

ESTTA Tracking number: **ESTTA524701**

Filing date: **03/04/2013**

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	Cervezas Cuauhtemoc Moctezuma SA de CV
Granted to Date of previous extension	03/13/2013
Address	Edificio Superior 3rd Floor. Av Alfonso Reyes 2202 Nte. CP. Monterrey, Nuevo Leon, 064000 MEXICO
Party who filed Extension of time to oppose	Cervezas Cuauhtemoc Moctezuma SA de CV
Relationship to party who filed Extension of time to oppose	Because the PTO system would not accept the accent mark over the "e"

Domestic Representative	Scott W. Petersen Partner Holland & Knight 131 South Dearborn Street 30th Floor Chicago, IL 60603 UNITED STATES scott.petersen@hklaw.com Phone:312.578.6689
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Applicant Information

Application No	85656471	Publication date	11/13/2012
Opposition Filing Date	03/04/2013	Opposition Period Ends	03/13/2013
Applicant	Weaver, Branden 2C 398 13Th Street Brooklyn, NY 11215 UNITED STATES		

Goods/Services Affected by Opposition

Class 032. All goods and services in the class are opposed, namely: Drinking water; Drinking water with vitamins; Energy drinks; Mineral water; Sports drinks
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Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
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)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3410073	Application Date	03/17/2007
Registration Date	04/08/2008	Foreign Priority Date	NONE
Word Mark	STAY THIRSTY, MY FRIENDS		
Design Mark	STAY THIRSTY, MY FRIENDS		
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2007/02/28 First Use In Commerce: 2007/02/28 beer		

Related Proceedings	None
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Attachments	77133710#TMSN.gif (1 page)(bytes) Opposition -- BRANDEN WEAVER_03_04_2013_16_39_55_569.pdf (12 pages) (446892 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	/Scott W. Petersen/
Name	Scott W. Petersen
Date	03/04/2013

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

CERVEZAS CUAUHTÉMOC)	
MOCTEZUMA SA DE CV,)	
)	Opp. No. _____
Opposer)	
)	
v.)	(Serial No. 85/656,471)
)	
)	
BRANDEN WEAVER,)	
)	
Applicant)	
_____)	

NOTICE OF OPPOSITION

In the matter of Application Serial No. 85/656,471 for registration of the mark STAY HYDRATED, MY FRIENDS, filed June 20, 2012, by Branden Weaver of 2C 398 13th Street, Brooklyn, New York 11215 (hereinafter "Applicant") and published for opposition in the *Official Gazette* of November 13, 2012; Cervezas Cuauhtémoc Moctezuma SA de CV, a corporation of Mexico, having a mailing address of Ave. Alfonso Reyes 2202 Nte. Col Bella Vista Monterrey Nuevo León, México CP. 64410 (hereinafter "Opposer") would be damaged by registration of said alleged trademark and hereby gives notice of its intention to oppose the registration of said trademark.

Application Serial No. 85/656,471 is herein referred to collectively as "the Application." The mark STAY HYDRATED, MY FRIENDS, as set forth in the Application, is herein referred to collectively as "Applicant's Mark."

Opposer has sought and received the requisite extensions of time in which to oppose this application, making this Notice of Opposition timely.

As grounds for opposition, Opposer states as follows:

1. Opposer is a major brewer whose beers are known around the world. Opposer is the owner of all right, title, and interest in and to the well known and famous trademarks DOS EQUIS, THE MOST INTERESTING MAN IN THE WORLD and STAY THIRSTY, MY FRIENDS. Opposer has been operating a brewery since at least as early as 1890. The beers sold under the Opposer's trademarks ("Opposer's Goods") are renowned among members of the general public in the United States and around the world.

2. Opposer is the owner of United States Trademark Reg. No. 3,410,073 for the mark STAY THIRSTY, MY FRIENDS for beer in International Class 32 ("Opposer's Registration"), which issued on April 8, 2008. Opposer's Registration is valid and subsisting. A copy of Opposer's Registration, prepared by the U.S. Patent and Trademark Office and showing the status and title of Opposer's Registration, is attached hereto as Exhibit 1. Opposer's Registration is conclusive evidence of Opposer's ownership of the mark STAY THIRSTY, MY FRIENDS, of the validity of the Opposer's Mark, and of Opposer's exclusive right to use the mark in commerce in connection with Opposer's goods. The Opposer's Registration has been used in conjunction with a nationally-famous advertising campaign which is titled "The Most Interesting Man in the World." The audio and video advertising features an actor who ends the commercial with the words "*I don't always drink beer but when I do, I prefer DOS EQUIS. STAY THIRSTY MY FRIENDS.*"

3. Opposer has been using Opposer's Mark in connection with Opposer's Goods continuously since 2007. During such time, Opposer has spent considerable time, effort and money in advertising and promoting its DOS EQUIS beer product under Opposer's Mark. As a result of Opposer's vigorous marketing, advertising, and promotion of its goods under the mark STAY THIRSTY, MY FRIENDS, Opposer's Mark has become well-known and famous as a distinctive indicator of the origin of Opposer's Goods, has acquired a highly favorable reputation among members of the purchasing public, and has become a valuable symbol of Opposer's goodwill.

