

ESTTA Tracking number: **ESTTA350612**

Filing date: **06/02/2010**

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	University of Kentucky
Granted to Date of previous extension	06/02/2010
Address	Joe Craft Center, 338 Lexington Avenue Lexington, KY 40506-0604 UNITED STATES

Attorney information	Michael S. Hargis King & Schickli, PLLC 247 North Broadway Lexington, KY 40507-1058 UNITED STATES michael@iplaw1.net Phone:859 252 0889
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Applicant Information

Application No	77787590	Publication date	02/02/2010
Opposition Filing Date	06/02/2010	Opposition Period Ends	06/02/2010
Applicant	NORTH AMERICAN BEVERAGES, L.L.C. 720 JEWELL DR. WACO, TX 76712 UNITED STATES		

Goods/Services Affected by Opposition

Class 032. All goods and services in the class are opposed, namely: Concentrates, syrups or powders used in the preparation of soft drinks; Non-alcoholic beverages, namely, carbonated beverages; Soda pops; Soft drinks
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Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2035116	Application Date	09/15/1995
Registration Date	02/04/1997	Foreign Priority Date	NONE
Word Mark	BIG BLUE SWISH		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 1995/02/09 First Use In Commerce: 1995/03/13 drinking water

U.S. Registration No.	2843073	Application Date	03/31/2003
Registration Date	05/18/2004	Foreign Priority Date	NONE
Word Mark	BIG BLUE NATION		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2002/03/08 First Use In Commerce: 2002/03/08 TEAM LOYALTY T-SHIRTS, POLO SHIRTS, JACKETS AND SWEAT SHIRTS		

U.S. Registration No.	3155973	Application Date	01/09/2003
Registration Date	10/17/2006	Foreign Priority Date	NONE
Word Mark	BIG BLUE NATION		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 016. First use: First Use: 2001/10/12 First Use In Commerce: 2001/10/12 POSTERS, SOUVENIR PROGRAMS OF ATHLETICS PROGRAMS, ATHLETICS MAGAZINES, ATHLETICS EXHIBITION SCHEDULES AND CALENDARS</p> <p>Class 041. First use: First Use: 2001/10/12 First Use In Commerce: 2001/10/12 ENTERTAINMENT SERVICES, NAMELY, CONDUCTING COLLEGIATE ATHLETIC EVENTS AND EXHIBITIONS, PRODUCTION OF LIVE AND TAPED TELEVISION PROGRAMS RELATING TO COLLEGIATE SPORTS, PROVIDING PUBLIC RECREATIONAL SPORTS AND ATHLETIC FACILITIES, AND PROVIDING ATHLETICS INSTRUCTION AND COACHING OF STUDENTS AND THE PUBLIC</p>		

U.S. Registration No.	2957180	Application Date	03/10/2004
Registration Date	05/31/2005	Foreign Priority Date	NONE

Word Mark	UK BIG BLUE CHECKING
Design Mark	
Description of Mark	NONE
Goods/Services	Class 036. First use: First Use: 2004/01/28 First Use In Commerce: 2004/01/28 BANKING SERVICES

U.S. Registration No.	3548248	Application Date	11/05/2005
Registration Date	12/16/2008	Foreign Priority Date	NONE

Word Mark	BIG BLUE SPORTS NETWORK
Design Mark	
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 2004/08/00 First Use In Commerce: 2004/08/00 promoting the goods and services of others by arranging for sponsors to affiliate their goods and services with athletic events; dissemination of advertising for others via the Internet Class 041. First use: First Use: 2004/08/00 First Use In Commerce: 2004/08/00 Production of radio, satellite, and television programs related to intercollegiate athletics; production of radio, satellite, or television entertainment and sports programs, namely, sports programming; entertainment services, namely, providing a web site featuring prerecorded audio and/or video footage and information in the field of intercollegiate athletics, and commentary and articles about intercollegiate athletics

Attachments	74729912#TMSN.gif (1 page)(bytes) 78381565#TMSN.jpeg (1 page)(bytes) 78747966#TMSN.jpeg (1 page)(bytes) Notice of Opposition w Exhibits.pdf (11 pages)(4555787 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	/Michael S. Hargis/
Name	Michael S. Hargis
Date	06/02/2010

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

In the Matter of Registration Application Serial No. 77/787,590
Filed July 23, 2009
For the mark **BIG RED VS. BIG BLUE**
Published in the *Official Gazette* on February 2, 2010

