

ESTTA Tracking number: **ESTTA651715**

Filing date: **01/22/2015**

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	3rd Generation Enterprises Co., Corp.		
Entity	Corporation	Citizenship	New Jersey
Address	P.O. Box 1222 Englewood Cliffs, NJ 07632 UNITED STATES		

Attorney information	Marc P. Misthal Gottlieb, Rackman & Reisman, P.C. 270 Madison Avenue New York, NY 10016 UNITED STATES efiling@grr.com, jpurow@grr.com, mmisthal@grr.com Phone:(212) 684-3900		
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Applicant Information

Application No	86337103	Publication date	12/23/2014
Opposition Filing Date	01/22/2015	Opposition Period Ends	01/22/2015
Applicant	Day's Beverages, Inc. 529 Guinevere Drive Newtown Square, PA 19073 UNITED STATES		

Goods/Services Affected by Opposition

Class 032. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Soft drinks
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	86381287	Application Date	08/29/2014
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	CITY CLUB		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 2011/12/01 First Use In Commerce: 2011/12/01 Soft drinks

U.S. Registration No.	2356463	Application Date	06/19/1997
Registration Date	06/13/2000	Foreign Priority Date	NONE
Word Mark	CITY CLUB		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1901/00/00 First Use In Commerce: 1901/00/00 soft drinks		

Attachments	86381287#TMSN.png(bytes) 75311352#TMSN.png(bytes) Notice of Opposition to CITY CLUB Days Bev FINAL.pdf(1269721 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	/Marc P. Misthal/
Name	Marc P. Misthal
Date	01/22/2015

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

In the Matter of Application Serial No. 86/337,103
Filed: July 15, 2014
Mark: CITY CLUB
Applicant: Day's Beverages Inc.
Published: December 23, 2014

3 RD GENERATION ENTERPRISES CO. CORP.,	X	
	:	
Opposer,	:	
	:	Opposition No.
v.	:	
	:	
DAY'S BEVERAGES, INC.,	:	
	:	
Applicant.	:	
	X	

NOTICE OF OPPOSITION

3rd Generation Enterprises Co. Corp. (hereinafter "Opposer"), through its attorneys, believes it will be damaged by the registration of the trademark CITY CLUB (hereinafter "Applicant's Mark") in Application Serial No. 86/337,103 for soft drinks, filed on behalf of applicant Day's Beverages, Inc. (hereinafter "Applicant") on July 15, 2014, and hereby opposes the same. As grounds for opposition, Opposer alleges, on knowledge as to Opposer and otherwise on information and belief, the following:

1. Opposer is a corporation organized under the laws of New Jersey with an address at P.O. Box 1222, Englewood Cliffs, New Jersey, 07632.
2. Opposer is engaged in the manufacturing, distribution and sale of soft drinks.

3. Opposer is the owner of Application No. 86/381,287 for the mark CITY CLUB in International Class 32, filed August 29, 2014. A copy of the printout of the United States Patent & Trademark Office (“USPTO”) database record for this application is attached as **Exhibit “A”**.

4. Opposer is the successor-in-interest to listed owner Cott Beverages Inc. for the cancelled Registration No. 2,356,463 for the mark CITY CLUB in International Class 32, registered June 13, 2000, with a date of first use of 1901 for soft drinks (the “Cancelled Registration”). A copy of the printout of the USPTO database record for the Cancelled Registration is attached as **Exhibit "B"**. After Opposer purchased the rights to the CITY CLUB mark in 2008, Opposer did not renew the Cancelled Registration in 2011 due to an oversight, resulting in its cancellation on January 4, 2011.

5. Opposer has acquired valuable goodwill in the CITY CLUB mark through use in commerce in the United States since at least as early as 2009. The mark has come to indicate to the trade and to the purchasing public soft drinks having their source of origin in Opposer. These common law rights are of considerable value to Opposer.

Opposer’s Acquisition and Use of Mark

6. In June 2008, Opposer acquired all right, title and interest to the mark CITY CLUB, a soft drink brand that has been in use through various predecessors-in-interest since as early as 1901. In November 2008, as a part of this transaction, Cott Beverages Inc. and Opposer entered into an assignment of intellectual property rights that included an assignment of the Cancelled Registration (the “Assignment”). A copy of the Assignment is attached as **Exhibit “C”**.

