

ESTTA Tracking number: **ESTTA276709**

Filing date: **04/07/2009**

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	Hansen Beverage Company		
Entity	Corporation	Citizenship	Delaware
Address	550 Monica Circle Suite 201 Corona, CA 92880 UNITED STATES		

Attorney information	Abraham W. Chuang Knobbe Martens Olson & Bear LLP 2040 Main Street Fourteenth Floor Irvine, CA 92614 UNITED STATES efiling@kmob.com Phone:(949) 760-0404		
----------------------	---	--	--

Applicant Information

Application No	77588742	Publication date	03/10/2009
Opposition Filing Date	04/07/2009	Opposition Period Ends	04/09/2009
Applicant	Cytosport, Inc. 4795 Industrial Way Benicia, CA 94510 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Dietary and Nutritional Supplements
--

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.	3057061	Application Date	04/18/2002
Registration Date	02/07/2006	Foreign Priority Date	NONE
Word Mark	MONSTER ENERGY		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 032. First use: First Use: 2002/03/27 First Use In Commerce: 2002/04/18 Fruit juice drinks having a juice content of 50% or less by volume that are shelf stable, carbonated soft drinks, carbonated drinks enhanced with vitamins, minerals, nutrients, amino acids and/or herbs, aerated water, soda water and seltzer water, but excluding perishable beverage products that contain fruit juice or soy, whether such products are pasteurized or not
----------------	---

U.S. Registration No.	3044315	Application Date	05/23/2003
Registration Date	01/17/2006	Foreign Priority Date	NONE
Word Mark	MONSTER ENERGY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2002/03/27 First Use In Commerce: 2002/04/18 nutritional supplements in liquid and non-liquid form, but excluding perishable beverage products that contain fruit juice or soy, whether such products are pasteurized or not		

U.S. Registration No.	3044314	Application Date	05/23/2003
Registration Date	01/17/2006	Foreign Priority Date	NONE
Word Mark	M MONSTER ENERGY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2002/03/27 First Use In Commerce: 2002/04/18 nutritional supplements in liquid and non-liquid form, but excluding perishable beverage products that contain fruit juice or soy, whether such products are pasteurized or not		

U.S. Registration No.	3134841	Application Date	05/07/2003
Registration Date	08/29/2006	Foreign Priority Date	NONE
Word Mark	M MONSTER ENERGY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2002/03/27 First Use In Commerce: 2002/04/18		

	Beverages, namely, carbonated soft drinks, carbonated soft drinks enhanced with vitamins, minerals, nutrients, amino acids and/or herbs, carbonated and non-carbonated energy and sports drinks, fruit juice drinks having a juice content of 50% or less by volume that are shelf stable, and aerated water, soda water and seltzer water, but excluding perishable beverage products that contain fruit juice or soy, whether such products are pasteurized or not
--	--

U.S. Registration No.	3134842	Application Date	05/07/2003
Registration Date	08/29/2006	Foreign Priority Date	NONE
Word Mark	M MONSTER ENERGY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2002/03/27 First Use In Commerce: 2002/04/18 Beverages, namely, carbonated soft drinks, carbonated drinks enhanced with vitamins, minerals, nutrients, amino acids and/or herbs, carbonated and non-carbonated energy or sports drinks, fruit juice drinks having a juice content of 50% or less by volume that are shelf stable, and water, but excluding perishable beverage products that contain fruit juice or soy, whether such products are pasteurized or not		

Attachments	78246567#TMSN.gif (1 page)(bytes) HANBEV471M6946833_1.pdf (6 pages)(243882 bytes)
-------------	---

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	/Abraham W. Chuang/
Name	Abraham W. Chuang
Date	04/07/2009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

HANSEN BEVERAGE COMPANY,

Opposer,

v.

CYTOSPORT, INC.,

Applicant.