UNIVERSITY OF KENTUCKY,	:	
	:	
Opposer,	:	
v.	:	OPPOSITION NO. _____
	:	
North American Beverages, LLC,	:	
	:	
Applicant.	:	

NOTICE OF OPPOSITION

The University of Kentucky (“Opposer”), a Kentucky state university, having a place of business at Joe Craft Center, 338 Lexington Avenue, Lexington, Kentucky, 40506-0604, believes that it will be damaged by registration of the mark shown in Registration Application Serial No. 77/787,590, and hereby opposes the same. The fee under 37 CFR §2.6(a)(17)(\$300/class x 1) is being paid by Deposit Account at the time of filing with ESTTA.

As grounds for opposition, it is alleged that:

1. On information and belief, Applicant North American Beverages, LLC is a Texas Limited Liability Company having a place of business at 720 Jewell Drive, Waco, Texas, 76712.

2. Applicant is the identified owner of the Registration Application Serial No. 77/787,590 (the “590 Application”), filed on July 23, 2009, for the composite BIG RED VS. BIG BLUE mark to identify “concentrates, syrups or powders used in the preparation of soft drinks; non-alcoholic beverages, namely, carbonated beverages; soda pops; soft drinks” in international class 32.

3. Some time during 1916 and certainly prior to Applicant’s filing date of July 23, 2009, the Opposer began using the mark GO BIG BLUE in association with its intercollegiate athletic events and exhibitions and to identify team loyalty clothing. The mark GO BIG BLUE is presently used to identify these and other goods and services.

4. On or before March 13, 1995, and certainly prior to Applicant’s filing date of July 23, 2009, the Opposer began using the mark BIG BLUE SWISH to identify bottled drinking water. The U.S. Patent and Trademark Office issued Registration No. 2,035,116 (Exhibit A) for the mark on February 4, 1997. The BIG BLUE SWISH mark has been in continuous use in commerce and remains in such use to identify bottled drinking water.

5. On or before March 8, 2002, and certainly prior to Applicant’s filing date of July 23, 2009, the Opposer began using the mark BIG BLUE NATION to identify clothing. The U.S. Patent and Trademark Office issued Registration No. 2,843,073 (Exhibit B) for the mark on May 18, 2004. The BIG BLUE NATION mark has been in continuous use in commerce and remains in such use to identify clothing.

6. On or before October 12, 2001, and certainly prior to Applicant’s filing date of July 23, 2009, the Opposer began using the mark BIG BLUE NATION in association with

entertainment services, namely, conducting collegiate athletic events and exhibitions among others. The U.S. Patent and Trademark Office issued Registration No. 3,155,973 (Exhibit C) for the mark on October 17, 2006. The BIG BLUE NATION mark has been in continuous use in commerce and remains in such use in association with entertainment services, namely, conducting collegiate athletic events and exhibitions among others.

7. The University of Kentucky also owns Registration No. 2,957,180 (Exhibit D) for the mark UK BIG BLUE CHECKING (registered on May 31, 2005) for banking services, and Registration No. 3,548,248 (Exhibit E) for the mark BIG BLUE SPORTS NETWORK (registered December 16, 2008) for the production of radio and television programs related to intercollegiate athletics, among others.

8. Together the marks in Exhibits A-E represent a family of BIG BLUE marks owned by the University of Kentucky.

9. Applicant's BIG BLUE VS. BIG RED mark is confusingly similar in appearance, sound, connotation, and overall commercial impression with Opposer's mark BIG BLUE SWISH and family of BIG BLUE marks.

10. Applicant's '590 Application describes its goods as including "concentrates, syrups or powders used in the preparation of soft drinks; non-alcoholic beverages, namely, carbonated beverages; soda pops; soft drinks." Each of these goods are highly similar, if not identical, to Opposer's goods.

11. Applicant's mark would travel in the same established and likely-to-continue trade channels as Opposer's BIG BLUE SWISH and family of BIG BLUE marks.

12. The conditions under which and buyers to whom sales are made are highly similar as both parties provide beverages which are typically sold in the same aisle in grocery stores, and in convenient marts to their customers.

13. On information and belief, the Applicant began using the mark BIG BLUE to identify clothing and hats on or about December 4, 2009.

14. On information and belief, the Applicant positioned said clothing and hats for sale on its website located at the domain name bigred.wfobrand.com directly adjacent goods bearing registered trademarks owned by the University of Kentucky (Exhibit F).

