

ESTTA Tracking number: **ESTTA339442**

Filing date: **03/27/2010**

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	MonaVie LLC
Granted to Date of previous extension	03/27/2010
Address	10855 South River Front Parkway South Jordan, UT 84095 UNITED STATES

Correspondence information	Jeffery M. Lillywhite Attorney Jeffery M. Lillywhite, PC PO Box 1113 Draper, UT 84020-1113 UNITED STATES jlillywhitepc@comcast.net Phone:801-416-0746
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Applicant Information

Application No	77654607	Publication date	01/26/2010
Opposition Filing Date	03/27/2010	Opposition Period Ends	03/27/2010
Applicant	Fruitology, Inc. 253 N. Carson Street, Ste. 3665 Carson City, NV 89706 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. First Use: 2008/10/15 First Use In Commerce: 2008/12/09 All goods and services in the class are opposed, namely: Dietary and nutritional supplements; Dietary food supplements; Dietary supplemental drinks; Food supplements, namely, anti-oxidants, herbal supplements; Nutritionally fortified beverages; Vitamin fortified beverages
Class 032. First Use: 2008/10/15 First Use In Commerce: 2008/12/09 All goods and services in the class are opposed, namely: Fruit juices and vegetable juices

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.	3111332	Application Date	12/02/2004
Registration Date	07/04/2006	Foreign Priority	NONE

		Date	
Word Mark	MONA·VIE ACTIVE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 005. First use: First Use: 2004/08/25 First Use In Commerce: 2004/08/25 Nutritional supplements, vitamin and mineral supplements, nutritional additives for use in foods and dietary supplements for human consumption, plant and herb extracts for medicinal purposes</p> <p>Class 032. First use: First Use: 2004/08/25 First Use In Commerce: 2004/08/25 Juice, namely fruit juices; Energy drinks</p>		

U.S. Registration No.	3106146	Application Date	12/02/2004
Registration Date	06/20/2006	Foreign Priority Date	NONE
Word Mark	M MONA-VIE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 005. First use: First Use: 2004/08/25 First Use In Commerce: 2004/08/25 Nutritional supplements, vitamin and mineral supplements, nutritional additives for use in foods and dietary supplements for human consumption, plant and herb extracts for medicinal purposes</p> <p>Class 032. First use: First Use: 2004/08/25 First Use In Commerce: 2004/08/25 Juice, namely fruit juices; Energy drinks</p>		

U.S. Registration No.	3111333	Application Date	12/02/2004
Registration Date	07/04/2006	Foreign Priority Date	NONE
Word Mark	MONA·VIE		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2004/08/25 First Use In Commerce: 2004/08/25 Nutritional supplements, vitamin and mineral supplements, nutritional additives for use in foods and dietary supplements for human consumption, plant and herb extracts for medicinal purposes Class 032. First use: First Use: 2004/08/25 First Use In Commerce: 2004/08/25 Juice, namely fruit juices; Energy drinks

U.S. Registration No.	3106147	Application Date	12/02/2004
Registration Date	06/20/2006	Foreign Priority Date	NONE
Word Mark	MONA-VIE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2004/08/25 First Use In Commerce: 2004/08/25 Nutritional supplements, vitamin and mineral supplements, nutritional additives for use in foods and dietary supplements for human consumption, plant and herb extracts for medicinal purposes Class 032. First use: First Use: 2004/08/25 First Use In Commerce: 2004/08/25 Juice, namely fruit juices; Energy drinks		

U.S. Registration No.	3691549	Application Date	10/20/2008
Registration Date	10/06/2009	Foreign Priority Date	NONE
Word Mark	MONA VIE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2004/08/25 First Use In Commerce: 2004/08/25 Nutritional supplements, vitamin and mineral supplements, nutritional additives for use in foods and dietary supplements for human consumption, plant and herb extracts for medicinal purposes		

U.S. Registration	3691548	Application Date	10/20/2008
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No.			
Registration Date	10/06/2009	Foreign Priority Date	NONE
Word Mark	MONA VIE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2004/08/25 First Use In Commerce: 2004/08/25 Juice, namely, fruit juices; Energy drinks		

