

4. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Opposition. To the extent an answer is required, Applicant denies the allegations contained in Paragraph 4 of the Opposition.

5. Applicant admits that it filed an application for registration of the mark FRUSION & Design for “yogurt and yogurt based beverages” and “beverages, namely, fruit-based beverages with yogurt” (Ser. No. 78/412,815) on May 4, 2004 and an application for registration of the mark “yogurt and yogurt based beverages” and “beverages, namely, fruit-based beverages with yogurt” (Ser. No. 78/412,815) on May 4, 2004 and that the United States Patent & Trademark Office published the applications for opposition in the Official Gazette of February 15, 2005 and April 5, 2005, respectively. Applicant denies that it filed the applications for registration “notwithstanding Opposer’s rights in and to its FRUSIA mark.”

6. Paragraph 6 of the Opposition contains legal conclusions to which no response is required. To the extent a response is required, Applicant denies the allegations contained in Paragraph 6 of the Opposition.

AS FOR A FIRST DEFENSE

The Notice of Opposition fails to state a cause of action upon which relief may be granted in law or in equity.

AS FOR A SECOND DEFENSE

There is no likelihood of confusion between Applicant’s mark and Opposer’s Mark based on the differences between the marks.

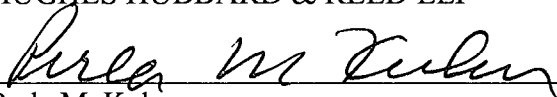
AS FOR A THIRD DEFENSE

There is no likelihood of confusion between Applicant's mark and Opposer's Mark because the goods and channels of trade of Applicant's mark are distinguishable from those of Opposer's Mark.

WHEREFORE, Applicant respectfully requests that the Board dismiss the Notice of Opposition in its entirety with prejudice and allow Applicant's applications for the mark FRUSION to subsist on the Principal Register.

Dated: New York, New York
July 5, 2005

Respectfully submitted,
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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

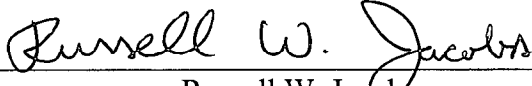
on July 5, 2005
HUGHES HUBBARD & REED LLP

Dated: 7/5/05 By: Cecelia Rabena

CECELIA Name: RABENA

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing ANSWER TO OPPOSITION was served, via first-class mail, postage prepaid on David S. D'Ascenzo, Kolisch Hartwell, P.C., 520 S.W. Yamhill Street, Suite 200, Portland, OR 97204, this 5th day of July, 2005.



Russell W. Jacobs