15. On information and belief, the Applicant positioned additional articles of clothing bearing its BIG RED mark and goods bearing registered trademarks owned by the University of Louisville on its website located at bigred.wfobrand.com, and directly adjacent goods bearing registered trademarks owned by the University of Kentucky.

16. Applicant's BIG BLUE VS. BIG RED mark consists of matter which when used to identify concentrates, syrups or powders used in the preparation of soft drinks, non-alcoholic beverages, namely, carbonated beverages, soda pops, and/or soft drinks, falsely suggests a connection between Applicant and Opposer under Section 2(a) of the Lanham Act, 15 U.S.C. §1052 (a).

17. Applicant's BIG BLUE VS. BIG RED mark so resembles the Opposer's BIG BLUE SWISH MARK and BIG BLUE family of marks as to be likely, when used on or in connection with Applicant's concentrates, syrups or powders used in the preparation of soft drinks, non-alcoholic beverages, namely, carbonated beverages, soda pops, or soft drinks, to

cause confusion, to cause mistake, and/or to deceive under Section 2(d) of the Lanham Act, 15U.S.C. §1052 (d).

WHEREFORE, Opposer believes that it will be damaged by the registration of the mark shown in the '590 Application, and requests that the opposition be sustained, and that registration of the mark in the '590 Application be refused.

Respectfully submitted,

Dated: June 2, 2010

By:



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Facsimile: (859) 252-0779

Attorney for Opposer
University of Kentucky

Int. Cl.: 32

Prior U.S. Cls.: 45, 46 and 48

Reg. No. 2,035,116

United States Patent and Trademark Office

Registered Feb. 4, 1997

TRADEMARK
PRINCIPAL REGISTER



UNIVERSITY OF KENTUCKY (KENTUCKY
CORPORATION)
LEXINGTON, KY 405060019

OWNER OF U.S. REG. NOS. 1,464,694,
1,467,677, AND 1,566,440.

FOR: DRINKING WATER, IN CLASS 32 (U.S.
CLS. 45, 46 AND 48).

SER. NO. 74-729,912, FILED 9-15-1995.

FIRST USE 2-9-1995; IN COMMERCE
3-13-1995.

NORA BUCHANAN WILL, EXAMINING AT-
TORNEY

Exhibit A

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

United States Patent and Trademark Office

Reg. No. 2,843,073

Registered May 18, 2004

**TRADEMARK
PRINCIPAL REGISTER**

BIG BLUE NATION

UNIVERSITY OF KENTUCKY (KENTUCKY
STATE AGENCY)
MEMORIAL COLISEUM
LEXINGTON, KY 405060019

OWNER OF U.S. REG. NOS. 201,611, 2,689,947 AND
OTHERS.

FOR: TEAM LOYALTY T-SHIRTS, POLO SHIRTS,
JACKETS AND SWEAT SHIRTS, IN CLASS 25 (U.S.
CLS. 22 AND 39).

SER. NO. 78-231,899, FILED 3-31-2003.

FIRST USE 3-8-2002; IN COMMERCE 3-8-2002.

BRIAN NEVILLE, EXAMINING ATTORNEY

Exhibit B

Int. Cls.: 16 and 41

Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38, 50, 100, 101 and 107

Reg. No. 3,155,973

Registered Oct. 17, 2006

United States Patent and Trademark Office

**TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER**

BIG BLUE NATION

UNIVERSITY OF KENTUCKY, STATE UNIVERSITY (KENTUCKY STATE AGENCY)
MEMORIAL COLISEUM
LEXINGTON, KY 405060019

FOR: POSTERS, SOUVENIR PROGRAMS OF ATHLETICS PROGRAMS, ATHLETICS MAGAZINES, ATHLETICS EXHIBITION SCHEDULES AND CALENDARS, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 10-12-2001; IN COMMERCE 10-12-2001.

FOR: ENTERTAINMENT SERVICES, NAMELY, CONDUCTING COLLEGIATE ATHLETIC EVENTS AND EXHIBITIONS, PRODUCTION OF LIVE AND TAPED TELEVISION PROGRAMS RELATING TO

COLLEGIATE SPORTS, PROVIDING PUBLIC RECREATIONAL SPORTS AND ATHLETIC FACILITIES, AND PROVIDING ATHLETICS INSTRUCTION AND COACHING OF STUDENTS AND THE PUBLIC, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 10-12-2001; IN COMMERCE 10-12-2001.

