

ESTTA Tracking number: **ESTTA777719**

Filing date: **10/19/2016**

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	Clearly IP Holdings, SRL
Granted to Date of previous extension	10/19/2016
Address	Burnham Court, Bishop's Court Hill Upper Collymore Rock St. Michael, BB11115 BARBADOS

Attorney information	David A. Payne Trademarkwise LLC 2810 Crossroads Drive, Suite 4000 Madison, WI 53718-8014 UNITED STATES docket- ing@trademarkwise.com,payne@trademarkwise.com,jacobus@trademarkwise.com Phone:608.819.4925
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**Applicant Information**

Application No	85918957	Publication date	06/21/2016
Opposition Filing Date	10/19/2016	Opposition Period Ends	10/19/2016
Applicants	Seeley, Jennifer 26451 Brooks Circle Stevenson Ranch, CA 91381 UNITED STATES  Seeley, Brett 26451 Brooks Circle Stevenson Ranch, CA 91381 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: Energy drink in the nature of caffeinated water
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**Grounds for Opposition**

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

## Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	1697898	Application Date	12/22/1987
Registration Date	06/30/1992	Foreign Priority Date	06/23/1987
Word Mark	CLEARLY CANADIAN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 0 First Use In Commerce: 0 FLAVORED MINERAL WATERS, FRUIT FLAVORED MINERAL WATERS, NON-FLAVORED MINERAL WATERS, CARBONATED MINERAL WATERS, NON-CARBONATED MINERAL WATERS, BOTTLED DRINKING WATERS, SPRING WATERS, SOFT DRINKS AND FRUIT JUICES		

Attachments	notice_of_opposition.pdf(87065 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 Overnight Courier on this date.

Signature	/dap/
Name	David A. Payne
Date	10/19/2016

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

In re: U.S. Application Serial No. 85918957  
Mark: CLEAR VOLTAGE ENERGY DRINK  
Published: June 21, 2016

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CLEARLY IP HOLDINGS, SRL,

*Opposer,*

v.

Opposition No.: \_\_\_\_\_

JENNIFER SEELEY & BRETT SEELEY,

*Applicants.*

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**NOTICE OF OPPOSITION**

Clearly IP Holdings, SRL (“Opposer”), a Società a Responsabilità Limitata of Barbados and assignee of record of The Clearly Food & Beverage Company, Inc., having its principal place of business at Burnham Court, Bishop’s Court Hill, Upper Collymore Rock, St. Michael, BB11115, Barbados, believes that it will be damaged by the registration of the mark CLEAR VOLTAGE ENERGY DRINK that is the subject of U.S. Application Serial No. 85918957, published in the Official Gazette on June 21, 2016, for “Energy drink in the nature of caffeinated water,” in International Class 32 and hereby opposes the registration thereof. As grounds for opposition, Opposer hereby alleges as follows:

1. Upon information and belief, Jennifer Seeley and Brett Seeley (“Applicants”) are individuals and citizens of the United States whose address is 26451 Brooks Circle, Stevenson Ranch, California 91381.

2. On or about April 30, 2013, Applicants filed Trademark Application Serial No. 85918957 (“Application”) for registration of the mark CLEAR VOLTAGE ENERGY DRINK

(“Applicants’ Mark”) in standard characters on the Principal Register, pursuant to Section 1(b) of the Trademark Act, 15 U.S.C. §1051(b), for use on or in connection with “Energy drink in the nature of caffeinated water,” in International Class 32.

3. On June 21, 2016, Applicants’ Mark was published in the Official Gazette for opposition.

4. Upon information and belief, Applicants have not commenced use of Applicants’ Mark in commerce.

5. Opposer is a Società a Responsabilità Limitata organized and existing under the laws of Barbados, having its principal place of business at Burnham Court, Bishop’s Court Hill, Upper Collymore Rock, St. Michael, BB11115, Barbados.

6. Opposer is engaged in the manufacture, promotion, distribution, and sale of bottled drinking water and water beverages, including flavored mineral waters, fruit flavored mineral waters, non-flavored mineral waters, carbonated mineral waters, non-carbonated mineral waters, spring waters, soft drinks, and fruit juices (“Opposer’s Products”).

