as evidenced by the national concern manifested through countless newspaper articles stating or implying that the mark Cocaine encourages children and young adults to use the real drug cocaine. Doctors, psychologists, sociologists and similar experts in the field have equally expressed their concern for the mark Cocaine and its potential dangerous consequence of promoting drug use. See Exhibits A, B, and C.

THE IMMORAL AND SCANDALOUS NATURE OF THE MARK

10. Opposers consider that the mark "Cocaine" in the context of the marketplace as applied to the goods described in the application for registration is scandalous and immoral from the standpoint of a substantial composite of the general public in the context of contemporary attitudes. See Exhibits A, B, and C.
11. Opposers allege that the mark Cocaine is offensive to a substantial composite of the public and that its registration would be shocking to the conscience of most Americans. A national concern for the mark Cocaine has been manifested through countless newspaper articles communicating that the mark Cocaine encourages children and young adults to use the illegal drug cocaine. Doctors, psychologists, sociologists, and similar experts in the field have equally expressed their concern for use of the mark Cocaine and its potential dangerous consequence of promoting drug use and generally observed the controversy that marketing this product poses.
12. AFDFY asserts that the federal government has spent billions of dollars on the war against drugs. A federal registration of the mark Cocaine for an energy drink is contrary to the federal government's clear and patent disapproval of drug use. See, *inter alia*, 21 U.S.C.A. § 841, 21 U.S.C.A. § 1521, and, *inter alia*, 67 FR 60103 and 67 FR 18083. The manifest illegality of Cocaine makes registration scandalous and immoral on its face. In addition, the federal registration of the mark Cocaine for a good of such nature will scandalously undermine the well-funded federal war against drugs.

13. AFDFY believes the mark Cocaine for an energy drink is scandalous and immoral and seeks to preclude registration of the mark Cocaine within the meaning of Section 2(a) of the Trademark Act of 1946, 15 U.S.C. § 1052(a).
14. PIPLA believes the registration of this mark in light of the manifest illegality of cocaine, pursuant to, *inter alia*, 21 U.S.C.A. § 841, in light of the federal policy intended to discourage use of cocaine by young people, pursuant to 21 U.S.C.A. § 1521, and of the so-called "war on drugs" in general, pursuant to, *inter alia*, 67 FR 60103 and 67 FR 18083, is *per se* immoral and scandalous and would be shocking to the conscience of most Americans
15. PIPLA believes the mark Cocaine for an energy drink is scandalous and immoral and seeks to preclude its registration within the meaning of Section 2(a) of the Trademark Act of 1946, 15 U.S.C. § 1052(a).
16. If applicant is granted the registration herein opposed, it would thereby obtain at least a *prima facie* exclusive right to the use of its mark in commerce. Such registration would be a source of damage and injury to Co-Opposers.
17. In view of the foregoing facts, Co-Opposers believe that they will be damaged by Applicant's registration of Cocaine.

DECEPTIVE MISDESCRIPTION

18. Opposers allege that the mark "Cocaine" used on a beverage designed to make the consumer "high", as promoted by the applicant, see Exhibits A, B, and C, is deceptively misdescriptive in that it purports to be either cocaine or a substance similar to cocaine when it contains, in fact, no cocaine or cocaine-like substances, and its registration is therefore prohibited by 15 U.S.C. § 1052(e)(1).

The New York Times

N.Y. / Region

N.Y. / Region

All NYT

Search

ESTRADE
MULTIMEDIA

WORLD

U.S.

N.Y. / REGION

BUSINESS

TECHNOLOGY

SCIENCE

HEALTH

SPORTS

OPINION

ARTS

STYLE

TRAVEL

JOBS

REAL ESTATE

AUTOS

THE CITY

IN THE REGION

N.Y./REGION OPINIONS

Indulge in the Marriott Experience
for a chance to win.

• Three grand prizes.
• Plus instant winners!

See Marriott rules. *\$500 cashback necessary.

Play now

Marriott
HOTELS & RESORTS

1 of 3

10/4/2006 5:32 PM

Lawmakers Scold Maker of 'Cocaine' Drink

By SEWELL CHAN
Published: October 3, 2006

Outraged New York City lawmakers denounced the manufacturer of a new, highly caffeinated soft drink called Cocaine yesterday and called for a boycott of the beverage, saying it glamorized an illegal and deadly stimulant that has ravaged families and neighborhoods since the epidemic of the 1980's.