Related Proceedings	MonaVie LLC v. Fruitology, Inc., 2:09CV01052 (US Dist. Court of Utah (11/30/2009))
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Attachments	78526294#TMSN.jpeg (1 page)(bytes) 78526281#TMSN.jpeg (1 page)(bytes) 78526297#TMSN.jpeg (1 page)(bytes) 78526284#TMSN.jpeg (1 page)(bytes) 77596409#TMSN.jpeg (1 page)(bytes) 77596392#TMSN.jpeg (1 page)(bytes) Notice_of_Opposition_Braz_A-Vie.pdf (6 pages)(353250 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	/Jeffery M. Lillywhite/
Name	Jeffery M. Lillywhite
Date	03/27/2010

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

In the matter of Trademark Application Serial No. 77/654,607
Published in the Official Gazette of January 26, 2010 at TM 64-65
International Classes: 5 and 32
Filed: January 22, 2009
Mark: Braz A Vie

MONAVIE LLC,)	Opposition No.: _____
)	
Opposer,)	
)	NOTICE OF OPPOSITION
v.)	
)	
FRUITOLOGY, INC.)	
)	
Applicant.)	

Opposer MonaVie LLC (hereinafter referred to as “MonaVie” or “Opposer”), a limited liability company with a principal place of business at 10855 South River Front Parkway, Suite 100, South Jordan, Utah 84095, believes that it will be damaged by registration of the mark “Braz A Vie”, shown in Serial Number 77/654,607 in International Classes 5 and 32, and hereby opposes same. The grounds for the opposition are that:

1. Upon information and belief, FRUITOLOGY, INC. (“Applicant”) is a Nevada corporation with a place of business at 253 N. Carson Street, Ste. 3665, Carson City, NV 89706. Applicant seeks to register the mark “Braz A Vie” (“Applicant’s Mark”) as a trademark to be used in International Classes 5 and 32, as evidenced by the publication of such mark in the Official Gazette on TM 64-65 of the January 22, 2010 issue, in conjunction with goods identified as “FOR DIETARY AND NUTRITIONAL SUPPLEMENTS; DIETARY FOOD SUPPLEMENTS; DIETARY SUPPLEMENTAL DRINKS; FOOD SUPPLEMENTS, NAMELY, ANTI-OXIDANTS, HERBAL SUPPLEMENTS;

NUTRITIONALLY FORTIFIED BEVERAGES; VITAMIN FORTIFIED BEVERAGES” and “LIGHT BEVERAGES FOR FRUIT JUICES AND VEGETABLE JUICES.”

2. Applicant filed its application on January 22, 2009, and received an application serial number of 77/654,607 on the basis of Section 1(a) of the Lanham Act.

3. For many years and long prior to the effective filing date of the subject application, Opposer has been engaged in the development, manufacture, distribution, marketing and line of branded nutritional juice and gel products sold in interstate commerce throughout the United States and the world in association with the pending application and common law mark “MONA·VIE” as evidenced by the Web site www.monavie.com. The goods offered by Opposer in association with such pending application and common law mark are such that the consumers will likely be confused as to the source of the goods offered by Applicant.

4. Opposer first began using the MONA·VIE mark in interstate commerce at least as early as August 25, 2004 for nutritional juice and gel products as evidenced by numerous registrations and applications, including US Reg. No. 3,111,332 for MONA·VIE ACTIVE, US Reg. No. 3,106,146 for M MONA-VIE, US Reg. No. 3,111,333 for MONA·VIE, US Reg. No. 3,106,147 for MONA-VIE, US Reg. No. 3,691,549 for MONA VIE, US Reg. No. 3,691,548 for MONA VIE, under the Lanham Act, 15 U.S.C. § 1051 and has used this mark continuously since that date.

5. Prior to the effective filing date of the subject application, Opposer had used the MONA·VIE mark on goods sold and services performed in interstate commerce. Accordingly, Opposer has developed goodwill and common law rights under 15 U.S.C. § 1125(a) in addition to its federal trademark rights before the subject application was filed and before the date of first use associated with the subject application.

