

ESTTA Tracking number: **ESTTA546687**

Filing date: **07/03/2013**

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	Double-Cola Co.-USA
Granted to Date of previous extension	07/03/2013
Address	537 Market Street Chattanooga, TN 37402 UNITED STATES

Attorney information	Tiffany W. Shimada Brinks Hofer Gilson & Llonc PO Box 10395 Chicago, IL 60610 UNITED STATES officeactions@brinkshofer.com, jtj@brinkshofer.com, tshimada@brinkshofer.com Phone:312-321-4200
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Applicant Information

Application No	85564478	Publication date	03/05/2013
Opposition Filing Date	07/03/2013	Opposition Period Ends	07/03/2013
Applicant	Talus Outdoor Technologies, LLC 648 E. Sussex Missoula, MT 59801 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 005. All goods and services in the class are opposed, namely: Dietary and nutritional supplements; Dietary and nutritional supplements for endurance sports; Dietary beverage supplements for human consumption in liquid and dry mix form for therapeutic purposes; Dietary food supplements; Dietary supplemental drinks; Dietary supplemental drinks in the nature of vitamin and mineral beverages; Dietary supplements; Food supplements, namely, anti-oxidants; Health food supplements; Liquid nutritional supplement; Liquid vitamin supplements; Mixed vitamin preparations; Nutritional and dietary supplements formed and packaged as bars; Nutritional supplement energy bars; Powdered nutritional supplement drink mix and concentrate; Protein dietary supplements; Protein supplements; Vitamin and mineral formed and packaged as bars; Vitamin and mineral supplements; all of the foregoing goods containing vitamins</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.	2319608	Application Date	05/12/1999
Registration Date	02/15/2000	Foreign Priority Date	NONE
Word Mark	SKI		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1956/08/10 First Use In Commerce: 1956/08/10 Soft drinks and concentrates and syrups for making the same		

U.S. Registration No.	3921879	Application Date	01/20/2010
Registration Date	02/22/2011	Foreign Priority Date	NONE
Word Mark	SKI INFRARED		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2009/09/30 First Use In Commerce: 2009/09/30 soft drinks		

Attachments	189-396 Notice of Opposition.pdf(96537 bytes) 189-396 Certificate of Service.pdf(14839 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	/Tiffany W. Shimada/
Name	Tiffany W. Shimada
Date	07/03/2013

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

Double-Cola Co.-USA,

Opposer,

v.

Talus Outdoor Technologies, LLC,

Applicant.

U.S. Serial No.: 85/564,478

NOTICE OF OPPOSITION

Opposer Double-Cola Co.-USA (“Opposer”), a corporation duly organized and existing under the laws of the State of Georgia, with its principal place of business in Chattanooga, Tennessee, believes it will be damaged by registration of the mark that is the subject of United States Trademark Application Serial No. 85/564,478 (the “Opposed Mark”), filed by Talus Outdoor Technologies, LLC (“Applicant”), and therefore hereby opposes registration pursuant to 15 U.S.C. §1063. In support of its opposition, Opposer states as follows:

1. Opposer uses, and has used since at least as early as 1956, the mark SKI in connection with the soft drinks and concentrates and syrups for making the same.
2. Opposer uses, and has used since at least as early as 2009, the mark SKI INFRARED in connection with the soft drinks. (Opposer’s SKI and SKI INFRARED marks are referred to collectively as “Opposer’s SKI Marks.”)
3. Each of Opposer’s SKI Marks is inherently distinctive.
4. By reason of Opposer’s advertising, promotion, and sale of goods under its SKI Marks, Opposer has developed substantial goodwill in its Marks. Opposer’s SKI Marks are strong as applied to their respective goods, and the Marks are entitled to a broad scope of

protection. At the very least, Opposer's Marks have acquired distinctiveness and secondary meaning.

5. Opposer owns the following US Trademark Registrations:

Mark	Reg. No.	Class	Goods	First Use
SKI	2,319,608	32	Soft drinks and concentrates and syrups for making the same	1956
SKI INFRARED	3,921,879	32	Soft drinks	2009

6. Opposer's Trademark Registrations are valid, subsisting, and in full force and effect.

7. Opposer's US Trademark Reg. No. 2,319,608 is incontestable.

8. Notwithstanding Opposer's prior rights in and to Opposer's SKI Marks, Applicant filed, on March 8, 2012, an intent-to-use application (Serial No. 85/564,478) to register VITAMIN SKI, for use in connection with: "Dietary and nutritional supplements; Dietary and nutritional supplements for endurance sports; Dietary beverage supplements for human consumption in liquid and dry mix form for therapeutic purposes; Dietary food supplements; Dietary supplemental drinks; Dietary supplemental drinks in the nature of vitamin and mineral beverages; Dietary supplements; Food supplements, namely, anti-oxidants; Health food supplements; Liquid nutritional supplement; Liquid vitamin supplements; Mixed vitamin preparations; Nutritional and dietary supplements formed and packaged as bars; Nutritional supplement energy bars; Powdered nutritional supplement drink mix and concentrate; Protein dietary supplements; Protein supplements; Vitamin and mineral formed and packaged as bars; Vitamin and mineral supplements; all of the foregoing goods containing vitamins" in Class 5 ("the Opposed Mark").

9. The Opposed Mark, when used in connection with the goods listed in the Serial No. 85/564,478, is likely to cause confusion as to source or origin and likely to mislead consumers in view of Opposer's SKI Marks. For example, and without limitation, the Opposed Mark is strikingly similar to Opposer's SKI Marks in appearance, sound, meaning, and commercial impression, and the goods listed in Applicant's application are similar to, and offered to the same or overlapping classes of individuals as those who purchase, Opposer's goods offered under its SKI Marks.

10. Applicant's registration of the Opposed Mark in association with the goods listed in the application will damage Opposer.

WHEREFORE, Opposer respectfully requests that registration of the Opposed Mark be refused pursuant to 15 U.S.C. §1052.

The Director hereby is authorized to charge the filing fee for this Notice of Opposition to Deposit Account No. 23-1925.

Respectfully submitted,

DOUBLE COLA CO.-USA

Dated: July 3, 2013

By:



John Gabrielides

Tiffany W. Shimada

BRINKS HOFER GILSON & LIONE

P.O. Box 10395

Chicago, IL 60610

Attorneys for Opposer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing NOTICE OF OPPOSITION was served on counsel for Applicant by email (katie@montanaiplaw.com) at the following address by U.S. mail, postage prepaid, on this 3rd day of July, 2013.

Katherine Sullivan, Esq.
Katherine E. Sullivan, PLLC
1001 E. Broadway St. STOP 2 PMB 306
Missoula, MT 59802-4914

A handwritten signature in cursive script, reading "Tiffany W. Shimada", is written over a horizontal line.