

ESTTA Tracking number: **ESTTA544230**

Filing date: **06/20/2013**

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	Andros
Granted to Date of previous extension	06/30/2013
Address	Zone Industrielle Biars-Sur-Cere, 46130 FRANCE

Attorney information	Julie B. Seyler Abelman Frayne & Schwab 666 Third Avenue New York, NY 10017 UNITED STATES JBSeyler@lawabel.com, Rdahl@lawabel.com Phone:2129499022
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Applicant Information

Application No	85675252	Publication date	01/01/2013
Opposition Filing Date	06/20/2013	Opposition Period Ends	06/30/2013
Applicant	Molkerei Alois MÄ¼ller GmbH & Co. KG Zollerstrasse 7 Aretsried, 86850 GERMANY		

Goods/Services Affected by Opposition

<p>Class 029. All goods and services in the class are opposed, namely: Yogurt; sweetened and fruit flavored yogurt; yogurt drinks; dairy products, excluding ice cream, ice milk and frozen yogurt; milk; milk products, excluding ice cream, ice milk and frozen yogurt; beverages having a milk base; jellies; jams; fruit purees; cheese; snack dips excluding salsa, chocolate and caramel; dairy-based spreads; margarine; canned, dried, frozen or preserved fruit; canned, dried, frozen or preserved vegetables; prepared, processed or roasted nuts; ready to eat vegetable based snack foods repackaged with dairy based dips</p>
<p>Class 030. All goods and services in the class are opposed, namely: Frozen yogurt and ice cream; dessert puddings; fruit jelly dessert candies; biscuits; cookies; cereal based snack foods and food bars; rice-based pudding desserts</p>
<p>Class 032. All goods and services in the class are opposed, namely: Fruit beverages containing yogurt; non-alcoholic drinks, namely, soft drinks, fruit drinks and fruit juices</p>

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.	4287703	Application Date	11/18/2011
Registration Date	02/12/2013	Foreign Priority Date	09/14/2011
Word Mark	FRUIT ME UP		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 029. First use: Preserved, dried and cooked fruits and vegetables; jellies jams, compotes, fruit purees; milk and dairy products, excluding ice cream, ice milk and frozen yogurt; yogurt, fruit pulp, fruit spread, fruits salad</p> <p>Class 030. First use: Fruits-based candies; fruit-based pastry and confectionery made of sugar, candy, chocolates; fruit-flavored chewing gum, not for medical purposes; fruit-flavored lollipops; fruit-based biscuits; flavorings, other than essential oils, fruit-flavored frozen yogurts; fruit-flavored edible ices; fruit sorbets</p> <p>Class 032. First use: Fruit-flavored mineral and aerated waters and other non-alcoholic drinks, namely, non-alcoholic cocktails, fruit drinks and fruit juices; non-alcoholic fruit extracts, fruit nectars, and fruits concentrates all used as ingredients of beverages; vegetable juices beverages; fruit sorbets in the form of beverages; syrups for making beverages, fruit drinks, fruit-flavored lemonades, fruit-based smoothies</p>		

U.S. Registration No.	4287710	Application Date	11/22/2011
Registration Date	02/12/2013	Foreign Priority Date	10/14/2011
Word Mark	FRUIT ME UP!		
Design Mark			
Description of Mark	<p>The mark consists of the words "FRUIT ME UP!" in stylized letters in green with a representation of an apple in red with green leaves on the stem with a sliced pineapple in yellow and white, a sliced peach in orange to form the eyes, and two apples slices in yellow, white and brown to form the ears, with a white mouth to form a smiling face within a white circle surrounded by a green square.</p>		
Goods/Services	<p>Class 029. First use: Preserved, dried and cooked fruits and vegetables; jellies, jams, compotes, fruit purees; milk and dairy products, excluding ice cream, ice milk and frozen yogurt; yogurt, fruit pulp, fruit spread, fruits salad</p> <p>Class 030. First use: Fruits-based candies; fruit-based pastry and confectionery made of sugar, candy, chocolates; fruit-flavored chewing gum, not for medical purposes; fruit-flavored lollipops; fruit-based biscuits; flavorings, other than essential oils, fruit-flavored frozen yogurts; fruit-flavored edible ices; fruit sorbets</p> <p>Class 032. First use: Fruit-flavored mineral and aerated waters and other non-alcoholic drinks, namely, non-alcoholic cocktails, fruit drinks and fruit juices; non-alcoholic fruit extracts, fruit nectars, and fruits concentrates all used as ingredients of</p>		

	beverages; vegetable juices beverages; fruit sorbets in the form of beverages; syrups for making beverages, fruit drinks, fruit-flavored lemonades, fruit-based smoothies
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Attachments	ANDROS V MOLKEREI ALOIS MULLER - NOTICE OF OPPOSITION - 6-20-13.pdf(476757 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	/Julie B. Seyler/
Name	Julie B. Seyler
Date	06/20/2013

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

In re Application No. 85/675252
Published January 1, 2013

Andros
<i>Opposer,</i>
v.
Molkerei Alois Muller GmbH & Co. KG
<i>Applicant</i>

Opposition No.

