

ESTTA Tracking number: **ESTTA279324**

Filing date: **04/21/2009**

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	Peace Mountain Natural Beverages Corp
Granted to Date of previous extension	04/22/2009
Address	PO Box 1445 Springfield, MA 01101 UNITED STATES
Attorney information	Mario G. Ceste Law Offices of Mario G. Ceste LLC P.O. Box 82 WALLINGFORD, CT 06492 UNITED STATES mgcpls@usa.net

Applicant Information

Application No	79051293	Publication date	12/23/2008
Opposition Filing Date	04/21/2009	Opposition Period Ends	04/22/2009
International Registration No.	0957124	International Registration Date	10/29/2007
Applicant	Bio-Synergy Ltd 10A Nutford Place London W1H 5YL UNITED KINGDOM		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Nutritional supplements for medical purposes, used by active people and for weight management
Class 032. All goods and services in the class are opposed, namely: Sports drinks, isotonic drinks

Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
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	2557075	Application Date	03/24/2000
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No.			
Registration Date	04/02/2002	Foreign Priority Date	NONE
Word Mark	SKINNY WATER		
Design Mark	SKINNY WATER		
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1999/10/15 First Use In Commerce: 2001/10/02 Nutriceuticals for use as a dietary supplement, nutriceuticals in concentrate form for use as a dietary supplement Class 032. First use: First Use: 1999/10/15 First Use In Commerce: 2001/10/02 isotonic drinks, isotonic drinks in concentrate form, drinking water		

U.S. Registration No.	2565774	Application Date	09/27/1999
Registration Date	04/30/2002	Foreign Priority Date	NONE
Word Mark	PEACE MOUNTAIN SKINNY WATER		
Design Mark	PEACE MOUNTAIN SKINNY WATER		
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1999/10/15 First Use In Commerce: 2001/10/02 Spring water, mineral water, purified water, namely table water, fruit flavored water		

U.S. Registration No.	2650352	Application Date	12/01/2000
Registration Date	11/12/2002	Foreign Priority Date	NONE
Word Mark	SKINNY COLA		

Design Mark	SKINNY COLA		
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2000/11/06 First Use In Commerce: 2002/07/27 Colas		

U.S. Registration No.	2657083	Application Date	02/12/2001
Registration Date	12/03/2002	Foreign Priority Date	NONE
Word Mark	SKINNY JUICE		
Design Mark	SKINNY JUICE		
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2002/07/01 First Use In Commerce: 2002/08/02 Nutriceuticals for use as a dietary supplement; nutriceuticals in concentrate form for use as a dietary supplement Class 032. First use: First Use: 2002/07/01 First Use In Commerce: 2002/08/02 Isotonic drinks; juice; concentrates or powders used in the preparation of juice drinks		

U.S. Registration No.	2657057	Application Date	12/28/2000
Registration Date	12/03/2002	Foreign Priority Date	NONE
Word Mark	SKINNY TEA		

Design Mark	SKINNY TEA		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2002/07/19 First Use In Commerce: 2002/08/01 tea, namely, tea not made with non-fat milk		

U.S. Registration No.	2743268	Application Date	01/10/2001
Registration Date	07/29/2003	Foreign Priority Date	NONE
Word Mark	SKINNY SHAKE		
Design Mark	SKINNY SHAKE		
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2002/07/12 First Use In Commerce: 2003/03/19 Dietary meal replacement in powder, liquid, or concentrate form		

U.S. Application No.	77145760	Application Date	04/01/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	SKINNY SMOOTHIE		
Design Mark	SKINNY SMOOTHIE		
Description of Mark	NONE		
Goods/Services	Class 005. First use:		

