

ESTTA Tracking number: **ESTTA515798**

Filing date: **01/14/2013**

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	Good-O Beverage Company
Granted to Date of previous extension	01/13/2013
Address	1801 Boone Avenue Bronx, NY 10460 UNITED STATES

Attorney information	Amy F. Divino Cozen O'Connor 277 Park Avenue New York, NY 10172 UNITED STATES adivino@cozen.com, tmdocketing@cozen.com Phone:212-883-4909
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Applicant Information

Application No	85553914	Publication date	07/17/2012
Opposition Filing Date	01/14/2013	Opposition Period Ends	01/13/2013
Applicant	Orca Beverage Inc. 11903 Cyrus Way #5 Mukilteo, WA 98296 UNITED STATES		

Goods/Services Affected by Opposition

Class 032. All goods and services in the class are opposed, namely: Concentrates, syrups or powders for making soft drinks or tea-flavored beverages; Soft drinks, namely, sodas

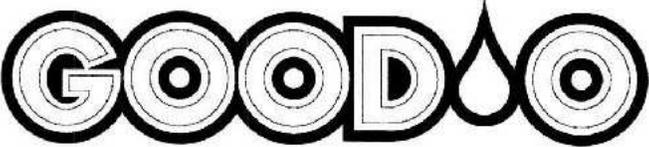
Grounds for Opposition

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.	2600715	Application Date	03/22/2001
Registration Date	07/30/2002	Foreign Priority Date	NONE
Word Mark	GOOD-O		

Design Mark	GOOD-O		
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1947/03/01 First Use In Commerce: 1947/03/01 non-alcoholic carbonated [and non-carbonated] beverages, namely, soft drinks, [bottled drinking water, fruit juices, fruit-flavored waters,] * and * fruit-flavored drinks [and non-alcoholic malt-based beverages]		

U.S. Registration No.	3355562	Application Date	03/30/2007
Registration Date	12/18/2007	Foreign Priority Date	NONE
Word Mark	GOOD O		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1970/00/00 First Use In Commerce: 1970/00/00 Non-alcoholic carbonated beverages		

U.S. Registration No.	3460470	Application Date	05/07/2007
Registration Date	07/08/2008	Foreign Priority Date	NONE
Word Mark	GOOD O KOLA CHAMPAGNE SODA		
Design Mark			
Description of Mark	The mark consists of a label. A row of drops appears across the top of the label. The stylized word GOOD and the stylized letter O are separated by a drop.		

	Below are the stylized words KOLA CHAMPAGNE SODA and the design of a sun and a palm tree which are superimposed over a circle with a scalloped edge. The background is divided in half vertically.
Goods/Services	Class 032. First use: First Use: 2003/00/00 First Use In Commerce: 2003/00/00 non-alcoholic beverages, namely, carbonated beverages

Attachments	76228744#TMSN.gif (1 page)(bytes) 77145136#TMSN.jpeg (1 page)(bytes) 77174065#TMSN.jpeg (1 page)(bytes) O So Good Notice of Opposition.pdf (10 pages)(921009 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	/AFD/
Name	Amy F. Divino
Date	01/14/2013

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

In the Matter of Trademark Application Serial No.: 85/553,914
For the Mark: O-SO GOOD
Published in the *Official Gazette* on July 17, 2012

GOOD-O BEVERAGE COMPANY,

Opposer,

v.

ORCA BEVERAGE INC.,

Applicant.

Opposition No.: _____

NOTICE OF OPPOSITION

Good-O Beverage Company (hereinafter "Opposer"), a New York partnership, having its principal place of business at 1801 Boone Avenue, Bronx, New York, 10460, believes it will be damaged by registration of the standard character mark O-SO GOOD shown in Application Serial No. 85/553,914 in the name of Orca Beverage Inc., having an address of 11903 Cyprus Way #5, Mukilteo, Washington, 98296 (hereinafter "Applicant"), and hereby opposes the same.

The grounds for opposition are as follows:

Applicant and the O-SO GOOD Mark

- 1) Upon information and belief, Applicant is the owner of the following application:

Mark	Application No.	Filing Date	Goods
O-SO GOOD	85/553,914	February 27, 2012	<u>Class 32</u> : Concentrates, syrups or powders for making soft drinks or tea-flavored beverages; Soft drinks, namely, sodas

Application Serial No. 85/553,914 is hereinafter referred to as the “ ‘914 Application.”

