

ESTTA Tracking number: **ESTTA143934**

Filing date: **06/04/2007**

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	Clif Bar & Co.
Granted to Date of previous extension	06/03/2007
Address	1610 Fifth Street Berkeley, CA 94710 UNITED STATES

Correspondence information	E Lynn Perry Perry IP Group A Law Corporation 100 Drakes Landing Road Suite 100 Greenbrae, CA 94904 UNITED STATES lperry@perryip.com, cmangonon@perryip.com Phone:415-461-5800
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**Applicant Information**

Application No	78890003	Publication date	12/05/2006
Opposition Filing Date	06/04/2007	Opposition Period Ends	06/03/2007
Applicant	Dr Pepper/Seven Up, Inc. 5301 Legacy Drive Plano, TX 75024 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 032. All goods and services in the class are opposed, namely: Non-alcoholic, non-carbonated and carbonated soft drinks, sports drinks, energy drinks and syrups and concentrates for making same; fruit juice
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**Applicant Information**

Application No	78889995	Publication date	12/05/2006
Opposition Filing Date	06/04/2007	Opposition Period Ends	
Applicant	Dr Pepper/Seven Up, Inc. 5301 Legacy Drive Plano, TX 75024 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 032.
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All goods and services in the class are opposed, namely: Non-alcoholic, non-carbonated and carbonated soft drinks, sports drinks, energy drinks and syrups and concentrates for making same; fruit juice

## Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

## Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2089043	Application Date	06/19/1996
Registration Date	08/19/1997	Foreign Priority Date	NONE
Word Mark	SHOT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1996/09/01 First Use In Commerce: 1996/09/01 high energy gels made primarily from brown rice syrup, flour and dried fruits		

U.S. Registration No.	3029171	Application Date	01/14/2005
Registration Date	12/13/2005	Foreign Priority Date	NONE
Word Mark	CLIF SHOT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2005/04/00 First Use In Commerce: 2005/04/00 high energy gels made primarily from brown rice syrup Class 032. First use: First Use: 2005/04/00 First Use In Commerce: 2005/04/00 Non-alcoholic beverages, namely, sports drinks		

U.S. Registration No.	3057646	Application Date	02/15/2005
Registration Date	02/07/2006	Foreign Priority Date	NONE
Word Mark	SHOT BLOKS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2005/08/16 First Use In Commerce: 2005/08/16 Snack food chews made primarily from brown rice syrup for consumption during athletic activities		

U.S. Registration No.	2939853	Application Date	11/20/2003
Registration Date	04/12/2005	Foreign Priority Date	NONE

Word Mark	MOJO
Design Mark	
Description of Mark	NONE
Goods/Services	Class 029. First use: First Use: 2002/04/00 First Use In Commerce: 2002/04/00 ready-to-eat food bars containing soy, nuts, rice, and fruit

U.S. Registration No.	2938934	Application Date	09/30/2003
Registration Date	04/05/2005	Foreign Priority Date	NONE
Word Mark	BIG SHOT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2004/03/01 First Use In Commerce: 2004/03/01 High energy gels made primarily from brown rice syrup, flour and dried fruits		

U.S. Registration No.	2687196	Application Date	12/12/2000
Registration Date	02/11/2003	Foreign Priority Date	NONE
Word Mark	MOJO BAR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2002/04/00 First Use In Commerce: 2002/04/00 READY TO EAT HIGH-ENERGY NUTRITION BARS FOR MEAL REPLACEMENT Class 030. First use: First Use: 2002/04/00 First Use In Commerce: 2002/04/00 GRAIN BASED READY TO EAT ENERGY FOOD BARS		

U.S. Registration No.	2941780	Application Date	11/20/2003
Registration Date	04/19/2005	Foreign Priority Date	NONE
Word Mark	MOJO MOUNTAIN MIX		
Design Mark			
Description of Mark	The mark consists of the letters MOJO arranged vertically, surrounded by four circles, and having the words "Mountain Mix" located immediately to the right of the three lowermost circles.		
Goods/Services	Class 029. First use: First Use: 2004/03/31 First Use In Commerce: 2004/03/31 ready-to-eat food bars containing soy, nuts, rice and fruit		

Attachments	78548048#TMSN.jpeg ( 1 page )( bytes ) 78567783#TMSN.jpeg ( 1 page )( bytes ) 78330908#TMSN.jpeg ( 1 page )( bytes ) 76179375#TMSN.gif ( 1 page )( bytes ) 78331048#TMSN.jpeg ( 1 page )( bytes )
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Signature	/elp/
Name	E Lynn Perry
Date	06/04/2007