	<p>Nutraceuticals for use as meal replacements and dietary supplements, nutraceuticals in ready-to-drink or concentrate form for use as a dietary supplement, nutritional drink mix for use as a meal replacement</p> <p>Class 029. First use: Dairy based beverages, Yogurt based beverages, soy-based food beverage used a milk substitute</p> <p>Class 030. First use: Shakes in the form of mixes for making yogurt-based blended beverages or ready-to-drink yogurt-based blended beverages</p> <p>Class 032. First use: Smoothie drinks, or concentrates and powders used in the preparation of smoothie drinks;soy-based beverages not being milk substitutes</p>
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U.S. Application No.	77185768	Application Date	05/21/2007
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	SKINNY SNACKS
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Design Mark	
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Description of Mark	NONE
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Goods/Services	<p>Class 005. First use: Nutraceuticals for use as meal replacements and dietary supplements; nutraceuticals in ready-to-drink or concentrate form for use as a dietary supplement; nutritional drink mixes; meal replacement drinks</p> <p>Class 029. First use: Snack mix consisting primarily of processed fruits, processed nuts and/or raisins</p> <p>Class 030. First use: Shakes in the form of mixes for making yogurt-based blended beverages or ready-to-drink yogurt-based blended beverages; Snack mix consisting primarily of crackers, and/or pretzels; Granola based snacks and snack bars</p> <p>Class 032. First use: Isotonic drinks, mineral water, artesian water, spring water, flavored water, soft drinks, drinking water, fruit drinks and fruit juices; carbonated and non-carbonated soft drinks</p>
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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	/mario g ceste/
Name	Mario G. Ceste
Date	04/21/2009

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

Peace Mountain Natural
Beverages Corporation

Opposer, : Trademark Application Ser.No.
79/051293

Mark: BIO-SYNERGY SKINNY

Published: December 23, 2008

v. : Opposition No. _____

Bio-Synergy Ltd.

Applicant. : Date: April 21, 2009

NOTICE OF OPPOSITION

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

Sir:

Peace Mountain Natural Beverages Corporation, a Massachusetts corporation, with a business address of P.O. Box 1445 , Springfield, MA 01101-1445 (“PEACE MOUNTAIN” or “OPPOSER”) believes that it will be damaged by registration of the mark BIO-SYNERGY SKINNY shown in Application Serial No. 79/051293 and hereby opposes the same.

The application as published in the Official Gazette may be summarized as follows:

Trademark Application Serial No.: 79/051293
Filed: October 29, 2007
Applicant: Bio-Synergy Skinny Ltd
Mark: BIO-SYNERGY SKINNY
For:
International Classes: 005 and 032
Published: December 23, 2008

(hereinafter referred to as “the ‘293 Application”).

As grounds for opposition, PEACE MOUNTAIN alleges:

1. Opposer PEACE MOUNTAIN has for many years been engaged in the research, development, manufacture and marketing of beverage and food products which are designed to help people loose and maintain their weight.
2. Opposer PEACE MOUNTAIN develops, manufactures and distributes beverages containing nutraceuticals, bottled water products, organic juices, energy drinks, and food products under its brands.
3. Opposer PEACE MOUNTAIN owns numerous Federal Registered trademarks including but not limited to Skinny Water® Reg. No. 2557075, Peace Mountain Skinny Water® Reg. No. 2565774, Skinny Cola® Reg No. 2632310, Skinny

Juice® Reg. No. 2657083, Skinny Tea Reg. No. 2657057, and Skinny Shake® Reg. No. 2743268.

4. Opposer PEACE MOUNTAIN has published Federal Trademarks awaiting registration under the marks SKINNY SMOOTHIE Serial No. 77/145760 and SKINNY SNACKS Serial No. 77/185768.

5. On October 29, 2007, Applicant filed the '293' Application, seeking registration for the mark "BIO-SYNERGY SKINNY" for use in connection with nutritional supplements in International Class 005 and isotonic drinks in Class 032. On information and belief, Applicant is not currently selling in the United States.

6. Since prior to January 2007, Opposer has had valid and enforceable rights in and to its Skinny Water®, Peace Mountain Skinny Water®, Skinny Cola®, Skinny Juice®, Skinny Tea®, Skinny Shake®, Skinny Smoothie and Skinny Snacks marks (collectively hereafter "Skinny Marks").

7. Opposer, since prior to January 2007, has advertised and promoted , itself and in conjunction with licensing agreements, throughout the United States the sale and distribution in interstate commerce of its goods and licensed goods bearing the Skinny Marks. As a result, the aforementioned mark has become identified in the minds of the public and trade as evidencing products that emanate from Opposer.

8. On information and belief, Opposer's products and licensed products bearing the Skinny Marks and Applicant's proposed products bearing BIO-SYNERGY SKINNY mark may be used by consumers for similar purposes, that is to promote a healthy diet and maintain weight loss.