Enlarge This Image



Marilynn K. Yee/The New York Times

A new energy drink on the market called "Cocaine" has been criticized by several members of the City Council.

Liquid Cocaine, Cocaine Smash, Cocaine Blast and even Cocaine Snort. The site promotes the beverage's page on MySpace, the heavily trafficked social-networking Internet site that is popular among children and teenagers.

Experts on drug use and nutrition condemned the beverage.

Joseph A. Califano Jr., chairman and president of the National Center on Addiction and Substance Abuse at [Columbia University](#), used five adjectives — insidious, disgraceful, irresponsible, reprehensible and disgusting — to describe the drink.

In a statement, Mr. Califano, who was secretary of health, education and welfare in the Carter administration, said it was "clearly aimed at children and teen 'partygoers.'"

The beverage is a competitor with so-called energy drinks like Red Bull. According to the Cocaine site ([drinkcocaine.com](#)), the beverage, sold in 8.4-ounce cans, has three times more caffeine per ounce than Red Bull and similar beverages like Rockstar Juiced, Full Throttle, Monster Energy and Bawls.

"This is a salted, heavily caffeinated, sugary drink with extra calories that nobody needs," said Marion Nestle, a professor of nutrition, food studies and public health at [New York University](#), after reviewing the nutritional label on the Cocaine beverage. "It's a souped-up Gatorade. This product has minimal nutritional value."

Redux Beverages, founded by James T. and Hannah H. Kirby, is registered in Las Vegas and located in Murrieta, Calif.

Mr. Kirby, 42, a former software executive who was in New York City yesterday to promote his product, said in a telephone interview, "I think most people are smart, and they know the difference between an energy drink and a Class A narcotic." He said of the name, "There's a lot of irony and wordplay."

The Press-Enterprise of Riverside, Calif., quoted Mr. Kirby last month as saying, "I chose the name because I knew it would be controversial, and controversy sells." He said the criticism was coming from "super-right-wing groups" and added, "I think kids are a lot smarter than people give them credit for."

INSIDE NYTIMES.COM

[More Articles in New York Region »](#)

Today's Headlines Daily E-Mail

Sign up for a roundup of the day's top stories, sent every morning. See Sample
michael.davis@law.csuohio.edu Sign Up
[Change E-mail Address](#) | [Privacy Policy](#)

E-MAIL

PRINT

REPRINTS

SAVE

45-MINUTE TURN
ON/STANDBY SET



Business
[nytimes.com/business](#)

[Up-to-the-minute analysis and smart summaries of today's market-moving events](#)

Also in Business:

- [The Warren Buffett of Europe plots his next deal](#)
- [Wall Street's crimson streak](#)
- [Another hedge fund under fire](#)

MOST POPULAR

E-MAILED | BLOGGED | SEARCHED

1. In Europe It's Fish Oil After Heart Attacks, but Not in U.S.
2. On the Road: Colliding With Death at 37,000 Feet, and Living
3. A Secret Society, Spilling a Few Secrets
4. So the Torah Is a Parenting Guide?
5. Out-of-Body Experience? Your Brain Is to Blame
6. In Bill's Fine Print, Millions to Celebrate Victory
7. The Minimalist: Eggs Take Their Place at the Dinner Table
8. R.W. Apple, a Times Journalist in Full, Dies at 71
9. The Earth Is the Finishing Touch
10. Thomas L. Friedman: If I Had One Wish

[Go to Complete List »](#)

Real Estate
[nytimes.com/realestate](#)

What You Get for ... \$4 Million

Also in Real Estate:

- [Homes for \\$4 million or less in Manhattan](#)
- [Homes for \\$4 million or less in Napa Valley](#)
- [Homes for \\$4 million or less in Miami](#)



City Hall, 1917
[Buy Now](#)

But at the City Hall news conference, Mr. Sanders and three other lawmakers — all Democrats — offered withering criticism.

“This is the height of irresponsibility for any company,” said Assemblyman Karim Camara of Brooklyn.

