

ESTTA Tracking number: **ESTTA364880**

Filing date: **08/25/2010**

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	AZPB Limited Partnership
Granted to Date of previous extension	08/29/2010
Address	Chase Field 401 East Jefferson Street Phoenix, AZ 85004 UNITED STATES

Attorney information	Elise Kasell Cowan Liebowitz & Latman 1133 Avenue of the Americas New York, NY 10036 UNITED STATES eck@cll.com, trademark@cll.com Phone:212-790-9200
----------------------	---

Applicant Information

Application No	77840190	Publication date	03/02/2010
Opposition Filing Date	08/25/2010	Opposition Period Ends	08/29/2010
Applicant	Rey, Brandon Alejandro 1177 Angelo Drive Beverly Hills, CA 90210 UNITED STATES		

Goods/Services Affected by Opposition

Class 034. All goods and services in the class are opposed, namely: Tobacco
--

Grounds for Opposition

Other	See attached pleading.
-------	------------------------

Attachments	Letter to Commissioner DB (Rey) NOO.pdf (1 page)(46555 bytes) DB (Rey) NOO.pdf (5 pages)(34164 bytes)
-------------	--

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	/Elise Kasell/
Name	Elise Kasell
Date	08/25/2010

Cowan, Liebowitz & Latman, P.C.

LAW OFFICES

1133 Avenue of the Americas • New York, NY 10036-6799

(212) 790-9200 • www.cll.com • Fax (212) 575-0671

August 25, 2010

By Electronic Filing

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

Re: AZPB Limited Partnership
Notice of Opposition Against
Brandon Alejandro Rey
Application to register DB
Ref. No. 21307.038

Dear Commissioner:

We enclose a Notice of Opposition against Application Serial Number 77/840,190 published in the Official Gazette on March 2, 2010. Contemporaneously with the electronic filing of this Notice of Opposition, we are arranging for an electronic payment in the amount of \$300 to cover the filing fee.

If the amount received is insufficient and additional fees are required, please charge our Deposit Account No. 03-3415.

Please address all future correspondence to the attention of Mary L. Kevlin of Cowan, Liebowitz & Latman, P.C.

Respectfully submitted,

/Elise Kasell/

Elise Kasell

Enclosures

cc: Ms. Diane Kovach (w/encs. – by fax)
Mary L. Kevlin, Esq. (w/encs.)
Richard S. Mandel, Esq. (w/encs.)

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

In re Application Serial No. 77/840,190
Filed: October 2, 2009
For Mark: DB
Published in the Official Gazette: March 2, 2010

-----X	:	
AZPB LIMITED PARTNERSHIP,	:	
Opposer,	:	Opposition No.
	:	
v.	:	
	:	
BRANDON ALEJANDRO REY,	:	<u>NOTICE OF OPPOSITION</u>
Applicant.	:	
	:	
-----X	:	

Commissioner for Trademarks
Attn: Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Opposer, AZPB Limited Partnership (“Opposer”), a Delaware limited partnership, with offices at Chase Field, 401 East Jefferson Street, Phoenix, Arizona 85004, believes that it will be damaged by registration of the mark DB in International Class 34 for “Tobacco” as shown in Application Serial No. 77/840,190 (the “Application”), and having been granted extensions of time to oppose up to and including August 29, 2010, hereby opposes the same.

As grounds for opposition, it is alleged that:

1. Opposer is the owner of the renowned ARIZONA DIAMONDBACKS MAJOR LEAGUE BASEBALL club.
2. Since long prior to October 2, 2009, Applicant’s constructive first use date, Opposer, its predecessors, and their affiliated and related entities, licensees and/or sponsors have used the name or mark DIAMONDBACKS and/or its abbreviations D BACKS and DB,



including, without limitation, in the following distinctive stylizations

and



, alone or with other word, letter and/or design elements, (the “Opposer’s DB Marks”), in connection with baseball games and exhibition services and a wide variety of goods and services, including, but not limited to, lighters, novelty items, clothing, candy, paper goods and printed matter, toys and sporting goods.

