

ESTTA Tracking number: **ESTTA518827**

Filing date: **01/30/2013**

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	The Absolut Company Aktiebolag
Granted to Date of previous extension	01/30/2013
Address	SE-117 97 Stockholm, SWEDEN
Party who filed Extension of time to oppose	Absolut Holding Inc. c/o Absolut Holding Filial
Relationship to party who filed Extension of time to oppose	Opposer acquired the entire right, title, and interest to the KAHLUA marks, and the accompanying goodwill, from its predecessor-in-interest, Absolut Holding Inc. c/o Absolut Holding Filial. The assignment of such rights was recorded with the U.S. Patent and Trademark Office on January 23, 2013, on Reel/Frame 4947/0426.

Attorney information	Robert W. Zelnick McDermott Will & Emery LLP 500 North Capitol Street, NW Washington, DC 20001 UNITED STATES dciplit@mwe.com, rzelnick@mwe.com, bmorgan@mwe.com, ksandacz@mwe.com Phone:202-756-8000
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Applicant Information

Application No	85615895	Publication date	10/02/2012
Opposition Filing Date	01/30/2013	Opposition Period Ends	01/30/2013
Applicant	Drinks Americas, Inc. 424 R Main Street Ridgefield, CT 06877 UNITED STATES		

Goods/Services Affected by Opposition

Class 033. All goods and services in the class are opposed, namely: Tequila
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Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

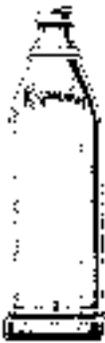
Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	711952	Application Date	08/10/1959
Registration Date	02/28/1961	Foreign Priority Date	NONE
Word Mark	KAHLUA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U049 (International Class 033). First use: First Use: 1937/05/20 First Use In Commerce: 1938/03/09 Coffee Liqueur		

U.S. Registration No.	752237	Application Date	01/15/1962
Registration Date	07/02/1963	Foreign Priority Date	NONE
Word Mark	KAHLUA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U049 (International Class 033). First use: First Use: 1937/05/20 First Use In Commerce: 1938/03/09 Coffee Liqueur		

U.S. Registration No.	752236	Application Date	01/15/1962
Registration Date	07/02/1963	Foreign Priority Date	NONE
Word Mark	KAHLUA		

Design Mark	
Description of Mark	NONE
Goods/Services	Class U049 (International Class 033). First use: First Use: 1937/05/20 First Use In Commerce: 1938/03/09 Coffee Liqueur

U.S. Registration No.	923586	Application Date	12/08/1970
Registration Date	11/09/1971	Foreign Priority Date	NONE
Word Mark	KAHLUA		
Design Mark			
Description of Mark	THE MARK CONSISTS OF THE CONFORMATION OF A BOTTLE, TOGETHER WITH THE WORD "KAHLUA" THEREON, USED AS A CONTAINER FOR APPLICANT'S COFFEE LIQUEUR		
Goods/Services	Class U049 (International Class 033). First use: First Use: 1937/05/20 First Use In Commerce: 1938/03/09 COFFEE LIQUEUR		

U.S. Registration No.	2276182	Application Date	10/07/1998
Registration Date	09/07/1999	Foreign Priority Date	NONE
Word Mark	KAHLUA ESPECIAL		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 1998/08/00 First Use In Commerce: 1998/08/00 Liqueur

U.S. Registration No.	2924197	Application Date	01/30/2003
Registration Date	02/01/2005	Foreign Priority Date	NONE
Word Mark	KAHLUA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2003/08/31 First Use In Commerce: 2003/08/31 Non-alcoholic cocktail mixes		

U.S. Registration No.	2988022	Application Date	03/06/2003
Registration Date	08/23/2005	Foreign Priority Date	NONE
Word Mark	KAHLUA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2003/06/00 First Use In Commerce: 2003/06/00 Coffee based drinks and iced coffee based drinks		

Attachments	72080029#TMSN.gif (1 page)(bytes) 72135749#TMSN.gif (1 page)(bytes) 72378151#TMSN.gif (1 page)(bytes) 75565772#TMSN.gif (1 page)(bytes) KAHLOWEEN - Notice of Opposition.pdf (6 pages)(16585 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	/Robert W. Zelnick/
Name	Robert W. Zelnick
Date	01/30/2013

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

THE ABSOLUT COMPANY AKTIEBOLAG,

Opposer,

v.

DRINKS AMERICAS, INC.,

Applicant.

Opposition No. _____

Serial No: 85/615895

Mark: KAHLOWEEN

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Re: Application No.: 85/615895
Mark: KAHLOWEEN
Applicant: Drinks Americas, Inc.
Filed: May 3, 2012
Published: October 2, 2012
Opposed Classes: 33

NOTICE OF OPPOSITION

The Absolut Company Aktiebolag, a Swedish corporation, with an address at SE-117 97, Stockholm, SWEDEN (“Opposer”), successor-in-interest to certain trademarks owned by Absolut Holding Inc. c/o Absolut Holding Filial, by and through its attorneys, hereby states that it will be damaged by registration of the mark “KAHLOWEEN,” covered by U.S. Application Serial No. 85/615895, owned by Drinks Americas, Inc. (“Applicant”), and hereby opposes registration of same.

The grounds for the notice are as follows:

1. Opposer produces, markets and distributes the world-famous KAHLUA alcohol beverage products, which are sold throughout the United States. Opposer and its predecessors-in-interest have used, advertised and promoted in commerce, and continue to use, advertise and promote in commerce the KAHLUA mark in connection with, inter alia, the worldwide distribution and sale of coffee liqueurs, and related products, since at least as early as 1938.

