

ESTTA Tracking number: **ESTTA393698**

Filing date: **02/16/2011**

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	McCorkle Nurseries, Inc.
Granted to Date of previous extension	02/16/2011
Address	4904 Luckey's Bridge Rd. SE Dearing, GA 30808 UNITED STATES

Attorney information	Maria v. Hardison Tassan & Hardison 4143 27th Street N. Arlington, VA 22207-5211 UNITED STATES maria@tassan.com Phone:703-522-4583
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Applicant Information

Application No	85038783	Publication date	10/19/2010
Opposition Filing Date	02/16/2011	Opposition Period Ends	02/16/2011
Applicant	International Fruit Genetics, LLC 441 Vineland Road Bakersfield, CA 933079556 UNITED STATES		

Goods/Services Affected by Opposition

Class 031. All goods and services in the class are opposed, namely: Fruits, namely, fresh grapes

Applicant Information

Application No	85037581	Publication date	10/19/2010
Opposition Filing Date	02/16/2011	Opposition Period Ends	
Applicant	International Fruit Genetics, LLC 441 Vineland Road Bakersfield, CA 933079556 UNITED STATES		

Goods/Services Affected by Opposition

Class 031. All goods and services in the class are opposed, namely: Live plants, namely, grape vines

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.	3130408	Application Date	12/21/2004
Registration Date	08/15/2006	Foreign Priority Date	NONE
Word Mark	DAZZLE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 031. First use: First Use: 2005/06/08 First Use In Commerce: 2005/06/08 CRAPE MYRTLES		

U.S. Registration No.	3133588	Application Date	12/21/2004
Registration Date	08/22/2006	Foreign Priority Date	NONE
Word Mark	RAZZLE DAZZLE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 031. First use: First Use: 2005/06/08 First Use In Commerce: 2005/06/08 CRAPE MYRTLES		

Attachments	76625337#TMSN.gif (1 page)(bytes) 76625338#TMSN.gif (1 page)(bytes) IFG581.pdf (4 pages)(54128 bytes) IFG783.pdf (4 pages)(53940 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	/mvh/
Name	Maria v. Hardison
Date	02/16/2011

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

MCCORKLE NURSERIES, INC.,)	
)	
Opposer,)	
)	Opposition No. _____
v.)	Serial No. 85/037,581
)	Mark: SWEET DAZZLE
)	
INTERNATIONAL FRUIT GENETICS, LLC)	
)	
Applicant.)	

NOTICE OF OPPOSITION

In the matter of the application of International Fruit Genetics, LLC (hereafter “Applicant”), a California limited liability company, having an address at 441 Vineland Road, Bakersfield, California 93307-9556, filed on May 13, 2010, and accorded Serial No. 85/037,581 an application seeking federal registration of the alleged mark SWEET DAZZLE for products in International Class 31 based upon an intent to use; Opposer, McCorkle Nurseries, Inc. (hereafter “Opposer”), a Georgia corporation, having a business address at 4904 Luckey’s Bridge Road, SE, Dearing, Georgia 30808 believes that it will be damaged by the foregoing registration of Applicant's mark and hereby opposes its registration.

The grounds for this opposition are as follows:

1. Opposer is the owner of Registration No. 3,130,408 for the mark DAZZLE for “crape myrtles.” Opposer has used the mark on the products in the U.S. since June 8, 2005.
2. Opposer is the owner of Registration No. 3,133,588 for the mark RAZZLE DAZZLE for “crape myrtles.” Opposer has used the mark on the products in the U.S. since June 8, 2005.

3. Applicant's mark is nearly identical in sound, appearance, and connotation to Opposer's marks DAZZLE and RAZZLE DAZZLE (hereafter the "Marks").

3. The products identified in Applicant's application are identical or related to the products sold by Opposer under the Marks. Furthermore, Applicant's products would be marketed in the same channels of commerce and directed toward the same classes of purchasers as Opposer's products; hence, contemporaneous use of Applicant's mark and Opposer's Marks is likely to cause confusion.

4. Opposer has expended considerable resources in promoting, protecting, and using its Marks. As a result, Opposer has created substantial goodwill in connection with its Marks throughout the United States, all of which will be jeopardized by the registration of Applicant's mark and, therefore, must be precluded from registration under Section 2(d) of the Lanham Act of 1946 [15 U.S.C. 1052(d)].

5. The mark set forth in Application No. 85/037,581 so resembles a mark or trade name previously used in the United States by Opposer, and not abandoned, as to be likely when applied to the services of Applicant to cause confusion, or to cause mistake, or to deceive.

6. The mark sought to be registered in application Serial No. 85/037,581 consists of, or comprises, a mark which so resembles a mark registered in the United States Patent and Trademark Office by Opposer and not abandoned, as to be likely when applied to the services of Applicant to cause confusion, or to cause mistake, or to deceive.

WHEREFORE, Opposer respectfully requests that this opposition be granted and that Serial No. 85/037,581 be denied registration.

This Notice of Opposition is filed together with the required government filing fee of three hundred dollars (\$300.00).

MCCORKLE NURSERIES, INC.

Date: February 16, 2011

By: 

Maria v. Hardison, Esq.

Attorney for Opposer

Tassan & Hardison

4143 27th Street North

Arlington, Virginia 22207-5211

(703) 522-4583

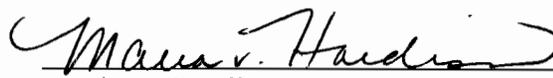
(703) 522-5306

E-mail: maria@tassan.com

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Notice of Opposition was mailed, first-class, postage prepaid, this 16th day of February 2011, to:

Jay M. Behmke, Esq.
Carle, Mackie, Power & Ross, LLP
100 B Street, Suite 400
Santa Rosa, California 95401-6376


Maria v. Hardison
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

MCCORKLE NURSERIES, INC.,)	
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Opposer,)	
)	Opposition No. _____
v.)	Serial No. 85/038,783
)	Mark: SWEET DAZZLE
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INTERNATIONAL FRUIT GENETICS, LLC)	
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Applicant.)	

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In the matter of the application of International Fruit Genetics, LLC (hereafter “Applicant”), a California limited liability company, having an address at 441 Vineland Road, Bakersfield, California 93307-9556, filed on May 13, 2010, and accorded Serial No. 85/038,783 an application seeking federal registration of the alleged mark SWEET DAZZLE for products in International Class 31 based upon an intent to use; Opposer, McCorkle Nurseries, Inc. (hereafter “Opposer”), a Georgia corporation, having a business address at 4904 Luckey’s Bridge Road, SE, Dearing, Georgia 30808 believes that it will be damaged by the foregoing registration of Applicant's mark and hereby opposes its registration.

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5. The mark set forth in Application No. 85/038,783 so resembles a mark or trade name previously used in the United States by Opposer, and not abandoned, as to be likely when applied to the services of Applicant to cause confusion, or to cause mistake, or to deceive.

6. The mark sought to be registered in application Serial No. 85/038,783 consists of, or comprises, a mark which so resembles a mark registered in the United States Patent and Trademark Office by Opposer and not abandoned, as to be likely when applied to the services of Applicant to cause confusion, or to cause mistake, or to deceive.

WHEREFORE, Opposer respectfully requests that this opposition be granted and that Serial No. 85/038,783 be denied registration.

This Notice of Opposition is filed together with the required government filing fee of three hundred dollars (\$300.00).

MCCORKLE NURSERIES, INC.

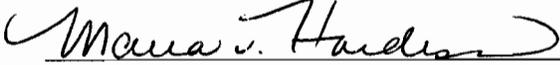
Date: February 16, 2011

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