

ESTTA Tracking number: **ESTTA626173**

Filing date: **09/09/2014**

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	AdvoCare International, L.P.
Granted to Date of previous extension	09/27/2014
Address	2801 Summit Ave. Plano, TX 75074 UNITED STATES
Attorney information	Joel R. Feldman, Esq. Greenberg Traurig, LLP 3333 Piedmont Rd., NE, Suite 2500 Atlanta, GA 30305 UNITED STATES atltrademark@gtlaw.com, feldmanjoel@gtlaw.com Phone:678-553-4778

Applicant Information

Application No	86231560	Publication date	07/29/2014
Opposition Filing Date	09/09/2014	Opposition Period Ends	09/27/2014
Applicant	Suja Life, LLC 8380 Camino Santa Fe, Suite 200 San Diego, CA 92121 UNITED STATES		

Goods/Services Affected by Opposition

Class 032. First Use: 2012/05/01 First Use In Commerce: 2012/08/27 Opposed goods and services in the class: Beauty beverages, namely, fruit juices and energy drinks containing nutritional supplements
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Void Ab Initio for non-use

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3303370	Application Date	09/05/2003
Registration Date	10/02/2007	Foreign Priority Date	NONE
Word Mark	ADVOCARE SPARK		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2004/04/00 First Use In Commerce: 2004/04/00 Nutritional dietary supplement in the form of a powdered drink mix

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	SPARK		
Goods/Services	Nutritional dietary supplement in the form of a powdered drink mix		

Attachments	Notice of Opposition for Suja Spark.pdf(313922 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	/jrf/
Name	Joel R. Feldman, Esq.
Date	09/09/2014

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

In the Matter of Application Serial No. 86/231,560: SUJA SPARK
Published in the *Official Gazette* on July 29, 2014

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ADVOCARE INTERNATIONAL, LP,)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	
SUJA LIFE, LLC,)	
)	
Applicant.)	
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NOTICE OF OPPOSITION

AdvoCare International, LP (“AdvoCare”) opposes Suja Life, LLC’s Application Serial No. 86/231,560 in International Class 32 (the “Application”) because AdvoCare will be damaged by the registration of the Application.

The grounds for opposition are:

BACKGROUND

1. Applicant seeks to register the word mark SUJA SPARK in International Class 32 for beauty beverages, namely, fruit juices and energy drinks containing nutritional supplements; fruit beverages; fruit drinks; fruit drinks and fruit juices; fruit drinks and juices; fruit juice; fruit juices; fruit juices and fruit drinks; herbal juices; mixed fruit juice; non-alcoholic beverages containing fruit juices; non-alcoholic fruit juice beverages; non-alcoholic honey-based beverages; smoothies (the “Class 32 Goods”).

2. Applicant filed the Application on March 25, 2014, based on Applicant’s alleged use of the SUJA SPARK mark on the Class 32 Goods.

3. The Application includes an alleged first-use-in-commerce date of August 27, 2012.

**ADVOCARE'S USE AND REGISTRATION
OF THE SPARK AND ADVOCARE SPARK BRANDS**

4. Opposer AdvoCare is a Delaware limited partnership with a business address of 2801 Summit Avenue, Plano, Texas 75074.

5. AdvoCare is the successor in interest to trademarks used and owned by AdvoCare International, LLC, a Delaware limited liability company.

6. Since February 1997, AdvoCare and its predecessor in interest have continuously used the mark SPARK in interstate commerce in the United States for nutritional dietary supplements in the form of powdered drink mix.

7. AdvoCare has common-law rights in the SPARK mark for nutritional dietary supplements in the form of powdered drink mix based on its nationwide use of the mark.

8. Since April 2004, AdvoCare has used the ADVOCARE SPARK mark in interstate commerce in the United States for nutritional dietary supplements in the form of powdered drink mix.

9. AdvoCare owns U.S. Reg. No. 3,303,370 for ADVOCARE SPARK in International Class 5 for nutritional dietary supplement in the form of a powdered drink mix (TSDR record attached at Exhibit 1).

10. U.S. Reg. Nos. 3,303,370 is a valid and subsisting incontestable U.S. trademark registration.

11. AdvoCare has filing priority in the ADVOCARE SPARK mark since September 5, 2003.

COUNT I
PRIORITY AND LIKELIHOOD OF CONFUSION

12. AdvoCare's rights in the SPARK and ADVOCARE SPARK marks predate Applicant's filing date for the Application.

13. AdvoCare's rights in the SPARK and ADVOCARE SPARK marks predate Applicant's alleged first-use-in-commerce date in the Application.

14. Applicant's applied-for SUJA SPARK mark closely resembles AdvoCare's SPARK and ADVOCARE SPARK mark.

15. Beauty beverages, namely, fruit juices and energy drinks containing nutritional supplements (the "Opposed Goods") are closely related to AdvoCare's SPARK- and ADVOCARE SPARK-branded International Class 5 goods, nutritional dietary supplement in the form of a powdered drink mix.