4. Opposer's beers offered under the DOS EQUIS brand and STAY THIRSTY, MY FRIENDS trademark are among the most highly acclaimed beers in the world. When entering "STAY THIRSTY MY FRIENDS" in Google - within quotation marks (to give only records where this exact configuration of words appears), there are millions of records.

5. Opposer adopted STAY THIRSTY, MY FRIENDS as early as February 2007. Since that time Opposer has continuously used and promoted Opposer's Mark in connection with DOS EQUIS beer. Opposer has a reputation for the highest quality products and the highest integrity in its business relationships with consumers and associates alike.

6. Opposer's trademark STAY THIRSTY, MY FRIENDS is strong, inherently distinctive, and arbitrary as applied to Opposer's Goods. Moreover, the distinctiveness of Opposer's Mark as a source indicator for Opposer's Goods

has been increased by virtue of Opposer's long-term use and vigorous promotion of Opposer's Mark over the last six years.

7. Opposer's trademark STAY THIRSTY, MY FRIENDS is famous and became famous prior to the adoption by Applicant of Applicant's Marks and prior to the filing dates of the Application.

8. Notwithstanding Opposer's prior rights in Opposer's Mark, Applicant filed the Application in the U.S. Patent and Trademark Office on June 20, 2012 (Serial No. 85/656,471) for the purpose of obtaining U.S. registration of the Applicant's Mark. The goods identified in the Application is "drinking water; drinking water with vitamins; energy drinks; mineral water; sport drinks" in International Class 32 ("Applicant's Goods"). The Application was filed on the basis of Applicant's intent to use the mark in Commerce, under 15 U.S.C. Section 1051(b).

9. On information and belief, Applicant has made no use of Applicant's Mark in connection with any goods.

10. Opposer has used, advertised and promoted Opposer's Mark and Opposer's Trade Name in interstate commerce from a date prior to the filing date of the Application and on information and belief and prior to any use by Applicant's Mark.

11. Opposer's Registration issued prior to the filing date of the Application and prior to any use by Applicant of Applicant's Mark.

12. Upon information and belief, at the time Applicant filed the Application and prior to any use of Applicant's Mark, Applicant knew or had

reason to know of Opposer's prior rights in the trademark STAY THIRSTY, MY FRIENDS.

13. Opposer's Registration, which issued on April 6, 2010, constitutes constructive notice to Applicant of Opposer's claim of ownership of its trademark STAY THIRSTY, MY FRIENDS, as provided in 15 U.S.C. Section 1072.

COUNT I

Dilution - §43(c)

14. Opposer realleges and incorporates by reference the allegations contained in paragraphs 1 through 13, above, as if set forth in their entirety herein.

15. Applicant's Mark STAY HYDRATED, MY FRIENDS, set forth in Application Serial No. 85/656,471, is essentially identical to Opposer's Mark, as it contains no distinctive matter other than the designation "Hydrated" which has a meaning related to "thirst" or "thirsty."

16. The literal portion of Applicant's Mark STAY HYDRATED, MY FRIENDS, as set forth in Application Serial No. 85/656,471, is essentially identical to Opposer's Mark, as it contains no distinctive matter other than the designation relating to the status of a consumer's "thirst" (here, to stay *not* thirsty).

17. The goods of the Applicant's Mark (beverages) are nearly identical to the Opposer's goods as both marks are used or intended to be used with beverages.

18. The International Class in which the Applicant's Mark designates goods is the identical International Class the Opposer's Mark designates (Class 32).

19. Use of Applicant's Mark is likely to and will cause dilution by blurring and dilution by tarnishment of Opposer's Mark, impairing the distinctive quality of the Opposer's Mark.

20. Use or registration of Applicant's Mark will promote an association in the minds of the public between Applicant's Mark and Opposer's Mark, arising from the similarity between Applicant's Mark and Opposer's Mark, thereby impairing the distinctiveness of Opposer's Mark by lessening the capacity of Opposer's Mark to identify and distinguish Opposer's Goods.

21. On information and belief, Applicant intended to create an association between Applicant's Mark and Opposer's Mark because of the fame and good reputation of Opposer's Mark.