)
) Opposition No.: _____

)
) Serial No.: 77/588742

)
) Mark: MONSTER PROTEIN

)
) I hereby certify that this correspondence and all
) marked attachments are being deposited with the
) United States Patent and Trademark Office,
) Trademark Trial and Appeal Board via electronic
) filing through their website located at
) <http://estta.uspto.gov/> on:

April 7, 2009

(Date)

Abraham W. Chang

NOTICE OF OPPOSITION

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

Dear Sir:

Hansen Beverage Company, a Delaware corporation, located and doing business at 550 Monica Circle, Suite 201, Corona, California 92880, ("Opposer") believes that it will be damaged by the registration of U.S. Trademark Application Serial No. 77/588,742 for the mark MONSTER PROTEIN owned by Cytosport, Inc., a California corporation ("Applicant") and therefore oppose the same.

A description of the MONSTER PROTEIN Application is as follows:

Mark: MONSTER PROTEIN
Serial No.: 77/588,742
Goods: Dietary and nutritional supplements

Class: 05
Filed: October 8, 2008
Filing Basis: 1(b)

As grounds for opposition, it is alleged:

1. Opposer manufactures and sells a line of drinks under the mark MONSTER ENERGY and related marks.

2. Opposer owns and relies on U.S. Trademark Registration 3,057,061 for the mark MONSTER ENERGY for “fruit juice drinks having a juice content of 50% or less by volume that are shelf stable, carbonated soft drinks, carbonated drinks enhanced with vitamins, minerals, nutrients, amino acids and/or herbs, aerated water, soda water and seltzer water, but excluding perishable beverage products that contain fruit juice or soy, whether such products are pasteurized or not” in International Class 32, which registration issued February 7, 2006 and is based on an application filed in the United States Patent and Trademark Office (“PTO”) on April 18, 2002. The filing date of Opposer’s ‘061 Registration is prior to the filing date of Applicant’s MONSTER PROTEIN application.

3. Opposer owns and relies on U.S. Trademark Registration No. 3,044,315 for the mark MONSTER ENERGY for “nutritional supplements in liquid and non-liquid form, but excluding perishable beverage products that contain fruit juice or soy, whether such products are pasteurized or not” in International Class 5, which registration issued January 17, 2006 and is based on an application filed in the PTO on May 23, 2003. The filing date of Opposer’s ‘315 Registration is prior to the filing date of Applicant’s MONSTER PROTEIN application.

4. Opposer owns and relies on U.S. Trademark Registration No. 3,044,314 for the mark M MONSTER ENERGY for “nutritional supplements in liquid and non-liquid form, but excluding perishable beverage products that contain fruit juice or soy, whether such products are

pasteurized or not” in International Class 5, which registration issued January 17, 2006 and is based on an application filed in the PTO on May 23, 2003. The filing date of Opposer’s ‘314 Registration is prior to the filing date of Applicant’s MONSTER PROTEIN application.

5. Opposer owns and relies on U.S. Trademark Registration No. 3,134,841 for the



mark **MONSTER ENERGY** for “beverages, namely, carbonated soft drinks, carbonated soft drinks enhanced with vitamins, minerals, nutrients, amino acids, and/or herbs, carbonated and non-carbonated energy and sports drinks, fruit juice drinks having a juice content of 50% or less by volume that are shelf stable, and aerated water, soda water and seltzer water, but excluding perishable beverage products that contain fruit juice or soy, whether such products are pasteurized or not” in International Class 32, which registration issued August 29, 2006 and is based on an application filed in the PTO on May 7, 2003. The filing date of Opposer’s ‘841 Registration is prior to the filing date of Applicant’s MONSTER PROTEIN application.

