ESTTA Tracking number: **ESTTA78665**

Filing date: **05/01/2006**

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	Cadbury Beverages B.V.
Granted to Date of previous extension	05/07/2006
Address	World Trade Center, Tower B, 17th floorStrawinskylaan 1725, 1077 XX Amsterdam, NETHERLANDS

Attorney information	Barbara A. Solomon, Esq. Fross Zelnick Lehrman & Zissu, P.C. 866 United Nations Plaza New York, NY 10017 UNITED STATES bsolomon@frosszelnick.com Phone:212-813-5900

Applicant Information

Application No	78470702	Publication date	11/08/2005
Opposition Filing Date	05/01/2006	Opposition Period Ends	05/07/2006
Applicant	National Paintball Supply, Inc. 570 Mantua Boulevard Sewell, NJ 08080 UNITED STATES		

Goods/Services Affected by Opposition

Class 018. All goods and sevices in the class are opposed, namely: Articles of leather and imitations of leather, namely, bags, sacks, harnesses, carry-alls and luggage; carry-alls, rucksacks, backpacks, knapsacks and duffle bags
Class 025. All goods and sevices in the class are opposed, namely: Apparel for use in the sport of paintball, namely, paintball jerseys, paintball t-shirts, paintball hats, paintball gloves, paintball shorts, all of the foregoing sold through paintball equipment distributors.
Class 028. All goods and sevices in the class are opposed, namely: Paintball ammunition, paintball marker guns, and paintball marker gun accessories, namely, valve pins, front bolts, velocity adjusters, expansion chambers, barrels, trigger frames, barrel adaptors, power feed adaptors, marker scopes, marker covers, marker holsters, cocking bolts, sight rails, springs, o-rings, turbo valves, air tanks, ball detents, sears, actuator rods, air block screws, shafts, push pins, air regulators, grips, elbows, butt plates; paintball accessories, namely, face masks, loaders, guppies, harnesses, throat deflectors, chest deflectors, knee pads for athletic use, elbow pads for athletic use

Applicant Information

Application No	78470703	Publication date	11/08/2005
Opposition Filing Date	05/01/2006	Opposition Period Ends	
Applicant	National Paintball Supply, Inc. 570 Mantua Boulevard Sewell, NJ 08080 UNITED STATES		

Goods/Services Affected by Opposition

Class 018. All goods and sevices in the class are opposed, namely: Articles of leather and imitations of leather, namely, bags, sacks, harnesses, carry-alls and luggage; carry-alls, rucksacks, backpacks, knapsacks and duffle bags
Class 025. All goods and sevices in the class are opposed, namely: Clothing, namely, shirts, jackets, jerseys, vests, pants, shorts, gloves, hats, pajamas, headbands, belts, and children's clothing, namely, shirts, jackets, jerseys, vests, pants, shorts, gloves, hats, pajamas, headbands, belts; articles of sports clothing for use in playing paintball sport games, namely, shirts, jerseys, hats, gloves, shorts and pants, all of the foregoing sold through paintball equipment distributors
Class 028. All goods and sevices in the class are opposed, namely: Paintball ammunition, paintball marker guns, and paintball marker gun accessories, namely, valve pins, front bolts, velocity adjusters, expansion chambers, barrels, trigger frames, barrel adaptors, power feed adaptors, marker scopes, marker covers, marker holsters, cocking bolts, sight rails, springs, o-rings, turbo valves, air tanks, ball detents, sears, actuator rods, air block screws, shafts, push pins, air regulators, grips, elbows, butt plates; paintball accessories, namely, face masks, loaders, guppies, harnesses, throat deflectors, chest deflectors, knee pads for athletic use, elbow pads for athletic use

Attachments	ECF Consol. NOP.pdf (7 pages)(188262 bytes)

Signature	/s/
Name	Barbara A. Solomon, Esq.
Date	05/01/2006

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

In the Matter of Application Serial No. 78/470,702 for the mark CRUSH
- and -
In the Matter of Application Serial No. 78/470,703 for the mark KRUSH
Filed: August 20, 2004
Published in the *Official Gazette* on November 8, 2005

CADBURY BEVERAGES B.V., Opposer, - against - NATIONAL PAINTBALL SUPPLY, INC., Applicant.	CONSOLIDATED NOTICE OF OPPOSITION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

BOX TTAB - FEE

Opposer, Cadbury Beverages B.V. ("Opposer"), a company organized and existing under the laws of the Netherlands, with its principal place of business at World Trade Center, Tower B, 17th Floor, Strawinskylaan 1725, 1077 XX, Amsterdam, Netherlands, believes that it would be damaged by the issuance of a registration to National Paintball Supply, Inc. of the trademark CRUSH applied for in intent-to-use Application Serial Number 78/470,702 for goods in International Classes 18, 25 and 28 and for the trademark KRUSH applied for in intent-to-use Application Serial Number 78/470,703 for goods in International Classes 18, 25 and 28 and therefore opposes the same. As grounds for the opposition, Opposer, by its attorneys Fross Zelnick Lehrman & Zissu, P.C., alleges as follows:

1. Since at least as early as 1916 and continuing through the present, Opposer and its predecessors have used the mark CRUSH for beverage products.