7. After the acquisition, Opposer manufactured, bottled and sold the CITY CLUB brand soda in interstate commerce through October 2012. Copies of redacted invoices dated

November 10, 2009, January 29, 2010, November 1, 2011, February 28, 2012, March 23, 2012 and July 18, 2012 showing sales of the CITY CLUB soda products (“Opposer’s CITY CLUB Invoices”) are attached as **Exhibit “D”**.

8. In October 2012, Opposer’s business suffered great damage from Hurricane Sandy. Its entire inventory and the majority of its records were destroyed, and it ceased production of CITY CLUB until such time as it was able to reconstruct its business.

9. As it reconstructed its business, Opposer recommenced sales of its TOP POP soda brand. Recently, Opposer resumed manufacturing of CITY CLUB. Copies of invoices from October, November, and December 2014 and January 2015 showing Opposer’s sale of CITY CLUB soda products is attached as **Exhibit “E”**.

Applicant’s Application

10. Applicant is a direct competitor of Opposer, as they both sell and distribute soft drinks in the Northeast region of the United States.

11. During the summer of 2014, Applicant made inquiries, through an intermediary, as to whether Opposer would be willing to sell the CITY CLUB brand. Opposer made it clear that it was unwilling to sell the brand at the price that Applicant offered, and Opposer believed that the failed negotiation brought the matter to a close.

12. Shortly thereafter, Opposer began to receive feedback from customers that Applicant was representing itself as the owner of the CITY CLUB brand.

13. Applicant is misrepresenting itself as the owner of the CITY CLUB brand in an attempt to illegitimately usurp Opposer’s rights in the CITY CLUB name and take advantage of the damage inflicted upon Opposer by Hurricane Sandy.

14. On July 15, 2014, Applicant filed a trademark application for CITY CLUB, namely, Application Serial No. 86/337,103, covering “soft drinks” (hereinafter “Applicant’s Goods”) under the filing basis 1(b) (the “Application”). A copy of the USPTO trademark database record showing the prosecution history and particulars of said application is attached as **Exhibit “F.”**

15. On September 2, 2014, Opposer's counsel sent a cease and desist letter notifying Applicant of its prior rights in the CITY CLUB mark, and demanding that Applicant abandon the Application. Applicant’s counsel responded with a letter dated September 3, 2014, requesting evidence of Opposer’s superior rights. In a letter to Applicant’s counsel dated October 6, 2014, Applicant furnished the Assignment and Opposer’s CITY CLUB Invoices to Applicant, and reiterated its demand for Opposer to abandon the application. Despite having this evidence in hand, Applicant never responded to Opposer’s October 6 letter. Instead of respecting Opposer’s prior rights and abandoning the Application, Applicant took affirmative action to proceed with its fraudulent application, as evidenced by the Examiner’s Amendment dated October 29, 2014, in which the Examining Attorney notes that counsel for Applicant authorized the Examining Attorney to disclaim the term “CLUB” so that the Application could proceed to publication. A copy of the Examiner’s Amendment dated October 29, 2014 is attached as **Exhibit “G”**.

Opposer has Priority of Use Over Applicant

16. As detailed above, Opposer validly acquired the rights to the CITY CLUB brand from Cott Beverages in 2008. Opposer continuously used the mark in commerce from 2008 to Hurricane Sandy in late 2012, and resumed sales of CITY CLUB soft drinks in the fall of 2014.

17. Applicant did not file its intent-to-use application until July 15, 2014, some six years after applicant acquired the CITY CLUB mark from Cott Beverages, and over one hundred

years after the date of first use in the Cancelled Registration.

18. On information and belief, Applicant has not commenced usage of Applicant's Mark in interstate commerce, and has no claim that it acquired rights in the CITY CLUB mark from any third party with valid rights in the mark.

19. On information and belief, Applicant has no legitimate claim to use of the CITY CLUB mark.

20. In view of the above, Applicant is not entitled to federal registration of Applicant's Mark.

Confusion Is Likely

21. Applicant's Goods opposed herein are identical to the goods for which Opposer has used and is using its CITY CLUB mark.

22. Opposer or its predecessors-in-interest have been using the CITY CLUB mark in interstate and/or foreign commerce in connection with soft drinks since at least as early as 1901.

23. Opposer has been using the CITY CLUB mark since well prior to the filing date of Applicant's U.S. application.

24. On information and belief, the goods set forth in the Application will be sold through the same channels of trade in which Opposer's products are sold and otherwise marketed.

25. On information and belief, Applicant's Goods opposed herein will be sold and/or otherwise marketed to the same general class of purchasers as Opposer's products under Opposer's mark.