2) Upon information and belief, Applicant filed the ‘914 Application in the U.S. Patent and Trademark Office (“PTO”) on February 27, 2012, relying on a claim of a bona fide intention to use the O-SO GOOD trademark in commerce under Section 1(b) of the Trademark Act.

3) The ‘914 Application was published for opposition in the *Official Gazette* of the PTO dated July 17, 2012.

4) Opposer has been granted an extension of time by the Trademark Trial and Appeal Board to file a Notice of Opposition against the ‘914 Application, to and including January 13, 2013 (which has been extended to and including January 14, 2013, pursuant to T.B.M.P. §112, 37 C.F.R. §2.196).

Opposer and its Marks

5) Since long prior to the filing date of the ‘914 Application and any use of the O-SO GOOD trademark, Opposer has continuously used in commerce the trademark GOOD-O and variations thereof, for non-alcoholic carbonated beverages, including soft drinks and fruit-flavored drinks. Consequently, priority of use belongs to Opposer.

6) Opposer is the owner of the following valid and subsisting trademark registrations in the PTO:

Mark	Reg. No./ Reg. Date	Date of First Use	Goods
GOOD-O	2,600,715 July 30, 2002	March 1, 1947	<u>Class 32</u> : Non-alcoholic beverages, namely, soft drinks and fruit-flavored drinks (as amended)
	3,355,562 Dec. 18, 2007	1970	<u>Class 32</u> : Non-alcoholic carbonated beverages
	3,460,470 July 8, 2008	2003	<u>Class 32</u> : Non-alcoholic beverages, namely, carbonated beverages

Copies of the aforesaid registrations are annexed hereto as Exhibit 1.

7) Opposer's U.S. trademark registrations listed in the chart in Paragraph 6 above are valid and enforceable. Opposer's exclusive rights in U.S. Trademark Registration No. 2,600,715 are incontestable. Opposer's GOOD-O trademarks are hereinafter collectively referred to as "Opposer's GOOD-O Marks."

8) As a result of their widespread exposure in retail stores and in other channels, Opposer's GOOD-O Marks have come to be recognized by the relevant public as identifying goods originating from and being associated exclusively with Opposer. Opposer has invested and continues to invest a great deal of money and effort in promoting Opposer's GOOD-O Marks. By the aforesaid extensive use of Opposer's GOOD-O Marks, and by the promotional efforts in connection therewith, Opposer has built up a valuable goodwill in Opposer's GOOD-O Marks. Because of such use and promotion, Opposer's GOOD-O Marks have acquired a secondary meaning in the minds of the public in connection with Opposer and the goods of Opposer.

COUNT I: Likelihood of Confusion

9) Applicant's O-SO GOOD mark is confusingly similar to Opposer's GOOD-O Marks in appearance, sound, meaning and overall commercial impression.

10) The goods identified in the '914 Application are the same, substantially the same and/or are related to Opposer's goods, and may be offered to the same, substantially the same, and/or related classes of purchasers.

11) Applicant's O-SO GOOD mark, as applied to the goods identified in the '914 Application, is confusingly similar to Opposer's GOOD-O Marks, as applied to the goods of Opposer, and is likely to cause confusion, mistake, or deception amongst the general and consuming public as to whether Applicant's goods originate with Opposer, or are licensed, authorized or sponsored by Opposer or are promoted with Opposer's approval in violation of Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d).

12) By reason of the foregoing, Opposer will be damaged by Applicant's registration of the O-SO GOOD mark.

13) Opposer hereby gives notice that at any hearing and on any appeal of this opposition proceeding it will rely on its registrations annexed hereto as Exhibit 1.

WHEREFORE, Opposer respectfully requests that the '914 Application be refused, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

Opposer herein appoints Amy F. Divino, David B. Sunshine and Martin G. Raskin, members of the Bar of the State of New York, its attorneys to prosecute the above opposition with full powers of substitution and revocation and to transact all business in the U.S. Patent and Trademark Office connected therewith; correspondence address: Cozen O'Connor, 277 Park

Avenue, New York, New York 10172, tel. (212) 883-4900, fax (212) 986-0604, e-mail:
tmdocketing@cozen.com.

