

ESTTA Tracking number: **ESTTA162117**

Filing date: **09/12/2007**

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	South Beach Beverage Company, Inc.
Granted to Date of previous extension	09/15/2007
Address	40 Richards Avenue Norwalk, CT 06854 UNITED STATES
Attorney information	Edmund J. Ferdinand, III Grimes & Battersby, LLP 488 Main Avenue Suite 300 Norwalk, CT 06851 UNITED STATES Ferdinand@gandb.com Phone:2038498300

Applicant Information

Application No	79023467	Publication date	07/17/2007
Opposition Filing Date	09/12/2007	Opposition Period Ends	09/15/2007
International Registration No.	0884266	International Registration Date	04/27/2006
Applicant	Ringler Informatik AG Baarerstattstrasse 10 CH-6300 Zug SWITZERLAND		

Goods/Services Affected by Opposition

Class 003. All goods and services in the class are opposed, namely: Soaps; perfumery, essential oils, cosmetics, hair lotions, dentifrices
Class 014. All goods and services in the class are opposed, namely: Precious metals and their alloys and goods made of or coated with these materials, namely amulets, boxes of precious metal, figurines, earrings, boxes for timepieces, and clock cases; jewellery, precious stones, horological and chronometric instruments
Class 018. All goods and services in the class are opposed, namely: Leather and imitation leather, goods made of these materials, namely briefcases, leather and imitation leather bags, belt bags, carrying cases for documents, leather handbags, leather purses, travelling cases of leather, and leather for chains; animal skins and hides; trunks and suitcases; umbrellas, parasols and walking sticks; whips, harness and saddlery
Class 025.

All goods and services in the class are opposed, namely: Clothing, namely T-shirts, pants, dresses, blouses, boxer shorts, blazer; footwear, namely boots, headgear, namely hats, caps
Class 029. All goods and services in the class are opposed, namely: Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, compotes, eggs; milk and milk products excluding ice cream, ice milk and frozen yogurt; edible oils and fats
Class 030. All goods and services in the class are opposed, namely: Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flours and processed cereals, bread, pastry and confectionery, namely, confectionery chips for baking, crackers, doughnuts, fruitcakes, and gingerbread; flavoured ices, honey, treacle syrup, yeast, baking powder, salt, mustard, vinegar, sauces, spices, ice for refreshment
Class 032. All goods and services in the class are opposed, namely: Beers, mineral and aerate waters and other non-alcoholic drinks, namely carbonated beverages, flavoured water, lemon squash, ginger ale, isotonic beverages, non-alcoholic cocktails, and tablewater; fruit drinks and fruit juices; syrups and other preparations for making fruit drinks, nonalcoholic beverages with tea flavour, tomato juice beverages, and vegetable juices

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2076309	Application Date	10/05/1995
Registration Date	07/01/1997	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1995/12/01 First Use In Commerce: 1995/12/01 T-shirts, caps, sweatshirts, tank tops, golf shirts Class 032. First use: First Use: 1995/12/01 First Use In Commerce: 1995/12/01 non alcoholic beverages, namely, iced tea, fruit drinks and fruit juices		

U.S. Registration No.	2897356	Application Date	09/11/2003
Registration Date	10/26/2004	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	The mark consists of TWO DUELING LIZARDS.		
Goods/Services	Class 030. First use: First Use: 1996/12/01 First Use In Commerce: 1996/12/01 TEAS, NAMELY, ICED TEAS, HERBAL TEAS, AND TEA-BASED BEVERAGES WITH FRUIT FLAVORING Class 032. First use: First Use: 1996/12/01 First Use In Commerce: 1996/12/01 FRUIT DRINKS; FRUIT JUICE DRINKS; SOFT DRINKS; AND SYRUPS AND CONCENTRATES FOR MAKING THE SAME; ENERGY DRINKS; SPORTS DRINKS AND ISOTONIC DRINKS		

U.S. Registration No.	3001196	Application Date	03/05/2004
Registration Date	09/27/2005	Foreign Priority Date	NONE
Word Mark	LIZFUEL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2004/03/01 First Use In Commerce: 2004/03/01 DAIRY BASED BEVEARGES Class 032. First use: First Use: 2004/03/01 First Use In Commerce: 2004/03/01 Fruit drinks, fruit and vegetable juice drinks, soft drinks, and syrups and concentrates for making the same		