26. Applicant's Mark is identical and therefore confusingly similar to Opposer's CITY CLUB mark. Applicant's Mark is likely, when used on or in connection with Applicant's

Goods and/or closely related goods, to cause confusion, mistake, and/or deceive the trade and/or the public, such that the trade and/or the public are likely to believe that Applicant's Goods have their origin with Opposer and/or that such goods are approved, endorsed or sponsored by Opposer, or associated in some way with Opposer.

27. Opposer therefore is likely to be damaged by registration of Applicant's Mark.

28. In view of the above allegations, Applicant is not entitled to federal registration of Applicant's Mark.

The Application is Fraudulent

29. When filing the application for Applicant's Mark, counsel for Applicant signed the Declaration that stated, *inter alia*, "the signatory believes that to the best of the signatory's knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/service of such other person, to cause confusion or mistake, or to deceive."

30. Considering that Applicant and Opposer are direct competitors in a small industry, and that Applicant attempted to purchase the CITY CLUB brand from Opposer, Applicant had knowledge that Opposer owns all legitimate rights in the CITY CLUB mark based on its prior use in commerce at the time of the filing of the Application.

31. Applicant has proceeded with the Application despite receiving further notice of Opposer's prior rights from the aforementioned letter correspondence, and as can be determined from a review of the Trademark Office's TSDR system, has made no effort to correct the statements made in its application.

32. Applicant therefore made a false representation to the USPTO.

33. This false representation was material to the registrability of the mark and the

allowance of the application.

34. On information and belief, Applicant made said representation with the intent to deceive the USPTO.

WHEREFORE, it is respectfully requested that this Opposition be sustained and that the registration sought by Application Serial No. 86/337,103 be denied in its entirety.

Respectfully submitted,

GOTTLIEB, RACKMAN & REISMAN, P.C.

By: 

Marc P. Misthal (mmisthal@grr.com)
Jonathan M. Purow (jpurow@grr.com)
270 Madison Avenue, 8th Floor
New York, New York 10016
(212) 684-3900 Tel.
(212) 684-3999 Fax
Attorneys for Opposer

Dated: January 22, 2015
New York, New York

CERTIFICATE OF TRANSMITTAL

I hereby certify that the foregoing Notice of Opposition is being electronically transmitted to the Trademark Trial and Appeal Board through the Electronic System for Trademark Trial and Appeals (ESTTA) this 22nd day of January, 2015



Marc P. Misthal

CERTIFICATION OF SERVICE

I hereby certify that on the date set forth below a true copy of the foregoing Notice of Opposition was served by first class mail on Applicant, by its attorney, as follows:

Alex R. Sluzas
Paul & Paul
1717 Arch Street, Suite 3740
Philadelphia, PA 19103



Marc P. Misthal

Dated: January 22, 2015

EXHIBIT A



United States Patent and Trademark Office

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CITY CLUB

Word Mark CITY CLUB

Goods and Services IC 032. US 045 046 048. G & S: Soft drinks. FIRST USE: 20111201. FIRST USE IN COMMERCE: 20111201

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 86381287

Filing Date August 29, 2014

Current Basis 1A

Original Filing Basis 1A

Owner (APPLICANT) 3rd Generation Enterprises Co. Corp. CORPORATION NEW JERSEY P.O. Box 1222 Englewood Cliffs NEW JERSEY 07632

Attorney of Record Marc P. Misthal

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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EXHIBIT B

**United States Patent and Trademark Office**
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[TSDR](#) [ASSIGN Status](#) [TTAB Status](#) (Use the "Back" button of the Internet Browser to return to TESS)
CITY CLUB

Word Mark	CITY CLUB
Goods and Services	(CANCELLED) IC 032. US 045 046 048. G & S: soft drinks. FIRST USE: 19010000. FIRST USE IN COMMERCE: 19010000
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	75311352
Filing Date	June 19, 1997
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	March 21, 2000
Registration Number	2356463
Registration Date	June 13, 2000
Owner	(REGISTRANT) City Club Beverage Corp CORPORATION NEW YORK 164-48 85th Street Howard Beach NEW YORK 11414 (LAST LISTED OWNER) COTT BEVERAGES INC. CORPORATION GEORGIA 4211 W. BOY SCOUT BOULEVARD SUITE 290 TAMPA FLORIDA 33607
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	NORM D. ST. LANDAU
Type of Mark	TRADEMARK
Register	PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR).

