

ESTTA Tracking number: **ESTTA346506**

Filing date: **05/10/2010**

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

Proceeding	91194330
Party	Defendant Fruitology, Inc.
Correspondence Address	LISEL M. FERGUSON PROCOPIO, CORY, HARGREAVES & SAVITCH 530 B STREET, SUITE 2100 SAN DIEGO, CA 92101-4496 UNITED STATES docketing@procopio.com
Submission	Answer
Filer's Name	Lisel M. Ferguson
Filer's e-mail	lmf@procopio.com,mlf@procopio.com,docketing@procopio.com
Signature	/Lisel M. Ferguson/
Date	05/10/2010
Attachments	Fruitolog's Answer to Notice of Opposition.pdf (6 pages)(19875 bytes)

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

MONAVIE LLC,)	Opposition No. 91194330
)	
Opposer,)	ANSWER TO NOTICE OF
)	OPPOSITION
v.)	
)	Trademark: BRAZ A VIE
FRUITOLOGY, INC.,)	
)	
Applicant.)	Serial No. 77/654,607
)	
_____)	

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

FRUITOLOGY, INC., Applicant, hereby answers the Notice of Opposition as follows:

ANSWER

1. Applicant admits that the information contained in paragraph 1 is correct with the exception that the correct address is 2533 N. Carson Street, Suite 3665, Carson City, NV 89706.
2. Applicant admits that the information contained in paragraph 2 is correct.
3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Notice of Opposition, and therefore denies the same.

4. The Notice of Opposition served upon Applicant was not accompanied by copies of registration numbers 3,111,332, 3,106,146, 3,111,333, 3,106,147, 3,691,549, 3,691,548 issued by the United States Patent and Trademark Office (“USPTO”) or the USPTO database records showing the current status and title of the registrations. Applicant admits that the USPTO electronic database reflects that MonaVie, LLC is listed as the owner of record for the aforementioned registrations, which speak for themselves. Applicant is without knowledge or information sufficient to form a belief as to the truth of the rest of the allegations contained in paragraph 4 of the Notice of Opposition, and therefore denies the same.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the Notice of Opposition, and therefore denies the same.

6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the Notice of Opposition, and therefore denies the same.

7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the Notice of Opposition, and therefore denies the same.

8. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Notice of Opposition regarding Opposer’s use of the MONA VIE mark, and therefore denies the same.

9. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the Notice of Opposition regarding the inherent distinctiveness claim, and therefore denies the same.

10. There is no number 10 listed in the opposition.

11. Applicant denies the allegations contained in paragraph 11 of the Notice of Opposition. Furthermore, it is unclear what Opposer means by “serves as a unique designation of origin”.

12. Applicant denies the allegations contained in paragraph 12 of the Notice of Opposition.

13. Applicant denies the allegations contained in paragraph 13 of the Notice of Opposition.

14. Applicant denies the allegations contained in paragraph 14 of the Notice of Opposition.

15. Applicant denies the allegations contained in paragraph 15 of the Notice of Opposition.

16. Applicant denies the allegations contained in paragraph 16 of the Notice of Opposition.

17. Applicant denies the allegations contained in paragraph 17 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

First Affirmative Defense

1. As the First Affirmative Defense to the Notice of Opposition, Applicant alleges that the Notice of Opposition does not state facts sufficient to constitute grounds for opposition against the registration of the mark BRAZ A VIE.

Second Affirmative Defense

2. As a Second Affirmative Defense to the Notice of Opposition, Applicant is informed, believes, and on that basis alleges that Applicant holds superior rights to the BRAZ A VIE mark by virtue of its use of this mark in commerce.

Third Affirmative Defense

3. As a Third Affirmative Defense to the Notice of Opposition, Opposer is barred by the equitable doctrine of laches.

Fourth Affirmative Defense

4. As a Fourth Affirmative Defense to the Notice of Opposition, Applicant alleges that Opposer failed to exercise reasonable care and diligence to avoid Opposer's claimed damages, if any, and therefore, such claimed damages are not attributable to the registration of BRAZ A VIE by Applicant.

Fifth Affirmative Defense

5. As a Fifth Affirmative Defense to the Notice of Opposition, Opposer is barred from opposing registration of Applicant's BRAZ A VIE mark by the doctrine of estoppel.

Sixth Affirmative Defense

6. As a Sixth Affirmative Defense Opposer cannot claim exclusive rights in the MONA VIE, MONA VIE ACTIVE, M MONA-VIE, and MONA VIE (Stylized) marks and/or has abandoned or lost its rights in the aforementioned marks due to failure to police third party uses of similar marks and/or enforce its rights, if any, against infringing uses.

Seventh Affirmative Defense

7. As a Seventh Affirmative Defense Opposer cannot claim exclusive rights in the MONA VIE, MONA VIE ACTIVE, M MONA-VIE, and MONA VIE (Stylized) marks

on the grounds that the marks are generic and/or descriptive as applied to the goods sold thereunder.

Eighth Affirmative Defense

8. As an Eighth Affirmative Defense Opposer's claims are barred by the doctrine of unclean hands.

Ninth Affirmative Defense

9. As a Ninth Affirmative Defense Applicant reserves the right to amend its Answer to add additional or other defenses that cannot now be articulated due to Opposer's failure to particularize its claims and/or the need for further discovery regarding Opposer's claims.

WHEREFORE, Applicant prays that Opposer's Notice of Opposition be dismissed in its entirety with prejudice, that the Trademark Trial and Appeal Board renders a decision in favor of FRUITOLOGY, INC. for registration of BRAZ A VIE, and that Applicant be issued the Certificate of Registration.

DATED: May 10, 2010

Respectfully Submitted,

PROCOPIO, CORY, HARGREAVES
& SAVITCH LLP
Attorneys for Applicant
PRECISION FORMULATIONS, LLC

By: /Lisel M. Ferguson/
Lisel M. Ferguson, Reg. No. 48,139

530 B Street, Suite 2100
San Diego, California 92101-4469
Tel: (619) 515-3267
Fax: (619) 235-0398

CERTIFICATE OF SERVICE

The undersigned hereby certifies that an original copy of the foregoing ANSWER TO NOTICE OF OPPOSITION was transmitted online on May 10, 2010, through the website of the Trademark Trial and Appeal Board of the United States Patent and Trademark Office and was served on Opposer by First Class Mail, postage prepaid this 10th day of May, 2010, in an envelope addressed as follows:

JEFFERY M. LILLYWHITE
JEFFERY M. LILLYWHITE, PC
PO BOX 1113
DRAPER, UT 84020-1113

Dated: San Diego, California
May 10, 2010

/Lisel M. Ferguson/
Lisel M. Ferguson