

ESTTA Tracking number: **ESTTA330862**

Filing date: **02/05/2010**

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	McKenzie River Corporation
Granted to Date of previous extension	02/07/2010
Address	1160 Battery Street, Suite 30 San Francisco, CA 94111 UNITED STATES
Attorney information	Stacy E. Don, Thomas H. Zellerbach Orrick, Herrington & Sutcliffe LLP 4 Park Plaza, Suite 1600 Irvine, CA 92614-2558 UNITED STATES ipprosecution@orrick.com, lpartmann@orrick.com Phone:916-447-9200

Applicant Information

Application No	77671357	Publication date	08/11/2009
Opposition Filing Date	02/05/2010	Opposition Period Ends	02/07/2010
Applicant	Schick, Brent H. 3999 Rochelle Dr. Dallas, TX 75220 UNITED STATES		

Goods/Services Affected by Opposition

Class 032. All goods and services in the class are opposed, namely: Energy drinks; Guarana drinks
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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.	3309901	Application Date	07/13/2006
Registration Date	10/09/2007	Foreign Priority Date	NONE
Word Mark	HOWLING MONKEY		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 2006/09/14 First Use In Commerce: 2006/09/14 Soft drinks, namely non-alcoholic carbonated energy soft drinks

Attachments	78928816#TMSN.jpeg (1 page)(bytes) opposition.PDF (4 pages)(161267 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	/Stacy E. Don/
Name	Stacy E. Don, Thomas H. Zellerbach
Date	02/05/2010

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

In the matter of trademark application Serial No. 77/671,357
Mark: PURPLE MONKEY AN ENERGY DRINK and design
Published for Opposition on August 11, 2009

MCKENZIE RIVER CORPORATION,

Opposer,

-v-

BRENT H. SCHICK, dba MONKEY GROUP,

Applicant.

Opposition No. _____

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

NOTICE OF OPPOSITION

Opposer McKenzie River Corporation, a California corporation with its principal place of business at 1160 Battery Street, Suite 30, San Francisco, California 94111 (“Opposer”) believes that it will be damaged if the application to register PURPLE MONKEY AN ENERGY DRINK and design (Application Serial No. 77/671,357) (“Application”) for “energy drinks; guarana drinks” in International Class 032, is allowed to register, and hereby opposes the same.

To the best of Opposer’s knowledge, the legal name of the current owner of the Application is Brent H. Schick, an individual of American citizenship domiciled at 3999 Rochelle Drive, Dallas, Texas 75220 (hereinafter referred to as “Applicant”).

The grounds for opposition are as follows:

1. Opposer is the owner of all right, title and interest in and to the mark HOWLING MONKEY for soft drinks, namely non-alcoholic carbonated energy soft drinks.

2. Opposer owns the U.S. registration for HOWLING MONKEY for “soft drinks, namely non-alcoholic carbonated energy soft drinks,” U.S. Registration No. 3,309,901, filed July 13, 2006. This mark registered on October 9, 2007.

3. Opposer's registration is valid and subsisting and provides prima facie evidence of Opposer's ownership of the HOWLING MONKEY mark and of its exclusive right to use the mark in commerce.

4. Applicant filed U.S. trademark application number 77/671,357 for PURPLE MONKEY AN ENERGY DRINK and design on an intent-to-use basis on February 16, 2009.

5. Applicant seeks registration of the mark PURPLE MONKEY AN ENERGY DRINK and design (Application Serial No. 77/671,357) for energy drinks and guarana drinks in International Class 032.

6. On information and belief, Applicant has not used the mark PURPLE MONKEY AN ENERGY DRINK and design in interstate commerce.

7. Opposer has used its HOWLING MONKEY mark continuously on or in connection with its goods in interstate commerce since prior to the filing date of Applicant's Application Serial No. 77/671,357 and has developed valuable goodwill with respect to the mark..

8. By virtue of its use and registration of the HOWLING MONKEY mark, Opposer has priority over Applicant.

9. Applicant's mark so resembles Opposer's mark that the use and registration thereof is likely to cause confusion, mistake and/or deception as to the source or origin of Applicant's or Opposer's goods or as to a perceived perception that Applicant is in some

way connected with, sponsored by, or affiliated with Opposer, all of which will damage Opposer and the goodwill symbolized by Opposer's HOWLING MONKEY mark.

10. The goods of Applicant are so closely related to the goods of Opposer that relevant consumers are likely to be confused, to be deceived or to mistakenly believe that Applicant's goods are those of Opposer or that Applicant is in some way connected with, sponsored by, or affiliated with Opposer, all of which will damage Opposer and the goodwill symbolized by Opposer's HOWLING MONKEY mark.

WHEREFORE, Opposer prays that this Board sustain this Opposition and refuse registration of the mark PURPLE MONKEY AN ENERGY DRINK (U.S. trademark application Serial Number 77/671,357).

Opposer hereby appoints the law firm of Orrick, Herrington & Sutcliffe LLP, 4 Park Plaza, Suite 1600, Irvine, CA 92614-2558, telephone number (916) 447-9200, as the address to which all communications are to be directed and hereby appoints each of the following attorneys associated with said firm, individually and collectively, its attorneys, with full power of substitution and revocation, to prosecute this opposition proceeding and to transact all business in the U.S. Patent and Trademark Office in connection therewith: Thomas H. Zellerbach and Stacy E. Don.

Dated: February 5, 2010

Respectfully submitted,
ORRICK, HERRINGTON & SUTCLIFFE LLP



Thomas H. Zellerbach
Stacy E. Don
IP Prosecution Department
4 Park Plaza, Suite 1600
Irvine, CA 92614-2558

Attorneys for Opposer,
McKenzie River Corporation

CERTIFICATE OF SERVICE

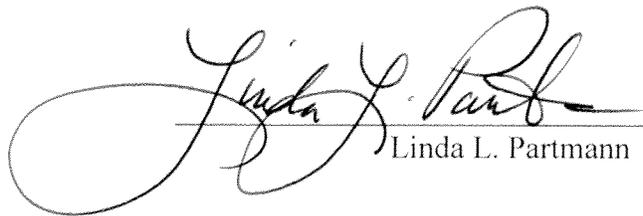
I am more than eighteen years old and not a party to this action. My business address is 400 Capitol Mall, Suite 3000, Sacramento, CA 95814. On February 5, 2010, I served the following document(s) on Applicant, Brent Schick, in the manner set forth below:

NOTICE OF OPPOSITION

- VIA FACSIMILE: by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- VIA US POSTAL SERVICE: by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Sacramento, California addressed as set forth below.

Brent H. Schick
3999 Rochelle Dr.
Dallas, TX 75220

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 5, 2010, at Sacramento, California.



Linda L. Partmann