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

CLIF BAR & CO.,	)	Opposition No.:
	)	
Opposer,	)	
	)	Serial No. 78890003
v.	)	Filed: May 23, 2006
	)	Mark: MO:JOE SWEET SHOT
DR PEPPER/SEVEN UP, INC.,	)	Published: December 5, 2006
	)	
Respondent.	)	<b>NOTICE OF OPPOSITION</b>
	)	

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CLIF BAR & CO., a California corporation having a place of business at 1610 Fifth St., Berkeley, CA 94710, believes it will be damaged by registration of the mark MO:JOE SWEET SHOT ("Applicant's Mark"), subject of the above-identified application owned by DR PEPPER/SEVEN UP, INC. ("Applicant"), and hereby opposes the same. As the basis for this Opposition, Opposer alleges:

1. Opposer uses the marks SHOT, CLIF SHOT, SHOT BLOKS, MOJO, MOJO BAR, MOJO MOUNTAIN MIX and CLIF MOJO ("Opposer's Marks"), on a nationwide basis, in connection with energy food products including energy bars, energy gels, and powders for making energy drinks.
2. Opposer's Marks are distinctive.
3. Opposer's Marks are widely recognized by the general consuming public of the United States as a designation of source of Opposer's products and are famous within the meaning of 15 U.S.C. §1125(c).

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4. Opposer is the owner of the following registrations, among others:

Mark	Reg. No.	Status
SHOT	2089043	Registered; incontestable
BIG SHOT	2938934	Registered
CLIF SHOT	3029171	Registered
SHOT BLOKS	3057646	Registered
MOJO	2939853	Registered
MOJO BAR	2687196	Registered
MOJO MOUNTAIN MIX	2941780	Registered

5. According to the records of the United States Patent and Trademark Office, Applicant filed an application to register Applicant's Mark on May 23, 2006, covering "Non-alcoholic, non-carbonated and carbonated soft drinks, sports drinks, energy drinks and syrups and concentrates for making same; fruit juice" in International Class 32; it was assigned Serial No. 78890003; and it was published on December 5, 2006 ("Applicant's Application").

6. No date of first use is stated in Applicant's Application, which is based on intent to use. On information and belief, Applicant is not using Applicant's Mark in the United States.

7. Applicant's Application was filed well after Opposer's first use and registration of Opposer's Marks and after Opposer's Marks became famous.

8. Registration and use of Applicant's Mark is likely to confuse actual and prospective customers of Applicant and/or Opposer.

9. Registration and use of Applicant's Mark will cause dilution by blurring or dilution by tarnishment, and will lessen the capacity of Opposer's Marks to distinguish Opposer's goods.

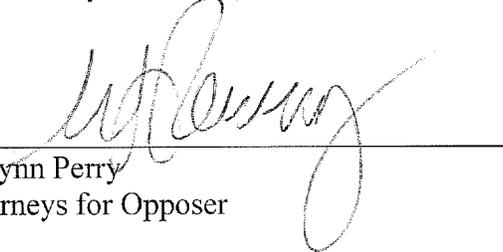
10. For the foregoing reasons, registration of Applicant's Mark would be injurious and damaging to Opposer within the meaning of Section 13 of the Trademark Act of 1946, as amended (15 USC §1063(a)) and would result in injury and damage to Opposer and its business, Opposer's Marks and Opposer's goodwill.

WHEREFORE, Opposer respectfully prays that this Notice of Opposition be sustained and that Applicant be denied registration of Applicant's Mark sought to be registered in the application herein opposed.

It is requested that all future communications in connection with this proceeding be addressed to the undersigned.

Respectfully submitted,

Dated: June 4, 2007

By:   
E. Lynn Perry  
Attorneys for Opposer

PERRY IP GROUP  
A Law Corporation  
100 Drakes Landing Road, Suite 100  
Greenbrae, CA 94904  
Telephone: (415) 461-5800  
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BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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Opposer,	)	
	)	Serial No. 78889995
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	)	Mark: DR PEPPER MO:JOE SWEET
DR PEPPER/SEVEN UP, INC.,	)	SHOT
	)	Published: December 5, 2006
Respondent.	)	
	)	<b>NOTICE OF OPPOSITION</b>

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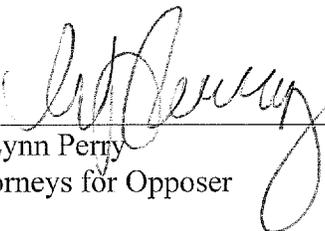
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