**Live/Dead
Indicator** DEAD

**Cancellation
Date** January 14, 2011

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EXHIBIT C

ASSIGNMENT OF INTELLECTUAL PROPERTY RIGHTS

This ASSIGNMENT OF INTELLECTUAL PROPERTY RIGHTS ("Assignment"), effective as of this 5th day of November 2008 (the "Effective Date"), is entered into by and between Cott Beverages Inc., a Georgia corporation, d/b/a Cott Beverages USA (the "Assignor"), and 3rd Generation Trucking Company, Inc., a New Jersey corporation (the "Assignee") (hereinafter referred to collectively as the "Parties" or individually as the "Party").

WHEREAS, the Assignor is the lawful owner of the trademarks and copyrights specifically set forth in Exhibit A annexed hereto and made a part hereof (hereafter, collectively, the "Intellectual Property"); and

WHEREAS, pursuant to and in accordance with that certain asset purchase agreement dated of even date herewith between Licensee and Licensor, among others (the "Purchase Agreement") the Assignor has agreed to sell and transfer, and the Assignee has agreed to accept, all of Assignor's rights, title and interest in and to the Intellectual Property.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Assignor does hereby assign to Assignee, and Assignee hereby accepts, all of Assignor's rights, title and interest in and to the copyrights, trademarks and trademark registrations specified in Exhibit A, including renewal rights therein, the exclusive right to enforce and to obtain registrations therefor throughout the world in the sole name of Assignee, its successors or assigns, and including the goodwill of the business symbolized by such marks.
2. The Assignor does hereby irrevocably sell, grant, convey, transfer, and assign unto the Assignee, its successors and assigns, and Assignee hereby accepts from Assignor, all of the Assignor's rights, title and interest in the United States and the world, including without limitation, all federal, state, and worldwide applications and registrations, all other federal, state, foreign, statutory intellectual property rights and moral rights, in and to the Intellectual Property.
3. The Assignor and the Assignee agree that this Agreement shall continue in perpetuity; the rights assigned to the Assignee are not limited in time or territory.

4. The Assignor expressly agrees to promptly execute any other documents or take any other action as may be reasonably necessary to vest, secure, perfect, protect or enforce the rights and interest of the Assignee in and to the Intellectual Property and to effectuate this Assignment. Notwithstanding the foregoing, Assignee shall assume all responsibility to record its right, title and interest in the Intellectual Property with any applicable government agencies upon execution of this Agreement.
5. This Assignment may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one agreement. Signatures of the parties transmitted by facsimile or electronic transmission shall be deemed to be their original signatures for all purposes.
6. This Assignment shall be governed and construed by and enforced in accordance with the internal laws of the State of Florida (without giving effect to principles of conflicts of laws).
7. The statements contained in the recitals of fact set forth above are true and correct and by this reference are incorporated in and made a part of this Assignment.
8. This Assignment is subject to the terms and provisions of the Purchase Agreement, which are incorporated herein by this reference, including that certain Seller License Agreement, as further described therein, by and between Assignor and Assignee. In the event of any conflict between this Assignment and the Purchase Agreement, the terms, provisions and limitations of the Purchase Agreement shall control.
9. Acceptance of this Assignment by Assignor shall require due execution by two of its officers.
10. All capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Purchase Agreement.
11. This Agreement, together with the Purchase Agreement and the Transaction Documents, together with the schedules and exhibits hereto and thereto, contain the entire understanding of the parties with respect to the transaction contemplated hereby and supersede all prior arrangements or understandings with respect thereto

[End of text; Counterpart signature pages of Assignor and Assignee follows.]

IN WITNESS WHEREOF, the undersigned, being duly authorized and acting on behalf of the Assignor, do hereby execute this Assignment to be effective as of the Effective Date.

COTT BEVERAGES INC.,
a Georgia corporation,
d/b/a Cott Beverages USA

COTT BEVERAGES INC.,
a Georgia corporation,
d/b/a Cott Beverages USA

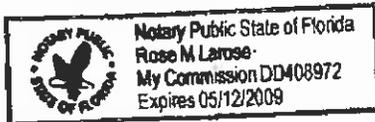
By: Matthew A. Kane
Name: Matthew A. Kane, Jr
Title: V.P. General Counsel

By: Juan R. Figueroa
Name: Juan R. Figueroa
Title: CFO

STATE OF FLORIDA)
) SS.
COUNTY OF HILLSBOROUGH)

On this 30 day of June, 2008, before me personally appeared Matthew Kane to me personally known, who, being by me duly sworn, did say that he is the Secretary of Cott Beverages Inc., a Georgia corporation, d/b/a Cott Beverages USA, and that said instrument was signed and sealed on behalf of said corporation, by all necessary authority; and said officer acknowledged said instrument to be the free act and deed of said corporation.