16. Applicant's use and registration of the applied-for SUJA SPARK mark is likely to cause confusion, mistake, and deception as to the source of Applicant's Opposed Goods within the meaning of 15 U.S.C. §§ 1114 and 1125(a).

17. Applicant's use and registration of the applied-for SUJA SPARK mark will injure and damage AdvoCare and the goodwill and reputation symbolized by AdvoCare's SPARK and ADVOCARE SPARK marks within the meaning of 15 U.S.C. § 1063(a).

18. Based on the similarity of the Applicant's and AdvoCare's marks and the high similarity of Applicant's Opposed Goods with AdvoCare's SPARK- and ADVOCARE SPARK-branded goods, the public is likely to incorrectly believe that Applicant's SUJA SPARK-branded fruit juices and energy drinks containing nutritional supplements are connected to AdvoCare. This confusion will cause irreparable damage to AdvoCare.

19. Applicant's registration of SUJA SPARK for the Opposed Goods should not be

allowed under 15 U.S.C. § 1052(d), because the applied-for mark, SUJA SPARK, resembles a mark previously used in the United States by AdvoCare and is likely to cause confusion, mistake, or to deceive.

COUNT II
VOID AB INITIO

20. Applicant identified use in commerce as the filing basis for the Application.

21. At the time of filing the Application, Applicant's attorney of record, Kelly A. Floyd, signed a declaration affirming the following: "In International Class 032, the mark was first used by the applicant or the applicant's related company or licensee or predecessor in interest at least as early as 05/01/2012, and first used in commerce at least as early as 08/27/2012, and is now in use in such commerce."

22. AdvoCare conducted an investigation, reasonable in scope, regarding Applicant's past and current use of the SUJA SPARK mark.

23. Upon information and belief, Applicant was not using the SUJA SPARK mark in interstate commerce for the Opposed Goods at the time it filed the Application.

24. Upon information and belief, Applicant is not currently using the SUJA SPARK mark in interstate commerce for the Opposed Goods.

25. Upon information and belief, Applicant has never used the SUJA SPARK mark in interstate commerce for the Opposed Goods.

26. Because Applicant was not using the SUJA SPARK mark in interstate commerce for the Opposed Goods at the time the declaration was filed for the Application, the Application is void *ab initio* with respect to the Opposed Goods.

CONCLUSION

27. AdvoCare respectfully requests that this opposition be sustained and Application Serial No. 86/231,560 be refused registration for the Opposed Goods.

Date: September 9, 2014

Respectfully submitted,
GREENBERG TRAURIG, LLP



Joel R. Feldman, Esq.
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*Attorneys for Opposer AdvoCare
International, LP*

CERTIFICATE OF ELECTRONIC TRANSMISSION

Date: September 9, 2014

I certify that this Notice of Opposition is being transmitted electronically to the Trademark Trial and Appeal Board of the United States Patent & Trademark Office, on the date indicated above, through the ESTTA electronic filing system at the web site <http://estta.uspto.gov/>.

By: 
Joel R. Feldman, Esq.

CERTIFICATE OF SERVICE

I certify that on September 9, 2014 I served this Notice of Opposition by first-class mail to:

P. Randolph Finch Jr
Marks Finch Thornton & Baird, LLP
4747 Executive Drive, Suite 700
San Diego, CA 92121

By: 
Joel R. Feldman, Esq.

Exhibit 1

ADVISORY: If you experience any trouble when clicking on the direct links to published records in Notices of Publication received via email and/or that appear in TSDR (Trademark Status and Document Retrieval), you can access the individual record by either 1) copying the link from the email or Notice of Publication in TSDR and pasting it into the url address of a supported browser (IE 10.0 or later and the latest versions of FireFox, Chrome or Safari); or 2) visiting the TMOG main page at https://tmg.uspto.gov/, selecting the Official Gazette issue date from the list of Issues in the upper left corner and then entering the 8 digit serial number in the box labeled "Search By" and clicking on the magnifying glass icon to execute the search.

STATUS DOCUMENTS [Back to Search](#) Print

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Mark: ADVOCARE SPARK

No Image exists for this case.

US Serial Number: 78296802 Application Filing Date: Sep. 05, 2003
 US Registration Number: 3303370 Registration Date: Oct. 02, 2007
 Register: Principal
 Mark Type: Trademark
 Status: A Sections 8 and 15 combined declaration has been accepted and acknowledged.
 Status Date: Feb. 11, 2013
 Publication Date: Apr. 13, 2004 Notice of Allowance Date: Jul. 06, 2004

▼ Mark Information [Collapse All](#)

Mark Literal Elements: ADVOCARE SPARK
 Standard Character Claim: No
 Mark Drawing Type: 1 - TYPESET WORD(S) /LETTER(S) /NUMBER(S)

▼ Related Properties Information

Claimed Ownership of US Registrations: [1959765](#) [2215866](#)

▼ Goods and Services

Note:
 The following symbols indicate that the registrant/owner has amended the goods/services:
 • Brackets [...] indicate deleted goods/services;
 • Double parenthesis (..) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
 • Asterisks "*" identify additional (new) wording in the goods/services.

