

ESTTA Tracking number: **ESTTA444413**

Filing date: **12/02/2011**

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	TA-XAN AG Corporation
Granted to Date of previous extension	12/04/2011
Address	Adolfsallee 21 Wiesbaden, 65185 GERMANY

Attorney information	JOHN J ARNOTT HOWISON & ARNOTT LLP PO BOX 741715 DALLAS, TX 75374-1715 UNITED STATES trademarks@dalpat.com,phu@dalpat.com,beth@dalpat.com,jarnott@dalpat.com Phone:9724790462
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**Applicant Information**

Application No	85186561	Publication date	06/07/2011
Opposition Filing Date	12/02/2011	Opposition Period Ends	12/04/2011
Applicant	FIRESTONE WALKER LLC 620 McMurray Road Buellton, CA 93427 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 032. First Use: 2009/09/30 First Use In Commerce: 2009/09/30  
All goods and services in the class are opposed, namely: Beer

**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.	4014834	Application Date	07/04/2010
Registration Date	08/23/2011	Foreign Priority Date	NONE
Word Mark	XAN		

Design Mark	
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Description of Mark	NONE
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Goods/Services	<p>Class 030. First use:          Coffee, in particular, coffee beverages; tea, in particular, tea beverages; non-alcoholic beverages primarily consisting of tea; mixes in the nature of powders used in the preparation of non-alcoholic tea based beverages and ready-to-drink tea and tea essence-based beverages; non-medicinal herbal tea extracts and herbal tea; cacao, in particular, cacao beverages; sugar, rice, tapioca, sago, coffee substitute; flours and flour compounds in the nature of gluten, protein reduced and gluten free flour, bread, pastries and confectionary in the nature of frozen confectionery, confectionery chips for baking, candy, chocolate, pastilles, ice cream, honey, molasses syrup, salt, mustard, vinegar, sauces, namely, seasoning; spices, ice</p> <p>Class 032. First use:          Beers, mixed drinks composed of beers; mineral and aerated waters and other non-alcoholic drinks, namely, non-alcoholic beer and lemonade; fruit drinks and fruit juices; syrups and other preparations for making beverages in the nature of soft drinks, sports drinks, energy drinks and fruit drinks</p>
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U.S. Registration No.	3171744	Application Date	02/03/2005
Registration Date	11/14/2006	Foreign Priority Date	08/03/2004

Word Mark	XAN
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Design Mark	
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Description of Mark	NONE
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Goods/Services	<p>Class 032. First use:          Beer, non-alcoholic beer and lemonade</p>
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U.S. Registration No.	3032529	Application Date	07/02/2004
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Registration Date	12/20/2005	Foreign Priority Date	NONE
Word Mark	XAN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: Beers; non-alcoholic beers and lemonades		

U.S. Registration No.	3673084	Application Date	08/18/2006
Registration Date	08/25/2009	Foreign Priority Date	02/20/2006
Word Mark	XAN		
Design Mark			
Description of Mark	The mark consists of a red dot with a black cross and the word Xan in black below on a gray background.		
Goods/Services	Class 032. First use: BEER, NON-ALCOHOLIC BEER; LEMONADE		

Attachments	85077821#TMSN.jpeg ( 1 page )( bytes ) 79017779#TMSN.jpeg ( 1 page )( bytes ) 79007105#TMSN.jpeg ( 1 page )( bytes ) 79029394#TMSN.jpeg ( 1 page )( bytes ) TXA30871 Exec Notice of Opposition.pdf ( 4 pages )(128399 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	/jja/
Name	JOHN J. ARNOTT
Date	12/02/2011

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

TA-XAN AG Corporation	§	Opposition No. _____
	§	
<i>Opposer,</i>	§	In the matter of:
	§	
Firestone Walker LLC	§	Application Serial No. 85/186,561
	§	Mark: BLACK XANTUS
<i>Applicant</i>	§	
	§	Filed on November 29, 2010
	§	
	§	Published in the Official Gazette on
	§	June 7, 2011

**NOTICE OF OPPOSITION**

Opposer, TA-XAN AG Corporation, a German corporation, doing business at Adolfasallee 21, 65185 Wiesbaden, Fed Rep Germany (“Opposer”), believes that it may be damaged by Applicant’s registration of the mark BLACK XANTUS (the “Opposed Mark”) shown in Application Serial No. 85/186,561, and hereby opposes that application.