In witness whereof, I have hereunto attached my hand and notarial seal, at the County and State aforesaid on the day and year last above written.



Rose M. Larose
Notary Public
My Commission Expires: 5/12/09

[Notary of Assignor signatories continues on following page.]

STATE OF FLORIDA)
) SS.
COUNTY OF Hillsborough)

On this 30 day of June, 2008, before me personally appeared Juan Figueroa to me personally known, who, being by me duly sworn, did say that he is the CEO of Cott Beverages Inc., a Georgia corporation, d/b/a Cott Beverages USA, and that said instrument was signed and sealed on behalf of said corporation, by all necessary authority; and said officer acknowledged said instrument to be the free act and deed of said corporation.

In witness whereof, I have hereunto attached my hand and notarial seal, at the County and State aforesaid on the day and year last above written.



Rose M. Larose
Notary Public
My Commission Expires: 5/12/09

[Counterpart signature page of Assignee follows.]

Exhibit A

Intellectual Property

U.S. Federal Registration No. 1335803, Top Pop.

U.S. Federal Registration No. 1285484, Top Pop.

U.S. Federal Registration No. 2356463, City Club.

Assignor's common law rights, if any, to the mark TOP POP as used for the goods listed in U.S. Federal Registration No. 1510360, Top Pop (expired).

Those copyrights owned by the Assignor as of the Closing Date (as defined in the Purchase Agreement) which are uniquely and exclusively dedicated to the Top Pop and City Club brands and which are contained on the labels and packaging constituting the Raw Materials Inventory, but excluding any of the Seller Names (as such term is defined in Section 4.4. of the Purchase Agreement).

EXHIBIT D



3rd Generation Trucking
 PO Box 1222
 Englewood Cliffs, NJ 07632

Invoice # 0041

Phone #	Email	Web Site	Date
(201) 408-5225	thirdgeneration@aol.com	www.toppopsoda.com	11/10/2009

PAID
 11/10/2009

Bill To



P.O. Number	Terms	Due Date
[Redacted]	Due on Receipt	11/10/2009

DESCRIPTION	Quantity	Price Each	Amount
CITY CLUB 24/20 OZ PINEAPPLE	180	6.27	1128.60
CITY CLUB 24/20 OZ GINGERALE	90	6.27	564.30
CITY CLUB 6/3 LITER ORANGE	96	4.85	465.60
CITY CLUB 6/3 LITER GRAPE	48	4.85	232.80
CITY CLUB 6/3 LITER FRUIT PUNCH	48	4.85	232.80
CITY CLUB 6/3 LITER COLA	48	4.85	232.80
CITY CLUB 6/2 LITER PINEAPPLE	50	4.85	232.50

Balance Due \$0.00



3rd Generation Trucking
 PO Box 1222
 Englewood Cliffs, NJ 07632

Invoice # 00109

Phone #

(201) 408-5225

Email

thirdgenerationt@aol.com

Web Site

www.toppopsoda.com

Date

01/29/2010

PAID
01/29/2010

Bill To



P.O. Number



Terms

Due on Receipt

Due Date

01/29/2010

DESCRIPTION	Quantity	Price Each	Amount
CITY CLUB 8/2 LITER FRUIT PUNCH	50	4.65	232.50
CITY CLUB 8/2 LITER BLACK CHERRY	100	4.65	465.00
CITY CLUB 8/3 LITER BLUE	144	4.85	698.40

Balance Due

\$0.00

11/4

3rd Generation Enterprises, Inc. II

Customer Purchase Order



P.O. Box 1222
Englewood Cliffs, NJ 07632

Phone (201)-408-3219 Fax (201)-408-4596
www.toppopsoda.com

Date	P.O. No.
11/1/2011	84358

Name / Address
[REDACTED] [REDACTED] NY

Ship To
[REDACTED]

Customer Phone
[REDACTED]

