

ESTTA Tracking number: **ESTTA354464**

Filing date: **06/23/2010**

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	LE GROUPE FRUITS & PASSION INC/THE FRUITS & PASSION GROUP, INC.
Granted to Date of previous extension	06/26/2010
Address	21 PAUL GAUGIN STREET CANDIAC, QC J5R 3X8 CANADA
Attorney information	STEWART J BELLUS COLLARD AND ROE 1077 NORTHERN BLVD ROSLYN, NY 11576 UNITED STATES SBELLUS@COLLARDROE.COM

Applicant Information

Application No	77755348	Publication date	04/27/2010
Opposition Filing Date	06/23/2010	Opposition Period Ends	06/26/2010
Applicant	Wine Group LLC, The 4596 S. Tracy Boulevard Tracy, CA 95377 UNITED STATES		

Goods/Services Affected by Opposition

Class 033. All goods and services in the class are opposed, namely: Wine

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Unfair competition

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2175134	Application Date	08/25/1997
Registration Date	07/21/1998	Foreign Priority Date	NONE
Word Mark	FRUITS & PASSION		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 003. First use: First Use: 1992/09/01 First Use In Commerce: 1993/05/13 bubble baths, bath oils, body soap, hair shampoo, toilet water, body creams and milks, essential oils for personal use, potpourri and sea water bath salts Class 004. First use: First Use: 1992/09/01 First Use In Commerce: 1993/05/13 candles Class 029. First use: First Use: 1992/09/01 First Use In Commerce: 1993/05/13 jams, fruit preserves, dried fruits, olive oil

U.S. Registration No.	3109718	Application Date	10/28/2003
Registration Date	06/27/2006	Foreign Priority Date	NONE
Word Mark	FRUITS & PASSION		
Design Mark	FRUITS & PASSION		
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1995/10/31 First Use In Commerce: 2006/03/14 Retail store services featuring food products, beauty products and grooming products		

U.S. Registration No.	3200061	Application Date	09/23/2004
Registration Date	01/23/2007	Foreign Priority Date	09/02/2004
Word Mark	HOT DOG FRUITS & PASSION		
Design Mark	HOT DOG FRUITS & PASSION		
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2005/03/10 First Use In Commerce: 2005/03/10 SHAMPOO, DRY SHAMPOO, EAU DE TOILETTE, HAIR DETANGLERS Class 005. First use: First Use: 2005/03/10 First Use In Commerce: 2005/03/10 ROOM DEODORIZERS, FABRIC DEODORIZERS		

U.S. Registration No.	3038995	Application Date	10/28/2003
Registration Date	01/10/2006	Foreign Priority Date	08/01/2003
Word Mark	INFLUENCE FRUITS & PASSION		

Design Mark			
Description of Mark	NONE		
Goods/Services	Class 004. First use: CANDLES		

U.S. Registration No.	3090614	Application Date	11/29/2002
Registration Date	05/09/2006	Foreign Priority Date	NONE

Word Mark	HUMAN FRUITS & PASSION
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Design Mark			
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Description of Mark	NONE		
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Goods/Services	<p>Class 003. First use: First Use: 2003/03/04 First Use In Commerce: 2003/04/24 PERSONAL CARE PRODUCTS, NAMELY, SHOWER GELS, SOAP, FOAMING BATH CREAM, MASSAGE OIL, BODY MILK LOTION, TALCUM POWDER, PERSONAL POWDER DEODORANT, HAND SOAP, BATH SEA SALTS, BATH OIL, BODY CREAM, NON-MEDICATED LIP BALM, HAND CREAM, EAU DE TOILETTE, MOISTURIZING BODY MILK, SHOWER GEL CREAM, AFTER SHAVE LOTION, SHAVING CREAM, PERSONAL DEODORANT, GEL SKIN SCRUB, ESSENTIAL OILS FOR PERSONAL USE, BODY SHAMPOO, NON-MEDICATED EYE CONTOUR CREAM, FACIAL MASK, SKIN CLEANSING MILK, SKIN CLEANSING GEL, SKIN REGENERATING TONERS, HAIR SHAMPOO, HAIR MOISTURIZERS, HAIR CONDITIONERS, SUN SCREEN LOTION, AFTER-SUN NEUTRALIZING SKIN LOTION, AFTER-SUN REGENERATING SKIN BUTTER, NON-MEDICATED MOISTURIZING DEODORANT FOOT CREAM, NON-MEDICATED CLEANSING AND SOOTHING FOOT BATH, EXFOLIATING FOOT CREAM, NON-MEDICATED REFRESHING AND DEODORANT FOOT POWDER; POTPOURRI, PERFUMED SACHET, EYE COMPRESSES FOR COSMETIC PURPOSES, PERFUMED BURNER OILS FOR USE AS ROOM FRAGRANCES</p> <p>Class 004. First use: First Use: 2003/03/04 First Use In Commerce: 2003/04/24 CANDLES</p>		
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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	/sjb/
Name	STEWART J BELLUS
Date	06/23/2010

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

-----X
LE GROUPE FRUITS AND PASSION INC./
THE FRUITS AND PASSION GROUP INC.