As grounds for its opposition, Opposer alleges:

1. Opposer is the owner of U.S. Trademark Reg. No. 4,014,834 covering the mark “XAN” for (among other things) “beers” in class 032, the application for which was filed on July 4, 2010, based on an international registration date of May 12, 2010; Reg. No. 3,673,084 covering the mark “XAN and Design” for (among other things) “beer” in class 032, the application for which was filed on August 18, 2006, claiming a priority date of February 20, 2006; Reg. No. 3,171,744 covering the mark “XAN and Design” for (among other things) “beer” in class 032, the application for which was filed February 3, 2005, claiming a priority date of August 3, 2004 and Reg. No. 3,032,529 covering the mark “XAN” for (among other things) “beers” in class 032, the application for which was filed on July 2, 2004, based on an international registration date of July 2, 2004; (hereinafter collectively the “XAN Marks”).

2. Each of the registrations for the XAN Marks mentioned above is at least prima facie evidence of the validity of each registration, of Opposer's ownership thereof, and of Opposer's exclusive right to use such registered marks on the goods set forth in the registrations.
3. Opposer filed its applications for registration of the XAN Marks as early as July 2, 2004.
4. Applicant, Firestone Walker LLC ("Applicant"), filed its Application Serial No. 85/186,561 for registration of the Opposed Mark for "beer" in International Class 032 on November 29, 2010. Applicant alleges that Applicant has been using the Opposed Mark in commerce since September 30, 2009.
5. Opposer enjoys priority as a result of the filing dates and/or priority dates of the applications for its trademark registrations for the XAN Marks that were well prior to the filing date of the application for the Opposed Mark.
6. Since the Applicant has disclaimed "BLACK" in the application for the Opposed Mark, the dominant portion of the Opposed Mark may be considered "XANTUS", whereas the dominant portion of Opposer's XAN Marks is "XAN."
7. The goods offered under the Opposed Mark are substantially similar to at least some of the goods offered under the XAN Marks. Specifically, Opposer's goods include (among other things) beer and Applicant's goods also contain beer.
8. Under the current circumstances, registration and use of the Opposed Mark by Applicant may result in consumer confusion with respect to goods sold under Opposer's XAN Marks.

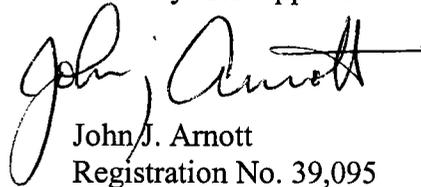
9. Under the current circumstances, registration of the Opposed Mark could injure the Opposer by possibly causing the public to be confused or mistaken into believing that the goods provided by Applicant are connected with, sponsored or associated by, or licensed or approved by Opposer.

10. Under the current circumstances, Opposer will be damaged and harmed by Applicant's registration of the Opposed Mark.

WHEREFORE, Opposer prays that Application Serial No. 85/186561 be refused, that no registration be issued to Applicant, and that this opposition be sustained in favor of Opposer.

This Notice of Opposition is being submitted through the Electronic System for Trademark Trials and Appeals (ESTTA). Please charge the requisite \$300.00 fee and any additional fees required to Deposit Account No. 20-0780 of Howison & Arnott, L.L.P.

Respectfully submitted,  
HOWISON & ARNOTT, L.L.P.  
Attorneys for Opposer



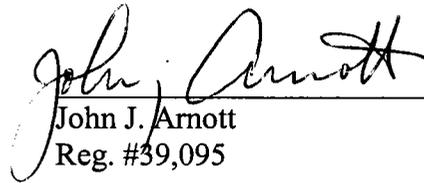
John J. Arnott  
Registration No. 39,095

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December 2, 2011

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Notice of Opposition Pursuant to 37 C.F.R. § 1.182 filed in the above-identified case on December 2, 2011, was submitted to counsel for the Applicant on December 2, 2011, by first class mail at the following address:

Rod S. Berman  
1900 Avenue of the Stars Floor 7  
Los Angeles, CA 90067-4308

  
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John J. Arnott  
Reg. #39,095

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