

ESTTA Tracking number: **ESTTA592840**

Filing date: **03/17/2014**

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	Lumen Water, Inc.
Granted to Date of previous extension	03/19/2014
Address	4439 Cole Avenue Dallas, TX 75205 UNITED STATES

Attorney information	Dyan M. House Carter Scholer Arnett Hamada & Mockler PLLC 8150 N. Central Expressway, Suite 1950 Dallas, TX 75206 UNITED STATES dhouse@carterscholer.com, trademarks@carterscholer.com Phone:214.550.5081
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**Applicant Information**

Application No	85971019	Publication date	11/19/2013
Opposition Filing Date	03/17/2014	Opposition Period Ends	03/19/2014
Applicant	Nuclear Wine Company LLC 1727 Prospect Avenue Santa Barbara, CA 93103 CANADA		

**Goods/Services Affected by Opposition**

Class 033. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Wine
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**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.	3953059	Application Date	03/30/2009
Registration Date	05/03/2011	Foreign Priority Date	NONE
Word Mark	LUMEN		

Design Mark	<h1>LUMEN</h1>		
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2008/10/10 First Use In Commerce: 2008/10/10 Drinking water		

U.S. Registration No.	4237348	Application Date	04/01/2012
Registration Date	11/06/2012	Foreign Priority Date	NONE
Word Mark	LUMEN		
Design Mark	<h1>LUMEN</h1>		
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2008/10/10 First Use In Commerce: 2008/10/10 Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Body shirts; Button down shirts; Collared shirts; Golf pants, shirts and skirts; Knit shirts; Long-sleeved shirts; Moisture-wicking sports shirts; Open-necked shirts; Polo shirts; Shirts; Short-sleeved shirts; Sport shirts; Sports shirts with short sleeves; T-shirts		

Attachments	77702676#TMSN.jpeg( bytes ) 85585881#TMSN.jpeg( bytes ) Notice of Opposition 031714.pdf(993100 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	/Dyan House/
Name	Dyan M. House
Date	03/17/2014

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

Lumen Water, Inc.,  
Opposer,

v.

Nuclear Wine Company LLC,  
Applicant.

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Mark: LUMEN  
Application Serial No. 85/971,019  
Published: November 19, 2013

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

**NOTICE OF OPPOSITION**

Lumen Water, Inc., a corporation organized under the laws of Texas, having a principal place of business at 4439 Cole Avenue, Dallas, Texas 75205 (hereinafter “*Opposer*”), believes that it will be damaged by registration of the trademark shown in Application Serial No. 85/971,019, in International Class 33 (“*Applicant’s Mark*”), and hereby opposes same. As grounds for the opposition, Opposer alleges as follows:

1. On information and belief, Nuclear Wine Company LLC is a California limited liability company, having a place of business at 1727 Prospect Avenue, Santa Barbara, California 93103 (hereinafter, “*Applicant*”).

2. Opposer is the owner and registrant of the trademark LUMEN, subject of United States Registration No. 3,953,059 for “drinking water” in International Class 32 (the “*Mark*”). Attached as Exhibit A is a true and correct copy of the registration certificate for the Mark (the “*’059 Registration*”).

3. Opposer first used the Mark in connection with drinking water at least as early as October 10, 2008.

4. Opposer is also the owner and registrant of the mark LUMEN for “athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; body shirts; button down shirts; collared shirts; golf pants, shirts and skirts; knit shirts; long-sleeved shirts; moisture-wicking sports shirts; open-necked shirts; polo shirts; shirts; short-sleeved shirts; sport shirts; sport shirts with short sleeves; t-shirts” in International Class 025, subject of U.S. Registration No. 4,237,348 (the “’348 Registration”). Attached as Exhibit B is a true and correct copy of the ’348 Registration.

5. Applicant’s Mark and Opposer’s Mark are similar in sight, sound, meaning and overall commercial impression. Moreover, Applicant’s Mark is identical to Opposer’s LUMEN Mark.

6. When used in association with the goods listed in Application Serial No. 85/971,019, Applicant’s Mark is likely to cause confusion, or to cause mistake, or to deceive, within the meaning of Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d).