Councilwoman Letitia James of Brooklyn called the beverage “a legal precursor to an illegal product,” while Councilman Larry B. Seabrook of the Bronx likened it to “imitation cigarettes, which caused generations upon generations to become smokers.”

They called on the city’s Department of Health and Mental Hygiene and the Department of Consumer Affairs to investigate the safety of the beverage, but the authority to do so may be limited. Professor Nestle said that because the energy drinks had been billed as dietary supplements rather than food items, they had eluded regulation by the federal Food and Drug Administration.

Whether the calls for a boycott will be heeded is unclear. Rupert Jee, owner of Hello Deli in Midtown, one of the five retailers listed on the Cocaine Web site, said, “They did, in fact, list our name without authorization.” But Mr. Jee said he was inclined to continue selling the beverage.

[More Articles in New York Region »](#)

Need to know more? 50% off home delivery of The Times.

Ads by Google

[what's this?](#)

Make Your Donation Today

Help Rebuild Lives & Communities in Hurricane Affected States.
www.BushClintonKatrinaFund.org

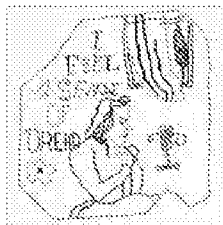
Gulf Hurricane Relief

Help Support Health Clinics Providing Critical Aid to Evacuees.
www.DirectRelief.org

Related Searches

[Beverages](#)
[Cocaine and Crack Cocaine](#)
[Drug Abuse and Traffic](#)
[Boycotts](#)

TimesSelect

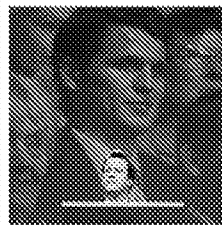


Maira Kalman:
‘Collecting Myself’

BOOKS »

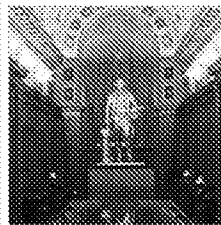
**Stephen King
Explores Joy
in Marriage,
Grief in Loss**

WORLD »



Tory Introduces Himself to
His Party

N.Y. / REGION »



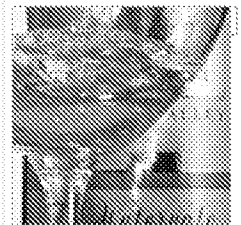
A Secret Society, Spilling a
Few Secrets

TimesSelect

**Self-Inflicted
Wounds**

We are diminishing our
civilization in the name
of protecting it, writes
Roger Cohen.

DINING & WINE »



Wines of The Times: A
Surprise from Australia

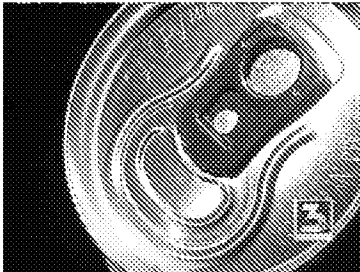
[Home](#) | [World](#) | [U.S.](#) | [N.Y. / Region](#) | [Business](#) | [Technology](#) | [Science](#) | [Health](#) | [Sports](#) | [Opinion](#) | [Arts](#) | [Style](#) | [Travel](#) | [Jobs](#) | [Real Estate](#) | [Automobiles](#) | [Back to Top](#)

[Copyright 2006 The New York Times Company](#) | [Privacy Policy](#) | [Search](#) | [Corrections](#) | [RSS](#) | [First Look](#) | [Help](#) | [Contact Us](#) | [Work for Us](#) | [Site Map](#)

[<<Back](#)

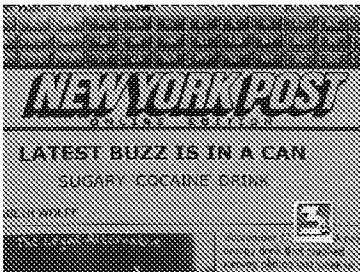
'Cocaine in a can' energy drink promises a better 'high'

Sep 19, 2006 10:26 AM



A Las Vegas beverage company is stirring up controversy with its new energy drink, one that promises a bigger kick than any of the dozens you'll find on the market. This one is called "Cocaine." And if the name itself doesn't create a buzz, wait until you hear the ingredients.