Terms
Net 30

Rep	Freight Co/ Rate
MB	

Description	Qty	Rate	Total
CITY CLUB 8/2 LITER BLACK CHERRY	49.61	4.72	287.92
CITY CLUB 8/2 LITER COLA	49.51	4.72	240.72
CITY CLUB 8/2 LITER PINEAPPLE	0.12	4.72	56.64
CITY CLUB 8/2 LITER BLACK CHERRY	0.207	4.72	977.04
CITY CLUB 6/3 LITER BLUE POP	19.35	4.74	165.90
CITY CLUB 6/3 LITER COLA	11.11	4.74	52.14
CITY CLUB 6/3 LITER FRUIT PUNCH	0.13	4.74	61.62
CITY CLUB 6/3 LITER GOLDEN COLA	25.20	4.74	94.80
CITY CLUB 6/3 LITER GRAPE	144.77	4.74	838.98
CITY CLUB 6/3 LITER GINGER ALE	0.23	4.74	109.02
CITY CLUB 6/3 LITER LEMON LIME	165.156	4.74	739.44
CITY CLUB 6/3 LITER ORANGE	101.134	4.74	635.16
CITY CLUB 6/3 LITER PINEAPPLE	48.71	4.74	810.54
6/3 black cherry	.159		
Total			\$5,069.92



3rd Generation Enterprises, Inc. II
 PO Box 1222
 Englewood Cliffs, NJ 07632

Invoice

Invoice #
978
Date
2/28/2012

Phone #	E-mail	www.Topopsoda.com
201-528-7274	marica@topopsoda.com	www.Topopsoda.com

Bill To
 [REDACTED]
 [REDACTED] NJ



P.O. Number	Terms	Due Date
[REDACTED]	NET 10	3/9/2012

Description	Quantity	Price Each	Amount
CITY CLUB 24/20 OZ. COLA	135	6.27	846.45
CITY CLUB 24/20 OZ. PINEAPPLE	180	6.27	1,128.60
CITY CLUB 24/20 OZ. FRUIT PUNCH	90	6.27	564.30
CITY CLUB 24/20 OZ. GINGERALE	90	6.27	564.30
CITY CLUB 24/20 OZ. COLA	45	6.27	282.15
PALLETS	12	5.00	60.00

Balance Due		\$0.00
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3rd Generation Enterprises, Inc. II
 PO Box 1222
 Englewood Cliffs, NJ 07632

Invoice

Invoice #
1031
Date
3/23/2012

Phone #	E-mail	Website
201-528-7274	marlen@toppopsoda.com	www.Toppopsoda.com

Bill To
 [Redacted]
 NJ



P.O. Number	Terms	Due Date
[Redacted]	NET 10	4/2/2012

Description	Quantity	Price Each	Amount
CITY CLUB 24/20 OZ PINEAPPLE	225	6.27	1,410.75
CITY CLUB 24/20 OZ BLUE POP	135	6.27	846.45
CITY CLUB 24/20 OZ GINGERALE	180	6.27	1,128.60
PALLETS	12	5.00	60.00
Balance Due			\$0.00



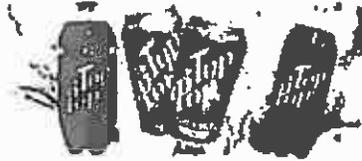
3rd Generation Enterprises, Inc. II
 PO Box 1222
 Englewood Cliffs, NJ 07632

Invoice

Invoice #
1212
Date
7/18/2012

Phone #	E-mail	Website
201-528-7274	marlen@toppopsoda.com	www.Toppopsoda.com

Bill To
 [Redacted]
 [Redacted] NY



P.O. Number	Terms	Due Date
[Redacted]	Due on receipt	7/18/2012

Description	Quantity	Price Each	Amount
CITY CLUB 8/2 LITER COLA	100	4.65	465.00
CITY CLUB 8/2 LITER GINGER ALE	150	4.65	697.50
CITY CLUB 8/2 LITER GRAPE	50	4.65	232.50
CITY CLUB 8/2 LITER PINEAPPLE	200	4.65	930.00
CITY CLUB 6/3 LITER ORANGE	48	4.85	232.80
CITY CLUB 6/3 LITER PINEAPPLE	48	4.85	232.80
Balance Due			\$0.00

EXHIBIT E



3rd Generation Enterprises
 PO Box 1222
 Englewood Cliffs, NJ 07632

Invoice # 2144

Phone #	Email	Web Site	Date
845-848-2556	info@toppopsoda.com	www.toppopsoda.com	10/21/14

Bill To



P.O. Number	Terms	Due Date
AB102114	Due on Receipt	10/21/14

DESCRIPTION	Quantity	Price Each	Amount
CITY CLUB 6/3 LITER FRUIT PUNCH	96	5.99	575.04
CITY CLUB 6/3 LITER BLUE	96	5.99	575.04
CITY CLUB 6/3 LITER PINEAPPLE	192	5.99	1,150.08
CITY CLUB 8/2 LITER COLA	100	5.65	565.00
CITY CLUB 8/2 LITER GRAPE	50	5.65	282.50