Opposer,

Opposition No.
Serial No. 77755348

v.

WINE GROUP LLC

Applicant
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NOTICE OF OPPOSITION

In the matter of an application for registration of the trademark FRUITS & PASSION for wine in class 33, filed on June 9, 2009 under Serial No. 77755348 (“Applicant’s Mark”) by WINE GROUP LLC (“Applicant”), LE GROUPE FRUITS AND PASSION INC/THE FRUITS AND PASSION GROUP INC. (“Opposer”) believes it will be damaged by said registration and opposes same. The grounds for opposition are as follows:

(BACKGROUND)

- 1 Opposer is the owner of the following U.S. Trademark Registrations:

<u>REGISTRATION NO.</u>	<u>MARK</u>	<u>CLASSES</u>
2175134	FRUITS & PASSION	3, 4, 29

3109718	FRUITS & PASSION	35
3200061	HOT DOG FRUITS & PASSION	3, 5
3038995	INFLUENCE FRUITS & PASSION	4
3090614	HUMAN FRUITS & PASSION	3

All of the above marks shall be referred to collectively as "Opposer's Marks".

2. Opposer first began using Opposer's Marks in the United States at least as early as 1993.
3. Opposer's use of Opposer's Marks has been substantially exclusive and continuous from its date of first use, and due to extensive use and promotion, Opposer's Marks have become extremely well known and famous.

Count I (Likelihood of Confusion)

4. Opposer incorporates by reference all the allegations contained in paragraphs 1-3 of this Notice of Opposition.
5. Opposer's long-term use and promotion, all of which pre-dates the filing of Applicant's intent to use application for Applicant's Mark, has created extensive good will that still exists among relevant consumers today.

6. As a result, the trade and the relevant purchasing public have come to recognize any services and goods related to those sold by Opposer, and bearing a mark similar to FRUITS & PASSION, as emanating from Opposer.
7. Notwithstanding Opposer's prior rights, Applicant filed an application seeking registration of a trademark containing the term FRUITS & PASSION for "wine."
8. The commercial impression of Applicant's mark is nearly identical to Opposer's marks.
9. Applicant's wine, as described in Application Serial Number 77755348, is closely related to goods and services marketed under Opposer's Marks.
10. Due to similarities between Opposer's and Applicant's marks, and the identical or closely related goods/services upon which those marks are used, there is a likelihood that consumers will be confused, mistaken and/or deceived into believing that Applicant's goods emanate from, or in some way are associated with, or sponsored, authorized or warranted by Opposer, all to the detriment of Opposer, and Opposer will be damaged if a registration is granted to Applicant.

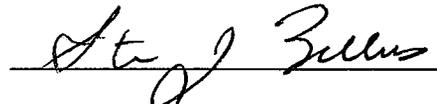
Count II (Unfair Competition and False Designation of Origin Under Section 43 (a))

11. Opposer incorporates by reference the allegations contained in paragraphs 1-10 of this Notice of Opposition.

12. By attempting to register the mark FRUITS & PASSION, despite knowledge that Opposer's Marks have significant consumer recognition, Applicant is using a mark which will lead to a false designation of origin, sponsorship or approval by Opposer, all to the detriment of Opposer who will be damaged by Applicant's use of the mark fruits & passion.

WHEREFORE, Opposer requests that this opposition be sustained and that the requested registration of Applicant's mark in Application Serial Number 77755348 be denied.

LE GROUPE FRUITS AND PASSION INC./
THE FRUITS AND PASSION GROUP INC.
("Opposer")



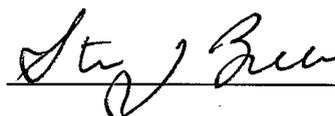
Stewart J. Bellus
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COLLARD & ROE, P.C.
Attorneys for OPPOSER
1077 Northern Boulevard
Roslyn, New York 11576
(516) 365-9802
sbellus@collardroe.com

Date: June 23, 2010

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the forgoing NOTICE OF OPPOSITION has this 23rd day of June, 2010, has been sent by prepaid First Class Mail to:

Deborah Davis Han, Esq.
Howard, Rice, Nemerovski, Canady, Falk & Rabkin
3 Embarcadero Center
Seventh Floor
San Francisco, CA 94111-4078

A handwritten signature in cursive script, appearing to read "Stewart J. Bellus", is written over a horizontal line.

Stewart J. Bellus