

ESTTA Tracking number: **ESTTA459196**

Filing date: **02/29/2012**

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

| | |
|------------------------|--|
| Proceeding | 91203780 |
| Party | Defendant MKS Global, LLC |
| Correspondence Address | R. Joseph Trojan Trojan Law Offices 9250 Wilshire Blvd., Suite 325 Beverly Hills, CA 90212 trojan@trojanlawoffices.com |
| Submission | Answer |
| Filer's Name | R. Joseph Trojan, Attorney for Applicant |
| Filer's e-mail | trojan@trojanlawoffices.com, ghausi@trojanlawoffices.com, speier@trojanlawoffices.com |
| Signature | /R. Joseph Trojan/ |
| Date | 02/29/2012 |
| Attachments | Answer to Opp 91203780.pdf (6 pages)(619624 bytes) |

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

_____)
Green Flash Brewing Company, Inc.)
)
Opposer,)
)
v.)
)
MKS Global, LLC,)
)
Applicant.)
_____)

**Opposition No. 91203780
Serial No. 85159802
Mark: FLASH ENERGY DRINK**

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

APPLICANT’S ANSWER TO THE NOTICE OF OPPOSITION

Applicant MKS Global, LLC. (“Applicant”), by its attorneys, answers the Notice of Opposition filed by Green Flash Brewing Company, Inc. (“Opposer”) in the above-referenced matter as follows:

RESPONSES TO ALLEGATIONS IN THE NOTICE OF OPPOSITION

1. Applicant denies the allegations in the first introductory paragraph of the Opposition, specifically the allegation that “Green Flash Brewing Company’s own trademark application, Serial No. 85/360,348 is currently suspended pending the outcome of MKS Global’s trademark application, as well as application Serial No. 85/245,740.” This is incorrect. Opposer’s trademark application, GREEN FLASH in IC 020 for “non-metal taps for beer kegs” and IC 032 for “beer,” is currently suspended only pending the outcome of application Serial No.

85/245,740, ST. JOHN BREWERS VIRGIN ISLANDS GREEN FLASH ENERGY DRINK in IC 032 for “energy drinks.” The examining trademark attorney did not cite Applicant’s FLASH ENERGY DRINK as a reason for the suspension of Opposer’s mark.

2. Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained in paragraph 1 of the Notice of Opposition and accordingly denies the allegations.

3. Applicant admits the allegations regarding Applicant and its trademark application contained in paragraph 2 of the Notice of Opposition.

4. Applicant does not have sufficient knowledge to confirm or deny the allegations set forth in paragraph 3 of the Notice of Opposition. On that basis Applicant denies the allegations set forth in paragraph 3 of the Notice of Opposition.

5. Applicant denies the allegations set forth in paragraph 4 of the Notice of Opposition.

6. Applicant does not have sufficient knowledge to confirm or deny the allegations set forth in paragraph 5 of the Notice of Opposition. On that basis Applicant denies the allegations set forth in paragraph 5 of the Notice of Opposition.

7. Applicant denies the allegations set forth in paragraph 6 of the Notice of Opposition.

8. Applicant denies the allegations set forth in paragraph 7 of the Notice of Opposition.

9. Applicant denies the allegations set forth in paragraph 8 of the Notice of Opposition.

10. Applicant denies the allegations set forth in paragraph 9 of the Notice of Opposition.

11. Applicant denies the allegations set forth in paragraph 10 of the Notice of Opposition.

All averments not specifically admitted are denied.

AFFIRMATIVE DEFENSES

Applicant repeats and realleges its responses in the above paragraphs as if set forth fully herein. Answering further, Applicant avers:

12. Opposer fails to state a claim upon which relief may be granted.

13. There is no likelihood of confusion, mistake or deception because, *inter alia*, Applicant's mark and the pleaded marks of Opposer are not confusingly similar. As noted above in paragraph 1 of this Answer, the examining trademark attorney did not cite Applicant's FLASH ENERGY DRINK as a reason for the suspension of Opposer's mark. Rather, Opposer's mark is currently suspended only pending the outcome of application Serial No. 85/245,740, ST. JOHN BREWERS VIRGIN ISLANDS GREEN FLASH ENERGY DRINK, in IC 032 for "energy drinks" (the "cited '740 mark"). In turn, the cited '740 mark is currently suspended pending the outcome of Applicant's trademark application. Should Applicant's trademark application become registered, the cited '740 mark may be abandoned such that Opposer's mark could have moved forward onto registration. However, now that Opposer has opposed this application, Opposer's mark cannot move forward until the outcome of this Opposition is determined. Hence, this Opposition is a self-defeating exercise for Opposer in that it is delaying the removal of the one obstacle to Opposer's trademark application.

14. There is no likelihood of confusion, mistake or deception because, *inter alia*, Applicant's mark and the pleaded marks of Opposer are not confusingly similar. As noted by the examining attorney, a likelihood of confusion may exist as to the cited '740 mark and Opposer's mark. Both marks use the words "GREEN FLASH," and the term "BREWERS" in the cited '740 mark may contribute to confusion associating GREEN FLASH with the identified goods of Opposer, beer. However, there are no such similarities between Opposer's mark and Applicant's mark. Applicant's mark does not use the term GREEN. Opposer's mark does not use the term "ENERGY DRINK." The only similarity between the marks is the term FLASH. Applicant's mark also includes a lightning bolt design and two circles above the terms "FLASH ENERGY DRINK." Upon an overall comparison of the marks as shown below, the marks in their totalities do not create a likelihood of confusion among consumers.

Applicant's Mark



Opposer's Mark

Green Flash

15. There is no likelihood of confusion, mistake or deception because, *inter alia*, Applicant's goods and Opposer's goods are not related and do not travel in the same channels of trade. Opposer applied for the mark GREEN FLASH in IC 020 for "non-metal taps for beer kegs" and IC 032 for "beer." Applicant's mark is FLASH ENERGY DRINK in IC 032 for "energy drinks."

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing APPLICANT'S ANSWER TO THE NOTICE OF OPPOSITION has been served on Candace L. Moon by mailing said copy on February 29, 2012, via First Class Mail, postage pre-paid, to:

Candace L. Moon
Michaux-Moon Legal Services
8450 Sleepy Way
El Cajon, CA 92021

/R. Joseph Trojan/
R. Joseph Trojan