

ESTTA Tracking number: **ESTTA304281**

Filing date: **09/02/2009**

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	Energy Brands Inc. d/b/a Glaceau
Granted to Date of previous extension	09/02/2009
Address	17-20 Whitestone Expressway Whitestone, NY 11357 UNITED STATES

Attorney information	David H. Bernstein Debevoise & Plimpton LLP 919 Third Avenue New York, NY 10022 UNITED STATES trademarks@debevoise.com, szparnass@debevoise.com Phone:212-909-6000
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Applicant Information

Application No	77297705	Publication date	05/05/2009
Opposition Filing Date	09/02/2009	Opposition Period Ends	09/02/2009
Applicant	Geniuswater Ltd. 589 Broadway, 2nd Fl. New York, NY 10012 UNITED STATES		

Goods/Services Affected by Opposition

Class 032. All goods and services in the class are opposed, namely: Non-alcoholic water-based beverages, namely, caffeinated water, flavored water, carbonated water, and fruit-flavored water; Drinking water with health, energy and hydration benefiting qualities
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Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2778914	Application Date	12/02/2000
Registration Date	11/04/2003	Foreign Priority Date	NONE
Word Mark	SMARTWATER		

Design Mark	SMARTWATER
Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 1996/01/00 First Use In Commerce: 1996/01/00 BOTTLED DRINKING WATER

U.S. Registration No.	2740881	Application Date	07/28/1998
Registration Date	07/29/2003	Foreign Priority Date	NONE
Word Mark	GLACEAU SMARTWATER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1996/01/00 First Use In Commerce: 1996/01/00 BOTTLED DRINKING WATER		

U.S. Registration No.	3420245	Application Date	01/26/2006
Registration Date	04/29/2008	Foreign Priority Date	NONE
Word Mark	GLACÉ#AU SMARTWATER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2006/01/01 First Use In Commerce: 2006/01/01 Bottled drinking water		

Attachments	76174464#TMSN.gif (1 page)(bytes) 78799834#TMSN.jpeg (1 page)(bytes) GENIUSWATER Notice of Opposition.pdf (5 pages)(14927 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	/S. Zev Parnass/
Name	S. Zev Parnass
Date	09/02/2009

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

In the Matter of Trademark Application Serial No. 77/297,705
Filed: October 5, 2007
Mark: GENIUSWATER
Published: May 5, 2009

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ENERGY BRANDS INC. D/B/A GLACÉAU, :
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 Opposer, :
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 v. :
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 GENIUSWATER LTD., :
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 Applicant. :
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Opposition No. _____

Commissioner for Trademarks
United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

Energy Brands Inc. d/b/a Glacéau (“Energy Brands”), a New York corporation with its principal place of business at 17-20 Whitestone Expressway, Whitestone, New York 11357, believes that it will be damaged by the registration of the mark GENIUSWATER by Applicant Geniuswater Ltd. (“Applicant”) and hereby opposes the same, by and through its attorneys Debevoise & Plimpton LLP, based upon the following grounds:

1. Energy Brands pioneered the enhanced water category when, in 1996, it launched its SMARTWATER brand, a vapor-distilled water enhanced with electrolytes.

2. Energy Brands owns United States federal trademark registration number 2,778,914 for the SMARTWATER mark for “bottled drinking water” in Class 32.

Energy Brands also owns United States federal trademark registrations for the marks GLACEAU SMARTWATER (Reg. No. 2,740,881) for “bottled drinking water” in Class 32 and GLACÉAU SMARTWATER and Design (Reg. No. 3,420,245) for “Bottled drinking water” in Class 32.

3. Energy Brands has used the SMARTWATER and GLACEAU SMARTWATER marks in interstate commerce since 1996, long prior to Applicant’s 2007 application for the GENIUSWATER mark. By virtue of the enormous success of the SMARTWATER brand, the SMARTWATER, GLACEAU SMARTWATER and GLACÉAU SMARTWATER and Design marks have become associated exclusively with Energy Brands. Energy Brands’ SMARTWATER and other products also have received considerable attention in the media.

4. By the application herein opposed, Applicant seeks to register the mark GENIUSWATER for “Non-alcoholic water-based beverages, namely, caffeinated water, flavored water, carbonated water, and fruit-flavored water; Drinking water with health, energy and hydration benefiting qualities” in Class 32. Applicant’s application is based on an intent to use the GENIUSWATER mark; no allegation of use has yet been filed.

5. Applicant’s GENIUSWATER mark is an obvious play off the mark SMARTWATER, as a “genius” refers to someone who is exceptionally smart.

6. Moreover, the goods set forth in Applicant’s application are identical or closely related to the goods in connection with which Energy Brands has registered and

uses the SMARTWATER, GLACEAU SMARTWATER and GLACÉAU SMARTWATER and Design marks cited above.

7. Based on the foregoing, Energy Brands will be damaged by the registration sought by Applicant because such registration will support and assist Applicant in the confusing and misleading use of the mark sought to be registered and will give color of exclusive statutory rights to Applicant in violation and derogation of the prior and superior rights of Energy Brands.

8. Registration should be refused pursuant to Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a), on the grounds that Applicant's use of the mark GENIUSWATER falsely suggests a connection between Applicant and Energy Brands, with consequent injury to Energy Brands and to the public.

9. Registration also should be refused pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), on the grounds that Applicant's GENIUSWATER mark so resembles Energy Brands' SMARTWATER, GLACEAU SMARTWATER and GLACÉAU SMARTWATER and Design marks cited above and used consistently by Energy Brands in the United States as to be likely to cause confusion, or to cause mistake, or to deceive, with consequent injury to Energy Brands and to the public.

WHEREFORE, Energy Brands believes it will be damaged by the registration by Applicant of the GENIUSWATER mark for the goods identified in Application Serial No. 77/297,705 and respectfully requests that the Opposition be sustained, registration of said mark be denied, and that the Trademark Trial and Appeal Board grant such other and further relief as it deems just and appropriate.

Payment has been provided in the requisite amount to cover the statutory filing fee for filing a Notice of Opposition. All communications should be addressed to Energy Brands' counsel, Debevoise & Plimpton LLP, at the address stated below.

Dated: September 2, 2009
New York, New York

Respectfully submitted,

DEBEVOISE & PLIMPTON LLP

By: /S. Zev Parnass/
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Attorneys for Opposer
Energy Brands Inc. d/b/a Glacéau

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Opposition has been sent via first class mail (certified and return receipt requested), postage prepaid, on this 2nd day of September, 2009 to:

Darren M. Geliebter
Lombard & Geliebter LLP
230 Park Ave., 10th Floor
New York, NY 10169

Attorney of Record for Applicant

/S. Zev Parnass/
S. Zev Parnass