

ESTTA Tracking number: **ESTTA386053**

Filing date: **12/29/2010**

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	Affliction Holdings LLC		
Entity	Limited Liability Company	Citizenship	California
Address	1799 Apollo Court Seal Beach, CA 90740 UNITED STATES		

Attorney information	Michael Bassiri 1799 Apollo Court Seal Beach, CA 90740 UNITED STATES bassiri@afflictionclothing.com, lmix@afflictionclothing.com Phone:562 598-0299		
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Applicant Information

Application No	77914227	Publication date	11/30/2010
Opposition Filing Date	12/29/2010	Opposition Period Ends	12/30/2010
International Registration No.	NONE	International Registration Date	NONE
Applicant	RAGE BEVERAGES INC. P.O. BOX 49605 MONTREAL, QUEBEC, H3T2A5 CANADA		

Goods/Services Affected by Opposition

Class 032. First Use: 2009/06/26 First Use In Commerce: 2009/06/26
All goods and services in the class are opposed, namely: Energy drinks

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3549997	Application Date	05/08/2008
Registration Date	12/23/2008	Foreign Priority Date	NONE
Word Mark	AFFLICTION		

Design Mark	<h1>AFFLICTION</h1>		
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2005/04/21 First Use In Commerce: 2008/05/07 Entertainment in the nature of competitions in the field of mixed martial arts; Entertainment services in the nature of live mixed martial arts (MMA) events; Entertainment services in the nature of live musical performances; Organizing live mixed martial arts events and competitions		

U.S. Registration No.	3857174	Application Date	04/06/2007
Registration Date	10/05/2010	Foreign Priority Date	NONE

Word Mark	AFFLICTION
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Design Mark	<h1>AFFLICTION</h1>		
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2010/03/26 First Use In Commerce: 2010/03/26 Sunglasses		

U.S. Registration No.	3772612	Application Date	08/25/2008
Registration Date	04/06/2010	Foreign Priority Date	NONE

Word Mark	AFFLICTION
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Design Mark	<h1>AFFLICTION</h1>		
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2008/05/23 First Use In Commerce: 2008/05/23 Retail shops featuring clothing, clothing accessories, leather goods, footwear, bags, jewelry, fragrances, sunglasses; Retail store and on-line retail store services featuring clothing, clothing accessories, leather goods, footwear, bags, jewelry, fragrances, sunglasses		

U.S. Registration No.	3109069	Application Date	04/27/2005
Registration Date	06/27/2006	Foreign Priority Date	NONE

Word Mark	AFFLICTION
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Design Mark	<h1>AFFLICTION</h1>		
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2005/04/21 First Use In Commerce: 2005/04/21 Clothing, namely shirts, t-shirts, tank tops, jackets, sweatshirts, shorts, pants, sweat pants, hats, caps and footwear		

U.S. Registration No.	3677704	Application Date	09/22/2008
Registration Date	09/01/2009	Foreign Priority Date	NONE

Word Mark	AFFLICTION
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Design Mark	AFFLICTION
Description of Mark	NONE
Goods/Services	Class 015. First use: First Use: 2007/11/00 First Use In Commerce: 2007/11/00 Musical instruments

U.S. Registration No.	3531751	Application Date	04/09/2007
Registration Date	11/11/2008	Foreign Priority Date	NONE
Word Mark	AFFLICTION		
Design Mark	AFFLICTION		
Description of Mark	NONE		
Goods/Services	Class 014. First use: First Use: 2007/11/01 First Use In Commerce: 2007/11/01 Jewelry		

U.S. Registration No.	3747346	Application Date	02/08/2008
Registration Date	02/09/2010	Foreign Priority Date	NONE
Word Mark	AFFLICTION		

Design Mark	<h1>AFFLICTION</h1>		
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2009/09/01 First Use In Commerce: 2009/09/01 coats, dress shirts, dress suits, men's suits, over coats, pants, shirts, shirts for suits, slacks, trousers		

U.S. Registration No.	3706917	Application Date	02/08/2008
Registration Date	11/03/2009	Foreign Priority Date	NONE

Word Mark	AFFLICTION		
Design Mark	<h1>AFFLICTION</h1>		
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2008/08/00 First Use In Commerce: 2008/08/00 Jackets and Suit coats		

U.S. Registration No.	3773491	Application Date	08/25/2008
Registration Date	04/06/2010	Foreign Priority Date	NONE
Word Mark	AFFLICTION		