6. For many years, Opposer has used the MONA·VIE mark to distinguish its products and services from other goods and services of the same type, and Opposer has acquired indisputable worldwide goodwill, reputation and fame in connection with the MONA·VIE mark through its use thereof.

7. Since Opposer's adoption and initial use of the MONA·VIE mark, Opposer has made a substantial investment in marketing and promoting its goods and services under this mark. Opposer has extensively used, advertised, promoted and offered for sale goods and services in association with the Opposer's MONA·VIE mark with the result that Opposer's customers and the general public have come to know and recognize Opposer's MONA·VIE mark and that the public associates this mark with Opposer and/or its goods and services, Opposer has developed indisputable worldwide extensive goodwill with the sale of goods and performance of services under the MONA·VIE mark.

8. As a result of Opposer's substantial and continuous use of the MONA·VIE mark in association with Opposer's goods and services, including advertising, labeling, marketing and performing, Opposer's MONA·VIE mark has become an asset of substantial value to Opposer as a distinctive indication of the origin and quality of its products and services. Products bearing the Opposer's MONA·VIE mark are marketed and sold throughout the United States and have acquired a broad and valuable reputation and goodwill.

9. Notwithstanding the inherent distinctiveness of Opposer's MONA·VIE mark, Opposer's MONA·VIE mark has also acquired secondary meaning to the public indicating Opposer as the source of goods and services bearing Opposer's MONA·VIE mark.

11. Opposer's MONA·VIE mark is distinctive and serves as a unique designation of origin with respect to goods offered by Opposer.

12. The ending of Applicant's Mark "A Vie" is identical in spelling and sound to the ending of Opposer's mark MONA·VIE and the literal elements of its registrations.

13. A likelihood of confusion in the marketplace exists between Opposer's MONA·VIE mark, when applied to the goods and services of the respective parties and Applicant's Mark, since both identify an açai berry product.

14. Registration of Applicant's Mark will result in irreparable dilution and damage to Opposer's trademark and Opposer's business.

15. If Applicant is permitted to register its mark for its goods as specified in the application herein opposed, such use and registration would result in confusion in the trade by reason of the similarity between Applicant's Mark and Opposer's MONA·VIE mark, thereby damaging and injuring Opposer. Any such confusion may result in the loss of business to Opposer. Furthermore, any defect, objection or fault found with the Applicant's goods marketed under Applicant's Mark may reflect upon and injure the reputation which Opposer has established for its goods and services in association with Opposer's MONA·VIE mark.

16. If Applicant is granted the registration herein opposed, it would thereby obtain at least a prima facie exclusive right to the use of its mark. Such registration would be a further source of damage to Opposer.

17. In view of the foregoing, Applicant is not entitled to federal registration of its claimed mark because Applicant's Mark as used upon its identified goods is not entitled to protection. Further, Applicant does not have right to exclusive use of said mark in commerce on Applicant's goods. Applicant's Mark, as claimed, does not and cannot function to identify such goods and to distinguish them from goods and services offered by Opposer.

WHEREFORE, Opposer prays that this opposition be sustained and that Application Number 77/654,607 be refused, and for such other and further relief at law or in equity as the Commissioner of Patents and Trademarks shall deem necessary or appropriate under the circumstances.

The fee required under 37 C.F.R. § 2.6(17) is submitted herewith.

Dated this 27th day of March, 2010.

Respectfully submitted,

By: _____/Jeffery M. Lillywhite/

Jeffery M. Lillywhite
JEFFERY M. LILLYWHITE, PC
PO BOX 1113
Draper, Utah 84020-1113
Telephone: (801) 416-0746
Facsimile: (801) 416-0764

Attorney for Opposer
MonaVie LLC

CERTIFICATION OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **NOTICE OF OPPOSITION** was served on Applicant by First Class Mail, postage prepaid this 29th day of March, 2010, in an envelope addressed as follows:

LISEL M. FERGUSON
PROCOPIO, CORY, HARGREAVES & SAVITCH, LL
530 B. St. Ste 2100
San Diego, CA 92101-4496

FRUITOLOGY, INC.
253 N. Carson Street, Ste. 3665
Carson City, NV 89706
United States

/Jeffery M. Lillywhite/