

ESTTA Tracking number: **ESTTA431317**

Filing date: **09/20/2011**

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	Goya Foods, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	100 Seaview Drive Secaucus, NJ 07094 UNITED STATES		

Attorney information	Stephen L. Baker Baker & Rannells, PA 575 Route 28, Suite 102 Raritan, NJ 08869 UNITED STATES officeactions@br-tmlaw.com,k.hnasko@br-tmlaw.com Phone:9087225640		
----------------------	--	--	--

Applicant Information

Application No	85305128	Publication date	08/23/2011
Opposition Filing Date	09/20/2011	Opposition Period Ends	09/22/2011
Applicant	Boundary Waters Brands, LLC 1921 Ewing Avenue South Minneapolis, MN 55416 UNITED STATES		

Goods/Services Affected by Opposition

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

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1860499	Application Date	09/21/1992
Registration Date	10/25/1994	Foreign Priority Date	NONE
Word Mark	JOYAS DE GOYA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1994/03/00 First Use In Commerce: 1994/03/00		

	fruit drinks, soft drinks, and malt syrups for beverages		
U.S. Registration No.	1859228	Application Date	09/21/1992
Registration Date	10/18/1994	Foreign Priority Date	NONE
Word Mark	JOYAS DE GOYA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1994/03/00 First Use In Commerce: 1994/03/00 rice, spices and coffee		
U.S. Registration No.	1857320	Application Date	09/21/1992
Registration Date	10/04/1994	Foreign Priority Date	NONE
Word Mark	JOYAS DE GOYA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1994/03/00 First Use In Commerce: 1994/03/00 canned fruits and vegetables		
U.S. Registration No.	622395	Application Date	04/29/1953
Registration Date	02/28/1956	Foreign Priority Date	NONE
Word Mark	GOYA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U046 (International Class 029, 032). First use: First Use: 1939/08/00 First Use In Commerce: 1939/08/00 CANNED VEGETABLES, CANNED FRUIT, CANNED APRICOT NECTAR, CANNED ORANGE JUICE, AND TOMATO SAUCE		
U.S. Registration No.	625975	Application Date	05/26/1954
Registration Date	04/24/1956	Foreign Priority Date	NONE

Word Mark	GOYA
Design Mark	
Description of Mark	NONE
Goods/Services	Class U048 (International Class 032). First use: First Use: 1943/00/00 First Use In Commerce: 1943/00/00 MALT CEREAL BEVERAGE

U.S. Registration No.	635283	Application Date	10/11/1955
Registration Date	10/02/1956	Foreign Priority Date	NONE

Word Mark	GOYA
Design Mark	
Description of Mark	NONE
Goods/Services	Class U045 (International Class 032). First use: First Use: 1950/05/00 First Use In Commerce: 1950/05/00 SYRUPS FOR MAKING SOFT DRINKS

U.S. Registration No.	764033	Application Date	01/15/1963
Registration Date	01/28/1964	Foreign Priority Date	NONE

Word Mark	GOYA
Design Mark	
Description of Mark	NONE
Goods/Services	Class U046 (International Class 029, 030). First use: First Use: 1939/08/00 First Use In Commerce: 1939/08/00 Coffee, and Edible Olive Oil

U.S. Registration No.	962193	Application Date	07/14/1972
Registration Date	06/26/1973	Foreign Priority Date	NONE
Word Mark	GOYA		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class U046 (International Class 029, 030, 032). First use: First Use: 1939/08/00 First Use In Commerce: 1939/08/00</p> <p>BEEF STEW, VIENNA SAUSAGE, CANNED FRUIT JUICES, CEREAL, CORN MEAL, HOMINY, CRACKERS, EDIBLE OILS, CORN OIL, OLIVE OIL, FRUIT SYRUP, SESAME SEED SYRUP, GRAPE JUICE, JELLIES AND PRESERVES, MAYONNAISE, OLIVES, RICE, SOUPS, SPAGHETTI, SPICES, SALT, PEPPER, OREGANO, VINEGAR, FLAVORING EXTRACTS, MEAT SAUCE, SWEET CHOCOLATE, TOMATO SAUCE, CHEESE, CREAM OF COCONUT, CANNED VEGETABLES, PAPAYA NECTAR, PEACH NECTAR, GUAVA NECTAR, SPAGHETTI AND MEAT BALLS, MEAT SAUCE AND CONDIMENT, BREADFUIT; PREPARED SEA FOOD-NAMELY, SHRIMP, SPICED SHRIMP, AND LOBSTER GUMBO, CANNED FISH, PASTELES, PUERTO RICAN SANCOCHO, FRUIT COCKTAIL, PREPARED COCONUT, AND FLAN CUSTARD</p>		

