

ESTTA Tracking number: **ESTTA378109**

Filing date: **11/11/2010**

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	The Alliance for Coffee Excellence, Inc.		
Entity	Corporation	Citizenship	Montana
Address	415 N. Higgins Ave. Missoula, MT 59802 UNITED STATES		

Correspondence information	Robert C. Lukes Garlington, Lohn & Robinson, PLLP PO BOX 7909 Missoula, MT 59807 UNITED STATES rclukes@garlington.com Phone:406-523-2500		
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Applicant Information

Application No	85019448	Publication date	10/12/2010
Opposition Filing Date	11/11/2010	Opposition Period Ends	11/11/2010
Applicant	International Cup Of Excellence 2020 Fieldstone Pkwy Suite 254 Franklin, TN 37069 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. All goods and services in the class are opposed, namely: Hats; Sweat shirts; T-shirts
Class 041. All goods and services in the class are opposed, namely: Entertainment in the nature of competitions in the field of professional figure skating

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
The mark is merely descriptive	Trademark Act section 2(e)(1)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2540624	Application Date	07/09/2001
Registration Date	02/19/2002	Foreign Priority Date	NONE

Word Mark	CUP OF EXCELLENCE
Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 1999/11/01 First Use In Commerce: 1999/11/01 COFFEE BEANS, roasted and unroasted

U.S. Registration No.	3428120	Application Date	02/01/2005
Registration Date	05/13/2008	Foreign Priority Date	NONE

Word Mark	CUP OF EXCELLENCE
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Design Mark	
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Description of Mark	The mark consists of dark brown coffee cup and line underneath cup, next line is maroon and last line is gold, words "Cup of Excellence" under the lines is dark brown also.
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Goods/Services	Class 035. First use: First Use: 2005/02/01 First Use In Commerce: 2005/02/01 ORGANISATION OF INTERNET AUCTIONS FOR COFFEE FARMERS ENABLING THEM TO OBTAIN BETTER AND FAIRER PRICES FOR QUALITY COFFEE AND LEADING TO IMPROVED ECONOMIC CONDITIONS AND IMPROVEMENT OF MARKETPLACE CONDITIONS Class 041. First use: First Use: 2005/02/01 First Use In Commerce: 2005/02/01 ENTERTAINMENT IN THE NATURE OF COMPETITIONS IN THE FIELD OF INTERNATIONAL CUPPING COMPETITIONS AND IMPROVEMENT OF MARKET PLACE CONDITIONS
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Related Proceedings	NA
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Attachments	78558276#TMSN.jpeg (1 page)(bytes) opposition re Cup of Excellence.pdf (6 pages)(196688 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	/Robert C. Lukes/
Name	Robert C. Lukes
Date	11/11/2010

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Attorneys for Opposer: The Alliance for Coffee Excellence, Inc.

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

In the Matter of Application:

Serial No. 85019448
Filed: April 21, 2010
Applicant: International Cup of Excellence, LLC
Mark: INTERNATIONAL CUP OF EXCELLENCE
For: Hats, Sweat shirts; T-shirts, in Class 25; and
Entertainment in the nature of competitions in the field of professional
figure skating, in Class 41
Published: Oct. 12, 2010

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The Alliance of Coffee Excellence, Inc.	*	
Opposer,	*	
	*	
v.	*	NOTICE OF OPPOSITION
	*	
International Cup of Excellence, LLC	*	Opposition No. _____
Applicant.	*	
	*	

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Opposer: The Alliance for Coffee Excellence, Inc.
415 N. Higgins. Avenue
Missoula, MT 59802

THE ALLIANCE FOR COFFEE EXCELLENCE, INC., a Montana corporation, believing that it will be damaged by registration of the mark shown in the above-identified application, hereby provides notice of its opposition to Application Serial No. 85019448, for the mark INTERNATIONAL CUP OF EXCELLENCE, as filed April 21, 2010, in the name of International Cup of Excellence, LLC and published for opposition on October 12, 2010.

The grounds of Opposition are as follows:

1. The Opposer, The Alliance for Coffee Excellence, Inc. (“The Alliance”), is a corporation organized under the laws of Montana and in good standing, having its principal place of business at 415 N. Higgins. Avenue, Missoula, MT 59802.

2. Applicant is International Cup of Excellence, (“ICUP”) a Connecticut limited liability company with offices at 2020 Fieldstone Pkwy, Suite 254, Franklin TN 37069.

3. Commencing prior to Applicant’s filing date and as early as 1991, The Alliance has engaged, and is currently engaged in the coffee business on an international level. The Alliance has used its trademark CUP OF EXCELLENCE continuously since at least 1991.

4. Commencing prior to Applicant’s filing date, The Alliance and its agents have used, advertised, promoted its goods and services under the trade name CUP OF EXCELLENCE, with the result that The Alliance trade name is recognized and associated with its goods and services. The Alliance has built goodwill in connection with its sales of goods and services under its trademark CUP OF EXCELLENCE.

