

ESTTA Tracking number: **ESTTA246577**

Filing date: **11/03/2008**

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	Underground Beverage Brands LLC
Granted to Date of previous extension	11/01/2008
Address	500 N. Rainbow, Suite 300 Las Vegas, NV 89107 UNITED STATES

Attorney information	Jason D. Firth Brownstein Hyatt Farber Schreck LLP 100 City Parkway, Suite 1600 Las Vegas, NV 89106 UNITED STATES lvpto@bhfs.com, jfirth@bhfs.com, jobermeyer@bhfs.com, claw@bhfs.com Phone:702-382-2101
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**Applicant Information**

Application No	77447380	Publication date	09/02/2008
Opposition Filing Date	11/03/2008	Opposition Period Ends	11/01/2008
Applicant	THE MUDTRUCK LLC #3 228 East 6th Street New York, NY 10003 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 030. All goods and services in the class are opposed, namely: Ready to drink coffee beverages
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**Applicant Information**

Application No	77467186	Publication date	09/02/2008
Opposition Filing Date	11/03/2008	Opposition Period Ends	
Applicant	THE MUDTRUCK LLC Suite 3 228 East 6th Street New York, NY 10003 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 030. First Use: 2001/03/06 First Use In Commerce: 2001/03/06 All goods and services in the class are opposed, namely: Coffee
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## Grounds for Opposition

The mark is merely descriptive	Trademark Act section 2(e)(1)
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Attachments	Notice of Opposition 77477380 & 77467186 (2).pdf ( 5 pages )(358262 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 First Class Mail on this date.

Signature	/Jason D. Firth/
Name	Jason D. Firth
Date	11/03/2008

**Certificate of Transmission**

I hereby certify that this correspondence is being deposited electronically at the Trademark Trial and Appeal Board on the date shown below.

  
Julie Obermeyer

Dated: November 3, 2008

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

**UNDERGROUND BEVERAGE  
BRANDS, LLC**

Opposer,

**vs.**

**THE MUDTRUCK, LLC**

Applicant.

Marks:

MUD and Design (Ser. No. 77/447,380)

MUD and Design (Ser. No. 77/467,186)

Opposition No. \_\_\_\_\_

**NOTICE OF OPPOSITION**

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

Underground Beverage Brands, LLC, a Delaware limited liability company with a place of business at 500 N. Rainbow Blvd., Suite 300, Las Vegas Nevada 89107 ("Opposer"), believes that it will be damaged by registration of the mark MUD and Design as shown in application Serial Nos. 77/447,380 and 77/467,186 by The Mudtruck, LLC ("Applicant") and hereby opposes the same.

As grounds for opposition, Opposer alleges the following:

## APPLICANT'S MARKS – PROSECUTION HISTORY

1. On June 23, 2003, Applicant filed a trademark application in the United States Patent and Trademark Office ("USPTO") to register the mark MUD and Design (Serial No. 78/265,714) for coffee.
2. On January 8, 2004, the USPTO issued a non-final office action that included a refusal to register Applicant's MUD and Design mark on the grounds that the mark was merely descriptive of Applicant's goods.
3. On July 7, 2004, Applicant amended its MUD and Design application to seek registration of the mark on the Supplemental Register.
4. On October 5, 2004, Applicant's MUD and Design mark registered on the Supplemental Register.
5. On April 14, 2008, Applicant filed two trademark applications ("Applications") in the USPTO to register the mark MUD and Design for the goods identified below ("Applicant's Goods"):
  - (a) MUD and Design (Serial No. 77/467,186) for coffee in International Class 30; and
  - (b) MUD and Design (Serial No. 77/447,380) for ready to drink coffee beverages in International Class 30.
6. During the prosecution of these Applications, the USPTO did not refuse to register either mark on the grounds that the mark is descriptive as used with coffee and related goods, did not require the Applicant to provide evidence tending to show that the MUD and Design mark had established secondary meaning, and did not require a disclaimer of "Mud."

7. On September 2, 2008, the Applications were published for opposition in the Official Gazette.

8. On September 15, 2008, Opposer timely filed a 30-day Request for Extension of Time to Oppose the Applications, which was granted until November 1, 2008.

#### **OPPOSER'S MARK – HISTORY OF USE**

9. Opposer is a manufacturer and distributor of coffee based beverages under the MUUD and Design mark.

10. Opposer owns a pending application, U.S. Serial No. 77/395,121 for the mark MUUD and Design for beverages made of coffee, coffee, coffee based beverages, coffee beans, coffee beverages with milk, coffee-based beverage containing milk, coffee-based beverages, ground coffee beans, prepared coffee and coffee-based beverages, roasted coffee beans in International Class 30; coffee-based liqueurs in International Class 33, and; coffee shops and coffee-house and snack-bar services, in International Class 43.

11. Opposer has been using its MUUD and Design mark in commerce and has not abandoned the mark.

12. Opposer has expended substantial amounts of time, effort and money in developing, advertising, and promoting its products under its MUUD and Design mark.

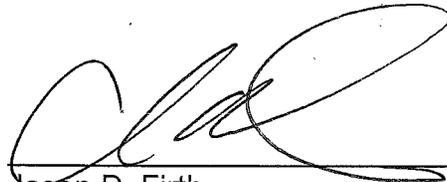
#### **APPLICANT'S MARK IS MERELY DESCRIPTIVE**

13. Opposer objects to the registration of the MUD and Design mark because, as used with Applicant's Goods, the mark is merely descriptive in violation of 15 U.S.C. §1052(e), and has not acquired distinctiveness or secondary meaning within the meaning of 15 U.S.C. §1052(f).

14. If Applicant is permitted to register the MUD and Design mark without disclaiming "Mud," Opposer will be damaged because a registration will confer upon Applicant the *prima facie* exclusive right to use "Mud," which would impair Opposer's right to continue to use its MUUD and Design mark.

THEREFORE, Opposer respectfully requests that registration of the mark MUD and Design as shown in application Serial Nos. 77/467,186 and 7/447,380 be refused and that this Opposition be sustained in favor of Opposer.

DATED: November 3, 2008



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Attorneys for Opposer  
Underground Beverage Brands, LLC

**Certificate of Service**

I, Julie Obermeyer, hereby certify that a true and complete copy of the foregoing Notice of Opposition has been served on G. Roxanne Elings of Greenberg Traurig via first-class mail on November 3, 2008:

G. Roxanne Elings  
Greenberg Traurig, LLP  
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