Design Mark	<h1>AFFLICTION</h1>		
Description of Mark	NONE		
Goods/Services	Class 018. First use: First Use: 2009/11/30 First Use In Commerce: 2009/11/30 All purpose sport bags; All-purpose athletic bags; athletic bags, sports bags, wallets and handbags, bags for sports; duffel bags, gym bags, handbags, leather bags, messengers bags, and wallets, purses, travelling bags		

U.S. Registration No.	3790247	Application Date	11/11/2009
Registration Date	05/18/2010	Foreign Priority Date	NONE

Word Mark	AFFLICTION		
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Design Mark			
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Description of Mark	The mark consists of stylized font of the word "Affliction".		
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Goods/Services	Class 014. First use: First Use: 2008/01/01 First Use In Commerce: 2008/01/01 jewelry, namely, key chains, rings, necklaces, dog tags, bracelets and pendants Class 018. First use: First Use: 2009/03/01 First Use In Commerce: 2009/03/01 wallets Class 025. First use: First Use: 2005/08/01 First Use In Commerce: 2005/08/01 men's and women's clothing, namely, shirts, tops, tank tops, baby tees, thermal shirts, long sleeve shirts, short sleeve shirts, dresses, jackets, leather jackets, sports coats, coats, hooded shirts, hooded sweatshirts, sweatshirts, pants, jeans, denim jeans, denim jackets, denim shorts, jean jackets, hats, caps, beanies, shorts, board shorts, belts, footwear, namely, boots		
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U.S. Registration No.	3784805	Application Date	11/12/2009
Registration Date	05/04/2010	Foreign Priority Date	NONE

Word Mark	AFFLICTION		
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Design Mark			
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Description of Mark	The mark consists of a stylized font of the word "Affliction".		
Goods/Services	Class 014. First use: First Use: 2009/11/01 First Use In Commerce: 2009/11/01 watches		

U.S. Registration No.	3784810	Application Date	11/24/2009
Registration Date	05/04/2010	Foreign Priority Date	NONE

Word Mark	AFFLICTION		
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Design Mark			
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Description of Mark	The mark consists of a stylized font of the word "Affliction".		
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Goods/Services	Class 035. First use: First Use: 2008/05/23 First Use In Commerce: 2008/05/23 retail shops, retail stores, and retail apparel stores featuring clothing, clothing accessories, footwear, jewelry; on-line retail store services featuring clothing, clothing accessories, footwear, jewelry		
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U.S. Application No.	77871230	Application Date	11/12/2009
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	AFFLICTION		
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Design Mark			
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Description of Mark	The mark consists of a stylized font of the word "Affliction".		
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Goods/Services	Class 009. First use: First Use: 2010/03/26 First Use In Commerce: 2010/03/26 sunglasses		
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U.S. Registration No.	3817136	Application Date	10/29/2009
Registration Date	07/13/2010	Foreign Priority Date	NONE

Word Mark	A AFFLICTION LIVE FAST		
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Design Mark	
Description of Mark	The mark consists of a stylized letter "A" with wings with the words "Affliction and Live Fast" above and below it, and four stylized cross designs, one each at the top, sides and bottom
Goods/Services	Class 025. First use: First Use: 2005/08/01 First Use In Commerce: 2005/08/01 women's and men's clothing, namely, jackets, hats, belts, denim jeans, denim jackets, denim shorts, jeans, jean jackets, leather jackets, t-shirts, polo shirts, shirts, baby tees, tops, dresses, hooded shirts, hooded sweatshirts, sweatshirts, thermal shirts, beanies, shorts, board shorts, long sleeves shirts, short sleeve shirts, leggings, caps

U.S. Registration No.	3784803	Application Date	11/10/2009
Registration Date	05/04/2010	Foreign Priority Date	NONE

Word Mark	A AFFLICTION LIVE FAST
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Design Mark	
Description of Mark	The mark consists of a stylized "A" with wings with the words "Affliction" and "Live Fast" above and below it.
Goods/Services	Class 014. First use: First Use: 2009/11/01 First Use In Commerce: 2009/11/01 watches