U.S. Registration No.	1349891	Application Date	06/28/1984
Registration Date	07/16/1985	Foreign Priority Date	NONE
Word Mark	GOYA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 1978/06/27 First Use In Commerce: 1978/06/27 WINES		

U.S. Registration No.	1354559	Application Date	06/18/1984
Registration Date	08/13/1985	Foreign Priority Date	NONE
Word Mark	GOYA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1959/04/06 First Use In Commerce: 1959/04/06 MALTA, NAMELY A NON-ALCOHOLIC MALT BEVERAGES		

U.S. Registration No.	1689199	Application Date	03/04/1991
Registration Date	05/26/1992	Foreign Priority Date	NONE
Word Mark	GOYA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1991/01/14 First Use In Commerce: 1991/01/14 coffee		

U.S. Registration No.	1739172	Application Date	11/23/1990
Registration Date	12/08/1992	Foreign Priority Date	NONE
Word Mark	GOYA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1991/01/01 First Use In Commerce: 1991/01/01 ice cream, sherberts, frozen yogurt and frozen confections		

Attachments	71646179#TMSN.gif (1 page)(bytes) 71667185#TMSN.gif (1 page)(bytes) 71696268#TMSN.gif (1 page)(bytes) 72429883#TMSN.gif (1 page)(bytes) Not.Opp. JOYA.pdf (7 pages)(28640 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	/Stephen L. Baker/
Name	Stephen L. Baker
Date	09/20/2011

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

-----X	
Goya Foods, Inc.	Opp. No.
	Mark: JOYA
Opposer	Ser. No.: 85305128
v.	Filing Date: April 26, 2011
Boundary Waters Brands, LLC.,	
.Applicant	
-----X	

**NOTICE OF OPPOSITION
PURSUANT TO 15 U.S.C SECTIONS 1063 AND 1125(c)**

In the matter of trademark application Serial No. 85305128 filed by Applicant, Boundary Waters Brands, LLC., (“Applicant”), for the mark JOYA as a trademark for “Soft drinks, namely, sodas” (“Applicant’s Goods”) in International Class 32, published for opposition in the Official Gazette of August 23, 2011, Opposer, GOYA FOODS, INC., a corporation organized and existing under the laws of the State of Delaware and located and doing business at 100 Seaview Drive, Secaucus, New Jersey 07094, believes that it will be damaged by the registration of the alleged mark shown in Application Serial No. 85305128 and opposes the registration under the provisions of 15 U.S.C. §1063 (Trademark Act of 1946, Section 13).

As grounds of opposition, it is alleged that:

1. Opposer is the owner of the marks GOYA and JOYAS DE GOYA and variations thereof (hereinafter the “GOYA MARKS”) as trademarks, trade names, and as service marks as applied to a wide range of goods and services directed to wholesale and retail consumers.

2. Opposer is now and for many years has been trading as and known by the marks and trade name GOYA, identifying Opposer as the source of a wide variety of goods, including beverages and food products substantially identical to and generally related to Applicant's Goods intended to be offered under its alleged mark JOYA.

3. Opposer is now and has been, for many years prior to any date which may be claimed by Applicant, engaged in the use of the mark and tradename JOYAS DE GOYA for fruit drinks, soft drinks, and malt syrups for beverages in International Class 32.

4. Since long prior to any date which may be claimed by Applicant, Opposer on its own behalf has been, and is now engaged in the sale of the goods identified in paragraphs 3 and 4 hereinabove under the mark and trade name GOYA and JOYAS DE GOYA in interstate commerce.

5. Opposer is the owner of, inter alia, the following U.S. trademark registrations, all of which are in good order, and are in the name of and owned by the Opposer, GOYA FOODS, INC.

MARK	Registration No.	Goods
JOYAS DE GOYA	1,860,499	<u>Fruit drinks, soft drinks, and syrups for beverages</u>
JOYAS DE GOYA	1,859,228	Rice, spices, coffee
JOYAS DE GOYA	1,857,320	canned fruits and vegetables
*GOYA and design	622,395	Canned vegetables, canned fruit, <u>canned apricot nectar, canned orange juice</u> and tomato sauce
GOYA and design	625,975	<u>Malt cereal beverage</u>
*GOYA and design	635,283	<u>Syrups for making soft drinks</u>