U.S. Registration No.	2879685	Application Date	09/22/2003
Registration Date	08/31/2004	Foreign Priority Date	NONE
Word Mark	LIZARD FUEL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1999/05/01 First Use In Commerce: 1999/05/01 DAIRY BASED BEVERAGES Class 032. First use: First Use: 1999/05/01 First Use In Commerce: 1999/05/01 FRUIT DRINKS, FRUIT JUICE DRINKS, SOFT DRINKS, AND SYRUPS AND CONCENTRATES FOR MAKING THE SAME		

U.S. Registration No.	2886640	Application Date	09/22/2003
Registration Date	09/21/2004	Foreign Priority Date	NONE
Word Mark	LIZARD LAVA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2001/10/01 First Use In Commerce: 2001/10/01 DAIRY BASED BEVERAGES Class 032. First use: First Use: 2001/10/01 First Use In Commerce: 2001/10/01 FRUIT DRINKS, FRUIT JUICE DRINK, SOFT DRINKS, AND SYRUPS AND CONCENTRATES FOR MAKING THE SAME		

U.S. Registration No.	2065837	Application Date	10/05/1995
Registration Date	05/27/1997	Foreign Priority Date	NONE
Word Mark	DRAIN THE LIZARD		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 025. First use: First Use: 1995/12/01 First Use In Commerce: 1995/12/01 T-shirts, caps, [swetshirts] * sweatshirts * , tank tops, golf shirts Class 032. First use: First Use: 1995/12/01 First Use In Commerce: 1995/12/01 non alcoholic beverages, namely iced tea, fruit drinks and fruit juices

U.S. Registration No.	2858429	Application Date	01/31/2002
Registration Date	06/29/2004	Foreign Priority Date	NONE
Word Mark	LIZARDADE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2002/08/01 First Use In Commerce: 2002/08/01 Non-alcoholic beverages, namely, carbonated soft drinks; and syrups, concentrates and powders for making soft drinks		

U.S. Registration No.	2864721	Application Date	08/09/2002
Registration Date	07/20/2004	Foreign Priority Date	NONE
Word Mark	TEAM LIZARD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1999/01/01 First Use In Commerce: 1999/01/01 ASSOCIATION SERVICES, NAMELY, PROMOTING THE INTERESTS OF ACTION SPORTS ATHLETES		

U.S. Registration No.	2937031	Application Date	09/08/2003
Registration Date	03/29/2005	Foreign Priority Date	NONE
Word Mark	LIZARD LIBERATION		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2004/06/01 First Use In Commerce: 2004/06/01 FRUIT DRINKS, FRUIT JUICE DRINKS, SOFT DRINKS, AND SYRUPS AND CONCENTRATES FOR MAKING THE SAME		

U.S. Application No.	76372078	Application Date	02/15/2002
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	LIZKIDS		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 032. First use: Non-alcoholic beverages, namely, carbonated soft drinks, fruit-flavored soft drinks, and colas; low calorie soft drinks; non-carbonated soft drinks; and syrups, concentrates, powders and other preparations for making soft drinks and colas
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U.S. Application No.	76381008	Application Date	03/12/2002
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	LIZKIDZ		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: Non-alcoholic beverages, namely, carbonated soft drinks, fruit-flavored soft drinks, and colas; low calorie soft drinks; non-carbonated soft drinks; and syrups, concentrates, powders and other preparations for making soft drinks and colas		

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Signature	/ejf/
Name	Edmund J. Ferdinand, III
Date	09/12/2007

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

In the Matter of Application Serial No. 79/023,467
Published in the *Official Gazette* on July 17, 2007

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South Beach Beverage Company, Inc.,	:	
Opposer,	:	
v.	:	Opposition No.:
Ringler Informatik AG,	:	
Applicant.	:	
-----X	:	

NOTICE OF OPPOSITION

South Beach Beverage Company, Inc. (“Opposer”), a Delaware corporation having its principal place of business at 40 Richards Avenue, Norwalk, Connecticut 06854, believes that it will be damaged by the registration by Ringler Informatik AG (“Applicant”), a Swiss company having its principal place of business at Baarermttstrasse 10 CH-6300, Zug, Switzerland, of the “Lizard Design” mark depicted in Application Serial No. 79/023,467 for goods in International Classes 3, 14, 18, 25, 29, 30 and 32, and hereby opposes same.