A bigger boost, more wired, more energy. The drink's maker claims that "doing cocaine" - the beverage that is - gives you a bigger and better high, without the crash that other energy drinks cause. But a local doctor says, don't believe the hype, and whatever you do, don't buy it for your kids.



Pop the top and let the buzz begin. Cocaine - "The Legal Alternative" - is the latest in a long line of energy drinks. It's makers are hoping that people from New York to Nevada will "just say snow."

Cocaine's inventor told the New York Post, "I can think of no other product except real cocaine that could have that effect on the public."



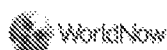
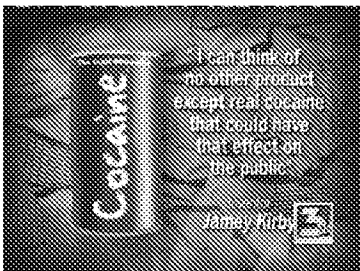
Even though the drink contains Vitamin B, Pediatrician, Dr. Noah Kohn says it's no good. "The energy is purely caffeine and sugar; there's no real nutritional value at all. Vitamin B12 at these doses is going to do absolutely nothing for you."

Cocaine in a can will surely have plenty of caffeine, and Dr. Kohn thinks you could get hooked. "Caffeine, like cocaine, is addictive."



Addiction is Dr. Kohn's biggest concern. He doesn't want kids reaching for these in the afternoon for a boost to do their homework, or before soccer practice. He tells parents all the time to cut sugary drinks from their child's diet. They're loaded in calories and, of course, caffeine.

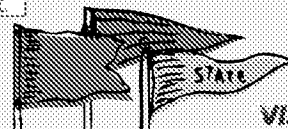
"Cocaine in a can" should be on store shelves - and in night-clubs - sometime this fall.



All content © Copyright 2000 - 2006 WorldNow and KVBC. All Rights Reserved.
For more information on this site, please read our [Privacy Policy](#) and [Terms of Service](#).

Receive a \$10 Starbucks Card

WHEN YOU USE YOUR VISA CARD TO BUY, PRELOAD OR AUTO-RELOAD A CARD. *Some restrictions apply.



SIGN UP NOW!

NEW YORK POST
ONLINE EDITION

NEW YORK POST EXCLUSIVE
WIN Front Row Seats
for Tony Bennett

CARS

Search Now

Jobs:

NYP@Work

MEMBERS

Log in

Services

HOME

STORY INDEX

SEND A LETTER

BREAKING

NEWS

BUSINESS

COLUMNISTS

ENTERTAINMENT

GOSSIP

JOBS

NEWS

Liberty Medals

Regional News

National News

World News

Weird But True

NYPD Blotter

XML/RSS

Feeds

POST OPINION

PULSE

REAL ESTATE

SPORTS

STYLE

TRAVEL

SPECIAL SECTIONS

DRIVE
Luxury Cars

TEMPO
The Rhythm of
Latin New York

EVERY
Every Tuesday

Home
Search Sale &
Rental Listings

PARADE

IN/Week
Listings &
Features

PAST SECTIONS

Classified
Classroom

Extra

Comics

Coupons

E-Edition

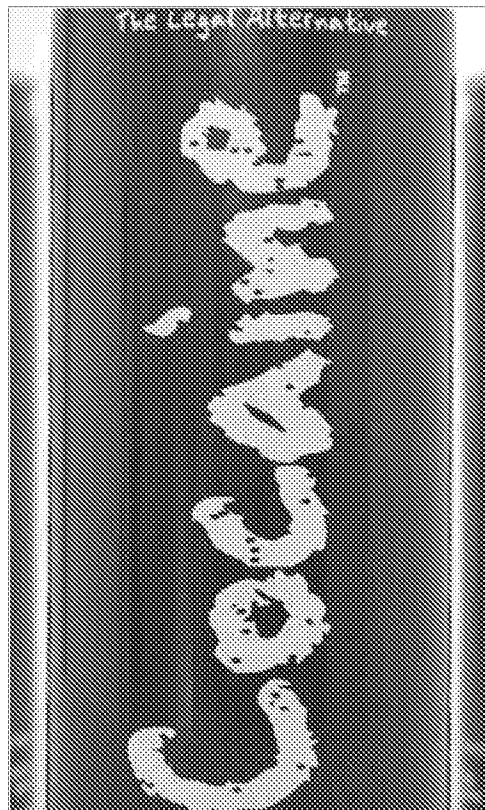
Games

Home Delivery

LATEST BUZZ IS IN A CAN

SUGARY 'COCAINE' DRINK

By ELIZABETH WOLFF



September 17, 2006 -- A new energy drink that crashed runway parties last week is called Cocaine, and its makers are billing it as "the legal alternative" to the white powder drug.