*GOYA	764,033	Coffee and edible olive oil
*GOYA	962,193	Beef stew, Vienna sausage, canned fruit juices, cereal, corn meal, hominy, crackers, edible oils, corn oil, olive oil, fruit syrup, grape juice, jellies and preserves, mayonnaise, olives, rice, soups, spaghetti, spices, salt, pepper, oregano, vinegar, flavoring extracts, meat sauce, sweet chocolate, tomato sauce, cheese, cream of coconut, canned vegetables, <u>papaya nectar</u> , spaghetti and meat balls, meat sauce and condiment breadfruit, prepared sea food – namely, shrimp, spices shrimp, and lobster gumbo, canned fish, pasteles, Puerto Rican sancocho fruit cocktail, prepared coconut and flan custard.
*GOYA	1,349,891	<u>Wines</u>
*GOYA	1,354,559	<u>Malta, namely a non-alcoholic malt beverage</u>
GOYA	1,689,199	Coffee
GOYA	1,739,172	Ice cream, sherbets, frozen yogurt and frozen confections

*Designates an incontestable registration.

6. GOYA trademarked products have been and are advertised and promoted by Opposer through print advertising to the trade, and through print, radio, television and point of sale advertising to the public. Opposer's marks and trade names GOYA and

JOYAS DE GOYA are displayed prominently in, around, and throughout various retail outlets operated by others, is displayed on delivery trucks, and is used prominently in advertisements promoting its GOYA products and services.

7. As a result of the expenditure by Opposer of substantial sums in establishing and maintaining its trademark and trade name GOYA as a symbol of Opposer, its quality products and services, the trade and purchasing public have come to recognize the mark and trade name GOYA as distinctive of Opposer's quality products and services and as indicating the source of those products and services.

8. Opposer's goods and services sold under and in connection with the mark and trade name GOYA, have met with popular approval throughout the wholesale and retail trade. As a result of Opposer's extensive sales and advertising, the mark and trade name GOYA in connection with its products, has come to mean, and is understood to mean, throughout the United States, the Opposer and Opposer's products only.

9. Opposer's beverages, including its malt beverages, soft drinks, fruit juices and fruit nectars sold under the GOYA MARKS, are of the highest quality, are well known and well regarded among wholesale and retail consumers, and are central to Opposer's business.

10. The use by Opposer of the GOYA MARKS including JOYAS DE GOYA for the goods and services alleged herein, is long prior to any date which may be lawfully claimed by Applicant, and Opposer has priority of use of the mark and trade name GOYA.

11. Opposer sells its GOYA goods through retail food stores and food service outlets, including restaurants and beverage bars. Opposer also sells its goods under the GOYA MARKS including beverages from its own GOYA beverage dispensers.

12. Upon information and belief, Applicant intends to distribute and sell its goods through the same channels of trade as Opposer, and direct its respective goods to the same ultimate consumer as Opposer.

13. The GOYA MARKS and designations cited above have acquired and remain of great value as identifications of source in Opposer for a variety of goods and services.

14. The Opposer's JOYAS DE GOYA and Applicant's JOYA mark are substantially identical in part and are confusingly similar when applied to the goods of the parties.

15. The goods of Applicant and Opposer are substantially identical in part and generally related in part, and Opposer's intended use of JOYA in connection with its goods is without the consent or permission of Opposer.

16. Since Opposer owns the GOYA MARKS by virtue of prior use, mistake or deception as to the source of origin of the goods will arise and will injure and damage the Opposer and its goodwill.

17. The registration of the mark JOYA to Applicant will cause the relevant purchasing public to erroneously assume and thus be confused, misled, or deceived, that Applicant's goods are made by, licensed by, controlled by, sponsored by, or in some way connected, related or associated with Opposer, all to Opposer's irreparable damage.

23. Opposer believes that it is and will be damaged by registration of the mark applied by Applicant.

WHEREFORE, Opposer prays that the application for registration of JOYA, Serial No. 85305128, filed on April 26, 2011, be denied and that this Opposition be sustained.

Respectfully submitted for Opposer
Goya Foods, Inc.

Dated: September 20, 2011

By: /s/Stephen L. Baker
Stephen L. Baker
BAKER & RANNELLS, PA
575 Route 28, Suite 102
Raritan, New Jersey 08869
(908) 722-5640

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Opposer's Notice of Opposition was forwarded by email and first class postage prepaid mail by depositing the same with the U.S. Postal Service on this 20th day of September, 2011 to the attorney for the Applicant at the following address:

TARA J. ANDERSON
FAFINSKI, MARK & JOHNSON, P.A.
775 PRAIRIE CENTER DR STE 400
EDEN PRAIRIE, MN 55344-7322
tara.anderson@fmjlaw.com

/ Linda Kurth/
Linda Kurth