2. CRUSH brand beverages are sold in convenience stores, delis, supermarkets, mass merchandisers, wholesale clubs and gas stations throughout the United States. Millions of bottles and cans of CRUSH-branded beverages have been distributed in the United States with sales in the millions of dollars. Opposer and its predecessors-in-interest have been using the CRUSH mark on beverages continuously for a period commencing long prior to any date on which Applicant can rely up to the current date.

3. Due to the extreme popularity of CRUSH-branded products, there have been significant opportunities for Opposer to expand its use of the CRUSH mark. In addition to using the CRUSH mark in connection with beverages, Opposer uses or licenses third parties to use the CRUSH mark on a variety of other products including candy, frozen novelties, lip balm and vitamin C drops. Since 1985 Opposer has used or licensed others to use CRUSH in connection with clothing. Currently, the CRUSH mark is used on or in connection with shirts, caps, sweatpants, pajama bottoms and shoelaces.

4. Opposer owns numerous U.S. trademark registrations for the CRUSH mark for beverages. In addition Opposer owns Registration No. 1,424,931 for the mark CRUSH for shirts, visors, t-shirts, jackets and caps. The registration issued on January 13, 1987, and is valid, subsisting and in full force and effect. The registration, which is incontestable, serves as conclusive evidence of Opposer's exclusive rights in and to the registered CRUSH mark for use in connection with clothing, is evidence that Opposer's rights in the CRUSH mark are long-prior to any rights on which Applicant can rely, and serves to place Applicant on notice of Opposer's rights.

5. Through its years of use and advertising and as a result of the expenditure of significant resources by Opposer and its predecessors, Opposer has established strong common law rights in the CRUSH mark as well as strong rights flowing from its federal registrations. The CRUSH mark has come to be associated uniquely with Opposer, represents enormous goodwill of Opposer and identifies and distinguishes goods manufactured, approved of, or licensed by Opposer from those of others.

6. As a result of the long use, registration and renown of the CRUSH mark, Opposer's CRUSH mark is entitled to an extremely broad scope of protection.

7. Upon information and belief, Applicant National Paintball Supply, Inc. is a Delaware corporation doing business at 570 Mantua Boulevard, Sewell, New Jersey 08080.

8. On or about August 20, 2004, Applicant filed intent-to-use Application Serial Number 78/470,702 to register the mark CRUSH in connection with goods in International Classes 18, 25 and 28.

9. On or about August 20, 2004, Applicant filed intent-to-use application Serial No. 78/470,703 for KRUSH for goods in Classes 18, 25 and 28.

10. As a matter of law, at the time Applicant filed its intent-to-use applications to register both CRUSH and KRUSH, Applicant was on constructive notice of Opposer's rights in the CRUSH mark based on Opposer's federal trademark registrations for the same. Upon information and belief, as a result of Opposer's and its predecessors' extensive use of the CRUSH mark for almost 90 years, Application was on actual notice of Opposer's prior rights in and to the CRUSH mark.

11. The filing date of the applications herein opposed, and the only date on which Applicant can rely, is long after the use, registration and acquisition of rights in the CRUSH

mark by Opposer or its predecessors-in-interest. As such, Opposer's rights in its CRUSH mark are prior and superior to any rights Applicant may claim in the marks CRUSH or KRUSH.

12. Applicant has applied to register the mark CRUSH which mark is identical in all respects to Opposer's prior used, registered and famous CRUSH mark.

13. Applicant also has applied to register the mark KRUSH which mark is a phonetic equivalent to and has the same sound, meaning and commercial impression as Opposer's prior used, registered and famous CRUSH mark.

14. Applicant seeks registration of the mark CRUSH for a broad array of articles of leather and imitations of leather including bags, harnesses, carryalls and luggage; on apparel for use in the sport of paintball; and on various accessories used in connection with paintball. The goods for which Applicant seeks registration of the CRUSH mark are identical if not related to those provided by Opposer or its licensees under the CRUSH mark. Moreover, given that Opposer licenses its CRUSH mark in connection with a variety of disparate goods, consumers will believe that the goods of Applicant are licensed or approved or otherwise authorized by Opposer.