OWNER OF U.S. REG. NOS. 209,775, 2,035,116, AND 2,689,947.

SER. NO. 78-201,611, FILED 1-9-2003.

LINDA ESTRADA, EXAMINING ATTORNEY

Int. Cl.: 36

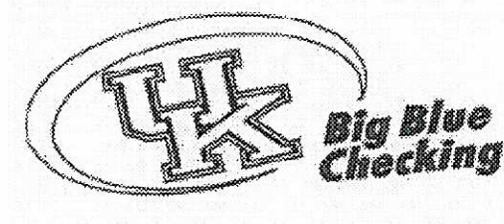
Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office

Reg. No. 2,957,180

Registered May 31, 2005

SERVICE MARK
PRINCIPAL REGISTER



UNIVERSITY OF KENTUCKY (KENTUCKY
STATE UNIVERSITY)

MEMORIAL COLISEUM

LEXINGTON, KY 40506

FOR: BANKING SERVICES, IN CLASS 36 (U.S.
CLS. 100, 101 AND 102).

FIRST USE 1-28-2004; IN COMMERCE 1-28-2004.

OWNER OF U.S. REG. NOS. 2,037,051, 2,806,593
AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "CHECKING", APART FROM THE
MARK AS SHOWN.

SER. NO. 78-381,565, FILED 3-10-2004.

IRENE D. WILLIAMS, EXAMINING ATTORNEY

Exhibit D

Int. Cls.: 35 and 41

Prior U.S. Cls.: 100, 101, 102, and 107

United States Patent and Trademark Office

Reg. No. 3,548,248

Registered Dec. 16, 2008

**SERVICE MARK
PRINCIPAL REGISTER**

BIG BLUE SPORTS NETWORK

UNIVERSITY OF KENTUCKY (KENTUCKY
STATE UNIVERSITY)
JOE CRAFT CENTER, 338 LEXINGTON AVENUE
LEXINGTON, KY 405060604

FOR: PROMOTING THE GOODS AND SERVICES
OF OTHERS BY ARRANGING FOR SPONSORS TO
AFFILIATE THEIR GOODS AND SERVICES WITH
ATHLETIC EVENTS; DISSEMINATION OF ADVER-
TISING FOR OTHERS VIA THE INTERNET, IN
CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 8-0-2004; IN COMMERCE 8-0-2004.

FOR: PRODUCTION OF RADIO, SATELLITE,
AND TELEVISION PROGRAMS RELATED TO IN-
TERCOLLEGIATE ATHLETICS; PRODUCTION OF
RADIO, SATELLITE, OR TELEVISION ENTER-
TAINMENT AND SPORTS PROGRAMS, NAMELY,
SPORTS PROGRAMMING; ENTERTAINMENT
SERVICES, NAMELY, PROVIDING A WEB SITE
FEATURING PRERECORDED AUDIO AND/OR
VIDEO FOOTAGE AND INFORMATION IN THE

FIELD OF INTERCOLLEGIATE ATHLETICS, AND
COMMENTARY AND ARTICLES ABOUT INTER-
COLLEGIATE ATHLETICS, IN CLASS 41 (U.S. CLS.
100, 101 AND 107).

FIRST USE 8-0-2004; IN COMMERCE 8-0-2004.

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 2,035,116, 2,843,073,
AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "SPORTS NETWORK", APART
FROM THE MARK AS SHOWN.

SN 78-747,966, FILED 11-5-2005.

SUNG IN, EXAMINING ATTORNEY

Exhibit E



Customer Service: 866-795-7517

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BIG RED VS BIG BLUE

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- [\\$40.00 - \\$49.99](#)
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\$8.00
 Go Big Blue Tee Shirt
 Item #BB-1002



\$12.80
 Big Blue Distressed/Torn Cap
 Item #BB-2003



\$29.00
 Univ. of Kentucky Blanket
 Item #BB-9000



\$48.00
 Big Blue Throw
 Item #BB-9001



\$15.00
 Go Big Blue Football
 Item #BB-9002



\$8.00
 Go Big Red Tee Shirt
 Item #BR-1009



\$12.80
 Big Red Distressed/Torn cap
 Item #BR-2006



\$29.00
 Univ. of Louisville Blanket
 Item #BR-9012



\$48.00
 Big Red Throw
 Item #BR-9013



\$15.00
 Go Big Red Football
 Item #BR-9014

Exhibit F