1. Opposer is the maker of popular ready to drink juice blends and exotic teas that have been distributed in the U.S. widely and continuously since 1996 under the trademark SOBE along with a distinctive design component featuring lizards – either two lizards (symbolizing the yin/yang of life) or a single lizard in a variety of poses. Since 1996, Opposer’s lizard designs have been a major focus of the company’s advertising, marketing and promotion of the brand. Indeed, Opposer has featured a lizard design on virtually all of its beverage products for

more than ten years, and South Beach has sold a popular “LIZARD” line of beverages featuring products such as “LIZ BLIZZ” and “LIZARD FUEL,” among others.

2. Opposer is the owner of the following U.S. registrations and allowed applications for variations of its LIZARD design and word marks (collectively, the “LIZARD Trademarks”):

Mark	Class(es)	Reg. No./App. No.
LIZARD Design (Dueling Lizards)	30, 32	2,897,356
LIZARD Design (One Lizard)	25, 32	2,076,309
LIZFUEL	29, 32	3,001,196
LIZARD FUEL	29, 32	2,879,685
LIZARD LAVA	29, 32	2,886,640
DRAIN THE LIZARD	25, 32	2,065,837
LIZARDADE	32	2,858,429
TEAM LIZARD	35	2,864,721
LIZARD LIBERATION	32	2,937,031
LIZKIDS	32	76/372,078
LIZKIDZ	32	76/381,008

3. Opposer has continuously used the LIZARD Trademarks in interstate commerce for a wide variety of goods since at least as early as 1996. Opposer has actively expanded its use of the mark in recent years.

4. Opposer’s LIZARD Trademarks are inherently distinctive as applied to beverage products and clothing. Moreover, as a result of the longstanding and widespread use of Opposer’s LIZARD Trademarks in connection with a wide variety of goods, Opposer’s LIZARD Trademarks have acquired extensive goodwill, have developed a high degree of distinctiveness and are well known and recognized as identifying high quality goods that have their origin with, or have been authorized by, Opposer.

5. Opposer’s LIZARD Trademarks are famous marks that are entitled to the broadest possible scope of protection against competing marks.

6. In 2006, Applicant filed an application under the Madrid Protocol seeking to register the design of a lizard for use in connection with goods in International Classes 3, 14, 18, 25, 29, 30 and 32. The application bears Serial No. 79/023,467.

7. Upon information and belief, Opposer's use of its LIZARD Trademarks for goods in International Classes 25, 29, 30 and 32 predates Applicant's claimed priority date of April 4, 2006. Hence, Opposer has paramount and superior rights as compared to Applicant.

8. Applicant's mark is highly similar to Opposer's LIZARD Design mark that appears in U.S. Trademark Registration Nos. 2,076,309 and 2,897,356 in appearance and commercial impression, and is therefore confusingly similar.

9. Applicant's goods are in many instances identical to the goods sold in connection with Opposer's LIZARD Trademarks and/or represent a natural zone of expansion for Opposer, and such goods are likely to travel and be promoted through the same channels of trade for sale to, and use by, the same class of unsophisticated purchasers.

10. Accordingly, Applicant's use of the mark depicted in Application Serial No. 79/023,467 in connection with goods in International Classes 3, 14, 18, 25, 29, 30 and 32 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 goods; or (b) provided by, sponsored by, approved by, licensed by, affiliated with or in some other way legitimately connected to Opposer and/or its goods.

WHEREFORE, Opposer respectfully requests that this opposition be sustained and that Applicant's Trademark Application Serial No. 79/023,467 be denied in all respects.

Dated: September 12, 2007

Respectfully submitted,

By 

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*Attorneys for Opposer South Beach
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