

ESTTA Tracking number: **ESTTA740551**

Filing date: **04/18/2016**

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	Conopco, Inc.
Granted to Date of previous extension	04/17/2016
Address	700 Sylvan Avenue Englewood Cliffs, NJ 07632 UNITED STATES
Attorney information	Gregory P. Gulia Duane Morris, LLP 1540 Broadway New York, NY 10036 UNITED STATES gggulia@duanemorris.com, vchew@duanemorris.com, AL-Christensen@duanemorris.com

Applicant Information

Application No	86647784	Publication date	10/20/2015
Opposition Filing Date	04/18/2016	Opposition Period Ends	04/17/2016
Applicant	Liquid Evolutions LLC 48 Union Street, #1C Stamford, CT 06906 UNITED STATES		

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: Alcoholic beverages except beers; Prepared alcoholic cocktail

Grounds for Opposition

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

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	4396616	Application Date	04/20/2011
Registration Date	09/03/2013	Foreign Priority Date	NONE

Word Mark	SICLE
Design Mark	SICLE
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2011/11/00 First Use In Commerce: 2011/11/00 Ice creams, frozen confections

U.S. Registration No.	2421400	Application Date	02/16/2000
Registration Date	01/16/2001	Foreign Priority Date	NONE

Word Mark	POPSICLE
Design Mark	POPSICLE
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 1923/00/00 First Use In Commerce: 1923/00/00 Frozen confections

U.S. Registration No.	1840718	Application Date	02/22/1993
Registration Date	06/21/1994	Foreign Priority Date	NONE
Word Mark	POPSICLE THE ORIGINAL BRAND		

Design Mark	 <p>The logo features the words "The Original Brand" in a cursive script at the top, above the word "Popsicle" in a large, bubbly, outlined font. The word "Popsicle" is enclosed within a decorative border of small circles.</p>		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1988/01/01 First Use In Commerce: 1988/01/01 frozen confections		

U.S. Registration No.	2668524	Application Date	09/26/2001
Registration Date	12/31/2002	Foreign Priority Date	NONE
Word Mark	POPSICLE		
Design Mark	 <p>The word "POPSICLE" is displayed in a large, bold, serif font.</p>		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2000/03/01 First Use In Commerce: 2000/03/01 ice cream		

U.S. Registration No.	2651685	Application Date	09/26/2001
Registration Date	11/19/2002	Foreign Priority Date	NONE
Word Mark	THE ORIGINAL BRAND POPSICLE		

Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2000/03/01 First Use In Commerce: 2000/03/01 ice cream		

U.S. Registration No.	1839541	Application Date	02/22/1993
Registration Date	06/14/1994	Foreign Priority Date	NONE
Word Mark	CREAMSICLE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1937/01/15 First Use In Commerce: 1937/01/15 frozen confections		

U.S. Registration No.	1840719	Application Date	02/22/1993
Registration Date	06/21/1994	Foreign Priority Date	NONE
Word Mark	CREAMSICLE THE ORIGINAL BRAND		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 030. First use: First Use: 1988/01/01 First Use In Commerce: 1988/01/01 frozen confections		
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U.S. Registration No.	434594	Application Date	11/09/1946
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Registration Date	11/25/1947	Foreign Priority Date	NONE
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Word Mark	FUDGSICLE		
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Design Mark			
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Description of Mark	NONE		
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Goods/Services	Class U046 (International Class 001, 005, 029, 030, 031, 032). First use: First Use: 1946/10/04 First Use In Commerce: 1946/10/04 FROZEN CONFECTIONS[AND POWDERED CONCENTRATES FOR MAKING THE SAME]		
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U.S. Registration No.	1840717	Application Date	02/22/1993
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Registration Date	06/21/1994	Foreign Priority Date	NONE
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Word Mark	FUDGSICLE THE ORIGINAL BRAND		
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Design Mark			
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Description of Mark	NONE		
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Goods/Services	Class 030. First use: First Use: 1988/01/01 First Use In Commerce: 1988/01/01 frozen confections		
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U.S. Registration No.	4150906	Application Date	09/23/2010
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Registration Date	05/29/2012	Foreign Priority Date	NONE
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Word Mark	YOSICLE		
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Design Mark	YOSICLE
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2012/02/15 First Use In Commerce: 2012/02/15 Ice cream, frozen confections, frozen yogurt

U.S. Registration No.	3178063	Application Date	11/09/2004
Registration Date	11/28/2006	Foreign Priority Date	NONE
Word Mark	CHOCSICLE		
Design Mark	CHOCSICLE		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2005/02/00 First Use In Commerce: 2005/02/00 frozen confections		

Attachments	85299678#TMSN.png(bytes) 75921375#TMSN.png(bytes) 74362545#TMSN.png(bytes) 76317760#TMSN.png(bytes) 76317761#TMSN.png(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	/Gregory P. Gulia/
Name	Gregory P. Gulia
Date	04/18/2016

MARK	REGISTRATION NUMBER	REGISTRATION DATE	FIRST USE DATE	GOODS
SICLE	4,396,616	September 3, 2013	November 2011	ice creams, frozen confections
POPSICLE	2,421,400	January 16, 2001	1923	frozen confections
POPSICLE THE ORIGINAL BRAND (and Design)	1,840,718	June 21, 1994	January 1, 1988	frozen confections
POPSICLE	2,668,524	December 31, 2002	March 1, 2000	ice cream
POPSICLE THE ORIGINAL BRAND (and Design)	2,651,685	November 19, 2002	March 1, 2000	ice cream
CREAMSICLE	1,839,541	June 14, 1994	January 15, 1937	frozen confections
CREAMSICLE THE ORIGINAL BRAND (and Design)	1,840,719	June 21, 1994	January 1, 1988	frozen confections
FUDGSICLE	434,594	November 25, 1947	October 4, 1946	frozen confections
FUDGSICLE THE ORIGINAL BRAND (and Design)	1,840,717	June 21, 1994	January 1, 1988	frozen confections
YOSICLE	4,150,906	May 20, 2012	February 15, 2012	ice creams, frozen confections, frozen yogurt
CHOSICLE	3,178,063	November 28, 2006	February 2005	frozen confections

2. The following registrations are incontestable pursuant to the provisions of Section 15 of the Lanham Act, 15 U.S.C. § 1065, and accordingly constitute conclusive evidence of the validity of the registered marks and the registrations therefor, of Opposer's ownership of the registered marks, and of Opposer's exclusive right to use the marks covered by the registrations in commerce in connection with the goods specified in the registrations: POPSICLE® (Reg. No.