3. Opposer owns U.S. federal registrations and applications for Opposer’s DB Marks in International Classes 9, 14, 16, 18, 25, 28, 35, 36 and 41, namely, United States Registration Nos. 2,506,423, 2,577,984, 2,718,516, 2,825,804, 2,875,933, 2,875,934, 2,889,634, 2,962,569, 3,240,969, 3,303,988 and 3,412,953 and Application Serial Nos. 76/692,228, 85/037,250 and 85/037,253.

4. Since long prior to October 2, 2009, Applicant’s constructive first use date, Opposer, its predecessors, and their affiliated and related entities, licensees and/or sponsors have promoted and advertised the sale and distribution of goods and services bearing or offered in connection with Opposer’s DB Marks, including, but not limited to, baseball games and exhibition services and a wide variety of goods and services, including, but not limited to,

lighters, novelty items, clothing, candy, paper goods and printed matter, toys and sporting goods and have sold or distributed such goods and rendered such services in commerce.

5. As a result of the sales and promotion of its goods and services bearing or offered in connection with Opposer's DB Marks, Opposer has built up highly valuable goodwill in Opposer's DB Marks, and said goodwill has become closely and uniquely identified and associated with Opposer.

6. On October 2, 2009, Applicant filed the Application for the word mark DB for "Tobacco" in International Class 34, based on an intent to use.

7. Upon information and belief, Applicant did not use the mark DB for the goods covered in the Application in United States commerce prior to its constructive first use date of October 2, 2009.

8. The goods covered by the Application are closely related to the goods offered and services rendered in connection with Opposer's DB Marks.

9. As Applicant has claimed the DB mark as a standard character mark, registration of such mark effectively would give Applicant rights to use of the letters "DB" in Applicant's mark in any stylization, including the stylizations of the Opposer's DB Marks that have been duly applied for registration and/or have priority of use over Applicant's DB mark. Additionally, registration of Applicant's DB mark effectively could lock Opposer into the "DB" stylization they have used and/or applied to register to date and could prevent Opposer from developing additional "DB" marks in the future in any other stylizations all to the great detriment of the Opposer which has invested heavily in the equity of the branding of "DB" marks.

10. Applicant's DB mark so resembles Opposer's DB Marks as to be likely, when used in connection with Applicant's goods, to cause confusion, to cause mistake, and to deceive

the trade and public, who are likely to believe that Applicant's goods have their origin with Opposer and/or that such goods are approved, endorsed or sponsored by Opposer or associated in some way with Opposer. Opposer would thereby be injured by the granting to Applicant of a certificate of registration for Applicant's DB mark.

11. Opposer would be further injured by the granting of a certificate of registration to Applicant because Applicant's DB mark would falsely suggest a connection between Applicant, which is not connected with or authorized by Opposer, and Opposer.

WHEREFORE, Opposer believes that it will be damaged by registration of Applicant's DB mark and requests that the opposition be sustained and said registration be denied.

Please recognize as attorneys for Opposer in this proceeding Mary L. Kevlin, Richard S. Mandel and Elise C. Kasell (members of the bar of the State of New York) and the firm Cowan, Liebowitz & Latman, P.C., 1133 Avenue of the Americas, New York, New York 10036.

Please address all communications to Mary L. Kevlin, Esq. at the address listed below.

Dated: New York, New York
August 25, 2010

Respectfully submitted,

COWAN LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposer

By: /Elise Kasell/

Mary L. Kevlin
Richard S. Mandel
Elise Kasell
1133 Avenue of the Americas
New York, New York 10036
(212)790-9200

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on August 25, 2010, I caused a true and correct copy of the foregoing Notice of Opposition to be sent via First Class Mail, postage prepaid, to Applicant's Correspondent of Record, Paul D. Supnik, Law Office of Paul D. Supnik, 9401 Wilshire Boulevard, Suite 1250, Beverly Hills, California 90212.

/Elise Kasell/

Elise Kasell