22. Use and registration of the Applicant's Mark will deprive Opposer of the ability to protect its reputation, persona, and goodwill.

23. Use and registration of Applicant's Mark is likely to harm the reputation of Opposer's Mark because prospective customers who encounter defects in the quality of Applicant's Goods will attribute those defects to Opposer, thereby tarnishing and harming Opposer's goodwill, as represented by Opposer's Mark.

24. By reason of the foregoing, Opposer will be damaged by the registration of Applicant's Mark and registration should be refused pursuant to the provisions of Section 43(c) of the Trademark Act, 15 U.S.C. §1125(c).

COUNT II

Likelihood of Confusion - §2(d)

25. Opposer realleges and incorporates by reference the allegations contained in paragraphs 1 through 24, above, as if set forth in their entirety herein.

26. The Applicant's Mark so closely resembles the Opposer's Mark in sound, appearance and meaning -- and in commercial impression -- that the use and registration thereof by Applicant is likely to cause confusion, mistake, and deception as to the source or origin of Applicant's Goods and will injure and damage Opposer and the goodwill and reputation symbolized by Opposer's Mark and Opposer's Trade Name.

27. The fame and renown of Opposer's Mark is such that the public is likely to be confused, to be deceived, and to assume erroneously that Applicant's Mark is associated with or otherwise connected with Opposer, and to mistakenly believe that Applicant's Goods are those of Opposer or that Applicant is in some way connected with, sponsored by, or affiliated with Opposer, all to Opposer's irreparable damage and injury.

28. Likelihood of confusion and deception is enhanced by the fact that Opposer's Goods and Opposer's commercial activities under Opposer's Mark and Opposer's Trade Name are provided or intended to be provided to the same

class of prospective customers as are Applicant's Goods. The Opposer's Goods and the Applicant's Goods are beverages in International Class 32.

29. Under the circumstances, registration and use of Applicant's Mark is likely to cause Opposer to lose control over the good and valuable reputation represented by and derived from Opposer's Mark and Opposer's Trade Name.

30. Registration of Applicant's Mark in light of the prior rights of Opposer in Opposer's Mark is therefore likely to cause confusion, mistake and/or deception among members of the relevant purchasing public resulting in damage and injury to Opposer in violation of the provisions of Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d).

COUNT III

False Suggestion of a Connection - §2(a)

31. Opposer realleges and incorporates by reference the allegations contained in paragraphs 1 through 30, above, as if set forth in their entirety herein.

32. Applicant's Mark is the same as, or a close approximation of, Opposer's Mark, which is a symbol of Opposer's identity and good will.

33. The designation "Stay Hydrated, My Friends" in Applicant's Mark points uniquely and unmistakably to Opposer and would be recognized by the public as the symbol of Opposer's identity and good will.

34. Opposer is not connected with the Applicant, Applicant's Goods, or any activities performed by the Applicant under Applicant's Mark.

35. The fame and reputation of Opposer is such that, when Applicant's Mark is used with the Applicant's Goods, the public would presume, falsely, that there is a connection between Applicant and Opposer.

36. Applicant's Mark falsely suggest a connection with Opposer, and accordingly registration of Applicant's Mark should be refused under Section 2(a) of the Trademark Act, 15 U.S.C. §1052(a).

Opposer, Cervezas Cuauhtémoc Moctezuma SA de CV, prays that this Opposition be sustained and that the registration sought by Applicant be refused.

Respectfully Submitted,

**Cervezas Cuauhtémoc Moctezuma
SA de CV**

DATE: March 4, 2013

By: 

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that the on March 4, 2013, the above Notice of Opposition is being electronically filed with the United States Patent and Trademark Office, Trademark Trial & Appeal Board. I further certify that a true copy of the foregoing Notice of Opposition has been served by first class mail, postage prepaid, at the following address:

Mr. Branden Weaver
398 13th Street, Apt. 2C
Brooklyn, NY 11215-5175



Scott W. Petersen

#12110920_v1

EXHIBIT A



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STAY THIRSTY, MY FRIENDS

Word Mark	STAY THIRSTY, MY FRIENDS
Goods and Services	IC 032 US 045 046 048. G & S: beer. FIRST USE: 20070228. FIRST USE IN COMMERCE: 20070228
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	77133710
Filing Date	March 17, 2007
Current Basis	1A
Original Filing Basis	1B
Published for Opposition	October 9, 2007
Change In Registration	CHANGE IN REGISTRATION HAS OCCURRED
Registration Number	3410073
Registration Date	April 8, 2008
Owner	(REGISTRANT) CCM IP, S A CORPORATION SWITZERLAND Avenue de Rumine 33 Lausanne SWITZERLAND CH-1005
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Scott W. Petersen
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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