Balance Due \$3,147.66



3rd Generation Enterprises
 PO Box 1222
 Englewood Cliffs, NJ 07632

Invoice # 2169

Phone #

Email

Web Site

Date

845-848-2556

info@toppopsoda.com

www.toppopsoda.com

11/26/14

Bill To



P.O. Number

Terms

Due Date

AB112614

Due on Receipt

1 1/26/14

DESCRIPTION	Quantity	Price Each	Amount
CITY CLUB 6/3 LITER ORANGE	144	5.99	862.56
CITY CLUB 6/3 LITER PINEAPPLE	48	5.99	287.52
CITY CLUB 6/3 LITER GINGER ALE	144	5.99	862.56
CITY CLUB 8/2 LITER PINEAPPLE	100	5.65	565.00

Balance Due \$2,577.64



3rd Generation Enterprises
 PO Box 1222
 Englewood Cliffs, NJ 07632

Invoice # 2201

Phone #

Email

Web Site

Date

845-848-2556

info@toppopsoda.com

www.toppopsoda.com

12/12/14

Bill To



P.O. Number

Terms

Due Date

AB121214

Due on Receipt

12/12/14

DESCRIPTION	Quantity	Price Each	Amount
CITY CLUB 8/2 LITER GINGER ALE	100	5.65	565.00
CITY CLUB 8/2 LITER COLA	100	5.65	565.00
CITY CLUB 8/2 LITER GRAPE	50	5.65	282.50
CITY CLUB 8/2 LITER PINEAPPLE	200	5.65	1,130.00
CITY CLUB 6/3 LITER PINEAPPLE	48	5.99	287.52

Balance Due \$2,830.02



3rd Generation Enterprises
 PO Box 1222
 Englewood Cliffs, NJ 07632

Invoice # 2221

Phone #	Email	Web Site	Date
845-848-2556	info@toppopsoda.com	www.toppopsoda.com	01/05/15

Bill To



P.O. Number	Terms	Due Date
AB1515	Due on Receipt	01/05/15

DESCRIPTION	Quantity	Price Each	Amount
CITY CLUB 8/2 LITER ORANGE	150	5.65	847.50
CITY CLUB 8/2 LITER FRUIT PUNCH	50	5.65	282.50
CITY CLUB 8/2 LITER PINEAPPLE	150	5.65	847.50
CITY CLUB 6/3 LITER GINGER ALE	96	5.99	575.04
CITY CLUB 6/3 LITER PINEAPPLE	96	5.99	575.04
CITY CLUB 6/3 LITER COLA	48	5.99	287.52

Balance Due \$3,415.10

EXHIBIT F

STATUS

DOCUMENTS

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Generated on: This page was generated by TSDR on 2015-01-15 18:11:26 EST**Mark:** CITY CLUB

CITY CLUB

US Serial Number: 86337103**Application Filing Date:** Jul. 15, 2014**Filed as TEAS Plus:** Yes**Currently TEAS Plus:** Yes**Register:** Principal**Mark Type:** Trademark**Status:** Application has been published for opposition. The opposition period begins on the date of publi**Status Date:** Dec. 23, 2014**Publication Date:** Dec. 23, 2014

▼ Mark Information

▼ Expand All

Mark Literal Elements: CITY CLUB**Standard Character Claim:** Yes. The mark consists of standard characters without claim to any particular font style, size, or c**Mark Drawing Type:** 4 - STANDARD CHARACTER MARK**Disclaimer:** "CLUB"

▼ 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: Soft drinks**International Class(es):** 032 - Primary Class**U.S Class(es):** 045, 046, 047**Class Status:** ACTIVE**Basis:** 1(b)

▼ Basis Information (Case Level)

Filed Use: No**Currently Use:** No**Filed ITU:** Yes**Currently ITU:** Yes**Filed 44D:** No**Currently 44D:** No

Date	Description	Proceeding Number
Dec. 23, 2014	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Dec. 23, 2014	PUBLISHED FOR OPPOSITION	
Dec. 03, 2014	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Nov. 17, 2014	LAW OFFICE PUBLICATION REVIEW COMPLETED	70997
Nov. 17, 2014	ASSIGNED TO LIE	70997
Oct. 29, 2014	TEAS CHANGE OF CORRESPONDENCE RECEIVED	