Attachments	77469196#TMSN.jpeg (1 page)(bytes) 77151039#TMSN.jpeg (1 page)(bytes) 77555173#TMSN.jpeg (1 page)(bytes) 78618478#TMSN.jpeg (1 page)(bytes) 77576150#TMSN.jpeg (1 page)(bytes) 77152321#TMSN.jpeg (1 page)(bytes) 77392370#TMSN.jpeg (1 page)(bytes) 77977895#TMSN.jpeg (1 page)(bytes) 77978758#TMSN.jpeg (1 page)(bytes) 77870662#TMSN.jpeg (1 page)(bytes)
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	77870979#TMSN.jpeg (1 page)(bytes) 77880148#TMSN.jpeg (1 page)(bytes) 77871230#TMSN.jpeg (1 page)(bytes) 77860462#TMSN.jpeg (1 page)(bytes) 77869490#TMSN.jpeg (1 page)(bytes) 12.30.10 Executed Notice of Opposition - Rage Affliction.pdf (7 pages)(137746 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 Bassiri/
Name	Michael Bassiri
Date	12/29/2010

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

Affliction Holdings, LLC

Opposer,

v.

Rage Beverages, Inc.,

Applicant

Opposition No.

Application No. 77/914,227

NOTICE OF OPPOSITION

In the matter of the application for registration of the trademark RAGE AFFLICTION filed by Rage Beverages, Inc. ("Applicant"), as shown in Application Serial No. 77/914,227 published for opposition in the Official Gazette on November 30, 2010. Applicant is a Canadian corporation who lists P.O. Box 49605 Montreal, Quebec Canada H3T2A5 as its address.

Affliction Holdings LLC ("Opposer"), is a California limited liability company with its address at 1799 Apollo Court, Seal Beach, CA 90740 and believes that it will be damaged by registration of the mark shown in said Application Serial No. 77/914,227 and hereby opposes the same:

1. Opposer is the owner of U.S. Trademark Registration No. 3,549,997, for the mark AFFLICTION covering entertainment in the nature of competitions in the field of mixed martial arts; Entertainment services in the nature of live mixed martial arts (MMA) events; Entertainment services in the nature of live musical performances; Organizing live mixed martial arts events and competitions in Class 41, which it has been using in commerce in connection with these services since at least May 2008.
2. Opposer is the owner of U.S. Trademark Registration No. 3,747,346 for the mark AFFLICTION covering coats, dress shirts, dress suits, men's suits, neckties, overcoats, pants, shirts, shirts for suits, slacks, ties, top coats, tuxedos, and trousers in Class 25, which it has been using in commerce in connection with these goods since at least September 2009.
3. Opposer is the owner of U.S. Registration No. 3,857,174 for the mark AFFLICTION covering sunglasses in Class 9, which has it has been using in commerce in connection with these goods since at least March 2010.
4. Opposer is the owner of U.S. Registration No. 3,772,612 for the mark AFFLICTION covering retail shops featuring clothing, clothing accessories, leather goods, footwear, bags, jewelry, fragrances, sunglasses, retail store and on-line retail store services featuring clothing, clothing accessories, leather goods, footwear, bags, jewelry, fragrances, and sunglasses, which it has been using in commerce in connection with these goods since at least May 2008.
5. Opposer is the owner of U.S. Trademark Registration No. 3,109,069, for the mark AFFLICTION covering clothing, namely shirts, t-shirts, tank tops, jackets,

sweatshirts, shorts, pants, sweat pants, hats, caps and footwear in Class 25, which it has been using in commerce in connection with these goods since at least April 2005.

6. Opposer is the owner of U.S. Trademark Registration No. 3,677,704, for the mark AFFLICTION covering musical instruments in Class 15, which it has been using in commerce in connection with these goods since at least November 2007.
7. Opposer is the owner of U.S. Trademark Registration No. 3,531,751, for the mark AFFLICTION covering jewelry in Class 14, which it has been using in commerce in connection with these goods since at least November 2007.
8. Opposer is the owner of U.S. Trademark Registration No. 3,706,917, for the mark AFFLICTION covering jackets and suit coats in Class 25, which it has been using in commerce in connection with these goods since at least August 2008.
9. Opposer is the owner of U.S. Trademark Registration No. 3,773,491 for the mark AFFLICTION cover all purpose sports bags, all purpose athletic bags, athletic bags, sports bags, wallets and handbags, bags for sports, duffel bags, gym bags, handbags, leather bags, messenger bags, and wallets, purses, and traveling bags, which it has been using in commerce in connection with these goods since at least November 2009.
10. Opposer is the owner of U.S. Registration No. 3,790,247 for the design mark  covering jewelry namely key chains, rings, necklaces, dog tags, bracelets, and pendants in Class 14, which it has been using in commerce in connection with these goods since at least January 2008. In addition, this