NOTICE OF OPPOSITION

Andros, a general partnership company organized and existing under the laws of France with an office at Zone Industrielle, Biars-Sur-Cere, 46130, FRANCE, believes that it will be damaged by registration of the mark shown in Application Serial Nos. 85/675252 and hereby opposes the same.

As grounds for opposition, it is alleged that:

1. Applicant is seeking to register the mark Früt Up for yogurt; sweetened and fruit flavored yogurt; yogurt drinks; dairy products, excluding ice cream, ice milk and frozen yogurt; milk; milk products, excluding ice cream, ice milk and frozen yogurt; beverages having a milk base; jellies; jams; fruit purees; cheese; snack dips excluding salsa, chocolate and caramel; dairy-based spreads; margarine; canned, dried, frozen or preserved fruit; canned, dried, frozen or preserved vegetables; prepared, processed or roasted nuts; ready to eat vegetable based snack foods repackaged with dairy based dips in Class 29; frozen yogurt and ice cream; dessert

puddings; fruit jelly dessert candies; biscuits; cookies; cereal based snack foods and food bars; rice-based pudding desserts in Class 30; and fruit beverages containing yogurt; non-alcoholic drinks, namely, soft drinks, fruit drinks and fruit juices in Class 32.

2. Opposer is the owner of all right, title and interest in and to the trademark FRUIT ME UP.

3. Opposer is the owner of all right, title and interest in and to Registration No. 4,287,703 for FRUIT ME UP for preserved, dried and cooked fruits and vegetables; jellies jams, compotes, fruit purees; milk and dairy products, excluding ice cream, ice milk and frozen yogurt; yogurt, fruit pulp, fruit spread, fruits salad; fruits-based candies; fruit-based pastry and confectionery made of sugar, candy, chocolates; fruit-flavored chewing gum, not for medical purposes; fruit-flavored lollipops; fruit-based biscuits; flavorings, other than essential oils, fruit-flavored frozen yogurts; fruit-flavored edible ices; fruit sorbets; fruit-flavored mineral and aerated waters and other non-alcoholic drinks, namely, non-alcoholic cocktails, fruit drinks and fruit juices; non-alcoholic fruit extracts, fruit nectars, and fruits concentrates all used as ingredients of beverages; vegetable juices beverages; fruit sorbets in the form of beverages; syrups for making beverages, fruit drinks, fruit-flavored lemonades, fruit-based smoothies.

4. Pursuant to 37 C.F.R. 1.122(d)(1) annexed hereto as Exhibit A is a printout from the electronic database records of the USPTO, namely TSDR that shows that the current status and title of Registration No. 4,287,703 is in the name of Opposer.

5. Opposer is the owner of all right, title and interest in and to Registration No. 4,287,710 for FRUIT ME UP and Design for preserved, dried and cooked fruits and vegetables; jellies jams, compotes, fruit purees; milk and dairy products, excluding ice cream, ice milk and frozen yogurt; yogurt, fruit pulp, fruit spread, fruits salad; Fruits-based candies; fruit-based

pastry and confectionery made of sugar, candy, chocolates; fruit-flavored chewing gum, not for medical purposes; fruit-flavored lollipops; fruit-based biscuits; flavorings, other than essential oils, fruit-flavored frozen yogurts; fruit-flavored edible ices; fruit sorbets; Fruit-flavored mineral and aerated waters and other non-alcoholic drinks, namely, non-alcoholic cocktails, fruit drinks and fruit juices; non-alcoholic fruit extracts, fruit nectars, and fruits concentrates all used as ingredients of beverages; vegetable juices beverages; fruit sorbets in the form of beverages; syrups for making beverages, fruit drinks, fruit-flavored lemonades, fruit-based smoothies.

6. Pursuant to 37 C.F.R. 1.122(d)(1) annexed hereto as Exhibit A is a printout from the electronic database records of the USPTO, namely TSDR that shows that the current status and title of Registration No. 4,287,710 is in the name of Opposer.

7. Opposer has priority.

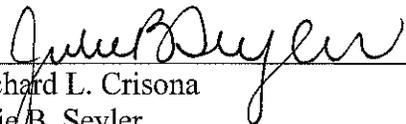
8. Applicant's mark FRUT UP is substantially similar to Opposer's mark FRUIT ME UP.

9. Applicant's goods are identical to and/or commercially related to Opposer's goods.

10. In view of the substantial similarity between the respective marks, the commercial relationship between the goods, registration of Applicant's mark is likely to cause confusion, mistake or deception to purchasers as to the source of Applicant's goods, and therefore it is requested that registration to Applicant be refused under Section 2(d) of the Trademark Act.

WHEREFORE, Opposer believes that it will be damaged by the registration of Application Serial No. 85/675252 and respectfully requests that registration be refused and this opposition be sustained.