2,421,400) (for frozen confections), POPSICLE THE ORIGINAL BRAND (and Design)[®] (Reg. No. 1,840,718) (for frozen confections), POPSICLE[®] (Reg. No. 2,668,524) (for ice cream), POPSICLE THE ORIGINAL BRAND (and Design)[®] (Reg. No. 2,651,685) (for ice cream), CREAMSICLE[®] (Reg. No. 1,839,541) (for frozen confections), CREAMSICLE THE ORIGINAL BRAND (and Design)[®] (Reg. No. 1,840,719) (for frozen confections), FUDGSICLE THE ORIGINAL BRAND (and Design)[®] (Reg. No. 1,840,717) (for frozen confections) and CHOCSICLE (Reg. No. 3,178,063) (for frozen confections).

3. The registrations noted above for SICLE[®] (Reg. No. 4,396,616), YOSICLE[®] (Reg. No. 4,150,906) and FUDGSICLE[®] (Reg. No. 434,594) are valid and subsisting, in full force and effect, and constitute *prima facie* evidence of the validity of the registered marks and of Opposer's exclusive right to use the marks in commerce in connection with the goods specified in the registration.

4. Opposer and its predecessors-in-interest and their licensees have used one or more of the marks comprising the SICLE Family of Marks in commerce in connection with the nationwide production, distribution, sale and promotion of frozen confections and/or ice cream for more than ninety years.

5. Opposer's SICLE Family of Marks symbolize the extensive goodwill and consumer recognition that Opposer has acquired and established through its substantial marketing, advertising, promotion, distribution and sale of frozen confection and ice cream products in connection with the SICLE Family of Marks.

6. Through its substantial expenditures of time, effort and other resources in connection with Opposer's continuous use and promotion of the SICLE Family of Marks,

Opposer has established a public perception of the distinctive SICLE Family of Marks as an exclusive indicator of source for Opposer's goods.

7. As a result of the regular, extensive and well-publicized use of the SICLE Family of Marks, the SICLE Family of Marks are famous in the United States and are associated exclusively with Opposer and its high quality products.

8. Accordingly, the public is likely to associate any marks ending in SICLE as belonging to Opposer's SICLE Family of Marks and the public will believe that any such products bearing such marks emanate from or are otherwise associated with Opposer and its products sold under the SICLE Family of Marks.

9. On June 1, 2015, Applicant filed the Application under Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b), to register the mark BOMBSICLE in connection with "alcoholic beverages except beers; prepared alcoholic cocktail," in International Class 33.

10. Applicant's BOMBSICLE Application was published for opposition in the *Official Gazette* on October 20, 2015. Pursuant to the Board's Order dated February 17, 2016, the deadline to oppose the Application is Sunday, April 17, 2016. Therefore, under TBMP Rule 112, Opposer timely files this Notice of Opposition on April 18, 2016, the first day succeeding the deadline set forth in the Board's February 17, 2016 Order that is not a Saturday, Sunday or Federal holiday.

11. Upon information and belief, Applicant has not yet commenced use of the BOMBSICLE trademark.

12. Opposer has acquired exclusive rights in the SICLE Family of Marks, individually and collectively, that substantially predate any rights upon which Applicant may rely.

13. Opposer's rights to the SICLE Family of Marks, and each of the individual marks comprising the SICLE Family of Marks, are superior to those of Applicant.

14. Opposer's SICLE Family of Marks, and each of the individual marks comprising the SICLE Family of Marks, are famous and were famous on and before the filing date of the Application or any use of the BOMBSICLE designation by Applicant.

15. The "SICLE" portion of Applicant's BOMBSICLE designation is identical and/or confusingly similar to Opposer's SICLE Family of Marks and the individual marks comprising the SICLE Family of Marks.

16. Applicant's designation BOMBSICLE is clearly intended to evoke Opposer's SICLE Family of Marks and to trade upon Opposer's vast goodwill and equity.

17. Opposer believes that it will be damaged by registration of Applicant's BOMBSICLE designation under Section 13 of the Lanham Act, 15 U.S.C. § 1063, because consumers familiar with Opposer's famous SICLE Family of Marks and the individual marks comprising the SICLE Family of Marks are likely to mistakenly believe that Applicant and/or its products emanate from, are sponsored or authorized by and/or are otherwise associated or affiliated with Opposer, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

18. Opposer believes it will be damaged by registration of the BOMBSICLE designation under Section 13 of the Lanham Act, 15 U.S.C. § 1063, because the use and registration of the BOMBSICLE designation is likely to dilute the distinctive quality of Opposer's famous SICLE Family of Marks and of the individual marks comprising the SICLE Family of Marks, in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 18, 2016, a true and correct copy of the foregoing Notice of Opposition was served, via prepaid first class mail, on counsel for Liquid Evolutions LLC, at the address indicated below:

Brad M. Behar, Esq.
Brad M. Behar & Associates, PLLC
94 Second Street
Mineola, New York 11501



Inez Vega

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