

ESTTA Tracking number: **ESTTA678735**

Filing date: **06/17/2015**

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	Nitro Dreams, LLC d/b/a Supercool Creamery
Granted to Date of previous extension	06/17/2015
Address	5119 MAPLEWOOD AVE APT 116 Los Angeles, CA 90004 UNITED STATES
Attorney information	Michael P. Martin Fischbach, Perlstein, Lieberman & Almond, LLP 1925 Century Park East, Suite 2050 Los Angeles, CA 90067 UNITED STATES mmartin@fpllaw.com

Applicant Information

Application No	86345243	Publication date	02/17/2015
Opposition Filing Date	06/17/2015	Opposition Period Ends	06/17/2015
Applicant	HB Concepts, Inc. 4161 Branford Dr Huntington Beach, CA 92649 UNITED STATES		

Goods/Services Affected by Opposition

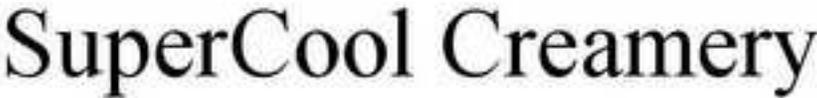
Class 035. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Self-serve frozen yogurt shop services
Class 043. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Frozen yogurt shop services in the nature of a restaurant

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	86570334	Application Date	03/19/2015
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	SUPERCOOL CREAMERY
Design Mark	
Description of Mark	NONE
Goods/Services	Class 043. First use: First Use: 2014/03/06 First Use In Commerce: 2014/03/06 Restaurant and catering services

Attachments	86570334#TMSN.png(bytes) NoticeOfOpposition.pdf(177820 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	/Michael P. Martin/
Name	Michael P. Martin
Date	06/17/2015

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

In the Matter of Trademark Application

Serial No.: 86/345243

Mark: SUPERCOOL

Filed: July 23, 2014

Published: February 17, 2015

Int'l Class: 35

NITRO DREAMS, LLC d/b/a Supercool

Creamery,

Opposer,

v.

HB CONCEPTS, INC., A California Corporation,

Applicant.

Opposition No.:

NOTICE OF OPPOSITION

Assistant Commissioner of Trademarks

PO Box 1451

Alexandria, VA 22313-1451

Sir:

Opposer Nitro Dreams, LLC, a California Limited Liability Company, (hereinafter "Opposer") believes that it will be damaged by registration of the mark shown in the above identified application, and hereby opposes the same in accordance with the provisions of Section 13 of the Lanham Act. (15 U.S.C. 1063) and Section 2(d) of the Lanham Act (15 U.S.C. 1052(d)); Lanham Act Section 1(b); and 37 CFR § 2.111 and 2.114 (Trademark Act Section 14).

The grounds for opposition are as follows:

1. Opposer owns the following U.S. Trademarks, among others: SuperCool Creamery, Serial No. 86570334 ("Opposer's Mark"). Opposer has been using said marks since at least March 6, 2014 and has been using said marks in interstate commerce since at least March 6, 2014.

2. Opposer has provided restaurant and catering services and utilized and maintains the intent to continue utilizing the above-referenced Opposer Mark in various

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combinations on its products, services, in sales catalogs and in advertising to identify them as originating from Opposer.

3. Opposer has developed extensive goodwill with respect to its Opposer's Mark, individually and in composite. Opposer has expended substantial sums in the advertising and promotion of its services, and by its efforts and its considerable expenditures for promotional activities, Opposer has developed an extensive and valuable reputation for its marks.

4. Opposer's mark has acquired substantial goodwill and secondary meaning through decades of use in commerce.

5. On July 23, 2014, HB Concepts, Inc., (hereinafter "Applicant") filed an application to register the mark SUPERCOOL (Stylized) as an Intent-To-Use Application which is identical to Opposer's Mark for: "Self-serve frozen yogurt shop services" in International Class 35; and "Frozen yogurt shop services in the nature of a restaurant." This

application was assigned Serial No. 86345243, and proceeded to publication in the Official Gazette of the United States Patent and Trademark Office on February 17, 2015.

6. Opposer is informed and believes that Applicant's proposed mark which was filed and used after Opposer's first use date of the identical mark for similar services and is likely to confuse Opposer's customers and potential customers, and the public generally in relation to its own marks.

7. Opposer has not and does not consent in any way to Applicant's proposed use of the mark referenced herein.

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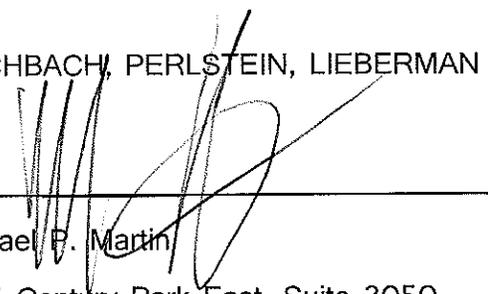
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WHEREFORE, Opposer respectfully requests that registration of Applicant's mark under the above identified application be refused and that this opposition be sustained.

Respectfully submitted,

FISCHBACH, PERLSTEIN, LIEBERMAN & ALMOND

Dated: June 17, 2015

By:  _____

Michael P. Martin

1925 Century Park East, Suite 2050

Los Angeles, California 90067

Telephone: (310) 556-1956

Facsimile: (310) 556-4617

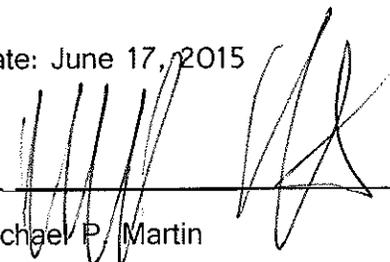
Attorneys for Opposer

CERTIFICATE OF MAILING AND SERVICE

The undersigned hereby certifies that NOTICE OF OPPOSITION is being filed electronically with the U.S. Patent & Trademark Office, Trademark Trial and Appeal Board; and a true and correct copy of this document is being served by e-mail and first class mail on attorney for Opposer on the date indicated below to:

HB CONCEPTS, INC.
4161 BRANFORD DR
HUNTINGTON BEACH, CALIFORNIA 92649-3033
UNITED STATES

Date: June 17, 2015



Michael P. Martin