2. Opposer owns extensive registered and common law rights to the KAHLUA marks throughout the United States. Opposer acquired the entire right, title, and interest to the KAHLUA marks, and the accompanying goodwill, from its predecessor-in-interest, Absolut Holding Inc. c/o Absolut Holding Filial. The assignment of such rights was recorded with the U.S. Patent and Trademark Office on January 23, 2013, on Reel/Frame 4947/0426.

3. In addition to its extensive common law rights in and to the KAHLUA marks, Opposer owns the following U.S. trademark registrations, among others, for KAHLUA alone and in combination with other terms and designs:

Trademark	Reg. No.	Reg. Date	Goods
KAHLUA and Design	711,952	02/28/61	Coffee liqueur, in Class 33
KAHLUA	752,237	07/02/63	Coffee liqueur, in Class 33
KAHLUA (Stylized)	752,236	07/02/63	Coffee liqueur, in Class 33
KAHLUA and Design	923,586	11/09/71	Coffee liqueur, in Class 33
KAHLUA ESPECIAL	2,276,182	09/07/99	Liqueur, in Class 33
KAHLUA	2,924,197	02/01/05	Non-alcoholic cocktail mixes, in Class 32
KAHLUA	2,988,022	08/23/05	Coffee based drinks and iced coffee based drinks, in Class 30

In addition, Opposer owns an allowed U.S. application for the mark KAHLUA and Design (Serial No. 85/667,740) covering Class 33 for “Alcoholic beverages except beers.” (Hereafter these registered, allowed, and common law marks are collectively referred to as the “KAHLUA Marks.”)

4. The registrations set forth in Paragraph 3 are valid and subsisting and in full force and effect. In addition, all of the registrations set forth in Paragraph 3 have achieved incontestable status under 15 U.S.C. §§ 1065 and 1115(b).

5. By reason of Opposer's extensive investment of time, money and effort, including substantial sales, advertising and promotional activities, Opposer's KAHLUA Marks have come to be recognized as signifying Opposer and its products. Opposer has built up extensive goodwill in its KAHLUA Marks.

6. Long prior to Applicant's filing of its application to register the mark "KAHLOWEEN" and prior to any use of the applied-for mark by Applicant, purchasers had come to recognize Opposer's KAHLUA Marks as identifying goods emanating exclusively from Opposer.

7. Opposer's KAHLUA Marks are famous and have been famous since long prior to Applicant's filing of its application to register the mark "KAHLOWEEN" and prior to any use of the applied-for mark by Applicant.

8. Notwithstanding Opposer's prior rights in and to Opposer's KAHLUA Marks, on May 3, 2012, Applicant filed U.S. Serial No. 85/615,895 for the mark "KAHLOWEEN" covering "Tequila" in International Class 33.

9. Applicant's herein-opposed application was published for opposition on October 2, 2012 in the Official Gazette (Trademarks) of the United States Patent and Trademark Office. Opposer's predecessor-in-interest, Absolut Holding Inc. c/o Absolut Holding Filial, was granted extensions of time to oppose until January 30, 2013. Thus, this Notice of Opposition is being timely filed.

10. Applicant's applied-for goods are similar to, related to and overlap with the products with which Opposer uses and has registered its KAHLUA Marks.

11. Applicant's mark "KAHLOWEEN" is confusingly similar to Opposer's KAHLUA Marks in sight, sound, connotation, and commercial impression, and Applicant's use and registration of "KAHLOWEEN" are likely to cause confusion, deception, and/or mistake among the relevant public.

12. Applicant's use and registration of the mark "KAHLOWEEN" are likely to falsely suggest a connection with Opposer and Opposer's KAHLUA Marks.

13. Applicant's use and registration of the mark "KAHLOWEEN" are likely to dilute the distinctiveness of Opposer's famous KAHLUA Marks.

14. Applicant's use and registration of the mark "KAHLOWEEN" are likely to tarnish and harm the reputation of Opposer's famous KAHLUA Marks.

15. Applicant's use and registration of the mark "KAHLOWEEN" interfere with Opposer's KAHLUA Marks and will damage Opposer, its business and its goodwill.

WHEREFORE, Opposer believes that it will be damaged by registration of Applicant's mark and prays that it be denied.

The requisite filing fee prescribed by 37 C.F.R. § 2.6(a)(17), in the amount of \$300.00, should be charged to Deposit Account No. 500417. If there are any additional fees due in connection with this Notice of Opposition, they should also be charged to Deposit Account No. 500417, and any excess fees should be credited to same. All correspondence relating to this matter should be directed to the undersigned attorneys for Opposer.

Respectfully submitted,

THE ABSOLUT COMPANY AKTIEBOLAG

Dated: January 30, 2013

By: /Robert W. Zelnick/
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Attorneys for Opposer

CERTIFICATE OF SERVICE

Opposer THE ABSOLUT COMPANY AKTIEBOLAG, through the undersigned counsel, hereby certifies that a copy of this NOTICE OF OPPOSITION has been served upon Applicant Drinks Americas, Inc., on this 30th day of January, 2013 by First Class U.S. Mail, postage prepaid, at the following address:

Drinks Americas, Inc.
424 R Main Street
Ridgefield, CONNECTICUT 06877
UNITED STATES

/Robert W. Zelnick /
Attorney for Opposer

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