Respectfully submitted,

GOOD-O BEVERAGE COMPANY

Dated: January 14, 2013

By:



Amy F. Divino, Esq.
David B. Sunshine, Esq.
Martin G. Raskin, Esq.
Cozen O'Connor
277 Park Avenue
New York, New York 10172
Tel: (212) 883-4900
Fax: (212) 986-0604
E-mail: tmdocketing@cozen.com
Counsel for Opposer

CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2013, I caused one true and correct copy of the foregoing document to be served by first class mail upon Applicant, by causing a true and correct copy thereof to be deposited in the United States mail, postage prepaid, addressed to Applicant as follows:

Michael Bourgeois, President
Orca Beverage Inc.
11903 Cyrus Way #5
Mukilteo, Washington 98296

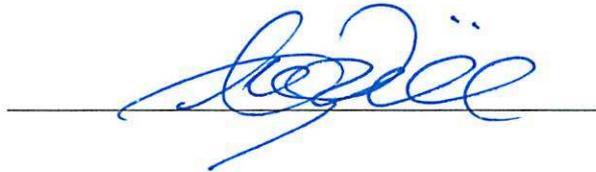
A handwritten signature in blue ink is written over a horizontal line. The signature is cursive and appears to read "Michael Bourgeois".

EXHIBIT 1

Int. Cl.: 32

Prior U.S. Cls.: 45, 46 and 48

Reg. No. 2,600,715

United States Patent and Trademark Office

Registered July 30, 2002

**TRADEMARK
PRINCIPAL REGISTER**

GOOD-O

**GOOD-O BEVERAGE COMPANY (PARTNER-
SHIP)
1801 BOONE AVENUE
BRONX, NY 10460**

**FOR: NON-ALCOHOLIC CARBONATED AND
NON-CARBONATED BEVERAGES, NAMELY SOFT
DRINKS, BOTTLED DRINKING WATER, FRUIT
JUICES, FRUIT-FLAVORED WATERS, FRUIT-FLA-
VORED DRINKS AND NON-ALCOHOLIC MALT-**

**BASED BEVERAGES, IN CLASS 32 (U.S. CLS. 45, 46
AND 48).**

FIRST USE 3-1-1947; IN COMMERCE 3-1-1947.

OWNER OF U.S. REG. NO. 1,364,796.

SER. NO. 76-228,744, FILED 3-22-2001.

ROBERT LORENZO, EXAMINING ATTORNEY

Int. Cl.: 32

Prior U.S. Cls.: 45, 46 and 48

United States Patent and Trademark Office

Reg. No. 3,355,562

Registered Dec. 18, 2007

**TRADEMARK
PRINCIPAL REGISTER**



**GOOD-O BEVERAGE COMPANY (NEW YORK
PARTNERSHIP)
1801 BOONE AVENUE
BRONX, NY 10460**

OWNER OF U.S. REG. NO. 2,600,715.

**FOR: NON-ALCOHOLIC CARBONATED BEV-
ERAGES, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).**

SER. NO. 77-145,136, FILED 3-30-2007.

FIRST USE 0-0-1970; IN COMMERCE 0-0-1970.

COLLEEN KEARNEY, EXAMINING ATTORNEY

Int. Cl.: 32

Prior U.S. Cls.: 45, 46 and 48

United States Patent and Trademark Office

Reg. No. 3,460,470

Registered July 8, 2008

TRADEMARK
PRINCIPAL REGISTER



GOOD-O BEVERAGE COMPANY (NEW YORK
PARTNERSHIP)
1801 BOONE AVENUE
BRONX, NY 10460

FOR: NON-ALCOHOLIC BEVERAGES, NAMELY,
CARBONATED BEVERAGES, IN CLASS 32 (U.S.
CLS. 45, 46 AND 48).

FIRST USE 0-0-2003; IN COMMERCE 0-0-2003.

OWNER OF U.S. REG. NO. 2,600,715.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "KOLA CHAMPAGNE SODA",
APART FROM THE MARK AS SHOWN.

THE MARK CONSISTS OF A LABEL. A ROW OF
DROPS APPEARS ACROSS THE TOP OF THE
LABEL. THE STYLIZED WORD GOOD AND THE
STYLIZED LETTER O ARE SEPARATED BY A
DROP. BELOW ARE THE STYLIZED WORDS KOLA
CHAMPAGNE SODA AND THE DESIGN OF A SUN
AND A PALM TREE WHICH ARE SUPERIMPOSED
OVER A CIRCLE WITH A SCALLOPED EDGE. THE
BACKGROUND IS DIVIDED IN HALF VERTICAL-
LY.

SER. NO. 77-174,065, FILED 5-7-2007.

COLLEEN KEARNEY, EXAMINING ATTORNEY