5. Commencing prior to Applicant's filing date, the Alliance and its agents had received trademark registrations from the United States Patent and Trademark Office ("USPTO") for its mark CUP OF EXCELLENCE. The registrations are for a word mark and a logo mark, both related to the words CUP OF EXCELLENCE. The Alliance is the owner of the following U.S. trademark registrations:

MARK	REG. NO.	DATE	GOODS/SERVICES
THE CUP OF EXCELLENCE	2540624	2/19/ 2002	COFFEE BEANS, roasted and unroasted, in Class 30
	3428120	5/13/2008	ORGANISATION OF INTERNET AUCTIONS FOR COFFEE FARMERS ENABLING THEM TO OBTAIN BETTER AND FAIRER PRICES FOR QUALITY COFFEE AND LEADING TO IMPROVED ECONOMIC CONDITIONS AND IMPROVEMENT OF MARKETPLACE CONDITIONS, in Class 35; and ENTERTAINMENT IN THE NATURE OF COMPETITIONS IN THE FIELD OF INTERNATIONAL CUPPING COMPETITIONS AND IMPROVEMENT OF MARKET PLACE CONDITIONS, in Class 41

6. Commencing prior to Applicant's filing date, the Alliance also began use of its trademark CUP OF EXCELLENCE in commerce for clothing, including t-shirts and hats.

7. Prior to Applicant first use, the Alliance also undertook to use the CUP OF EXCELLENCE mark for advertisements and promotion on internet, via the world wide web. To this effect, it is the owner of the domain “www.cupofexcellence.com.”

8. Commencing prior to the Applicant’s filing date, The Alliance uses the CUP OF EXCELLENCE trademark on an international level. The Alliance is the owner of a trademark registration for the CUP OF EXCELLENCE mark in the following countries: (a) European Union; (b) United Kingdom; and (c) Japan, all of which were registered prior to the Applicant’s filing date. In addition, The Alliance also has pending applications to register the CUP OF EXCELLENCE mark in South Korea and Canada.

9. Despite Opposer’s prior and public use of the trademark CUP OF EXCELLENCE, on April 21, 2010, Applicant filed an “intent to use” application under 15 U.S.C. § 1051(b) for registration of its alleged INTERNATIONAL CUP OF EXCELLENCE trademark in two classes: (1) in Class 25, for “Hats, Sweat shirts; T-shirts”; and (2) in Class 41, for “Entertainment in the nature of competitions in the field of professional figure skating. This application was assigned Serial No. 85019448 and was published for opposition in the Official Gazette on October 12, 2010.

10. As The Alliance’s business area includes all of the United States, as well as many foreign countries, the Applicant does or intends to business in the same geographical area of The Alliance.

11. Applicant trademark is a simulation and colorable imitation of, and so resembles The Alliance’s CUP OF EXCELLENCE trademark as to be likely, when

applied to the goods/services of Applicant, to cause confusion or mistake or to deceive purchasers, resulting in damage and detriment to The Alliance and its reputation.

12. Applicant's trademark is merely descriptive and has not acquired secondary meaning.

13. Upon information and belief, The Alliance alleges that its customers, and the public in general, are likely to be confused, mistaken or deceived as to the origin and sponsorship of Applicant's goods/services marketed under Applicant's alleged INTERNATIONAL CUP OF EXCELLENCE mark and mislead into believing that such goods/services are produced by, emanate from, or are in some way directly or indirectly associated with The Alliance, to the damage and detriment of The Alliance and its reputation.

15. Upon information and belief, The Alliance alleges that it will be damaged by the use and registration by Applicant of the alleged INTERNATIONAL CUP OF EXCELLENCE trademark, as set forth in Applicant's Trademark Application, Serial No. 85019448, in that the mark is substantially similar to The Alliance's CUP OF EXCELLENCE mark and infringes its common law rights, as used in connection with certain goods which identical to the goods described in Applicant's trademark application and other goods which are sufficiently related so as to cause a likelihood of confusion.

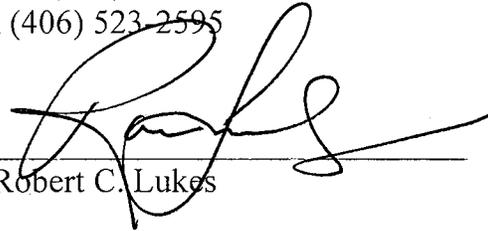
WHEREFORE, Opposer, The Alliance for Coffee Excellence, Inc., hereby requests that the Applicant's Trademark Application Serial No. 85019448 should be rejected, that no registration should be issued thereon to Applicant and that this Opposition be sustained in favor of Opposer.

DATED this 11th day of November, 2010.

Attorneys for Opposer, The Alliance for Coffee Excellence, Inc.

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By


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