Oct. 29, 2014	APPROVED FOR PUB - PRINCIPAL REGISTER	
Oct. 29, 2014	EXAMINER'S AMENDMENT ENTERED	88888
Oct. 29, 2014	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
Oct. 29, 2014	EXAMINERS AMENDMENT E-MAILED	6328
Oct. 29, 2014	EXAMINERS AMENDMENT -WRITTEN	88206
Oct. 27, 2014	ASSIGNED TO EXAMINER	88206
Jul. 18, 2014	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Jul. 18, 2014	NEW APPLICATION ENTERED IN TRAM	

▲ Proceedings - Click to Load

EXHIBIT G

To: Day's Beverages, Inc. (info@paulandpaul.com)
Subject: U.S. TRADEMARK APPLICATION NO. 86337103 - CITY CLUB - 2014-072
Sent: 10/29/2014 1:50:35 PM
Sent As: ECOM102@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION

U.S. APPLICATION SERIAL NO. 86337103

MARK: CITY CLUB

86337103

CORRESPONDENT ADDRESS:
ALEX R SLUZAS
PAUL AND PAUL
2000 MARKET ST STE 2900
PHILADELPHIA, PA 19103-3229

CLICK HERE TO RESPOND TO THIS I
<http://www.uspto.gov/trademarks/index.js>

[VIEW YOUR APPLICATION FILE](#)

APPLICANT: Day's Beverages, Inc.

CORRESPONDENT'S REFERENCE/DOCKET NO :
2014-072

CORRESPONDENT E-MAIL ADDRESS:
info@paulandpaul.com

EXAMINER'S AMENDMENT

ISSUE/MAILING DATE: 10/29/2014

DATABASE SEARCH: The trademark examining attorney has searched the USPTO's database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d). TMEP §704.02; *see* 15 U.S.C. §1052(d).

APPLICATION HAS BEEN AMENDED: In accordance with the authorization granted by Alex Sluzas on October 29, 2014, the trademark examining attorney has amended the application as indicated below. Please advise the undersigned immediately of any objections. Otherwise, no response is necessary. TMEP §707. Any amendments to the identification of goods and/or services may clarify or limit the goods and/or services, but may not add to or broaden the scope of the goods and/or services. 37 C.F.R. §2.71(a); *see* TMEP §§1402.06 *et seq.*

[Disclaimer](#)

The following disclaimer statement is added to the record:

No claim is made to the exclusive right to use "CLUB" apart from the mark as shown.

See 15 U.S.C. §1056(a); TMEP §§1213, 1213.08(a)(i).

/April Reeves/
April E. Reeves
Examining Attorney
Law Office 102
(571) 272-3681
april.reeves@uspto.gov

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the Trademark Electronic Application System (TEAS) form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

To: Day's Beverages, Inc. (info@paulandpaul.com)
Subject: U.S. TRADEMARK APPLICATION NO. 86337103 - CITY CLUB - 2014-072
Sent: 10/29/2014 1:50:36 PM
Sent As: ECOM102@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

**IMPORTANT NOTICE REGARDING YOUR
U.S. TRADEMARK APPLICATION**

USPTO OFFICE ACTION (OFFICIAL LETTER) HAS ISSUED
ON 10/29/2014 FOR U.S. APPLICATION SERIAL NO. 86337103

Please follow the instructions below:

(1) **TO READ THE LETTER:** Click on this [link](#) or go to <http://tsdr.uspto.gov/>, enter the U.S. application serial number, and click on "Documents."

The Office action may not be immediately viewable, to allow for necessary system updates of the application, but will be available within 24 hours of this e-mail notification.

(2) **QUESTIONS:** For questions about the contents of the Office action itself, please contact the assigned trademark examining attorney. For *technical* assistance in accessing or viewing the Office action in the Trademark Status and Document Retrieval (TSDR) system, please e-mail TSDR@uspto.gov.

WARNING

PRIVATE COMPANY SOLICITATIONS REGARDING YOUR APPLICATION: Private companies **not** associated with the USPTO are using information provided in trademark applications to mail or e-mail trademark-related solicitations. These companies often use names that closely resemble the USPTO and their solicitations may look like an official government document. Many solicitations require that you pay "fees."

Please carefully review all correspondence you receive regarding this application to make sure that you are responding to an official document from the USPTO rather than a private company solicitation. All official USPTO correspondence will be mailed only from the "United States Patent and Trademark Office" in Alexandria, VA; or sent by e-mail from the domain "@uspto.gov." For more information on how to handle private company solicitations, see

http://www.uspto.gov/trademarks/solicitation_warnings.jsp