7. Since at least as early as 1987, Opposer, Opposer’s predecessors in interest, and Opposer’s licensees have used and are now using the mark CLEARLY CANADIAN (“Opposer’s Mark”) in commerce throughout the United States and worldwide in connection with the promotion and sale of Opposer’s Products.

8. Opposer has made a substantial investment in advertising and promoting Opposer’s Products under Opposer’s Mark in a variety of media.

9. Opposer’s marketing efforts, combined with the quality of Opposer’s Products, have resulted in substantial sales worldwide.

10. By virtue of a long history of use in the United States and throughout the world, and Opposer's sales and promotional activities, Opposer's Mark has generated valuable goodwill and reputation, and the consuming public and trade have come to recognize Opposer's Mark as being used by Opposer or by a single source, and to associate and identify Opposer's Mark with Opposer or with a single source.

11. Opposer is the owner of record and successor in interest, by assignment from The Clearly Food & Beverage Company, Inc., of U.S. Registration No. 1697898 for the mark CLEARLY CANADIAN ("Opposer's Mark"), registered June 30, 1992, on the Principal Register, for "Flavored mineral waters, fruit flavored mineral waters, non-flavored mineral waters, carbonated mineral waters, non-carbonated mineral waters, bottled drinking waters, spring waters, soft drinks, and fruit juices," in International Class 32. The aforesaid registration is valid and subsisting, unrevoked, and uncanceled, and Opposer is the owner of Opposer's Mark, the registration thereof, and all of the business and goodwill represented thereby. Registration No. 1697898 has become incontestable pursuant to 15 U.S.C. § 1065.

12. The application upon which Registration No. 1697898 is based was filed on December 22, 1987, and claims a priority filing date of June 23, 1987, a date nearly twenty-six years prior to Applicant's filing date.

**GROUND I**  
**LIKELIHOOD OF CONFUSION**

13. Opposer repeats and realleges each and every allegation set forth in paragraphs 1 through 12 herein.

14. Opposer's Mark is famous in the United States and throughout the world.

15. Applicants' Mark is similar to Opposer's Mark in appearance, sound, connotation, and commercial impression.

16. The goods identified in the Application are similar and closely related to the goods with which Opposer is using Opposer's Mark.

17. The goods identified in the Application are similar and closely related to the goods with which Opposer's Mark is registered.

18. Registration of Applicants' Mark is likely to cause confusion, mistake, or deception as to the source of Applicants' goods and is likely to falsely suggest a common association, sponsorship, or origin of said goods between Applicants and Opposer.

**GROUND II**  
**DILUTION**

19. Opposer repeats and realleges each and every allegation set forth in paragraphs 1 through 18 herein.

20. Through Opposer's extensive advertisement and promotion and substantial sales, Opposer's Mark has become famous.

21. Upon information and belief, any use by Applicants of Applicants' Mark has occurred and/or will occur after Opposer's Mark became famous.

22. Applicants' Mark is likely to blur and/or tarnish the positive associations of Opposer's Mark.

23. Thus, if Applicants are permitted to register and use Applicants' Mark, it is likely to cause dilution of the distinctive quality of Opposer's Mark.

WHEREFORE, Opposer prays that the opposition be sustained, that judgment be entered in favor of Opposer and against Applicants, and that registration of Applicants' Mark be refused.

Dated: October 19, 2016

Respectfully submitted,

TRADEMARKWISE LLC

By: /David A. Payne/  
David A. Payne  
Attorney for Opposer  
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Madison, Wisconsin 53718  
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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JENNIFER SEELEY & BRETT SEELEY,

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**CERTIFICATE OF MAILING**

I hereby certify that on October 19, 2016, I filed the foregoing NOTICE OF OPPOSITION by electronic means with:

U.S. Patent and Trademark Office  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

Dated: October 19, 2016

By: /Breslyn D. Jacobus/  
Breslyn D. Jacobus

**CERTIFICATE OF SERVICE**

I hereby certify that on October 19, 2016, I caused one copy of the attached NOTICE OF OPPOSITION to be sent via courier in a sealed envelope addressed to:

Christopher J. Day  
Law Office of Christopher Day  
9977 North 90<sup>th</sup> Street, Suite 155  
Scottsdale, Arizona 85258

Dated: October 19, 2016

By: /Breslyn D. Jacobus/  
Breslyn D. Jacobus