6. Opposer owns and relies on U.S. Trademark Registration No. 3,134,842 for the mark M MONSTER ENERGY for “beverages, namely, carbonated soft drinks, carbonated drinks enhanced with vitamins, minerals, nutrients, amino acids, and/or herbs, carbonated and non-carbonated energy or sports drinks, fruit juice drinks having a juice content of 50% or less by volume that are shelf stable, and water, but excluding perishable beverage products that contain fruit juice or soy, whether such products are pasteurized or not” in International Class 32, which registration issued August 29, 2006 and is based on an application filed in the PTO on May 7, 2003. The filing date of Opposer’s ‘842 Registration is prior to the filing date of Applicant’s MONSTER PROTEIN application.

7. Opposer's Registration Nos. 3,057,061, 3,044,315, 3,044,314 3,134,841 and 3,134,842 are valid, subsisting, unrevoked and uncanceled; as such they constitute *prima facie* evidence of the validity of the registered marks and of the registrations thereof, and of Opposer's ownership of the marks shown therein. Opposer's registrations also constitute notice to Applicant of Opposer's claim of ownership of the marks shown therein as provided in Sections 7(b), 22 and 33(a) of the Trademark Act.

8. Since at least before the filing date of the MONSTER PROTEIN application, Opposer has continuously used and promoted the MONSTER ENERGY and M MONSTER ENERGY Marks shown in Registration Nos. 3,057,061, 3,044,315, 3,044,314, 3,134,841, and 3,134,842 (the "MONSTER ENERGY Marks") in interstate commerce in connection with its goods. By virtue of Opposer's continuous and substantial use, the MONSTER ENERGY Marks have become identifiers of Opposer and its goods, and distinguish Opposer's goods from the goods of others. As a result, Opposer has built up, at great expense and effort, valuable goodwill in the MONSTER ENERGY Marks. Opposer has developed a significant amount of goodwill through the use and promotion of its MONSTER ENERGY Marks, such that consumers have come to recognize a family of "MONSTER" marks with which Opposer markets and sells its goods.

9. In addition to the protection afforded Opposer by its federal trademark registrations, Opposer has extensive common law rights in its MONSTER ENERGY marks throughout the United States, having sold hundreds of millions of dollars worth of goods under Opposer's MONSTER ENERGY Marks. Opposer's common law rights in its MONSTER ENERGY marks predate the filing date of Applicant's MONSTER PROTEIN application.

10. Opposer will be damaged by registration of the MONSTER PROTEIN Application in that the MONSTER PROTEIN mark so resembles Opposer's MONSTER ENERGY Marks

registered in the United States Patent and Trademark Office, and in which Opposer owns common law trademark rights, as to be likely, when used on or in connection with the goods as they are identified in the MONSTER PROTEIN application, as to cause confusion, or to cause mistake or to deceive within the meaning of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

11. Opposer will further be damaged by registration of the MONSTER PROTEIN Application in that the MONSTER PROTEIN mark is likely to cause dilution by blurring or dilution by tarnishment of Opposer's famous MONSTER ENERGY Marks.

12. In view of Opposer's prior rights in its MONSTER ENERGY Marks, Applicant is not entitled to federal registration of the MONSTER PROTEIN mark pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

WHEREFORE, Opposer prays that U.S. Trademark Application Serial No. 77/588,742 be rejected and stricken, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

Please charge Deposit Account No. 11-1410 to cover the opposition fee and any additional fees which may be required, or credit any overpayment to this account.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 4/7/09

By: 

Diane M. Reed

Lynda J. Zadra-Symes

Abraham W. Chuang

2040 Main Street, Fourteenth Floor

Irvine, CA 92614

(949) 760-0404

efiling@kmob.com

Attorneys for Opposer,

HANSEN BEVERAGE COMPANY

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing NOTICE OF OPPOSITION upon Applicant's counsel by depositing one copy thereof in the United States Mail, first-class postage prepaid, on April 7, 2009, addressed as follows:

Peter M. De Jonge
THORPE NORTH AND WESTERN, LLP.
PO BOX 1219
SANDY, UT 84091-1219


Francisca C. Leon Guerrero

6705900/FLG/022509