The drink's maker maintains that "doing Cocaine" - the beverage, that is - gives you a bigger and better high without the crash that other energy drinks cause.

They say a high hits you within five minutes, followed by a caffeine boost 15 minutes later. But hold on - the ride lasts five hours and the concoction is "350 percent stronger than Red Bull," they claim.

JUST SAY 'SNOW': The creator of "Cocaine" the drink says even the provocative name helps people get wasted.

Email

Print

Feeds

Archives

Reprint

Newsletters

The 2006

Nissan Xterra

\$1,000

NISSAN CASH BACK

CLICK FOR OFFER DETAILS

Build your Xterra
Request a Brochure
Locate a Dealer

NISSAN SHIFT your ride

They argue that the effect is part chemical - this drink uses "simple" sugars that don't need to be broken down by the body to create a sugar buzz, and a much larger dose of vitamin B12 - and part psychological.

"When a person sees the name of the drink, some psychological effect happens and the person is already experiencing the energy buzz before they even open the can," speculates Cocaine inventor Jamey Kirby, whose company, Redux Beverages, is based in Las Vegas.

"I can think of no other product except real cocaine that could have that effect on the public," he said.

Does it get you high?

Taste-testers say the drink, which tastes

The 2006

Nissan Xterra

\$1,000

NISSAN CASH BACK

CLICK FOR OFFER DETAILS



Build your Xterra

Request a Brochure

Locate a Dealer

NISSAN SHIFT your ride

Horoscope
Last 7 Days

Photo

Lottery

Newsletters

Post Store

Post Winners

RSS

TV Week

Weather

PROMOTIONS

 Win Tix to
See Tony
Bennett

 \$6 Million
Scratch & Win

 Sign Up For
Coupons Now!

 Mardi
Gras NYC
Street
Festivals

 The Post,
delivered to
your computer

Sweepstakes
and Contest
Rules

SERVICES

Search
Archives

Online Media
Kit

Print Media Kit

Back Issues

Contact Us

FAQ

Int'l

Newspapers

NewsCorp

Sites

Privacy Policy

Reprints

Terms of Use

Work at the

Post

Photo Rates

something like a "liquid cherry Jolly Rancher" candy, hits you hard.

"It does give you a little rush," said one sipper of Cocaine, which is slated to be sold in nightclubs Mannhatta, Identity and Stereo, as well as groceries like West Side Gourmet, this fall.

"It's like I'm high . . . I keep bobbing my head to the music," said the guinea pig.

Another taster, however, hated the feeling the drink gave her. "I don't like the tingly feeling in my chest. I feel my heart racing - and I'm not being paranoid . . . I feel looped!"

Another said it led to an immediate and irritating onset of heartburn.

Kirby confessed that an ingredient was added to slightly numb the throat to add an oral sensation - much like cocaine does.

The company is marketing the drink to partiers instead of health nuts and workaholics, and has attracted rock-industry investors like Curt Cuomo, a Grammy-nominated writer and producer famed for penning KISS hits like "Psycho Circus."

It's so new, health experts haven't weighed in yet.

elizabeth.wolff@nypost.com

Back to: [Regional News](#) | [National News](#) | [World News](#) | [Home](#)

Mortgage Rates Near 39-yr Lows

\$300K loan for under \$999/mo. Think you pay too much? See new payment.
www.lowermybills.com

Orbitz - Budget Travel Deals Online

Book travel faster and easier. Save on flights, packages, and more.
www.orbitz.com

Capital One Credit Cards

Competitive rates. No hassle rewards. Apply now.
www.capitalone.com

NEW YORK POST is a registered trademark of NYP Holdings, Inc. NYPOST.COM, NYPOSTONLINE.COM, and
NEWYORKPOST.COM
are trademarks of NYP Holdings, Inc. Copyright 2006 NYP Holdings, Inc. All rights reserved.