application also covers wallets in Class 18, which it has been using in commerce in connection with these goods since at least March 2009. Lastly, this application covers men's and women's clothing namely shirts, tops, tank tops, baby tees, thermals, long sleeve shirts, short sleeve shirts, dresses, jackets, leather jackets, sports coats, coats, hoodies, sweatshirts, pants, jeans, denim, jean jackets, hats, caps, beanies, shorts, board shorts, belts, footwear namely boots in Class 25, which it has been using in commerce in connection with these goods since at least August 2005.

11. Opposer is the owner of U.S. Registration No. 3,784,805 for the design mark

Affliction

covering watches in Class 14, which it has been using in commerce in connection with these goods since at least November 2009.

12. Opposer is the owner of Registration No. 3,784,810 for the design mark

Affliction

covering retail shops, retail stores, and retail apparel stores featuring clothing, clothing accessories, footwear, jewelry; on-line retail store services featuring clothing, clothing accessories, footwear, jewelry in Class 35, which it has been using in commerce in connection with these goods since at least May 2008.

13. Opposer is the owner of U.S. Trademark Application No. 77/871,230 for the

design mark **Affliction**

covering sunglasses in Class 9 which it has been using in commerce in connection with this good since at least March 2010.

14. Opposer is the owner of U.S. Registration No. 3,817,136 for the design mark



covering women's and men's clothing, namely, jackets, hats, belts, denims, jeans, jean jackets, leather jackets, t-shirts, polo shirts, shirts, baby tees, tops, dresses, hoodies, sweatshirts, thermals, beanies, shorts, board shorts, long sleeves shirts, short sleeve shirts, leggings, caps in Class 25, which it has been using in commerce in connection with these goods since at least August 2005.

15. Opposer is the owner of U.S. Registration No. 3,784,803 for the design mark



covering watches in Class 14, which it has been using in commerce in connection with these goods since November 2009.

16. Opposer is the owner of the U.S. Registration No. 3,839,587 for mark AFFLICTION BLACK PREMIUM covering clothing in Class 25, which it has been using in commerce in connection with these goods since at least February 2009.

17. Applicant filed an in use application and claims first use in commerce on June 26, 2009. Opposer has been able to verify the use of this product through Applicant's website at <http://www.rageliquidenergy.com>. Applicant displays the

below referenced mark on its website that the energy drink is offered at many



convenient stores.

18. The font design of the RAGE AFFLICTION mark on Applicant's energy drink as depicted above and sought to be registered by Applicant is very similar to the AFFLICTION stylized design marks referenced above in paragraphs 10 through 13.
19. Consumers are likely to be confused and to mistakenly believe that Applicant's products offered under its RAGE AFFLICTION mark either emanate from or are licensed by, sponsored by, or associated with Opposer.
20. If Applicant were permitted to use and register its mark for its goods as specified in its application, confusion among consumers resulting in damage and injury to Opposer would be caused by virtue of the fact that Applicant's mark and Opposer's trademark bare striking similarities, and the related nature of the goods covered by those marks. Any defect, objection or fault found with Applicant's goods would reflect upon, serious injure, and dilute the reputation and value that Opposer has established under its trademark.

WHEREFORE, Opposer prays that RAGE AFFLICTION Serial No. 77/914,227 be rejected, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of the Opposer.

Opposer appoints Michael Bassiri, General Counsel for Affliction Holdings LLC, 1799 Apollo Court, Seal Beach California to transact all business on its behalf in connection with this Opposition.

December 30, 2010

AFFLICTION HOLDINGS LLC

Michael Bassiri, General Counsel
1799 Apollo Court
Seal Beach, CA 90740
Tel: 562-598-0299

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 30th day of December 2010, a true copy of the foregoing **NOTICE OF OPPOSITION** was served by first-class mail and federal express as indicated below postage pre-paid on:

Rage Beverages, Inc.
P.O. Box 49605
Montreal, Quebec Canada H3T2A2
(U.S. Mail)

Rage Beverages, Inc.
5895 Chemin Saint Laurent
Montreal, Quebec QCH4S
(Federal Express)

AFFLICTION HOLDINGS LLC

Michael Bassiri, General Counsel
1799 Apollo Court
Seal Beach, CA 90740
Tel: 562-598-0299