

ESTTA Tracking number: **ESTTA305397**

Filing date: **09/10/2009**

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	CytoSport, Inc.		
Entity	Corporation	Citizenship	CA
Address	4795 Industrial Way Benicia, CA 94510 UNITED STATES		

Attorney information	Jed H. Hansen Thorpe North & Western, LLP 8180 South 700 East, Suite 350 Sandy, UT 84070 UNITED STATES hansen@tnw.com, sisneros@tnw.com, docket@tnw.com		
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Applicant Information

Application No	77561497	Publication date	08/11/2009
Opposition Filing Date	09/10/2009	Opposition Period Ends	09/10/2009
Applicant	Hansen Beverage Company Suite 201 550 Monica Circle Corona, CA 92880 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Nutritional supplements
Class 032. All goods and services in the class are opposed, namely: Non-alcoholic beverages, namely, energy drinks and drinks enhanced with vitamins, minerals, nutrients, amino acids and/or herbs, but excluding perishable beverage products that contain fruit juice or soy

Grounds for Opposition

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

U.S. Registration No.	2904119	Application Date	05/24/2002
Registration Date	11/23/2004	Foreign Priority Date	NONE
Word Mark	MONSTER FOOD		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 1999/06/01 First Use In Commerce: 1999/06/01 Whey protein blend in a powdered drink mix form for use as a nutritional supplement

Attachments	76412056#TMSN.gif (1 page)(bytes) opp.pdf (4 pages)(113642 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	/Jed H. Hansen/
Name	Jed H. Hansen
Date	09/10/2009

Peter M. de Jonge
Jed H. Hansen
Gordon K. Hill
THORPE NORTH & WESTERN, L.L.P.
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Sandy, Utah 84070
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Attorneys for CytoSport, Inc.
Opposed Mark: MONSTER SNIPER ENERGY SHOOTER
U.S. Trademark Application Serial Number 77/561,497

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

<p>CytoSport, Inc. Opposer, v. Hansen Beverage Company Applicant.</p>	<p>Opposition No. _____</p>
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NOTICE OF OPPOSITION

CytoSport, Inc. (hereinafter referred to as “Opposer”), a corporation existing under the laws of the State of California, having a principal place of business at 4795 Industrial Way, Benicia, California 94510, believes it will be damaged by the registration of the mark MONSTER SNIPER ENERGY SHOOTER in Application Serial No. 77/561,497, and opposes and alleges the following:

1. Hansen Beverage Company (hereinafter referred to as “Applicant”), a corporation existing under the laws of the State of Delaware, having a principal place of business at 550

Monica Circle, Suite 201, Corona, California 92880, seeks to register the mark MONSTER SNIPER ENERGY SHOOTER as a trademark for “nutritional supplements” in International Class 5 and “non-alcoholic beverages, namely, soft drinks, energy drinks” in International Class 32..

2. Opposer is the owner of U.S. Trademark Registration No. 2,904,119 for the mark MONSTER FOOD, for use in connection with “whey protein blend in a powdered drink mix form for use as a nutritional supplement” in International Class 5.

3. The MONSTER FOOD mark has been continuously used in interstate commerce since at least as early as June 1, 1999. During that time, significant good will has been created in the MONSTER FOOD mark.

4. As a result, Opposer is the owner of common law rights in the MONSTER FOOD mark.

5. Registration of Applicant’s mark MONSTER SNIPER ENERGY SHOOTER is likely to damage Opposer in that Applicant’s mark, when used on or in connection with the identified goods, so resembles Opposer’s word mark for MONSTER FOOD to be likely to cause confusion, to cause mistake or to deceive. Such confusion is likely to falsely suggest a connection between Applicant and Opposer.

6. Upon information and belief, Applicant selected its mark with full knowledge of Opposer’s marks.

WHEREFORE, Opposer requests that Application Serial No. 77/561,497 be refused registration, that no registration be issued to Applicant for the mark MONSTER SNIPER ENERGY SHOOTER and that this Opposition be sustained in favor of Opposer.

That statutory Opposition Filing Fee of \$600.00 is included herewith. Please charge any additional fees and credit any overpayment to Deposit Account No. 20-0100.

DATED this 10th day of September, 2009.

Respectfully submitted,

/s/ Jed H. Hansen
Peter M. de Jonge
Jed H. Hansen
Gordon K. Hill
Attorneys for Opposer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing NOTICE OF OPPOSITION was served upon Applicant by the method(s) indicated below:

Abraham Chuang
Knobbe Martens
2040 Main Street, 14th Floor
Irvine, CA 92614

- Hand Delivery
- United States Mail
- First Class, Postage Pre-Paid
- Overnight Delivery
- Fax Transmission
- Electronic Mail

on this 10th day of September, 2009.



A handwritten signature in cursive script, appearing to read "Ramon J. Seneres", is written over a horizontal line.