

ESTTA Tracking number: **ESTTA348785**

Filing date: **05/20/2010**

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	Hansen Beverage Company		
Entity	Corporation	Citizenship	Delaware
Address	550 Monica Circle Suite 201 Corona, CA 92880 UNITED STATES		

Attorney information	Alina S. Morris 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	77750913	Publication date	04/20/2010
Opposition Filing Date	05/20/2010	Opposition Period Ends	05/20/2010
Applicant	Cytosport, Inc. 4795 Industrial Way Benicia, CA 94510 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Nutritionally enhanced water; Protein enhanced water

Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
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Attachments	HANBEV615M-NTC_OF_OPPOSITION-2010-05-20.pdf (4 pages)(108658 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	/Alina S. Morris/
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Name	Alina S. Morris
Date	05/20/2010

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

HANSEN BEVERAGE COMPANY,

Opposer,

v.

CYTOSPORT, INC.

Applicant.

)
) Opposition No.: _____

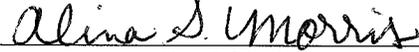
)
) Serial No.: 77/750913

)
) Mark: MUSCLE MILK PROH2O

)
) I hereby certify that this correspondence and all
) marked attachments are being deposited with the
) United States Patent and Trademark Office,
) Trademark Trial and Appeal Board via electronic
) filing through their website located at
) <http://estta.uspto.gov/> on:

)
) _____
) May 20, 2010

)
) (Date)

)
) 

)
) Alina S. Morris

NOTICE OF OPPOSITION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Sir:

Opposer, Hansen Beverage Company, a Delaware corporation, located and doing business at 550 Monica Circle, Suite 201, Corona, California 92880, believes that it will be damaged by Application Serial No. 77/750913 and hereby opposes the same.

As grounds for opposition, Opposer alleges as follows:

1. According to the records of the USPTO, Cytosport, Inc. (“Cytosport”) is identified as the owner of Application Serial No. 77/750913 (the “Application”) for the mark MUSCLE MILK PROH2O (the “Mark”).

2. Application Serial No. 77/750913 was filed June 3, 2009 by Cytosport, Inc. pursuant to Trademark Act Section 1(b). The identification of goods listed in the Application as filed was as follows: “Nutritionally enhanced water; Protein enhanced water” in International Class 5. Opposer is engaged in the sale of beverages, including nutritional supplement beverages, which compete with those sold by Cytosport under the Mark.

3. The Mark consists of deceptive matter and is not registrable pursuant to Section 2(a) of the Trademark Act (15 U.S.C. §1052(a)).

4. Cytosport’s powdered nutritional supplement marketed, offered for sale, and sold by Cytosport under the MUSCLE MILK PROH2O does not contain milk in liquid or powder form.

5. On information and belief, consumers and prospective consumers are likely to believe that Cytosport’s MUSCLE MILK PROH2O powdered nutritional supplement contains milk.

6. By use of the MUSCLE MILK PROH2O Mark, Cytosport would falsely represent that the products sold under that mark contain milk (liquid or powdered), which misrepresentation is material in that it will affect consumers’ and prospective consumers’ decision to purchase Cytosport’s powdered nutritional supplement drink mix.

7. Cytosport’s MUSCLE MILK PROH2O Mark is deceptive.

8. By reason of all the foregoing, Petitioner will be damaged by the Registration.

WHEREFORE, Opposer prays that U.S. Trademark Application Serial No. 77/750913 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: 5/20/2010

By: Alina S. Morris

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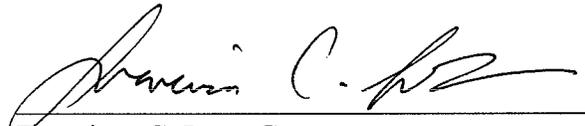
Attorneys for Opposer,

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 May 20, 2010, addressed as follows:

Peter M. De Jonge
Thorpe North And Western, LLP.
Po Box 1219
Sandy, Ut 84091-1219


Francisca C. Leon Guerrero

9078695/FLG/052010