15. Applicant seeks registration of the mark KRUSH for a broad array of articles of leather and imitations of leather including bags, harnesses, carryalls and luggage; on apparel not limited to use in the sport of paintball; and on various accessories used in connection with paintball. The goods for which Applicant seeks registration of the KRUSH mark are identical if not related to those provided by Opposer or its licensees under the CRUSH mark. Moreover, given that Opposer licenses its CRUSH mark in connection with a variety of products, consumers will believe that the goods of Applicant are licensed or approved or otherwise authorized by Opposer.

16. Applicant's applications to register the marks CRUSH and KRUSH in connection with goods in International Classes 18 and 28 are not limited with respect to consumers or channels of trade. As such, these goods will be deemed to be sold to all customers and through all channels of trade that are customary for such goods. These are the same customers that are familiar with Opposer's CRUSH mark and the same channels of trade through which Opposer or its licensee sell Opposer's CRUSH branded product.

17. With respect to Applicant's applications to register CRUSH and KRUSH in connection with Class 25, to the extent that the applications are restricted to products sold through paintball equipment distributors, this limitation on trade channel is not sufficient to avoid confusion since Opposer's goods are of the type that could be sold through paintball distributors since they include such items as shirts, hats and pants. Moreover, the customers for Applicant's clothing products under the marks CRUSH and KRUSH would overlap with customers that are familiar with Opposer's CRUSH mark used in connection with clothing or Opposer's consumers for CRUSH-branded product.

18. Registration to Applicant of the marks CRUSH and KRUSH is inconsistent with Opposer's prior rights in its CRUSH mark, is inconsistent with Opposer's statutory grant of exclusivity of use of the registered CRUSH mark, and would destroy Opposer's investment and goodwill in its CRUSH mark.

CLAIM FOR RELIEF UNDER SECTION 2(d)

19. Opposer repeats and re-alleges each and every allegation contained in paragraphs 1 through 18 as if fully set forth herein.

20. The CRUSH mark is associated exclusively with Opposer and its predecessors-in-interest and has been used continuously and registered by Opposer or its predecessors since a date long prior to any date on which Applicant can rely.

21. Applicant's mark CRUSH is identical to, and Applicant's KRUSH mark is the phonetic equivalent of, Opposer's prior registered and prior used CRUSH mark and both are identical to Opposer's mark in sound, meaning and commercial impression. Applicant seeks to use its marks in connection with goods identical or related to those provided by Opposer or its licensees under its CRUSH mark, sold to the same or overlapping consumer base who is familiar with Opposer's CRUSH-branded products, and sold through the same channels of trade used by Opposer.

22. By virtue of the fact that Opposer licenses its CRUSH mark for a broad variety of goods and receives requests by various entities to use the CRUSH mark on a wide array of goods, consumers, recognizing that companies license famous trademarks for many different goods and services, are likely to believe that Applicant's use of CRUSH or KRUSH is licensed by Opposer.

23. By virtue of the use of the CRUSH mark by Opposer, its predecessors and its licensees, the goodwill associated with Opposer's CRUSH mark, the registrations owned by Opposer for the CRUSH mark, the fame of the CRUSH mark, and the use of the CRUSH mark on clothing, the registration by Applicant of CRUSH for goods in International Class 18, 25 and 28 as identified in Application S.N. 78/470,702 and for the mark KRUSH for goods in International Class 18, 25 and 28 as identified in Application S.N. 78/470,703 is likely to create the erroneous impression that Applicant's products originate from, come from, or are otherwise associated with Opposer or that Applicant's use of CRUSH or KRUSH for the goods identified

in the applications is licensed by, or its products are endorsed or in some way connected with Opposer. Registration of the marks CRUSH and KRUSH in connection with the goods identified in the opposed applications is likely to cause confusion, cause mistake, or to deceive the public into the belief that the products offered by Applicant under the marks CRUSH or KRUSH come from or are otherwise sponsored by Opposer in violation of Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d).

24. By reason of the foregoing, Opposer is likely to be harmed by registration of Application S.N. 78/470,702 for the mark CRUSH and Application S.N. 78/470,703 for the mark KRUSH.

WHEREFORE, it is respectfully requested that this opposition be sustained and that the registration sought by Applicant in Application S.N. 78/470,702 and 78/470,703 be denied.

Opposer authorizes the opposition fee in the amount of $1800 for two marks in three classes each to be debited from Opposer's attorneys' Deposit Account No. 23-0825-0576900.

Dated: New York, New York
May 1, 2006

FROSS ZELNICK LEHRMAN
& ZISSU, P.C.

By: _____
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Attorneys for Opposer Cadbury Beverages B.V.

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