7. The goods listed in the ’059 Registration and those listed in Application Serial No. 85/971,019 are related.

8. The classes of purchasers are the same with respect to Opposer’s goods and Applicant’s goods.

9. Opposer’s goods and Applicant’s goods move through the same channels of trade.

10. The relevant consuming public is likely to mistakenly believe that Applicant’s goods originate from, are sponsored or authorized by, or are otherwise connected to Opposer’s goods.

11. Applicant filed Application Serial No. 85/971,019 on June 26, 2013, on an intent-to-use basis.

12. Upon information and belief, Applicant's first use of the mark LUMEN was in October 2013, five years after Opposer's first use of the Mark.

13. Opposer is the senior user of the LUMEN Mark.

14. Opposer has made, and continues to make, a substantial investment in advertising and promoting its goods under the LUMEN Mark.

15. Opposer will be damaged by the registration sought by Applicant insofar as the registration will be *prima facie* evidence of the validity of the registration, Applicant's ownership of the mark LUMEN for the goods claimed by Application Serial No. 85/971,019, and Applicant's exclusive right to use the mark LUMEN in association with the goods claimed by Application Serial No. 85/971,019 when, in fact, Applicant is not entitled to the full scope of such rights by virtue of Opposer's prior and continuous use of and registrations for the LUMEN Mark.

16. Based upon the foregoing, registration of Applicant's Mark is likely to cause injury and damage to Opposer.

WHEREFORE, Opposer respectfully requests that registration of the mark LUMEN as shown by Application Serial No. 85/971,019, be denied under Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d), and that this Opposition be sustained.

Please charge the filing fee of US \$300.00 to Deposit Account No. 50-5742 of Opposer's counsel noted below.

Dated: March 17, 2014

Respectfully submitted,

By: /Dyan M. House /  
Dyan M. House  
Texas State Bar No. 24036923  
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HAMADA & MOCKLER, PLLC  
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ATTORNEYS FOR APPLICANT

## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice of Opposition has been served via First Class Mail, postage prepaid, to Applicant at the address below on this the 17<sup>th</sup> day of March 2014:

William W. Henry  
NUCLEAR WINE COMPANY, LLC  
1727 Prospect Avenue  
Santa Barbara, California 93103

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*/Dyan M. House/*

Dyan M. House

Exhibit A

**United States of America**  
United States Patent and Trademark Office

**LUMEN**

**Reg. No. 3,953,059**

LUMEN WATER, INC. (TEXAS CORPORATION)  
8600 THACKERY STREET, APARTMENT 8406  
DALLAS, TX 75225

**Registered May 3, 2011**

**Int. Cl.: 32**

FOR: DRINKING WATER, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

**TRADEMARK**

FIRST USE 10-10-2008; IN COMMERCE 10-10-2008.

**PRINCIPAL REGISTER**

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 77-702,676, FILED 3-30-2009.

JOHN HWANG, EXAMINING ATTORNEY



*David J. Kypos*

Director of the United States Patent and Trademark Office

Exhibit B

United States of America  
United States Patent and Trademark Office

LUMEN

**Reg. No. 4,237,348**

**Registered Nov. 6, 2012**

**Int. Cl.: 25**

**TRADEMARK**

**PRINCIPAL REGISTER**

LUMEN WATER, INCORPORATED (TEXAS CORPORATION), AKA LUMEN  
4439 COLE AVENUE  
DALLAS, TX 75202

FOR: ATHLETIC APPAREL, NAMELY, SHIRTS, PANTS, JACKETS, FOOTWEAR, HATS AND CAPS, ATHLETIC UNIFORMS; BODY SHIRTS; BUTTON DOWN SHIRTS; COLLARED SHIRTS; GOLF PANTS, SHIRTS AND SKIRTS; KNIT SHIRTS; LONG-SLEEVED SHIRTS; MOISTURE-WICKING SPORTS SHIRTS; OPEN-NECKED SHIRTS; POLO SHIRTS; SHIRTS; SHORT-SLEEVED SHIRTS; SPORT SHIRTS; SPORTS SHIRTS WITH SHORT SLEEVES; T-SHIRTS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 10-10-2008; IN COMMERCE 10-10-2008.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 85-585,881, FILED 4-1-2012.

JUHI KAVEESHVAR, EXAMINING ATTORNEY



*David J. Kappas*

Director of the United States Patent and Trademark Office