9. On information and belief, Applicant's goods will enter and will be sold in the same or similar channels of trade and are or will be marketed to the same or a similar class of consumers as Opposer's goods sold under any of its Skinny Marks.

10. By reason that the goods and channels of trade are similar, Applicant's use of BIO-SYNERGY SKINNY brand name is likely to cause confusion with the Opposer's rights in its Skinny Marks. On information and belief Applicant appends the word "water" to the use of BIO-SYNERGY SKINNY to create the composite name BIO-SYNERGY SKINNY WATER. In that form the Applicant use is identical to the Opposer's mark "SKINNY WATER"

11. The consuming public, upon seeing Applicant's mark as applied for in the '293' Application, used in association with its goods, is likely to be believe and will be deceived into thinking that the Applicant's goods are endorsed or sponsored by Opposer creating a false suggestion of a connection.

12. The consuming public will falsely believe that the Applicant and the Opposer have entered into a commercial relationship. The consuming public will purchase the Applicant's goods believing that the Applicant's goods were manufactured by the Opposer or that the Opposer has licensed its formulations to the Applicant, all of which will be untrue and damaging to the Opposer.

13. Opposer will also be damaged by the confusion that will result if Applicant is permitted to obtain registration for the mark "BIO-SYNERGY SKINNY" because any faults or defects that might be found in Applicant's goods would reflect adversely upon and seriously injure the valuable reputation and good will of the Opposer.

14. Opposer, as identified in paragraph 3, owns numerous registered marks containing the word “SKINNY”. The Applicant’s products are similar if not identical to Opposer’s products.

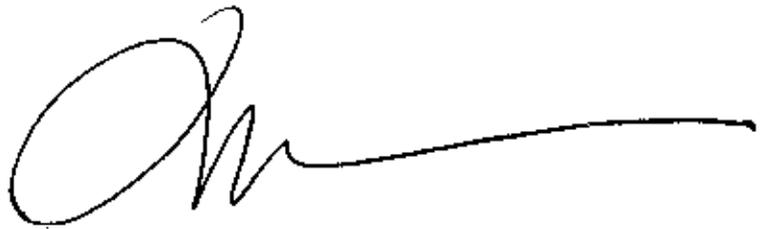
15. For the foregoing reasons, Opposer’s marks would be diluted and Opposer would be greatly damaged by the registration of BIO-SYNERGY SKINNY by the Applicant.

WHEREFORE, Opposer respectfully requests that the instant Opposition be sustained and registration for the ‘293’ Application be refused.

The fee required under 37 C.F.R. § 2.6(a)(17) has been paid with the submission of this opposition paper.

Respectfully submitted,

Peace Mountain Natural Beverages Corp.

A handwritten signature in black ink, appearing to read 'Mario G. Ceste', with a long horizontal flourish extending to the right.

By: _____
Attorney for Opposer,

Mario G. Ceste
Law Offices of Mario G. Ceste LLC
P.O. Box 82
Wallingford, Connecticut 06492
Tel No: 203-678-6418
Fax No: 801-761-3314
Email: mgcpls@usa.net

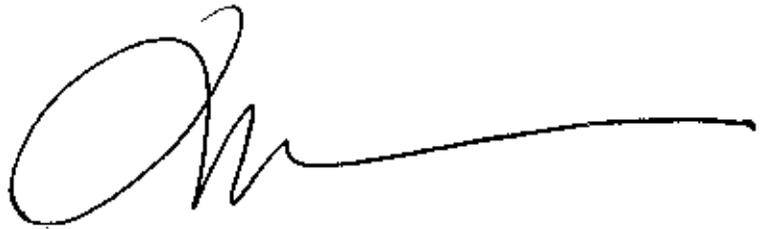
USPTO Reg. No. 44,068

CERTIFICATION

This is to certify that on April 21, 2009 , a copy of the foregoing was sent by First Class U.S. Mail on this date to:

Oliver E. Todd, Jr.
MacMillan, Sobanski & Todd, LLC
One Maritime Plaza, 5th Floor
Toledo, Ohio 43604

Attorney for Opposer,

A handwritten signature in black ink, appearing to read 'Mario G. Ceste', with a long horizontal flourish extending to the right.

By: _____

Mario G. Ceste

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