

ESTTA Tracking number: **ESTTA317301**

Filing date: **11/17/2009**

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
Granted to Date of previous extension	11/28/2009
Address	550 Monica Circle, Suite 201 Corona, CA 92880 UNITED STATES

Attorney information	Diane M. Reed Knobbe Martens Olson & Bear LLP 2040 Main Street Fourteenth Floor Irvine, CA 92614 UNITED STATES efiling@kmob.com Phone:949-760-0404
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Applicant Information

Application No	77739850	Publication date	09/29/2009
Opposition Filing Date	11/17/2009	Opposition Period Ends	11/28/2009
Applicant	Hashaw, Archie G. Jr. 44 Windmill Drive Hempstead, TX 77445 UNITED STATES		

Goods/Services Affected by Opposition

Class 033. All goods and services in the class are opposed, namely: Alcoholic cocktail mixes

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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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
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U.S. Registration No.	3134841	Application Date	05/07/2003
Registration Date	08/29/2006	Foreign Priority Date	NONE

Word Mark	M MONSTER ENERGY
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Design Mark	
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Description of Mark	NONE
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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
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U.S. Registration No.	3134842	Application Date	05/07/2003
Registration Date	08/29/2006	Foreign Priority Date	NONE

Word Mark	M MONSTER ENERGY
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Design Mark	
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Description of Mark	NONE
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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
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U.S. Application No.	77673736	Application Date	02/19/2009
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	MONSTER MIXXD
Design Mark	
Description of Mark	NONE
Goods/Services	<p>Class 005. First use: First Use: 2007/12/00 First Use In Commerce: 2007/12/00 Nutritional Supplements</p> <p>Class 032. First use: First Use: 2007/12/00 First Use In Commerce: 2007/12/00 non-alcoholic beverages, namely, carbonated soft drinks; carbonated drinks enhanced with vitamins, minerals, nutrients, amino acids and/or herbs; carbonated energy or sports drinks</p>

Attachments	<p>78246567#TMSN.gif (1 page)(bytes) 77673736#TMSN.jpeg (1 page)(bytes) HANBEV578M-NTC_OF_OPPOSITION-2009-11-17.PDF (6 pages)(239462 bytes)</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	/Diane M. Reed/
Name	Diane M. Reed
Date	11/17/2009

in International Class 33.

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

3. 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 MARGARITA application.

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



mark  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 MARGARITA application.

5. 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 MARGARITA application.

6. Opposer’s Registration Nos. 3,057,061, 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.

7. Since at least before the filing date of the MONSTER MARGARITA application, Opposer has continuously used and promoted the M ONSTER ENERGY and M MONSTER ENERGY Marks shown in Registration Nos. 3,057,061, 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.

8. Opposer owns and relies on U.S. Trademark Application No. 77/673736 for the mark MONSTER MIXXD for “nutritional supplements” in International Class 5 and “non-alcoholic beverages, namely, carbonated soft drinks; carbonated drinks enhanced with vitamins, minerals, nutrients, amino acids and/or herbs; carbonated energy or sports drinks” in International Class 32, which application was filed on February 19, 2009. The filing date of Opposer’s ‘736 Application is prior to the filing date of Applicant’s MONSTER MARGARITA application

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

10. Opposer will be damaged by registration of the MONSTER MARGARITA Application in that the MONSTER MARGARITA mark so resembles Opposer’s MONSTER and MONSTER ENERGY marks registered in the United States Patent and Trademark Office, and in which Opposer owns common law trademark rights, and so resembles the MONSTER MIXXD mark which is the subject of a pending application and in which Opposer has common law rights, as to be likely, when used on or in connection with the goods as they are identified in the MONSTER MARGARITA 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 MARGARITA Application in that the MONSTER MARGARITA mark is likely to cause dilution by blurring or dilution by tarnishment of Opposer's famous MONSTER and MONSTER ENERGY marks.

12. In view of Opposer's prior rights in its MONSTER, MONSTER ENERGY and MONSTER MIXXD marks, Applicant is not entitled to federal registration of the MONSTER MARGARITA 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. 77/739850 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.

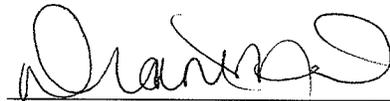
Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: _____

11/17/09

By: _____



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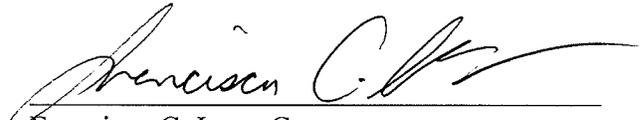
Attorneys for Opposer,

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 November 17, 2009, addressed as follows:

Archie G. Hashaw, Jr.
44 Windmill Dr.
Hempstead, TX 77445-8120


Francisca C. Leon Guerrero

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