Respectfully submitted,


Richard L. Crisona
Julie B. Seyler

Attorneys for Opposer

ABELMAN, FRAYNE & SCHWAB
666 Third Avenue
New York, New York 10017
(212) 949-9022

EXHIBIT A



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FRUIT ME UP

Word Mark **FRUIT ME UP**

Goods and Services IC 029. US 046. G & S: Preserved, dried and cooked fruits and vegetables; jellies jams, compotes, fruit purees; milk and dairy products, excluding ice cream, ice milk and frozen yogurt; yogurt, fruit pulp, fruit spread, fruits salad

IC 030. US 046. G & S: Fruits-based candies; fruit-based pastry and confectionery made of sugar, candy, chocolates; fruit-flavored chewing gum, not for medical purposes; fruit-flavored lollipops; fruit-based biscuits; flavorings, other than essential oils, fruit-flavored frozen yogurts; fruit-flavored edible ices; fruit sorbets

IC 032. US 045 046 048. G & S: Fruit-flavored mineral and aerated waters and other non-alcoholic drinks, namely, non-alcoholic cocktails, fruit drinks and fruit juices; non-alcoholic fruit extracts, fruit nectars, and fruits concentrates all used as ingredients of beverages; vegetable juices beverages; fruit sorbets in the form of beverages; syrups for making beverages, fruit drinks, fruit-flavored lemonades, fruit-based smoothies

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 85476218

Filing Date November 18, 2011

Current Basis 44E

Original Filing Basis 1B;44D

Published for Opposition August 21, 2012

Registration Number 4287703

Registration

Date February 12, 2013
Owner (REGISTRANT) ANDROS General Partnership Company FRANCE Zone Industrielle Biars-Sur-Cere FRANCE 46130
Attorney of Record Lawrence E. Abelman
Priority Date September 14, 2011
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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For Serial Number: 85476218

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Web interface last modified: Apr 8, 2013 v.2.3.3

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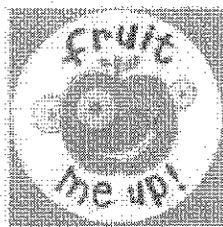
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Word Mark **FRUIT ME UP!**

Goods and Services IC 029. US 046. G & S: Preserved, dried and cooked fruits and vegetables; jellies, jams, compotes, fruit purees; milk and dairy products, excluding ice cream, ice milk and frozen yogurt; yogurt, fruit pulp, fruit spread, fruits salad

IC 030. US 046. G & S: Fruits-based candies; fruit-based pastry and confectionery made of sugar, candy, chocolates; fruit-flavored chewing gum, not for medical purposes; fruit-flavored lollipops; fruit-based biscuits; flavorings, other than essential oils, fruit-flavored frozen yogurts; fruit-flavored edible ices; fruit sorbets

IC 032. US 045 046 048. G & S: Fruit-flavored mineral and aerated waters and other non-alcoholic drinks, namely, non-alcoholic cocktails, fruit drinks and fruit juices; non-alcoholic fruit extracts, fruit nectars, and fruits concentrates all used as ingredients of beverages; vegetable juices beverages; fruit sorbets in the form of beverages; syrups for making beverages, fruit drinks, fruit-flavored lemonades, fruit-based smoothies

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 02.11.16 - Faces, smiley; Smiley faces
 04.07.02 - Objects forming a person; Person formed by objects
 05.09.05 - Apples
 05.09.06 - Avocados; Fruits with pits (apricots, peaches, plums, olives and the like)
 05.09.09 - Pineapples
 05.09.13 - Fruits (slices or quarters of)
 26.01.01 - Circles as carriers or as single line borders
 26.09.21 - Squares that are completely or partially shaded

Serial Number 85479073

Filing Date November 22, 2011

Current Basis 44E

Original Filing Basis 1B;44D

Published for

Opposition August 21, 2012
Registration Number 4287710
Registration Date February 12, 2013
Owner (REGISTRANT) ANDROS General Partnership Company FRANCE Zone Industrielle Biars-Sur-Cere FRANCE 46130
Attorney of Record Lawrence E. Abelman
Priority Date October 14, 2011
Description of Mark The color(s) green, red, white, yellow, orange and brown is/are claimed as a feature of the mark. The mark consists of the words "FRUIT ME UP!" in stylized letters in green with a representation of an apple in red with green leaves on the stem with a sliced pineapple in yellow and white, a sliced peach in orange to form the eyes, and two apples slices in yellow, white and brown to form the ears, with a white mouth to form a smiling face within a white circle surrounded by a green square.
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing NOTICE OF OPPOSITION was served by first class mail, postage prepaid this 20th day of June, 2013 upon the following:

James R. Meyer
SCHNADER HARRISON SEGAL & LEWIS LLP
1600 MARKET ST STE 3600
PHILADELPHIA, PA 19103-7286



Julie B. Seyler