

ESTTA Tracking number: **ESTTA410389**

Filing date: **05/23/2011**

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	High Voltage Beverages, LLC
Granted to Date of previous extension	05/22/2011
Address	6000 Fairview Road Suite 1200 Charlotte, NC 28210 UNITED STATES
Attorney information	Meichelle R. MacGregor Cowan, Liebowitz & Latman, P.C. 1133 Avenue of the Americas New York, NY 10036 UNITED STATES mrm@cll.com, trademark@cll.com Phone:212-790-9200

Applicant Information

Application No	85025385	Publication date	11/23/2010
Opposition Filing Date	05/23/2011	Opposition Period Ends	05/22/2011
International Registration No.	NONE	International Registration Date	NONE
Applicant	Acava Limited 167, Merchants Street Valleta VLT, 1174 MALTA		

Goods/Services Affected by Opposition

Class 032. All goods and services in the class are opposed, namely: Energy drinks
--

Grounds for Opposition

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

Attachments	NooVOLT44.pdf (4 pages)(13519 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	/Meichelle R. MacGregor/
Name	Meichelle R. MacGregor
Date	05/23/2011

28236.000

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

In the Matter of Application Serial No. 85/025,385
Filed: April 28, 2010
For Mark: VOLT 440 MÁS ENERGÍA
Published in the Official Gazette: November 23, 2010

----- X

HIGH VOLTAGE BEVERAGES, LLC,

Opposer,

Opposition No.

-against-

NOTICE OF OPPOSITION

ACAVA LIMITED,

Applicant.

----- X

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

High Voltage Beverages, LLC, a Delaware limited liability company ("Opposer"), believes that it will be damaged by registration of the mark VOLT 440 MÁS ENERGÍA for "energy drinks" in International Class 32, as shown in Application Serial No. 85/025,385, and having been granted extensions of time to oppose up to and including May 22, 2011, hereby opposes the same.

As grounds of opposition, it is alleged that:

1. Opposer is and has been, through the activities of its predecessor-in-interest and assignor Brand Name Management, Inc., in the business of developing, marketing and distributing beverages.

2. Opposer owns, by assignment from Brand Name Management, Inc., Registration No. 3,230,068 for the mark VOLT for “electrolyte replacement soft drinks” in International Class 32 (“Opposer’s VOLT Mark”). The application that matured into the aforesaid registration was filed on July 23, 1997 on an intent-to-use basis and thus enjoys a priority date of July 23, 1997.

3. Commencing in October 2006, Opposer has marketed, distributed, promoted and advertised soft drinks under Opposer’s VOLT Mark. Opposer’s VOLT soft drinks are offered in both carbonated and non-carbonated versions, available in multiple flavors and including energy enhancement ingredients.

4. Opposer has advertised and promoted its VOLT soft drinks through radio advertising, sampling programs, point-of-sale materials and other materials which have enhanced the association of the VOLT mark with Opposer.

5. On or about April 28, 2010, Acava Limited (“Applicant”) filed Application Serial No. 85/025,385 (the “Application”) on the basis of Section 44(e) to register the mark VOLT 440 MÁS ENERGÍA (“Applicant’s VOLT 440 MÁS ENERGÍA Mark”) for “energy drinks” in International Class 32.

6. Applicant’s Application disclaims the descriptive term “energia” (a translation of “energy”) and claims a priority date, based upon a foreign filing, of February 17, 2010.

7. Upon information and belief, Applicant did not use Applicant’s VOLT 440 MÁS ENERGÍA Mark prior to its claimed priority date of February 2010, which substantially post-dates Opposer’s constructive first use date of July 23, 1997 and its common law priority date of October 2006. Opposer’s VOLT Mark thus enjoys priority over Applicant’s VOLT 440 MÁS ENERGÍA Mark.

8. The goods covered by the Application are identical and/or closely related to goods covered by Opposer's VOLT Mark and its corresponding registration.

9. Applicant's VOLT 440 MÁS ENERGÍA Mark so resemble Opposer's VOLT Mark as to be likely, when applied to Applicant's goods, to cause confusion, or to cause mistake or to deceive prospective consumers into believing that the goods offered in connection with Applicant's VOLT 440 MÁS ENERGÍA Mark are provided, approved, endorsed or sponsored by Opposer, or that the parties or their goods are otherwise associated, affiliated or connected in some way. Opposer would thereby be injured by the granting to Applicant of a certificate of registration for Applicant's VOLT 440 MÁS ENERGÍA Mark.

WHEREFORE, Opposer, by its attorneys, respectfully requests that its opposition be sustained and that the Applications for registration be denied.

Please recognize as attorneys for Opposer in this proceeding Jonathan Z. King, Richard S. Mandel and Meichelle R. MacGregor and the firm Cowan, Liebowitz & Latman, P.C., 1133 Avenue of the Americas, New York, New York 10036.

Dated: New York, New York
May 23, 2011

Respectfully submitted,

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

By: Jonathan Z. King
Jonathan Z. King
Richard S. Mandel
Meichelle R. MacGregor
1133 Avenue of the Americas
New York, NY 10036-6799
(212) 790-9200

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 23, 2011, a copy of the foregoing Notice of Opposition to was served via first class, postage paid mail on Applicant's Attorney and Correspondent of Record addressed as follows:

Laurel V. Dineff
Dineff Trademark Law Limited
160 N Wacker Dr
Chicago, IL 60606-1633

/Meichelle R. MacGregor
Meichelle R. MacGregor