For: Nutritional dietary supplement in the form of a powdered drink mix
 International Class(es): 005 - Primary Class U.S Class(es): 006, 018, 044, 046, 051, 052
 Class Status: ACTIVE
 Basis: 1(a)
 First Use: Apr. 2004 Use in Commerce: Apr. 2004

▼ Basis Information (Case Level)

Filed Use:	No	Currently Use:	Yes	Amended Use:	No
Filed ITU:	Yes	Currently ITU:	No	Amended ITU:	No
Filed 44D:	No	Currently 44D:	No	Amended 44D:	No
Filed 44E:	No	Currently 44E:	No	Amended 44E:	No
Filed 66A:	No	Currently 66A:	No	Amended 66A:	No
Filed No Basis:	No	Currently No Basis:	No		

▼ Current Owner(s) Information

Owner Name: AdvoCare International, L.P.
 Composed of: AdvoCare GP, LLC, a Delaware limited liability company
 Owner Address: 2801 Summit Avenue
 Plano, TEXAS 75074
 UNITED STATES
 Legal Entity Type: LIMITED PARTNERSHIP State or Country Where Organized: DELAWARE

▼ Attorney/Correspondence Information

Attorney of Record

Attorney Name: Joel R. Feldman, Esq., Kristen L. Fancher, Esq.
 Attorney Primary Email Address: attrademark@qtlaw.com Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: Joel R. Feldman, Esq., Kristen L. Fancher, Esq.
 Greenberg Traurig, LLP
 3333 Piedmont Rd. NE, Suite 2500
 Atlanta, GEORGIA 30305
 UNITED STATES
 Phone: 678-553-2100 Fax: 678-553-2212
 Correspondent e-mail: attrademark@qtlaw.com Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

▼ Prosecution History

Date	Description	Proceeding Number
Aug. 08, 2014	NOTICE OF SUIT	
Jul. 11, 2014	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	88888
Jul. 11, 2014	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
Jul. 07, 2014	ATTORNEY REVOKED AND/OR APPOINTED	
Jul. 07, 2014	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Feb. 21, 2013	NOTICE OF SUIT	
Feb. 11, 2013	NOTICE OF ACCEPTANCE OF SEC. 8 & 15 - E-MAILED	
Feb. 11, 2013	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	77315
Feb. 11, 2013	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	77315
Jan. 30, 2013	TEAS SECTION 8 & 15 RECEIVED	
May 07, 2012	ATTORNEY REVOKED AND/OR APPOINTED	
May 07, 2012	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Jan. 15, 2009	ATTORNEY REVOKED AND/OR APPOINTED	
Jan. 15, 2009	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	

Oct. 02, 2007	REGISTERED-PRINCIPAL REGISTER	
Aug. 25, 2007	LAW OFFICE REGISTRATION REVIEW COMPLETED	68552
Aug. 25, 2007	ASSIGNED TO LIE	68552
Jul. 16, 2007	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Jul. 07, 2007	STATEMENT OF USE PROCESSING COMPLETE	76873
Mar. 24, 2007	USE AMENDMENT FILED	76873
Mar. 24, 2007	TEAS STATEMENT OF USE RECEIVED	
Mar. 16, 2007	EXTENSION 5 GRANTED	65362
Jan. 06, 2007	EXTENSION 5 FILED	65362
Jan. 08, 2007	TEAS EXTENSION RECEIVED	
Jul. 01, 2006	EXTENSION 4 GRANTED	98765
Jul. 01, 2006	EXTENSION 4 FILED	98765
Jul. 01, 2006	TEAS EXTENSION RECEIVED	
Jan. 06, 2006	EXTENSION 3 GRANTED	98765
Jan. 06, 2006	EXTENSION 3 FILED	98765
Jan. 06, 2006	TEAS EXTENSION RECEIVED	
Jul. 06, 2005	EXTENSION 2 GRANTED	98765
Jul. 06, 2005	EXTENSION 2 FILED	98765
Jul. 06, 2005	TEAS EXTENSION RECEIVED	
Jan. 25, 2005	EXTENSION 1 GRANTED	73859
Jan. 06, 2005	EXTENSION 1 FILED	73859
Jan. 06, 2005	TEAS EXTENSION RECEIVED	
Jul. 06, 2004	NOA MAILED - SOU REQUIRED FROM APPLICANT	
Apr. 13, 2004	PUBLISHED FOR OPPOSITION	
Mar. 24, 2004	NOTICE OF PUBLICATION	
Feb. 19, 2004	APPROVED FOR PUB - PRINCIPAL REGISTER	
Feb. 18, 2004	EXAMINERS AMENDMENT E-MAILED	
Feb. 17, 2004	ASSIGNED TO EXAMINER	77769

▼ Maintenance Filings or Post Registration Information

Affidavit of Continued Use: Section 8 - Accepted
 Affidavit of Incontestability: Section 15 - Accepted

▼ TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: TMEG LAW OFFICE 102

Date in Location: Feb. 11, 2013

▼ Assignment Abstract Of Title Information - None recorded

▼ Proceedings - Click to Load